

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Tr. Application No. 411/87

Shri P.S. Sonkamble,
Water Supply Gate,
Mahendra Singh Chawl,
Ulhasnagar - 4.

.. Applicant
(Original Plaintiff)

vs.

1. The Union of India,
through
The General Manager,
Central Railway,
Bombay V.T.
2. The Divisional Railway Manager,
Central Railway, V.T. Annex Building,
Bombay V.T.,
Bombay.

.. Respondents
(Original Defendants)

Coram: Hon'ble Member(A) Shri P. Srinivasan

Hon'ble Member(J) Shri M.B. Mujumdar.

Appearances :

1. Shri K.R. Jadhav
Advocate for the
Applicant.
2. Shri P.R. Pai,
Advocate for the
Respondents.

ORAL JUDGMENT

DATE : 24-3-1988

(PER : P. Srinivasan, Member(A))

This transferred application which originated as Regular Civil Suit No. 66/84 before the Civil Judge, Junior Division, Kalyan has come before us for hearing today.

2. The applicant who was working as a Sr. Asstt. Coaching Clerk was dismissed from service by the Disciplinary Authority by order dtd. 16th April, 1983 after institution of departmental inquiry proceedings. In the application as it was originally filed before the Civil Judge, the applicant challenged the said order of 16-4-1983 and prayed that it should be declared as null and void. The Civil suit was filed on 13-2-1984.

P. S. Srinivasan

Meanwhile an appeal filed by the applicant against the order of the Disciplinary Authority was dismissed by the Appellate Authority viz. the Divisional Railway Manager, Bombay V.T. Shri K.R. Jadhav, the learned Counsel for the applicant, submitted that the order of the Appellate Authority was not communicated to his client. Shri P.R. Pai, the learned Counsel for the respondents produced the file of the Appellate Authority from which we notice that the dismissal of the appeal by the Appellate Authority was communicated to the applicant by a letter dtd. 30-1-1984 which we extract in full below :

Central Railway

REGD. POST AD.

Divisional Office,
Bombay V.T.

No.88/C/247/G/78

Dated: 30th Jan.1984

Shri P.S. Sonkamble
Mahendra Singh Chawl,
Near Water Supply Rly. Gate,
Ulhasnagar-4, Distt. Thane.

Sub: Your dismissal from railway
service.

Ref: Your appeal dated 22nd April,
1983.

Your above quoted appeal has been considered by the Sr.DCS
Bombay and he has passed the following orders :

"I agree with the findings of the Enquiry
Officer. I also uphold the penalty imposed
by the Disciplinary Authority."

Please acknowledge receipt.

Sd/-30-1-84
(H.L. Pradhan)
For Div.Rly.Manager(C)
Bombay V.T.

3. The question arose during the hearing of this application
whether the procedure followed by the Disciplinary Authority before

P. S. Pradhan

passing the order 16-4-1983 dismissing the applicant was consistent with the procedure laid down by a Full Bench of this Tribunal in Tr. Appln. No.2/86, P.K. Sharma vs. Union of India, Shri Jadhav specifically stated before us that he did not wish to rely on the judgment in P.K. Sharma's case and that therefore he did not wish the matter to be sent back to the Disciplinary Authority for being continued from the state of the inquiry report. He concentrated his attack on the order of the appellate authority said to have been communicated to the applicant by the letter of 30-1-84 which we have extracted above. The said order, Shri Jadhav contended was not a speaking order and the applicant had not been given an opportunity of personal hearing before the said order was passed and therefore it was liable to be struck down in view of the judgment of the Supreme Court in Ram Chandra's case reported in ATR 1986(2) 252. He, therefore, contended that this Tribunal should strike down the order of the appellate authority and direct the said authority to pass a fresh speaking order after giving the applicant an opportunity of being heard.

4. Shri P.R. Pai submitted that even though the order of the Appellate Authority was cryptic, the appellate authority had passed a more detailed order on file on 19-1-1984 and that only the operative portion of the said order had been communicated to the applicant. He, therefore, submitted that the appellate authority had considered the objections of the applicant and had dismissed the appeal only after such consideration. He conceded, however, that the applicant had not been given an opportunity of personal hearing by the appellate authority, because the applicant did not demand a personal hearing.

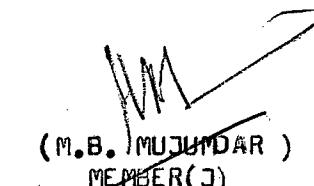
5. After careful consideration we are satisfied that the order of the Appellate Authority as communicated to the applicant is not a speaking order. It is also common ground that the Appellate Authority did not give the applicant an opportunity of personal hearing. So far as the order of the Disciplinary Authority is concerned since the Counsel for the applicant did not wish to raise any objection to its validity

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based on the Full Bench decision in P.K. Sharma's case we do not wish to say anything more about it. We, therefore, set aside the order of the appellate authority conveyed to the applicant in the letter dtd. 30-1-1984, extracted above. We restore the appeal to the file of the Appellate Authority and direct him to hold a fresh hearing, give the applicant an opportunity of being heard and pass a speaking order. While the applicant will have the liberty of urging all his objections against the merits of the enquiry and the order of the Disciplinary Authority before the Appellate Authority, he is precluded from raising any objection based on the Full Bench decision in P.K. Sharma's case because of the specific concession made before us and referred to above. ^{M When} ~~If~~ the appellate authority disposes of his appeal in terms of our directions ^{If} ~~and~~ the applicant still has any grievance he is at liberty to approach this Tribunal with fresh application in this regard.

6. The application is disposed of on the above lines. Parties to bear their own costs.


(P. SRINIVASAN)
MEMBER(A)


(M.B. MUJUMDAR)
MEMBER(J)