

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

(S)

O.A. NO: 189/90

199

TexxxNo:

DATE OF DECISION 3.2.92

Abdul Gafar Khan

Petitioner

Mr. G.S.Walia

Advocate for the Petitioners

Versus,

Union of India & Ors.

Respondent

Mr. N.K.Srinivasan

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C.Srivastava, V/C

The Hon'ble Mr. M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *N*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *N*

mbm*

U.C.Srivastava
(U.C.Srivastava)
V/C

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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(6)

Original Application No. 189/91

Abdul Gafar Khan

... Applicant

v/s

Union of India & Ors.

... Respondents

CORAM : Hon'ble Vice-Chairman, Shri Justice U.C.Srivastava
Hon'ble Member (A), Shri M.Y. Priolkar

Appearances:

Mr. G.S.Walia, Advocate
for the applicant and
Mr. N.K.Srinivasan, Counsel
for the respondents.

ORAL JUDGMENT:

Dated : 3.2.1992

(Per. U.C.Srivastava, Vice-Chairman)

The applicant was working as a Khalasi under the respondents. On 16.9.88 he was given a charge sheet on the ground that he had procured service card issued by IOW(M), Murla, for obtaining appointment which is found bogus after verification and hence he violated the rule 3(1)(i) & (iii) of the Railway Service Conduct Rules, 1966. The applicant's grievance is that without waiting for the reply on the charge sheet the disciplinary authority made up its mind that the case against the applicant was established and an Inquiry Officer was appointed. The applicant submitted his reply to the Inquiry Officer. The Inquiry Officer recorded his findings against the applicant and the disciplinary authority on the basis of that removed the applicant from service. The applicant filed a departmental appeal against the same which was also dismissed vide order dated 4.3.91. In the appeal also the applicant has challenged the enquiry proceedings on a variety of grounds including that opportunity of hearing was not given to him and the enquiry

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was otherwise vitiated on other grounds. One of the grounds which has been raised by the applicant in this application is that the appellate authority did not give him any personal hearing. As it was incumbent on the appellate authority to give him personal hearing it is not necessary for us to analysis the merits of the case as the relief which the applicant was claiming could have also been granted by the appellate authority in case the appellate authority was satisfied that it was a case for interreference and the pleas raised by the applicant carries weight. It has been held in the case of Ram Chander v. Union of India and Ors., 1986(2) SC 1173 that giving of a personal hearing by the Appellate Authority is a must whenever disciplinary authority passes an order and this application deserves to be allowed on the ground that the appellate authority has not given personal hearing to the applicant as such the appellate order stands vitiated. Learned counsel for the applicant contended that in case the appellate order goes out the original order will also go out as the original order merges in the appellate authority's order. In this connection he has made reference to the case of S.S.Rathore v. State of Madhya Pradesh, AIR 1990 SC 10. In the said case the question was starting point of limitation and in the said connection it was observed that disciplinary authority's order merges in the order of appellate authority and ~~the~~ as such challenge to appellate order was sufficient. It was observed that if the appellate authority dismisses the appeal it is the appellate authority's order which will become operative as the order passed by the disciplinary authority merges in that order. Learned counsel made a specific reference to the observations made in the Rathore's case as to whether there is any difference in the 3 types

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of cases viz. when the appellate authority reverses the order or modifies the order passed by the original authority or the third case the appellate authority dismisses the appeal and confirms the order of the original authority. Obviously, there may not be any difference so far as point in issue in the said case is concerned. But where appellate order is quashed and the appellate authority is requested to rehear the appeal or it does not result in quashing the disciplinary authority's order as there would not remain anything for the appellate authority to decide. The disciplinary authority's order stands quashed only when it is specifically done with the result that appellate authority's order also stands quashed. Thus Rathore's case has no applicability to the facts or question raised in this case. Accordingly we allow this application and quash the order dated 4.3.91 and direct the appellate authority to give a personal hearing to the applicant taking into consideration all the pleas raised by him challenging the entire proceedings including that the person who issued the card was also not examined although his examination was a must and pass a speaking order and let the appeal be disposed of within a period of two months from the date of communication of this order. No order as to costs.

A copy of the order may be given in ten days time.


(M.Y. Priolkar)
Member(A)


(U.C. Srivastava)
Vice-Chairman