

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH

O.A.670/87

Mr. Bhagwan Manga More,  
(Ticket Collector),  
Sindi Colony,  
Near Hanuman Mandir,  
Chalisgaon,  
Dist. Jalgaon,  
Maharashtra.

.. Applicant

vs.

1. Union of India  
through  
The General Manager,  
Central Railway,  
Bombay V.T. 400 001.
2. The Divisional Railway  
Manager,  
Central Railway,  
Bhusaval

.. Respondents

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

Appearances:

1. Shri D.V. Gangal  
Advocate for the  
applicant.
2. Shri P.R. Pai  
Advocate for  
the respondents.

ORAL JUDGMENT

Date: 8-9-1988

(Per M.B. Mujumdar, Member (J))

This application is filed by the  
applicant under Section 19 of the Administrative  
Tribunals Act, 1985 challenging the order of  
penalty which was imposed upon him after holding  
a departmental enquiry.

*fact*  
The relevant points for the purpose  
of this judgement are these: In 1964 the applicant,  
was appointed as Ticket Collector by the Central

Railway. In due course, in 1974 he was promoted as Travelling Ticket Examiner. Along with the memorandum dtd. 19-4-1985 a statement containing three charges was served on him. He denied the charges. Hence one D.K.Kamat, Assistant Enquiry Officer in the Office of the General Manager, Vigilance Branch, Bombay V.T. was appointed as Inquiry Officer. No Presenting Officer was appointed, but one R.K.Deo, retired Station Superintendent, was engaged by the applicant as Assisting Railway Employee. Four witnesses were examined in support of the charges. The applicant was also examined. By the report dtd. 20-11-1985 the Inquiry Officer held that all the charges were proved. The Disciplinary Authority i.e. Divisional Commercial Supdt., Bhusaval, by order dtd. 21-7-1986 accepted the finding of the Inquiry Officer and held the applicant guilty <sup>of all</sup> upon the charges framed against him and imposed the penalty of removal from service with immediate effect. ~~on the applicant~~. It was mentioned in the same order that <sup>a</sup> copy of the findings of the Inquiry Officer had already given to the applicant by the Inquiry Officer, but by his letter dtd. 25-7-1986 the applicant challenged

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that statement and requested for giving him a copy of the Inquiry Officer's report in order to enable him to prefer an appeal. Accordingly on 30-7-1986 a copy of the Inquiry Officer's report was supplied to him.

On 8-8-1987 the applicant preferred an appeal against the order of penalty. The appeal was put before the Senior Divisional Commercial Superintendent, Bhusaval. The Appellate Authority who dismissed the appeal by observing "I do not find any justification to alter/amend the decision of the Des - punishment stands good". Against that order the applicant had preferred a revisional petition dtd. 25-3-1987 but it was rejected on 26-6-1987 by the General Manager, Central Railway. On 28-9-1987 the applicant has filed the present application challenging the order of penalty passed by the Disciplinary Authority as well as the orders passed by the Appellate Authority and the revisional authority.

The respondents have resisted the application by filing their written statement. But it is not necessary to state the contentions taken by them therein because we are disposing

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of this application by relying on the judgment of the Supreme Court in Ram Chander vs. Union of India, ATR 1986(2) SC 252 as was urged before us by the learned counsel for the applicant.

The Supreme Court has observed in Ram Chander's 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 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 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 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."

After observing above the Supreme Court allowed the appeal and directed the Appellate Authority i.e. the Railway Board in that case 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.

In the present case the record shows that a personal hearing was given to the applicant by the then Sr.Divisional Commercial Superintendent, Bhusaval Shri P.Uniyal who found it necessary to get certain additional information before taking a final decision on the appeal. By the time this

information was received, another officer (Shri

S.B.Kherkar) had been appointed as Sr.Divisional

Commercial Superintendent, Bhusaval and it was

he who took the final decision on the appeal.

In our view the officer who disposed of the appeal

should have himself heard the applicant personally.

Apart from this we had already quoted the

Appellate Authority's order and in our view

it is not at all a reasoned and speaking order.

The applicant had raised many points in the

appeal memo and the appellate authority should

have given his findings on all the points while

disposing of the appeal.

We, therefore, feel it necessary to

dispose of this application by passing an order

in consonance with the decision in Ram Chander's

case cited above.

We, therefore, pass the following

order:

(i) The orders passed by the Appellate

Authority on 11-3-1987(at page 29 of the paper book)

and the order passed by the revisional authority on

26-6-87(at page 37 of the paper book) are hereby

quashed and set aside.

(ii) The Appellate Authority shall dispose of the appeal preferred by the applicant on 8-8-1986 (at page 25 of the paper book) after affording a personal hearing to the applicant and ~~after passing~~ <sup>by passing</sup> a reasoned and speaking order.

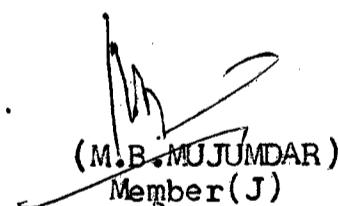
(iii) The Appellate Authority shall dispose of the appeal as expeditiously as possible, say within 4 months from the date of receipt of a copy of this order.

(iv) If the decision in appeal goes against the applicant he will be at liberty to approach this Tribunal after exhausting all the departmental remedies available to him.

(v) Parties to bear their own costs.



(P.S. CHAUDHURI)  
Member (A)



(M.B. MUJUMDAR)  
Member (J)