

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 618 OF 2011

Thursday, this the 21st day of June, 2012

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

K.B.Prathapan
EX.GDS BPM Kunchithanni PO
Residing at Kavunkal House
Kunjithanni PO, Idukki – 685 565

... Applicant

(By Advocate Mr. P.C.Sebastian)

versus

1. The Director of Postal Services
Central Region
Kochi – 682 018
2. The Superintendent of Post Offices
Idukki Division
Thodupuzha – 685 584
3. Union of India represented by
Secretary to Government of India
Ministry of Communications
Department of Posts
New Delhi – 110 001

... Respondents

(By Advocate Mr.Varghese P Thomas, ACGSC)

The application having been heard on 21.06.2012, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant while working as Branch Postmaster was subjected to disciplinary action. Three charges were framed against him vide Annexure A-3. Subsequently, an enquiry was conducted and he was found guilty of charges and he was removed from service. He preferred an appeal before the Appellate Authority specifically seeking personal hearing. The



Appellate Authority disposed of the appeal by Annexure A-1 order but denied the request for personal hearing on the ground of absence of any specific provision thereof.

2. Subsequent to the 42nd amendment of the Constitution has taken away the right of the civil servant to show cause against the proposed penalty and the only available opportunity of highlighting the disproportionality in the matter of punishment is only by way of an appeal. The Hon'ble Supreme Court in the decision in **Ram Chander v. Union of India & Others (1986) 3 SCC 103** after analyzing various decisions regarding hearing at the appellate stage has held as follows:-

"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 case 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 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." (emphasis supplied)

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3 Therefore, in the light of the above legal position the mere fact that the rule does not specifically provide for any personal hearing at the appellate stage is not a good reason to deny right of personal hearing. In the circumstances, we allow this OA without going into the merits of the case. The impugned order in appeal is set aside. Let the Appellate Authority afford a personal hearing to the applicant and pass fresh orders. This shall be done as early as possible, at any rate, within three months from the date of receipt of a copy of this order.

4. OA is allowed as above.. No costs.

Dated, the 21st June, 2012.


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R.RAMAN
JUDICIAL MEMBER

vs