

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED THURSDAY, THE THIRTEENTH DAY OF JULY ONE
THOUSAND NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI S.P.MUKERJI, VICE CHAIRMAN
&
HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.362/86

N.T.Joseph - Applicant

vs

1. Divisional Railway Manager,
Southern Railway,
Trivandrum.
2. Divisional Commercial
Superintendent,
Southern Railway,
Trivandrum.
3. Divisional Commercial
Inspector, Southern Railway,
Ernakulam South. - Respondents

M/s K.Ramakumar, C.P.Ravindranath & - Counsel of the
E.M.Joseph applicant

Smt Sumathi Dandapani - Counsel of the
respondents

O_R_D_E_R

(SHRI S.P.MUKERJI, VICE CHAIRMAN)

In this application dated 15.4.1986, the applicant
who has been working as Head Commercial Clerk under Southern
Railway at Trichur has prayed that the impugned orders
dated 30.9.1985 imposing a penalty of withholding of
increments for a period of 12 months without the effect
of postponing future increments; as also the appellate order
dated 24.3.1986 at Annexure-E rejecting his appeal should be
set aside.

2. We have heard the learned counsel for both the parties and gone through the documents. It is evident from the impugned order of punishment dated 30.9.1985 that the order was passed without considering the explanation dated 24.3.1984 at Annexure-B which the applicant had given to the undated memorandum at Annexure-A. The reason for non-consideration of his explanation could be that the explanation reached the respondents beyond the time limit of 10 days from the receipt of the memorandum at Annexure-A. Without going into the merits of the case we find that even though this point of non-consideration of his representation had been made out by the applicant in his appeal dated 8.11.1985 at Annexure-D and the explanation had been received by the respondents, ~~By~~ when the appellate authority ~~dwelt~~ did not ~~thwart~~ upon this particular infirmity in the disciplinary proceedings and other points raised in the appeal and passed a non-speaking order rejecting his representation.

3. It is now an established law that after the 42nd amendment of the Constitution whereby the second opportunity of representation on the quantum of punishment has been taken away, there is all the more reason that the appellate authority not only passes a speaking order but also gives an opportunity to the appellant for personal hearing. In this connection, the celebrated judgements

of the Supreme Court in Ramachander Vs Union of India, ATR 1986(2) SC 252 and R.P.Bhat Vs Union of India, AIR 1986 SC 1040 will be pertinent. With regard to the instant case before us, we cannot help noticing that the appellate order on the face of it seems to be very sketchy and indicative of a routine disposal inasmuch worded as it has been/by filling up blanks in a cyclostyled pro-forma. We feel that in the larger interest of natural justice, the technicality of expiry of 10 days time should not have been the governing factor with the respondents to ignore the explanation of the applicant altogether.

4. In the facts and circumstances, we allow the application to the extent of setting aside the appellate order dated 24.3.86 and directing that the appellate authority dated 8.11.85 should re-consider the appeal of the applicant as also the explanation given by him dated 24.3.1984 and dispose of the appeal in accordance with law after giving the applicant a personal hearing. We further direct that the appeal should be disposed of within a period of three months from the date of receipt of communication of this order with liberty to the applicant to move appropriate forum, if so advised in case he feels aggrieved by the outcome of the appeal to be considered on the above lines.

5. There will be no order as to costs.


(N.DHARMADHAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

13-7-1989

trs

C.C.P. No. 26189

M.OA 362/86

08.12.89

Shri. Ramachandran
Nair - for applicant.
Mrs. Sumati Dandapani
for Respondent.

SPM & AVH

list for further directions
at the request of the learned Counsel
for the respondents on 20.12.89.

SPM & AVH

20.12.89

SPM & AVH

Shri Ramachandran Nair
Smt. Sumati Dandapani.

The learned counsel for the respondents
states that the Appellate Authority in compliance with our
judgment dated 18th July, 1989 given personal hearing to
the original applicant. The appellate order has been
sent to him.

PN
R/P
List for further directions on the
C.C.P. on 2.1.90.

SPM

Sumi

20.12.89

8.1.90

SPM
Mr. K. Ramakumar for the applicant
Mrs. Sumathi Dandapani for respondent.

It is stated on behalf of the
applicant that the appellate order
has been received by him.

Accordingly the case is closed
and the notice of contempt is
discharged.

SPM
Since this is a Divisional Bench matter
I recall my order dated 8.1.90 and direct

that this may be placed before the concerned D.B.

8.1.90

SPM/9.1.90

17.1.90

C.C.P. 26/89
in O.A. 362/86

Shri MR Ramachandran Nair
Ms. Preethy Kesavan

SPM & ND

Heard the learned counsel for both the parties. It is stated on behalf of the applicant that the appellate order has since been received by the applicant. Accordingly the C.C.P. does not survive and the same is closed and the notice of contempt is discharged.



17.1.90

Order communicated
22.1.90

