

CENTRAL ADMINISTRATIVE TRIBUNAL: BOMBAY BENCH: BOMBAY

O.A.NO.112 OF 1987

Ampaty Abraham,  
Ex-Assistant Commercial Clerk (Coaching),  
Sion Railway Station of the Central Railway,  
residing at Room No.603, Laxmi Chawl,  
Kumbharwada Road, Dharavi, Bombay-400 017. .. Applicant.

(By Sri C.Nathan, Advocate)

v.

Sri S.M.Chandwani,  
Divisional Commercial Superintendent (I),  
Central Railway, Bombay V.T. .. Respondent.

(By Sri R.K.Shetty, Advocate)

CORAM:

Hon'ble Mr.Justice K.S.Puttaswamy, .. Vice-Chairman.  
Hon'ble Mr.M.Y.Priolkar, .. Member(A).

ORAL JUDGMENT:

(Per: Justice Sri K.S.Puttaswamy, VC)

Dated: 22-12-1988.

In this application made under Section 19 of the Administrative Tribunals Act,1985 ('Act'), the applicant has challenged Order No.BB/C/DAR/Major/126/84 dated 17-12-1986 (Exhibit-G) made by the Divisional Commercial Superintendent (I), Bombay and the Appellate Authority ('AA') and Order No.BBCC.DAR/Major/136.84 dated 29-5-1985 made by the Assistant Commercial Superintendent (Cog.), Bombay V.T. and the Disciplinary Authority ('DA').

2. The facts of this case have been succinctly set out by this Tribunal in its order made on 22-10-1986 in Original Application No.25 of 1986 (Exhibit-F), in which the applicant had challenged an earlier order of the AA affirming the very order of the DA. On this, it is unnecessary for us to re-state the facts over again in this order.

3. In its order made on 22-10-1986 in O.A.No.25 of 1986 this Tribunal took strong exception to the earlier order of the AA on the ground that it was not a speaking order and, therefore, remitted the case to that authority for fresh disposal. In pursuance of the remand order of this Tribunal, the AA affording an opportunity of

personal hearing to the applicant had again dismissed the same on 17-12-1986 (Exhibit-G). Hence, this application.

4. Sri C.Nathan, learned counsel for the applicant contends that the order of the AA was not a speaking order made in conformity with the principles enunciated by the Supreme Court in RAM CHANDER v. UNION OF INDIA [1986 (2) SLR 608] and this Tribunal in its order in O.A.No.25 of 1986 and on this ground itself we must annul the impugned orders and direct the reinstatement of the applicant to service with all consequential benefits.

5. Sri R.K.Shetty, learned counsel for the respondent refuting the contention of Sri Nathan, contends that the order made by the AA was a speaking order and examining all the facts and circumstances this Tribunal should only confirm the impugned orders without making one more remand to the AA.

6. The order made by the AA on the second occasion reads thus:-

"As per the directive from the Registrar vide his letter mentioned above for giving a personal hearing to you as per Rule No.22(2) of Discipline and Appeal Rules,1968, you have been given a personal hearing on 8-12-1986 at 11-00 hours by the Appellate Authority and his observations are as under:-

(i) He has evaded the enquiry proceedings due to non-availability of ARE to defend his case.

(ii) He has been given adequate opportunity to defend his case by postponing the enquiry twice.

(iii) His reporting sick on 12-4-1985 was not made known to the E.O who was holding enquiry at Sion on that date and there is no information on file about his sickness on 12-4-1985.

(iv) In view of the above, ex-parte decision is justified from Administration's point of view."

The only merit of this order is that it alludes to the personal hearing afforded to the applicant as if that was a ritual performed by him and then dismisses the appeal of the applicant virtually restating what had been stated by him in his earlier order. We have no doubt that this order is not a speaking order which he was bound to make as directed by this Tribunal. The order of the AA does not

examine and record its findings on the material contentions urged by the applicant in his appeal before him and the requirements of Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968. Even after examining the order of the AA more than once and the valiant effort made by Sri Shetty to sustain the same, we find it impossible to hold that it is a speaking order. On this it necessarily follows that we cannot uphold the order of the AA.

7. The fact that the AA had committed a blunder once more does not mean that we should annul his order and the order of the DA on that score itself and direct the reinstatement of the applicant to service with all consequential benefits as strongly urged by Sri Nathan. We are of the view that this contention of Sri Nathan cannot be accepted both on principle and authority.

8. Both sides persuaded <sup>by us</sup> to examine the merits and decide the matter finally one way or the other.

9. When we find that the AA had not performed his duties as enjoined on him by law, we must compel him to perform that duty without usurping his jurisdiction and power under the Rules. On this view, we decline to examine the contentions urged by both sides on the validity of the order of the DA.

10. We are informed by Sri Shetty that Sri S.M.Chandwani, who heard the appeal in pursuance of the remand order is not now holding the post of the Appellate Authority and another officer is now holding the same. On what we have held earlier, we must necessarily direct the new AA or the new Divisional Commercial Superintendent to afford a fresh opportunity of personal hearing to the applicant and then decide his appeal afresh in accordance with law.

11. As the orders made by the AA on two occasions are taken exception to by us on well known grounds and not on debatable grounds, we consider it proper to direct the respondent to pay exemplary costs to the applicant. We assess the Advocate's fee payable by the respondent at Rs.500-00.

12. In the light of our above discussion, we allow this application in part, quash Order No.BB/C/DAR/Major/126/84 dated 17th December, 1986 of the AA and direct him to restore the appeal filed by the applicant to its original file, afford an opportunity of personal hearing to the applicant on such date as is found convenient to him and then decide his appeal in accordance with law, the observations made by the Supreme Court in Ram Chander's case and our orders with all such expedition as is possible in the circumstances of the case and in any event ~~within~~ <sup>within</sup> a period of two months from the date of receipt of this order.

13. Application is disposed of in the above terms with costs.

Advocate's fee Rs.500=00.

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(M.Y.PRIOLKAR)  
MEMBER(A)

*Mr. Puttalamy*  
(K.S.PUTTASWAMY)  
VICE-CHAIRMAN.  
22/12/88