

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
 NEW DELHI  
 NEW BOMBAY BENCH

O.A. No. 423/87 198  
 XXXXX

DATE OF DECISION 2.11.1988

Shri V.M.Mandade

Petitioner

Shri Mohan Sudame (amicus curiae)

Advocate for the Petitioner(s)

Versus

Senior Divisional Operating Superintendent,  
 Respondent

Shri P.S.Lambat

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.B.Mujumdar, Member (J)

The Hon'ble Mr. P.S.Chaudhuri, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, CIRCUIT Sittings  
AT NAGPUR, NAGPUR.

ORIGINAL APPLICATION NO. 423 OF 1987.

Shri Vinayak Mahadeo Mandade,  
Removed Pointsman,  
C/o. E.N. Dhage,  
Manapure Road,  
Malguzaripura,  
Wardha.

... Applicant

V/s.

Senior Divisional  
Operating Superintendent,  
Central Railway,  
Nagpur.

... Respondent

Coram: Hon'ble Member(J), Shri M.B. Mujumdar  
Hon'ble Member(A), Shri P.S. Chaudhuri

ORAL JUDGMENT:

Dated: 2.11.1988

The applicant, who was working as a pointsman, was removed from service after holding a departmental proceeding against him by the order dated 13.7.1985/4.9.1985 passed by the Senior Divisional Operating Superintendent, Central Railway, Nagpur. Against that order the applicant had preferred appeals dated 10.11.1985 and 3.2.1986. The appeals were decided by the Divisional Railway Manager, Central Railway, Nagpur and his decision was conveyed to the applicant by the Senior Divisional Operating Superintendent, Central Railway, Nagpur by his letter dated 16.6.1986. The letter reads thus:

Subject: Appeal dated 10.11.85 and 3.2.86  
preferred by Shri Vinayak Mahadeo  
P/man Wardha against the orders of  
imposition of penalty of 'Removal  
from Service' vide order No.NGP/  
T.694/0/WR of 13.7.1985/4.9.1985.

The Divisional Railway Manager, Central Railway, Nagpur has considered your appeal dated 10.1.1985 and 3.2.1986 against the orders of imposition of penalty of "Removal from Service" in terms of Rule 22(2) of Railway Servant (D & A) Rules, 1968 and he finds as under:-

" Delinquent employee along with his ARE heard in person. No new points brought up. I do not find any reason to change the decision taken by the Disciplinary Authority."

Please acknowledge the receipt.

2. Mr. Sudame submitted that the decision of the Appellate Authority was not in accordance with the judgment of the Supreme Court in Ramchander Vs. Union of India, A.T.R. 1986(2) S.C.252. In para 5 the Supreme Court has pointed out as under:

"To say the least, this is just a mechanical reproduction of the phraseology of Rule 22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshal the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a long period of service may not deserve such a harsh punishment. There being non-compliance with the requirements of Rule 22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside."

In para 25 the Supreme Court observed as under:-

" Professor de Smith at pp. 242-43 refers to the recent greater readiness of the courts to find a breach of natural justice 'cured' by a subsequent hearing before an appellate tribunal. In *Swadishi Cotton Mills Vs. Union of India* although the majority held that the expression 'that immediate action is necessary' in Section 18-AA(1)(a) of the Industrial Undertakings (Development and Regulation) Act, 1951, does not exclude absolutely, by necessary implication, the application of the *ad alteram partem* rule, *Chinnappa Reddy, J.* dissented with the view and expressed that the expression 'immediate action' may in certain situations mean exclusion of the application of the rules of natural justice and a post-decisional hearing provided by the statute itself may be sufficient substitute. 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 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 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."

3. In result the Supreme Court allowed the appeal and directed the appellate authority to hear and dispose of the appeal after affording a personal hearing to the applicant on merits by a reasoned order in conformity with the requirements of Rule.22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, as expeditiously as possible.

4. Turning to the facts of this case, though the applicant was given a personal hearing by the appellate authority, the order in our opinion, is not a reasoned order. Mr.Sudame the learned advocate for the applicant showed us the appeal memos, *in these appeal memos,* the applicant had raised a number of points. The appellate authority's order does not show that these points were dealt with him in any way.

5. Hence we propose to dispose of this application on the lines of the order passed by the Supreme Court in Ramchander's case. We therefore, pass the following orders:

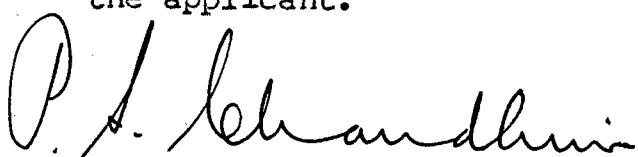
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O R D E R

- 1) The order passed by the appellate authority i.e. the Divisional Railway Manager, Central Railway, Nagpur on the appeals preferred by the applicant on 10.11.1985 and 3.2.1986 is hereby quashed and set aside.
- 2) The appellate authority shall dispose of the appeals preferred by the applicant on 10.11.1985 and 3.2.1986 against the impugned order of penalty on 13.7.1985/14.9.1985 by the Senior Divisional Operating Superintendent, Central Railway, Nagpur, after affording a personal hearing to the applicant and on merits and by passing a reasoned order in conformity with the requirements of Rule.22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968.
- 3) The appellate authority shall dispose of the appeal, as far as possible, within a period of three months from the date of receipt of a copy of this order.
- 4) If the decision of the appeal goes against him, the applicant will be at liberty to approach this Tribunal by filing a fresh application after exhausting the departmental remedies available to him.
- 5) Parties to bear their own costs.

6. We appreciate the assistance rendered to us by Mr. Mohan Sudame who was appointed as amicus curiae to argue the case of the applicant.



(P.S. CHAUDHURI)  
Member (A)



(M.B. MULJUMDAR)  
Member (J)