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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. --
T.A. No. (N)274/87

198

DATE OF DECISION 30-4-1993

Shrawan Sakharam Bhurse

Petitioner

Advocate for the Petitioner(s)

Versus

U.O.I. & Ors.

Respondent

Advocate for the Respondent(s)

CORAM :

The Hon'ble Ms. Usha Savara, Member(A)

The Hon'ble Mr. V.D. Deshmukh, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000

Usha Savara
(USHA SAVARA) 30.6.93
M(A)

M

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Tr.(N)274/87

Shrawan Sakharam Bhurse,
r/o. Behind Medical College,
Manewada, At Post, Tah. & Dist.
Nagpur.

.. Applicant

-versus-

1. The Director General,
Post and Telegraphs
New Delhi
2. The General Manager,
Telecommunications,
Maharashtra Circle,
Bombay - 400 001.
3. The Distt. Manager Telephones,
Saraf Chambers,
Nagpur - 440 001.
4. The Assistant Engineer(Cable)
(Maintenance)
C.T.O.Compound,
Nagpur.

.. Respondents

Coram: Hon'ble Ms.Usha Savara, Member(A)

Hon'ble Mr.V.D.Deshmukh, Member(J)

Appearances:

Both the parties
present.

JUDGMENT:

Date: 30 Apr. 93.

¶ Per Ms.Usha Savara, Member(A) ¶

Writ Petition No.1578/83 was filed
in the Bombay High Court, Nagpur Bench. It was
transferred to the Tribunal and has been
numbered as Tr.(N)274/87.

2. The petitioner, was appointed as
a casual labourer in the Telephone Division
and was made permanent w.e.f.25-1-78.
at Nagpur, A departmental enquiry was started
against him, and the charge against him being
proved, he was removed from service on
17-11-81(Annexure 4). Appeal was filed


against the order to the Divisional Engineer of Phones at Nagpur. He quashed the order of removal as it was a non-speaking order, and the rule had been misquoted. He directed that it was not necessary to hold a fresh enquiry but the Disciplinary authority should apply his mind to the case and issue a fresh and proper order on the basis of the Inquiry report. Pursuant to this, an order was passed by the Assistant Engineer, Cables(Main) on 14-5-82 in which he agreed with the findings of the Enquiry Officer and imposed the punishment of removal from service w.e.f. 14-5-82. The applicant preferred an appeal against the order of removal from service to the General Manager, Telecommunications, Maharashtra Circle, Bombay on 10-8-82 and also to the Divisional Engineer (V&A) Office of the Distt. Manager, Telephones, Bombay on 18-6-82 in which the only ground for cancellation of the order was that the order of removal had been passed by one Shri V.B. Wakodikar who had also acted as his Enquiry Officer. It was the applicant's case that the Enquiry Officer could not act as Disciplinary Authority. The appellate order was passed on 19-8-82 stating that in the C.C.S.(CCA) Rules, 1965, there is no specific ban in the Disciplinary Authority acting as Enquiry Officer. The appeal was rejected. The applicant made further representations against the order of the Appellate Authority to the Appellate Authority, the General Manager and the Dist. Manager but there was no further communication from the respondents.


3. The learned counsel for the applicant

assailed the disciplinary proceedings on two grounds only. The first ground taken by her was that the Disciplinary Authority having acted as the Enquiry Officer, was precluded from passing the order imposing the penalty of removal. The second ground was that the applicant had not been given a personal hearing by the appellate authority. In the reply filed by the respondents, they have asserted that the order passed by the Disciplinary authority was not in contravention of the C.C.S.(CCA) Rules, 1965 and also that it was not mandatory to give a personal hearing.

4. We have heard Shri Darda for the respondents. No doubt, there is no bar on the Disciplinary Authority acting as the Enquiry Officer under the Rules. But we do not agree with the respondents that personal hearing is not mandatory. In the case of "Ram Chander vs. U.O.I. (1986) 1 ATC 47, it has been held by the Supreme Court that the appellate authority while disposing of an appeal preferred by the civil servant must not only give a hearing to the delinquent, but also pass a reasoned order dealing with the contentions raised by him the appeal. It has nowhere been observed by the Supreme Court that a personal hearing should be given to the delinquent civil servants only when such is requested by them. Such being the position, considering the fact that no personal hearing was given by the appellate authority to the applicant, we are constrained to hold that the appellate order cannot stand.

5. In the circumstances the O.A. shall succeed. The appellate order is set aside. The appellate authority shall consider the appeal preferred by the applicant after giving him a personal hearing and pass a well reasoned order on merits within 120 days of receipt of a copy of this order. There is no order as to costs.


(V.D.DESHMUKH)
M(J)


(USHA SAVARA) 30 4. 93
M(A)

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