

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

O.A.92/86

K.P.Vijayan Menon,
Ramesh Chourasia Building,
P.K.Salve Road,
Mohan Nagar,
Nagpur - 440 001.

... Applicant

V/s.

1. The Collector,
Central Excise & Customs
2nd Floor,
Saraf Chambers, Sadar,
Nagpur.
2. The Collector,
Central Excise & Customs,
Manekbagh Palace,
Indore, M.P.
3. The Central Vigilance Officer,
New Delhi.
4. The Secretary,
Central Board of Excise and Customs,
North Block,
New Delhi.
5. The Union of India through
The Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.

... Respondents.

Coram: Hon'ble Vice-Chairman B.C.Gadgil
Hon'ble Member J.G.Rajadhyaksha.

Appearance:

1. Mr.Pillai, Advocate
for the applicant.
2. Mr.S.R.Atre, Advocate,
for Mr.P.M.Pradhan, Advocate,
for Respondents.

Tribunal's Order:

Date: 21-11-1986.

(Per B.C.Gadgil, Vice-Chairman)

The applicant who was Inspector in the Central
Excise and Customs Department has filed this application
against the orders passed in departmental inquiry proceedings
... 2/-

removing him from service. The order of the disciplinary authority is dtd. 7-8-1981 while the appeal has been dismissed on ~~12-12-1983~~. 12th October, 1983

This application can be decided on a very short point and hence it is not necessary to give in details the history of the litigation. Suffice it to say that there was a raid at the house of Shri Sukhdeo Ramratan Malani on 9-2-1975 by the officers of the Central Excise and Customs. The raiding party consisted of 7 persons including Mr.S.G.Rangari, Mr.V.N. Kolte, the applicant and others. The allegations against the applicant and others is that a bribe of Rs.40,000/- was demanded and that out of the gold ornaments found in the house of Sukhdev 2 Akbary gold mohars and some other gold ornaments have been removed without including them in the panchnama. The inquiry officer conducted an inquiry. The matter then went to the disciplinary authority who has passed the impugned order dtd. 7-8-1981. The applicant preferred an appeal to the appellate authority viz. Respondent No.4. As earlier stated that appeal was dismissed. The appellate order is at page 501 of the compilation.

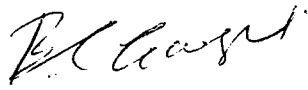
It was contended by Mr.Pillai that this order suffers from a two fold lacuna. One is that personal hearing was not given to the applicant by the appellate authority. The second contention is that the appellate order cannot be said to be a speaking order dealing with all the points that have been raised by the applicant in the application. We have gone through the appellate order and we are satisfied that what Mr.Pillai submits is correct. The effect of above mentioned defects has been considered by the Supreme Court in the case of Ram Chander V/s. Union of India & Ors. reported in 1986(II) Services Law Reporter, Page 608, It was a case of Railway employee. Rule 22(2) of the Railway Service(Disci-

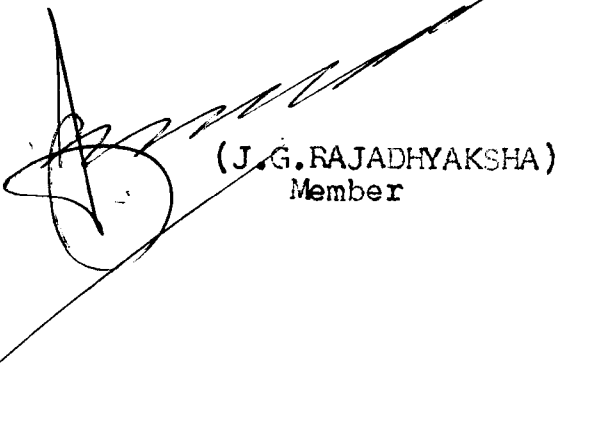
plinary and Appeal) Rule, 1968 is practically similar to Rule 27(2) of the CCS CCA Rules. This rule contemplates that the appellate authority has to consider a number of factors viz. (i) whether the procedure laid down in the rules has been complied with and if not what is its effect, (ii) whether the evidence on record warrants the findings of the disciplinary authorities, and (iii) whether the penalty is adequate or not. The Supreme Court has held that after the Constitution (42nd amendment) Act, 1976 it has become essential that the appellant in departmental proceeding is given a personal hearing and that a speaking order is written by the authority concerned. In the absence of all this the Supreme Court quashed the appellate order and remanded the appeal to the appellate authority for proper disposal. In the present case the applicant was not given a personal hearing. Secondly the appellate order is very cryptic and cannot be said to be a speaking order giving reasons ^{to} there all the points that are raised in the appeal.

Hence the course prescribed by the Supreme Court has to be followed. It would, therefore, be in the interest of justice that the said appeal is remanded to the appellate authority with appropriate directions as mentioned above. We would like to state that we are not going into the merits of the various contentions raised by the applicant and the applicant would be at liberty to agitate them before the appellate authority. Mr. Pillai submitted that ^{if} the applicant unfortunately fails in the appellate the applicant's right to approach the revision authority and the Tribunal should be kept intact. It is needless to pass any order in that respect as such right exists.

The application is partly allowed. The appeal filed by the applicant on 19-9-1981 is remanded to the appellate authority viz. The Central Board of Excise and Customs for deciding it after giving an opportunity to the applicant of being heard. Of course this does not mean that the appeal ^{cannot} ~~can~~ be decided ex-parte if the applicant would not remain present on the day fixed for hearing. The appellate authority is further directed to give a speaking and reasoned order so as to cover all the points that ~~has~~ been raised by the applicant in the appeal memo. The appeal deserves to be expeditiously decided say within a period of 3 months from today.

^{Parties}
~~Party~~ is to bear their own cost.


(B.C.GADGIL)
Vice-Chairman


(J.G. RAJADHYAKSHA)
Member