

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Transferred Application No.66/1986.

Shri Shivnandan Shivmangal Singh,
Railway Quarters No.350/8,
Type III,
Wagon Repair Shop Colony,
Kotak Junction,
Rajasthan

.. Applicant
(Original Petitioner)

v/s

1. Shri M.S.Gujral,
General Manager,
Western Railway,
W.Rly.Headquarters Building,
Churchgate, Bombay-20.

2. Union of India .. Respondents

Ceram: Hon'ble Vice-chairman B.C.Gadgil

Hon'ble Member J.G.Rajadhyaksha

Appearances

- 1) Shri C.U.Singh for the applicant.
- 2) Shri V.D.Govilkar, Advocate for the Respondents.

Judgement (Per Vice-chairman B.C.Gadgil) Dt.28.10.1986

The Writ Petition No.1000/80, which was filed in the High Court of Bombay, has been transferred to this Tribunal for decision and it has been numbered as Transferred Application No.66/86.

The applicant, who was Asstt.Shop Superintendent working under Western Railway, was removed from service by an order dated 1.9.79. This order was preceded by a departmental enquiry. The applicant had filed an appeal. The said appeal was dismissed on 1.12.1980 by General Manager, Western Railway. It is these orders that are being challenged before us.

We do not intend to go into the merit of the

application. What is important is that the appellate authority has not given a personal hearing to the applicant before deciding the appeal. The appellate authority's order which is at page 54 of the Compilation has itself made it clear that a personal hearing was not granted. Secendiy, ^{about} the appellate order, though it gives some reasons, it can be validly urged that the order is so cryptic that ^{it} cannot be termed as a speaking order. What will be the effect of such cryptic order without giving an opportunity to the delinquent of being heard at the stage of appeal has been considered by the Supreme Court in the case of Remchander V/s Union of India (Reported in 1986(2) - SLR 608. In the Supreme Court also, it was a case of a Railway Servant who was removed from service, and in which a departmental appeal ^{had} failed. The Supreme Court held that while deciding the departmental appeal, it is necessary that an opportunity should be given to the applicant and that the appellate order should be a reasoned and speaking order.

We would, however, clarify that the appeal can be heard and decided ex.parte if the applicant would remain absent after he was given an opportunity to remain present.

Mr. Singh submitted that in spite of the above mentioned decision as enunciated in the Supreme Court decision, we should go in the merit of the case and record the findings that the enquiry is vitiated as pleaded in the application. In our opinion, this procedure would not be correct and it would be in the fitness of things if we ^{follow} the law laid down by the

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Supreme Court and direct the appellate authority to do the needful.

The application is partly allowed. The departmental appeal dated 3.10.79 filed by the applicant is remanded to the appellate authority with a direction that the said appeal should be decided after giving an opportunity to the applicant of being heard. In addition, the appellate order should be a reasoned order so as to cover all the points raised in his appeal memo. As the matter and the dismissal order is very old, we direct that the appellant should be heard as expeditiously as possible, say within three months from today. The parties to bear their own cost.

B.C.Gadgil
(B.C.GADGIL)
Vice-chairman

(J.G.RAJADHYAKSHA)
(J.G.RAJADHYAKSHA)
Member (A)