

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 355 of 2008

Tuesday, this the 2nd day of June, 2009

CORAM:

Hon'ble Mr. George Paracken, Judicial Member
Hon'ble Ms. K. Noorjehan, Administrative Member

P.A. Thomas, Aged 46 years, S/o. Abraham,
 Ex. GDS MD, Kuriyode P.O., Residing at
 Parappathu Mini Bhavan, Chadayamangalam
 P.O., Kollam - 691 534.

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Applicant

(By Advocate – Mr. P.C. Sebastian)

V e r s u s

1. The Senior Superintendent of Post Offices,
Kollam Division, Kollam - 691 001.
2. The Asst. Supdt. of Post Offices, Kollam
South Sub Division, Kollam - 691 001.
3. Shri R. Venunatha Pillai, Postmaster,
Kollam Head Post Office (Inquiring Authority).
4. The Union of India, Represented by the Secretary
to Govt. of India, Ministry of Communications,
Department of Posts, New Delhi.

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Respondents

(By Advocate – Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 2.6.2009, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. George Paracken, Judicial Member -

The applicant is aggrieved by (i) the Annexure A-3 inquiry report submitted by the 3rd respondent, (ii) the Annexure A-5 proceedings dated 30.5.2006 by which the disciplinary authority has imposed the punishment of removal from service on him and (iii) the Annexure A-7 appellate authority's order dated 9.11.2006 rejecting his appeal.



2. We have heard Shri P.C. Sebastian, learned counsel for the applicant and Ms. Jisha for Mr. TPM Ibrahim Khan, SCGSC on behalf of respondents.

3. One of the arguments of the applicant's counsel Shri P.C. Sebastian was that the applicant was not granted any opportunity for personal hearing by the appellate authority even though he has specifically requested for the same in his Annexure A-6 appeal dated 16.8.2006. He has also pointed out that though the appellate authority has passed a very detailed order rejecting his appeal, yet it has not given any reasons as to why his request for personal hearing was not granted to him. In this regard Shri P.C. Sebastian relied upon the judgment in Ram Chander Vs. Union of India & Ors., 1986 (3) SCC 103 in which the Apex Court has held that 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. The Apex Court has also held that fair play and justice also require that such a personal hearing should be given to the delinquent servant. The relevant part of the said judgment is extracted below:

"It is not necessary for our purpose 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 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 punishment 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."

4. Shri Sebastian has also produced a copy of the judgment of the Hon'ble High Court of Kerala in the case of C. Rajan Vs. The Sub Divisional Inspector of Post Offices, Trivandrum Central Sub Division, Trivandrum & Ors. (OP No. 28631 of 2000 S) decided on 15th October, 2001. In the said judgment the Hon'ble High Court has relied upon the judgment of Apex Court in Ram Chander (supra) and held that the Appellate Authority is liable to grant an opportunity of personal hearing to the applicant. The operative part of the said order is also reproduced for the sake of convenience:

"9. In view of the above legal position, the appellate order is liable to be set aside being a decision taken in violation of the principles of natural justice read in the light of the decision of the Supreme Court in Ram Chander v. Union of India. But, as the petitioner has not raised such a ground, we decline to interfere with the appellate order. But, having regard to the facts and circumstances of the case, we are exercising our discretion to the extent of directing the appellate authority to re-consider the question of penalty to be imposed on the petitioner after affording an opportunity of being heard. This, the appellate authority should do uninfluenced by the stand regarding penalty in Ext. P14 and Ext. P16.

10. The Supreme Court in the decision in Secretary, Ministry of Communication v. Gundu Achari (unreported decision in SLP (C) No. 5646/1990 referred to in Ram Dhirai Pandey v. Union of India - 1999 SCC (L&S) 946) has declared rule 9(3) of the Posts and Telegraphs Extra-Departmental Agents (Conduct and Service) Rules, 1964 as unconstitutional. Rule 9 (3) provided that an employee put off duty shall not be entitled to any allowance for the period for which he is kept out of duty under this rule. We have already found that the petitioner is eligible to be treated as on duty from 13.11.1987 to 15.6.1990. In view of the obliteration of rule 9(3) from the Statute, the petitioner is entitled to pay/allowances for the period upto 13.7.1992, the date on which he was dismissed from service by Ext. P12. Regarding payment of subsistence allowance the Supreme Court in the decision in R.P. Kapur v. Union of India (AIR 1964 SC 787) has held:

"But, what amount should be paid to the public servant during such suspension will depend upon the provisions of the Statute or Rule in that connection. If there is such a provision, the payment during suspension will be in accordance therewith.

