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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

Original Application No.9/1985

Mr.T.G.Shahani,  
Daulatnagar Co-op.Housing Society,  
Building No. 10/136,  
Kopri, Thane(E),  
PIN 400 603

... Applicant

v/s.

Shri G.S.Shukla,  
Agricultural Marketing Adviser,  
to the Govt. of India,  
Ministry of Rural Development  
Directorate of Marketing & Inspection  
(Head Office) NH IV,  
Faridabad(Haryana)

... Respondent

Coram: Hon'ble Member(A) L.H.A.REGO  
Hon'ble Member(J)M.B.MUJUMDAR

TRIBUNAL'S ORDER

Date: 26-08-1987

Heard Mr.Bhutani, the Learned Advocate, for the applicant and Mr.J.D.Desai(for Mr.M.I.Sethna), ~~for~~ the Learned Counsel for the Respondents.

The applicant was working as Assistant Marketing Officer and was removed from service with immediate effect by an order dated 17-3-1982 passed by the Disciplinary Authority, viz. the Agricultural Marketing Adviser to the Government of India. Against that order the applicant had preferred an appeal dated 16-4-1982. The appeal was decided by the Appellate Authority, viz. the Director and Chief Vigilance Officer, by an order dated 20/21st of July,1984. That order is at page 87 to 91 of the compilation. Thereafter, after giving a notice dated 29-9-1984 through an advocate, the applicant has filed the present application on 28-11-1985 under Section 19 of the Administrative Tribunals Act,1985.

We have not stated the facts earlier

to the impugned order dated 17.3.1982 because they are not relevant for this order. While hearing the arguments of the Learned Advocate for the applicant we found that the order passed by the Appellate Authority on 20/21st July 1984 is not consistent with the requirements laid down by the Supreme Court in the case of Ram Chander V. Union of India and Ors. reported in ATR 1986(2) SC 252. In short the Supreme Court <sup>has</sup> held in that case 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 intial 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 provide 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 emphasise that reasoned decision 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

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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."

In result the Supreme Court directed the Appellate Authority to hear and dispose of the appeal after affording a personal hearing to the appellant on merits by a reasoned order in conformity with the requirements of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rule, 1968, as expeditiously as possible, and in any event, not later than four months from the date of this order.

We, therefore, propose to pass a similar order in this case because we find that the Appallate Authority i.e., the Director and Chief Vigilance Officer, has decided the appeal without giving a personal hearing to the applicant. We also find from the order that he has not dealt with the points raised by the applicant in his appeal memo. In our opinion he should have considered and given his opinion on the points raised by the applicant in his appeal memo. We are, therefore, of the view that the decision of the Appellate Authority is not consistent with the principles laid down by the Supreme Court in Ram Chander's case cited above.

Next point to be considered is whether we should refer the matter back to the Appellate Authority and dispose of the present application. But we find that if we dispose of the application and in case the Appellate Authority's order goes against the applicant, the applicant may find it costly to file a fresh application before this Tribunal. We, therefore, propose to keep the case pending till the matter is decided by the Appellate Authority, as directed above. We, therefore, pass the following orders:

The order passed by the Appellate Authority i.e., the Director and Chief Vigilance Officer Shri Atul Sinha on the appeal preferred by the applicant on 16.4.1982 is hereby quashed and set aside. We direct that the Appellate Authority shall decide the appeal on merits,

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after affording a personal hearing to the applicant and by passing a reasoned order in the light of the principles laid down by the Supreme Court in Ram Chander's case. We further direct that the appeal should be disposed of as expeditiously as possible ~~and as far as possible~~ but not later than four months from the date of receipt of this order. The applicant shall also cooperate with the Appellate Authority so that the appeal ~~is~~ decided as expeditiously as possible.

The present application shall be kept pending till the appeal is disposed of by the Appellate Authority

The case is fixed on 30.12.1987 for intimating the decision of the appeal and for directions.

The case may not be treated as part heard.

  
( M B Majumdar )

Member (J)

  
( L H A Rego ) 26-2-87  
Member (A)