

(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

CIRCUIT SITTING AT PANAJI

O.A. No. 252/88

~~XXX~~ No.

198

DATE OF DECISION 14-12-1990

Eknath Pandurang Dhaujekar Petitioner

Mr.C.U.Singh Advocate for the Petitioner(s)

Versus

Supdt.Engineer M/E, PWD, Panaji & Respondent

Ors.

Mr.A.I.Bhatkar for Mr.M.I.Sethna Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. N. Sengupta, Member (J)

The Hon'ble Mr. M.Y. Priolkar, Member (A)

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

N. Sengupta
(N. SENGUPTA)
M(J)

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
CIRCUIT SITTING AT PANAJI

O.A.252/88

Eknath Pandurang Dhaujekar,
C/o. Chander Uday Singh,
Advocate,
Savla Chambers, 6th Floor,
40, Cawasji Patel Street,
Fort, Bombay - 400 023. .. Applicant

vs.

1. Supdt. Engineer M/E,
Public Works Department,
Altinho,
Panaji,
Goa.
2. Chief Engineer,
Public Works Department,
Altinho,
Panaji,
Goa.
3. Chief Secretary,
Government of Goa,
Secretariat,
Panaji
Goa. .. Respondents

Coram: Hon'ble Member (J) Shri N. Sengupta

Hon'ble Member (A) Shri M. Y. Priolkar

Appearances:

1. Mr. C. U. Singh
Advocate for the
Applicant.
2. Mr. A. I. Chatkar (for
Mr. M. I. Sethna)
Advocate for the
respondents.

JUDGMENT: (Per N. Sengupta, Member (J))

Date: 14-12-1990

The applicant assails his order of removal from service passed by the Superintending Engineer (M/E), Public Works Department of the Govt. of Goa, Daman and Diu.

2. The applicant was working as Assistant Stores Keeper and was thus incharge of the stores including some bags of cement stacked

therein. There, it was alleged by the department, was a verification of the stock in the Stores and it was found that there was a shortage of 77 bags of cement. On this allegation a disciplinary proceeding was initiated against the applicant and after an enquiry the applicant was removed from service by the order dated 14th January, 1986 vide document 'E' annexed to the application. The applicant against that order filed an earlier application to this Bench of the Tribunal which was numbered as O.A.330/86. The applicant had also preferred an appeal against the order passed by the Superintending Engineer. In the earlier original application this Bench of the Tribunal directed the Appellate Authority to decide the applicant's appeal as expeditiously as possible and also gave liberty to the applicant to agitate the matter by a fresh application if need arose after the disposal of the appeal by the appellate authority.

In the said order in O.A. 330/86, it was made clear that the appellant i.e. the present applicant was to be given an opportunity of being heard and the appellate order should be a speaking order or reasoned order as contemplated by the decision of the Supreme Court in the case of Ramchander v. The Union of India reported in 1986(2)SLR 608. The appeal was Heard and decided by the Chief Engineer and the Chief Engineer dismissed the appeal.

*Heard & Enq'd
H.C. 14/11/*

Thereafter the present application was filed.

The grounds ^{asked} by the applicant are that there were a number of illegalities and irregularities in the conduct of the enquiry and there were also illegalities committed by the appellate authority, thus the order assailed against ~~MM~~ is unsustainable.

3. The respondents in reply, as was expected of them, have refuted all the material allegations of the applicant and they have further averred that the applicant even though ~~he~~ was aware that no appeal lay to the Lt. Governor of Goa, he preferred the appeal to the said Governor instead of to the Chief Engineer who is the appellate authority. They further state^d that as the applicant is a work-charged employee he could not be placed in the same footing as a regular employee of the Government. Other allegations in the affidavit in counter need not be set out.