But, if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension."

11. This decision albeit on suspension will apply to put off duty as well. Therefore, the disciplinary authority shall decide what should be the wages/allowances to be paid to the petitioner while he was put off duty in the light of the observations contained hereinabove. The appellate authority shall take a fresh decision on the question of punishment to be imposed on the petitioner. The disciplinary authority as well as the appellate authority shall take the decision within two months from the date of receipt of a copy of this Judgment.

The Original Petition is disposed of as above. No costs."

5. The learned counsel for the respondents, Ms. Jisha, on the other hand, has submitted that according to the Department of Personnel & Training OM dated 28.10.1985, granting of the request for personal hearing at appellate stage is at the discretion of the appellate authority and there is no legal right for the delinquent employee to claim such a hearing. The Government of India Instruction No. 5 mentioned beneath Rule 27(3) of CCS (CCA) Rules in Swamy's Compilation, is extracted hereunder:

"(5) Personal hearing at the discretion of Appellate Authority in major penalty cases.- The Committee of the National Council (JCM) set up to review the CCS (CCA) Rules, 1965, has recommended that provision may be made for personal hearing by the Appellate Authority of the employee concerned if the appeal is against a major penalty.

2. The above recommendation has been considered in all its aspects. Rule 27 of the CCS (CCA) Rules, 1965, does not specifically provide for the grant of a personal hearing by the Appellate Authority to the Government servant before deciding the appeal preferred by him against a penalty imposed on him. The principle of right to personal hearing applicable to a judicial trial or proceeding even at the appellate stage is not applicable to departmental inquiries, in which a decision by the Appellate Authority can generally be taken on the basis of the records before it. However, a personal hearing of the appellant by the Appellate Authority at times will afford the former an opportunity to present his case more effectively and thereby facilitate the Appellate Authority in deciding the appeal quickly and in a just and equitable manner. As Rule 27 of the CCS (CCA) Rules does not preclude the grant of personal hearing in suitable cases, it has been decided 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.

(G.I., Dept. of Per. & Trg., OM No. 11012/20/85-Estt. (A), dated the 28th October, 1985)

3. It has been decided that in all those cases where a personal hearing is allowed by the Appellate Authority in terms of the above OM, the Government servant may be allowed to take the assistance of a Defence Assistant also, if a request is made to that effect.

(G.I., Dept. of Per. & Trg., OM No. 11012/2/91-Estt. (A), dated the 23rd April, 1991)"

6. We fully agree with the contention of the learned counsel for the applicant that when the applicant has specifically asked for personal hearing, the appellate authority ought to have granted the same in the view of the law laid down by the Hon'ble Apex Court in the case of Ram Chander (supra) which was followed by the Hon'ble High Court of Kerala in the case of C. Rajan (supra). Moreover, once the Apex Court has laid the law on a particular issue, the instructions of the Government on that issue would lose their significance.

7. We therefore, quash and set aside the order dated 9.11.2006 (Annexure A-7) and remit the case back to the appellate authority who shall grant an opportunity of personal hearing to the applicant within a period of one month from the date of receipt of a copy of this order. Thereafter, the Appellate Authority shall re-consider the inquiry report, disciplinary authority's order and the appeal of the applicant and shall pass a fresh order, either reiterating the earlier order or modifying the same and communicate it to the applicant within a period of two months thereafter.

8. It is made clear that we have not gone into the merits of the case and other contentions of the counsel for the parties. If the applicant is still aggrieved and if he is so advised, he is at liberty to approach this Tribunal again by way of a fresh proceedings.

9. This OA is accordingly, disposed of. There shall be no order as to costs.


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(GEORGE PARACKEN)
JUDICIAL MEMBER

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