

(2020) 09 SHI CK 0276

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 3752 Of 2020

Kashmir Singh

APPELLANT

Vs

Himachal Pradesh Road Transport Corporation & Ors

RESPONDENT

Date of Decision : 17-09-2020

Acts Referred:

Industrial Undertakings (Development And Regulation) Act, 1951 — Section 18A(1)(a)

Citation : (2020) 09 SHI CK 0276

Hon'ble Judges : Tarlok Singh Chauhan, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Rakesh Kumar Dogra, Shubh Mahajan

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J

1. Notice. Ms. Shubh Mahajan, Advocate, appears and waives service of notice on behalf of the respondents.

2. With consent of the parties, the instant petition is taken up for final hearing and is being disposed of as such.

3. It is not in dispute that the petitioner was imposed penalty of stoppage of two annual increments with cumulative effect by respondent No.3-Regional Manager. Aggrieved thereby, the petitioner filed an appeal before respondent No.2-Divisional Manager, who disposed of the same vide order dated 22.8.2020, which reads as under:-

"Whereas Shri Kashmir Singh, Conductor, HRTC, Mandi has preferred an appeal against Order No. HRTC-MD- ESTT/PFE-2018-19-6574 dated 18.12.2019 passed by the Regional Manager, HRTC, Mandi, imposed therein the penalty of stoppage of two annual increments with cumulative effect.

And whereas, the undersigned after going through the whole records of the case/appeal, find no reasons to interfere with the order of Regional Manager, HRTC,

Mandi. Now, therefore, after careful consideration of the appeal and all relevant records of the case/appeal, the undersigned in exercise of the powers vested in him under CCS (CC&A) Rules, 1965 and all other powers enabling him in this behalf the appeal is considered and rejected being time barred."

4. A bare reading of the aforesaid order would reveal that the same is cryptic and non-speaking one.

5. It is no longer *res integra* that the appellate authority must not only give hearing to the government servant concerned, but also pass a reasoned order dealing with the contentions raised by him in the appeal.

6. Reference in this regard can conveniently be made to the judgment of the Hon'ble Supreme Court in *Ram Chander vs. Union of India*, AIR 1986 SC 1173, relevant portion whereof reads as under:-

"24. Professor de Smith at pp. 242-43 refers to the recent greater readiness of the Courts to find a breach of natural justice 'cured' by a subsequent hearing before an appellate tribunal. In *Swadeahi Cotton Mills v. Union of India*, [1981] 2 S.C.R. 533 although the majority held that the rule of *audi alteram partem* was not excluded from s.18A(1)(a) of the Industrial Undertakings (Development and Regulation) Act, 1951, Chinnappa Reddy, J. dissented with the view and expressed that the expression 'immediate action' may in certain situations mean exclusion of the application of the rules of natural justice and a post-decisional hearing provided by the statute itself may be a sufficient substitute. It is not necessary for our purposes to go into the vexed question whether a post-decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the rules of natural justice since the majority in *Tulsiram Patel's* 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 inquiry is not worthy of credence or consideration or that the charge 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 a 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's* 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. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and give a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fairplay and justice also require that such a personal hearing should be given."

7 In view of aforesaid exposition of law, the writ petition is allowed and consequently, the order, dated 22.8.2020 (Annexure P-5) passed by respondent No.2 is quashed and set aside and respondent No.2 is directed to reconsider the appeal of the petitioner and decide the same in accordance with law within a period of six weeks from the date of receipt of a copy of this judgment. Pending application(s), if any, also stands disposed of.