4. We have heard Mr.C.U.Singh for the applicant and Mr.Bhatkar for Mr.M.I.Sethna for the respondents at some length. It has been urged on behalf of the applicant that before the Disciplinary Authority imposed the order of removal from service, no copy of the enquiry report was supplied to the applicant, therefore the impugned order cannot be sustained. We need not much dilate

Not in order

on the point since the matter has been concluded by the Full Bench decision of this Tribunal in the case of P.K.Sharma v. Union of India (Full Bench Judgments(CAT)(1986-1989) 245) which has now been approved by the Honourable Supreme Court. In that case the Full Bench of this Tribunal examined in depth the implications of Article 311(2) of the Constitution of India and it interpreted the meaning of the expression "reasonable opportunity" and concluded that not giving ~~him~~ a copy of the report of the enquiry officer before imposition of the penalty of dismissal or removal makes the order invalid. Therefore, the first contention of Mr.Singh must be upheld.

5. Mr.Singh has drawn our attention to another glaring illegality in the conduct of the enquiry. After the applicant's petition the appellate authority supplied a copy of the enquiry report, that is to be found at page 75 of the file. The enquiry report is a cryptic one but that is not of much consequence in the present context. From paragraph two of the said report it would be found that the applicant was cross examined by the Inquiry Officer. No doubt strict rules of criminal trial do not apply to a disciplinary proceeding but

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nevertheless there cannot be any doubt that departmental disciplinary proceeding is nothing but a quasi-criminal proceeding and as such the charged official stands almost on the same footing as an accused in a criminal case. An Inquiry Officer is supposed to be neutral.

Because he ^{is} ~~has~~ entrusted with a quasi-judicial function of arriving ^{at} findings based on facts and evidence adduced during the enquiry. If the enquiry officer begins to cross examine the charged official he assumes the role of a prosecutor and ^{an} inference of bias can be easily drawn against such an officer. That apart, there is no provision in the Central Civil Service (Classification, Control and Appeal) Rules for crossexamining the charged official unless he offered to examine himself. The Inquiry Officer in his report stated that cross examination ~~except~~ of the applicant was enclosed but he did not clearly indicate what the cross examination included. Thus it is clear that the enquiry was vitiated.

6. There has been some controversy at the Bar as to who is the Appellate Authority but that question ^{need} ~~did~~ not detain us. Already a reference has been made to a part of the order passed by this Tribunal in O.A. 330/86 where a direction was given to follow the decision of the Supreme Court in the case of Ramchandra v. Union of India.

Neeraj
14/11/

The appellate authority in the concluding part of his impugned order made the following observation "The right to personal hearing at appellate stage has been disallowed, in the light of the decisions contained in State of Gujarat vs. P.B. Kumalbhai, AIR 1969 GUJ 260 vide case law (2) below Rule 27 in Swamy's Compilation of CCS (CCA) Rules (Fifteenth Edition)" From this portion it would be abundantly clear that the applicant was denied the right to be heard at the appellate stage. Right to be heard is a fundamental right and when it is denied there is a denial of natural justice. It is really unfortunate that the appellate authority inspite of the express direction of this Tribunal to follow the decision of the Supreme Court in Ram Chander's case, ^{India} which by virtue of Article 141 of the Constitution of India is a part of law of the land was binding on the learned appellate authority, did not allow the applicant a hearing and thus committed a contempt of this Tribunal as well as of the Supreme Court. However, as the person who ~~has~~ passed the impugned appellate order by now ^{is} no more ^{is} the Chief Engineer ~~and~~ or might not be in service, we refrain from drawing up a contempt suo-moto ^{against him.}

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7. The reasons stated above are sufficient

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to quash the impugned order of removal passed by the disciplinary authority and confirmed by the appellate authority. Ordinarily we would have thought of remanding the matter to the disciplinary authority for a fresh disposal, but as in the meantime more than five years have passed from the date the disciplinary proceedings commenced, we do not like to remand the case and would direct that the applicant should be reinstated in service within a month from the date of receipt of a copy of this order and would be deemed to be in service from the date of removal till the date of his reinstatement in service. There will be no order as to costs.

M.Y. Priolkar (M.Y. PRIOLKAR)

Member (A)

N.S. Sengupta (N.S. SENGUPTA)

Member (J)

14.12.70