

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Original Application No.325/86.

Smt.S.R.Jaisingh,
C/o.Shri.S.R.Atre,
Advocate, B-5/2 Suman Nagar,
Sion-Trombay Road,
Chembur - Bombay-400 071.

.. Applicant

Vs

1. The Union of India.
 2. The Secretary,
Ministry of Defence,
South Block,
New Delhi.
 3. The Director General of Defence Estates,
Government of India,
Ministry of Defence,
New Delhi.
 4. The Director,
Defence Lands and Cantonments,
Pune-411001.
 5. The Defence Estates Officer,
Bombay Circle, Colaba,
Bombay.
 6. The Enquiry Officer,
Office of the Director,
Defence Lands and Cantonments,
Southern Command, Pune-411 001.
 7. The Defence Estates Officer,
Rajasthan Circle, Jaipur,
State of Rajasthan.
- .. Respondents.

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

ORAL JUDGEMENT
(Per Shri J.G.Rajadhyaksha)

Date: 14.9.1987.

The applicant was an Upper Division Clerk in the Office of the Director General of Defence Lands and Cantonments has filed this application on the 5th of September, 1986. Her grievances were (i) transfer & (ii) removal from service, after a departmental enquiry in which she had no reasonable opportunity of participating. The learned advocate for the applicant who appeared before us made the following submissions in brief. The applicant was transferred on 29.9.1984 from Bombay against the government policy of

keeping husband and wife together at the same station, as well as without considering other aspects such as that the applicant is a woman, and her school going children and her family life would be jeopardised.

Secondly, the learned advocate pointed out that the person Mr. Sabastian who issued the orders of transfer in his capacity of Director of Lands and Cantonments is now the Director General of Defence Estates. He is, therefore, also the appellate authority so far as the applicant is concerned. The disciplinary order was passed by another person who was at the relevant time Director of Lands and Cantonments. The applicant's apprehension is that Mr. Sabastian being biased against the applicant, the decision in appeal may have gone against her. Thirdly, the learned advocate argues that in spite of the representations of the applicant, the enquiry was held ex parte, therefore, it was illegal and vitiated ab initio. Fourthly, he argues that all rules of natural justice have been violated, inasmuch as her request for holding the enquiry in Bombay instead of in Pune was turned down and she was not given enough opportunity of inspecting the records on which the applicant relied. Lastly, it is argued that the orders passed by the disciplinary authority as well as the appellate authority were unconstitutional.

2. At this stage we asked the learned advocate whether the appellant had been given a personal hearing and whether the order passed in appeal which is at page 99 of the compilation could be termed a "reasoned order." Both the learned advocates for the applicant as well as the Respondents admitted that a personal hearing had not been granted to the applicant at any stage whatsoever i.e. neither at the enquiry stage, nor at the stage the second

show cause notice was issued to her by the disciplinary authority, nor at the stage of the appeal. The learned advocate for the applicant also pointed out that the order at page 99 could not be termed as a reasoned order taking into account all aspects of the case and the points raised in appeal. He reiterated his apprehension that if there was any proposal of remanding the matter to the appellate authority for a decision in terms of the law laid down by the Hon'ble Supreme Court in the case of Ram Chander V. Union of India & Ors. reported in A.T.R.1986(2) S.C.252, the same Mr. Sabastian being the appellate authority, the applicant might not receive justice at his hands. Apart from this, it was the learned advocate's strong argument that since the enquiry was vitiated ab initio, it would be just and proper for this Tribunal to take a decision on merits, as well, instead of remanding the matter to the appellate authority. He thus submitted that the matter might not be remanded. The learned advocate for the respondents however, has left the matter to be decided according to the law laid down by the Supreme Court. In view of the facts of the case briefly mentioned earlier by us, we feel that no useful purpose would be served by our going into the merits of the case at this stage, because it is very clear that the applicant was not given a personal hearing by the appellate authority, in particular, as also by the disciplinary authority at an earlier occasion.

3. After hearing both the learned advocates on this particular aspect, we feel convinced that the appropriate course would be for the Tribunal to follow the law laid down by the Supreme Court in the case of Ram Chander V. Union of India & Ors. inasmuch as the appellate authority in this case has admittedly not given a personal hearing to the appli-

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cant nor has passed a reasoned order after taking into consideration the points raised in the appeal memo, as well as the points required to be taken into account according to the rules in this behalf, viz. rule 27 of the C.C.S.(CCS) Rules:

4. We therefore, hold and direct that the order passed in appeal by the Director General Defence Estates which is at page 99 of the compilation and is dt.11th July, 1986 should be set aside. The matter should be remanded to the Director General, Defence Estates for giving a personal hearing to the applicant, for considering all points raised by her in her appeal memo, as also for taking into consideration all points required to be taken into account according to rule 27 of the C.C.S.(CCA) Rules and then deciding the appeal by passing a reasoned order.

5. In view of the apprehension of the learned advocate for the applicant that since the Director of Lands & Cantonments viz. Mr. Sebastian is now the Director General Defence Estates, it might not be proper for the same person to hear and decide the appeal. We would therefore, recommend to the Ministry of Defence that they should nominate and authorise, if necessary by a special order, an officer equal in status to the DGDE to hear and dispose of the appeal of the applicant. We further direct that the appeal should be heard and decided within say about 4 months' time from the date of this order.

6. In the event of the decision of the appellate authority going against the applicant, the applicant will be at liberty to move this Tribunal afresh for consideration of her grievance. No order as to costs.

(J.G. RAJADHYAKSHA)
Member(A)

(M.B. MUJUMDAR)
Member(J)