

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Transferred Application No.369/86

Shri.P.V.P.Pillai
38/4, New H Type Quarters,
Range Hills,
Pune - 411 020.

.. Applicant

Vs

1. The Union of India through
the Secretary,
Ministry of Defence,
Government of India,
New Delhi.

2. The Director General,
Ordnance Factories,
6, Esplanade East,
Calcutta - 700 001.

3. The General Manager,
Ammunition Factory,
Kirkee, Pune - 411 003.

.. Respondents.

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

Appearances:

1. Mr.P.U.Srinivasan, Advocate
for the applicant.

2. Mr.J.D.Desai (for Mr.M.I.Sethna)
Advocate for the Respondents.

ORAL JUDGMENT
(Per Shri M.B.Mujumdar)

Dated: 15.9.1987.

The applicant had filed regular civil suit No.2130/84 in the Court of the Civil Judge, Senior Division, Pune, challenging the Departmental Enquiry held against him and the resultant order of punishment passed on 16-8-1983. The suit is transferred to this Tribunal under section 29 of the Administrative Tribunals Act, 1985.

2. The applicant was appointed as Labourer in Ammunition Factory, Kirkee, Pune in 1962. He was promoted as Examiner Gr.I in 1973. For some incident that took place on 15.8.1980, a charge was framed against him. The charge read as follows:

" The said Shri P.V.P.Pillai, SQC/20 along with others on 15.8.1980 at about 1045 hours forcibly stoned the
....2

car of General Manager, Ammunition Factory (Shri P.P. Ghose) when he was on the way to Range Hills Primary School to unfurl the National Flag. They shouted repeatedly anti General Manager slogans and disturbed the peace in a prohibited area. Again Shri P.V.P. Pillai SQC/20 along with others at about 1145 hours, when the General Manager was proceeding to Range Hills, KG School, they forcibly blocked the way by placing a bench in front of the General Manager's car, and actively indulged in shouting of slogans, which was repeated by others in the mob."

We may point out that similar charges were framed against five other employees.

3. One E.S. Krishnamurthy, Manager Engineering, was appointed as Inquiry Officer and a joint enquiry was held against the applicant as well as the five other employees. Five witnesses were examined by the Presenting officer and about 14 witnesses were examined on behalf of the defence. By his report dated 2.4.1983 the Inquiry Officer held that the charges against the applicant as well as the other employees were proved. On 16.8.83 the Disciplinary Authority i.e. General Manager of the Ammunition Factory (R.S. Jaiswal) passed the impugned order. He agreed with the findings of the Inquiry Officer and held that the charge was proved and imposed the penalty of reduction of pay by two stages in the time scale for a period of one year with cumulative effect. We are told that similar orders were passed against the other employees also. The applicant preferred an appeal against that order on 16.9.1983. The appeal was decided by the Joint Director Vigilance (G. Subrahmanian) on 7.5.1984 and he has passed the following order:

" The appeal dated 16.9.83 of Shri P.V.P. Pillai, Examiner ~~Exam/008~~, Gr-I Ammunition Factory, Kirkee addressed to the ~~0870~~ Director General, Ordnance Factories has been considered by the DGOF with reference to the relevant records of the case leading to the imposition of the penalty of reduction of pay by two stages in his time scale for

...3

a period of one year with cumulative effect on him vide General Manager, Ammunition Factory, Kirkee Order No.02/Vig/PVPP/SQC/20 dated 16.8.83 and the following conclusions are drawn :-

- i) The procedure prescribed in the CCS(CCA) Rules has been complied with;
- ii) The findings are justified; and
- iii) the penalty imposed is adequate;

There is no reason or mitigating circumstances to modify the decision already arrived at.

The appeal of Shri Pillai is accordingly dismissed."

4. The applicant has challenged the order of the Disciplinary Authority as well as the Appellate Authority by filing the suit.

5. While hearing the arguments we found that the appellate order is not according to law. The Supreme Court has held in Ram Chander V. Union of India & Ors. A.T.R.1986(2) S.C.252 that the Appellate Authority has to decide the appeal after giving a personal hearing to the applicant and by passing a reasoned order. We cannot do better than ~~by~~ quoting the observations of the Supreme Court itself. In para 25, the Supreme Court has observed:-

"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 enquiry is not worthy of credence or consideration or that the charges proved against him are not of 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 the 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."

6. 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 and by passing a reasoned order in conformity with the requirements of Rule 22(2) of the Railway Servants [Discipline and Appeal] Rules, 1968 (corresponding to Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

7. In view of the observations of the Supreme Court . it is clear that the Appellate Authority in the present case has not decided the appeal according to law. We have already quoted the order passed by the Appellate Authority and no further comments are necessary to show that it is not consistent with the principles laid down by the Supreme Court. We are, therefore, inclined to pass a similar order ^{to one} which was passed by the Supreme Court in Ram Chander's case.

8. We ~~p~~ may point out that the scope of an appeal is much larger than the scope of a Civil Court or this Tribunal while deciding a suit or an application like the present one. Appellate Authority can go into the merits of the case, appreciate the evidence and take its own decision regarding the findings of the Disciplinary Authority as well as the penalty imposed upon the appellant. We, therefore, feel that it will be in the interest of the persons like the applicant that the matter should be got first decided by the Appellate Authority according to law, before coming to the Tribunal.

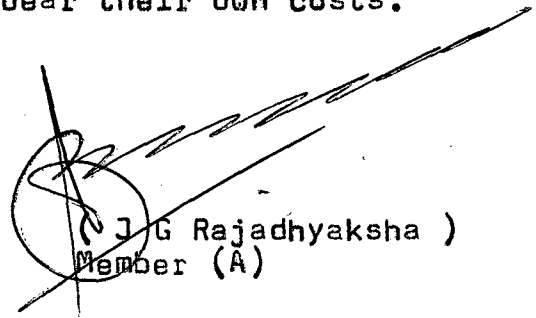
9. We, therefore, pass the following order :

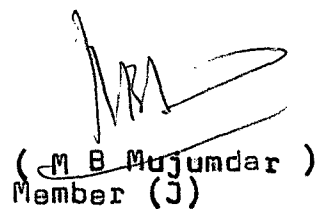
ORDER

- 1) The order passed by the Appellate Authority i.e., the Joint Director, Vigilance, on 7.5.84 is hereby quashed and set aside.
- 2) We direct that the Appellate Authority shall dispose of the appeal preferred by the applicant

on 16.9.1983 on merits after affording a personal hearing to the applicant and by passing a reasoned, speaking order in conformity with the requirements of rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as expeditiously as possible.

- 3) We further direct that the applicant will be at liberty to approach this Tribunal by filing a fresh application under section 19 of the Administrative Tribunal's Act, in case the decision of the Appellate Authority goes against him.
- 4) Parties to bear their own costs.


(J. G. Rajadhyaksha)
Member (A)


(M. B. Mujumdar)
Member (J)