9

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 667 OF 2003 February
Cuttack, this the 9th day ~~January~~, 2005

Sri Gopabandhu Parida ..... Applicant

Vrs.

Union of India and others ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? yes

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? yes

(J.K.KAUSHIK)
JUDICIAL MEMBER

(B.N.SOM)
VICE-CHAIRMAN

10

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.NO. 667 OF 2003
Cuttack, this the 9th day ~~January~~ February, 2005

CORAM:
HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI J.K.KAUSHIK, JUDICIAL MEMBER

.....

Sri Gopabandhu Parida, son of Sri Laxmidhar Parida, Village/Post: Sankiri, Via Raisuan, District Keonjhar

..... Applicant

Advocate for applicant - Mr.P.K.Padhi

Vrs.

1. Union of India, represented by its Member (P), Ministry of Communications, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi 110 001.
2. Director of Postal Services, Sambalpur Region, At/PO/Dist.Sambalpur.
3. Superintendent of Post Offices, Keonjhar Division, At/PO Keonjhargarh, Dist.Keonjhar 758 001
4. Chief Post Master General,Orissa Circle, Bhubaneswar, Dist. Khurda 751 001

..... Respondents

Advocate for respondents - Mr.U.B.Mohapatra, Sr.CGSC

O R D E R

PER J K KAUSHIK, JUDICIAL MEMBER

Shri Gopbandhu Parida has filed this Original Application under section 19 of the A T Act. 1985, for seeking the following reliefs:

" It is therefore humbly prayed that the Hon'ble Tribunal may kindly be pleased to quash Annexure-18, 20 & 22 and direct the respondents to reinstate the applicant in service with all consequential benefits"

2. We have heard the arguments advanced by the learned counsel for both the contesting parties and have given considerable thought to the pleadings and records of the case.

11

2

3. The abridged facts of this case are that the applicant was employed on the post of EDBPM of Senkiri Branch PO during the year 1996. He was put off duty on dated 27.11.96 on the ground of contemplation of disciplinary inquiry. He was issued with charge sheet vide memo dated 15.4.97 which contained a set of charges i.e. alleging that he committed temporary misappropriations of Rs. 400/-, 360/- and 310/- for few days. He was not supplied with copies of the listed documents as well as the statement of witnesses despite his request. He denied the charges. IO and PO were appointed and confronted inquiry was conducted. The applicant nominated one Shri Ganeswar to assist as defence assistant but he was asked to nominate someone else, which he did. During the inquiry proceedings, the depositors confirmed that they had earlier given their statements under dictation and there was no discrepancy in the passbook.

4. The further facts of the case as narrated by the applicant are that the Inquiry Officer held the charge No. I as not proved and other two charges as proved, without considering his defence note. He submitted a detailed representation against the findings of Inquiry officer on the charges No. II & III but the DA

12

accepted the unsigned report and inflicted the penalty of removal from service vide order dated 21.10.98. He preferred an appeal that came to be accepted and a de novo proceedings from the stage of submission of IO report was ordered. The new IO did nothing except signing the identical report. The DA indicated his disagree note in respect of charge No. 1 and asked the applicant to submit his representation, which was duly submitted. However, the punishment order dated 30.5.2000 was almost the same. An exhaustive appeal was preferred wherein the specific request was made for giving personal hearing but such hearing was not found expedient and was denied. The same came to be turned down on dated 19.10.2000. He also filed a petition against appellate order but the same was rejected vide letter dated 16.4.2002. Certain averments have adduced relating to the biasness and corrupt practices of IO and DA. The OA has been filed on diverse grounds enunciated in para 5 and its sub-para.

5. The respondents have resisted the claim of the applicant and have submitted a detailed counter reply to the OA. The facts and ground raised in the pleadings of applicants have been generally refuted. As regards the person hearing by the appellate authority is concerned, the defence of the respondents

is that there was no reason for giving personal hearing and whatever the applicant wanted to point out was pointed out in the appeal. The DA has acted judiciously and reached to the conclusion that the applicant was guilty of all the charges. The same has been affirmed by the Member (P) Department of Post.

6. Both the learned counsel have reiterated the facts and grounds mentioned in the respective pleadings of the parties. We want to skip up and straightway come to one of the ground on which great emphasis has been laid by the learned counsel for the applicant i.e. relating to grant of personal hearing by appellate authority. In the instance case, the personal hearing was specifically asked for but has been refused in the following terms:

> " I have gone through the appeal and all connected records of the case. There is no reason for personal hearing as whatever the applicant wanted to point out has been pointed out in his appeal dated 30.7.2000. Further after taking into consideration the available records of the case the appellate order will be issued and I do not feel any purpose will be served by personal hearing."

The mere perusal of the aforesaid version would reveal that the same does not appeal to the reason. It is astonishing to note that the concerned authority could forecast as to what the applicant would say during personal hearing. It is no reason at all; rather could be aptly termed as eyewash, reflecting no

application of mind. The principle of natural justice that justice should not only be done but seems to have been manifestly and undoubtedly done has been obviously given goodbye.

6. We may trace out the law position on the point of hearing to be given by the appellate authority. As per the Govt. of India's instruction No. 5 below rule 27 of CCS (CCA) Rules 1965, it has been provided that "where the appeal is against an order imposing a major penalty and the appellant makes a specific request for a personal hearing, the appellate authority may after considering all relevant circumstances of the case, allow the appellant at its discretion, the personal hearing". We may point out the discretion has to be judicious one and the discretion does not mean discrimination or arbitrary action. In any case, there has to be some cogent reason for non-acceptance of such request, which is not there in the instant case as pointed out above.

7. As regards the legal pronouncement, the learned counsel for both the parties undertook to assist us by facilitating the citations on this point but they betrayed and left us in distress. We could lay hand on one of the most celebrated judgement delivered by the Apex court in case of Ram Chander Vs. Union of

India and others **AIR 1986 SUPREME COURT 1173,** wherein their Lordships have lucidly illustrated the necessity and object of personal hearing by the appellate authority. We would do well by reproducing an excerpt from penultimate para and the same is axiomatic answer to the issue:

> "It is not necessary for our purposes to go into the vexed question whether a post-decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the rules of natural justice since the majority in Tulsiram Patel's case (AIR 1985 SC 1416) unequivocally lays down that the only stage at which a Government servant gets 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing should be given."

16

7

8. Keeping in view the aforesaid principles of law, we are of considered opinion that the appellate authority has not dealt the matter in a fair manner and the applicant ought to have been allowed personal hearing. If that were so, we shall have to relegate the matter to the appellate authority for the needful. We do not find it expedient to adjudicate upon other issues involved in this case at this juncture to enable the appellate authority would apply its independent mind to the whole case of the applicant.

9. The upshot of the aforesaid discussion is that the Original Application has force and the same stands allowed in part. The impugned order dated 19.10.2000 (A/20) and order-dated 16.4.2002 (A/22) passed in revision petition stand quashed. The appellate authority is directed to give a personal hearing to the applicant and then decide the appeal afresh in accordance with law, completing the whole exercise within a period of three months from the date of communication of this order. The result of the appeal shall regulate the consequential benefits. Costs made easy.

(J.K.KAUSHIK)
JUDICIAL MEMBER

(B.N.SOM)
VICE-CHAIRMAN