

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

~~XXXXXX No.~~

T. A. No. 249/86

198

DATE OF DECISION 27-2-1991

Gopal Mohan Vijay Petitioner

Mr. G. K. Masand Advocate for the Petitioner(s)

Versus

Union of India Respondent

Mr. N. K. Srinivasan Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C. Srivastava, Vice-Chairman

The Hon'ble Mr. P.S. Chaudhuri, Member (A)

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 ?

Yes

Y



(P.S. CHAUDHURI)
Member (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
 NEW BOMBAY BENCH

Tr.249/86

Gopal Mohan Vijay,
 Railway Quarters,
 No.T/281/A
 West Yard,
 Bulsar.

.. Applicant

vs.

Union of India
 through
 General Manager,
 Western Railway,
 Churchgate,
 Bombay 400 001.

.. Respondent

Coram: Hon'ble Shri U.C.Srivastava, Vice-Chairman
 Hon'ble Shri P.S.Chaudhuri, Member(A)

Appearances:

1. Mr.G.K.Masand
 Advocate for the
 Applicant.
2. Mr.N.K.Srinivasan
 Advocate for the
 Respondent.

ORAL JUDGMENT:

Date: 27-2-1991

(Per P.S.Chaudhuri, Member(A))

This application has come to the Tribunal by way of transfer from the Court of Civil Judge (Junior Division) Nandurbar in terms of its order dated 12-6-1986 on RCS No. 134/80 which was filed before it on 28-4-1980. In it the applicant (Plaintiff) who was working as a Guard on Western Railway is challenging the order dated 12-1-1978 by which he is removed from service and the appellate order dtd. 21.11.1978 by which this penalty is modified to the penalty of compulsory retirement.

2. The respondents have opposed the suit by filing their written statement. We have heard

Mr.G.K.Masand, learned counsel for the applicant and Mr.N.K.Srinivasan, learned counsel for the respondent.

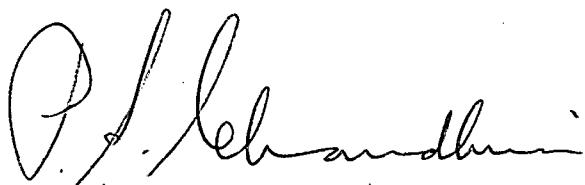
3. It is Mr.Masand's case that the appellate authority had not considered all the points made in the appeal. It was his further submission that even though the Appellate Authority had indicated that the appeal was submitted after the prescribed time limit had expired, once he had decided to condone the delay it was incumbent upon him to consider all points and pass appropriate speaking order after giving the applicant a personal hearing in the matter. He cited Ram Chander v. Union of India - ATR 1986(2) SC 252. We see considerable merit in the submission.

4. Mr.Masand also sought to contend that the punishment was unduly severe for the paltry offence. Mr.Srinivasan counted this by submitting that the Tribunal had no power to substitute its own discretion for the punishment imposed by the competent authority unless it was malafide. He cited Union of India v. Parmananda(AIR 1989 SC 1185) in support of his submission. In view of the clear ruling of the Supreme Court in this matter we are unable to go along with Mr.Masand on this submission.

5. Against this background we are of the opinion that the application deserves to succeed partially. We also note from the record that the applicant had filed a review petition dated 4-12-1978 which was turned down by order dated 23-2-1979.

6. We direct that the appellate order dated 21-11-1978 be quashed. Having so directed it becomes necessary to also quash the order dated 23-2-1979 to enable the Appellate Authority to reconsider the matter. The Appellate Authority will reconsider the appeal and pass reasoned and speaking orders thereon after giving the applicant a personal hearing. Of course if the applicant fails to present himself before the Appellate Authority after having been given at least two opportunities to do so there will be no option for the Appellate Authority but to decide the appeal on merits. If the applicant continues to be aggrieved after the appellate order he is at liberty to approach this Tribunal afresh in the matter.

7. In the circumstances of the case there will be no order as to costs.



(P.S.CHAUDHURI)
Member(A)



(U.C.SRIVASTAVA)
Vice-Chairman