

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXXXX~~

NEW BOMBAY BENCH

O.A. No. 477 of 1987.
T.A. No. - -

DATE OF DECISION 24.9.1987

Mr. Narsinha Dinkar Mhaskar Petitioner

Mr. G.D. Samant Advocate for the Petitioner(s)

Versus

The General Manager, Central Railway Respondent
Bombay and two others.

Mr. V.G. Rege Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.G. Rajadhyaksha, Member (A)

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

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*

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

O.A. No.477/87

Mr. Narsinha Dinkar Mhaskar
C/o. Takbhate Wada,
Near Datta Mandir,
Kurduwadi Junction (PO)

Central Railway, Dist Sholapur.

.... Applicant.

V/s.

The General Manager
Central Railway,
Head Quarter Office,
Central Railway,
G.P.O. Bombay-400 001.

Chief Operating Superintendent
Central Railway,
Bombay V.T.

Divisional Railway Manager,
Central Railway,
Sholapur.

.... Respondents.

Coram: Hon'ble Member (A) J G Rajadhyaksha
Hon'ble Member (J) M B Mujumdar

Appearance :

Mr. G.D. Samant
Advocate
for the Applicant.

ORAL JUDGMENT

DATED : 24.9.87

(PER : M B Mujumdar, Member(J))

On 1.9.1987, when the matter came before us for admission we found that the Appellate Authority had not decided the appeal in accordance with the principles laid down by the Supreme Court in Ram Chander V. Union of India, 1986 ATR (2) SC 252. Hence without admitting the matter we directed that notices should be issued to the respondents regarding admission hearing.

2. MR. V.G. Rege, advocate, was present at that time and he accepted the notice alongwith copy of the application. As he could not come to the Tribunal today we have heard Mr. Hatle, Chief Law Assistant. We have also heard Mr. G.D. Samant, the Learned Advocate for the applicant.

3. The essential facts for the purpose of this order are these. At the relevant time the applicant was working as Station Superintendent at the Jeur Railway Station of the Sholapur Division of the Central Railway. On 20th April, 1983 a memorandum along with three charges and necessary documents were served upon him. In view of the order which we are passing it is not necessary to state the charges. The Area Officer, Dound (Mr. V.B. Khadtare) was appointed as Enquiry Officer. The applicant pleaded not guilty to the charges. The Inquiry was held and the Enquiry Officer submitted his report holding that all the charges were proved. Divisional Railway Manager, Central Railway (Mr. V. Kalikavatharam) who was the Disciplinary Authority accepted the findings of the Enquiry Officer and imposed the penalty of removal from service upon the applicant. Against that order the applicant preferred an appeal dated 14.10.1985. The decision of the Appellate Authority was communicated to the applicant by the letter dated 23.1.1981. Though the order passed by the Appellate Authority is not on record ^{it} is undisputed that personal ~~hearing~~ ^{hearing} was not given to the applicant. The Appellate Authority confirmed the order of removal from service, passed upon the applicant by the Disciplinary Authority. Against that order the applicant preferred a Review Petition dated 20th March, 1986 to the General Manager for revision. The General Manager modified the sentence of removal from service imposed upon the applicant by the Disciplinary Authority and reduced it to compulsory retirement. The order of the General Manager was communicated to the applicant by the Divisional Railway Manager, Central Railway, Sholapur, by his letter dated 30.6.1986. Applicant had preferred a petition to the President of India against that order, but it was withheld, as can be seen from the letter of the Divisional Railway Manager, Sholapur dated 14.10.1987.

4. We find that the order passed by the Appellate Authority is contrary to the principles laid down by the Supreme Court in Ram Chander's case, because the applicant was not given a personal hearing. The Supreme Court in para 25 of its judgment has held as follows :

"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 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."

5. In result the Supreme Court directed the Appellate Authority 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 the relevant rules.

6. We propose to pass a similar order in this case. We are passing this order at the admission stage because we do not think that the respondents reply will help us in taking a different view. Hence, after hearing both the sides we pass the following order :

ORDER

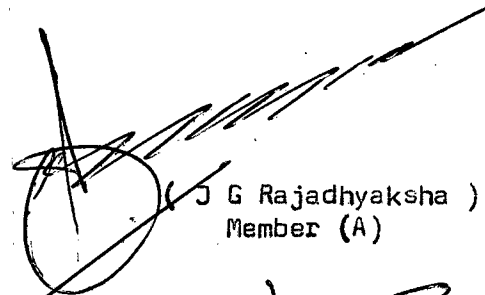
- 1) The order passed by the Chief Operating Superintendent on the appeal preferred by the applicant on 14-10-1985, by which the penalty of removal of service was imposed upon the applicant by the Disciplinary Authority as well as the order passed by the General Manager on the revision petition filed by the applicant on 21.3.1986 by which the penalty of removal from service was reduced to compulsory retirement, are hereby quashed and set aside.
- 2) The Appellate Authority is hereby directed to hear and dispose of the appeal preferred by the applicant on 14.10.1985 after affording a personal hearing to the appellant, 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, as expeditiously as

(P)

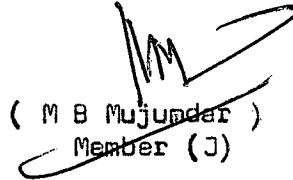
-: 4 :-

possible and in any event not later than four months from the date of receipt of this order.

- 3) If the decision of the Appellate Authority goes against the applicant he will be at liberty to approach this Tribunal by way of a fresh application after exhausting his remedy of revision.
- 4) With these directions O.A. No. 477/87 is disposed of with no order as to costs.



(J G Rajadhyaksha)
Member (A)



(M B Mujumdar)
Member (J)