

(2005) 01 KAR CK 0053
In the Karnataka High Court
Case No : Writ Petition No. 10202 of 2003

N. Shamasundar

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

Industries (Development and Regulation) Act, 1951 — Section 18 AA (1) (a)
Karnataka State Road Transport Corporation Servants (Conduct and Discipline),
Regulations, 1971 — Regulation 32

Citation : (2005) ILR (Kar) 1863

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : Vijay Kumar, for B.B. Bajentri, for the Appellant; Ashok Haranahalli,
for the Respondent

Final Decision : Allowed

Judgement

K. Sreedhar Rao, J.—The Petitioner after a disciplinary enquiry is dismissed from service by the order at Annexure-A dated 5-4-1993. The Petitioner preferred an appeal under the regulations, the appeal was kept in cold storage. Hence the Petitioner filed WP 11636/93 for a direction to the appellate authority to dispose of the appeal. This Court by order at Annexure-B in the writ petition directed the disposal of the appeal by the appellate authority and also to consider the request of personal hearing. The appellate authority has passed the order at Annexure-D dated 16-12-1997. Annexure-C is the additional grounds raised by the Petitioner in continuation of the grounds of appeal submitted earlier. In the decision of the Supreme Court in Ram Chander Vs. Union of India (UOI) and Others, the following observations are made at para 24.:

"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 Swadeshi Cotton Mills Vs. Union of India (UOI), although the Majority held that the expression "that immediate action is

necessary" in Section 18AA(1)(a) of the Industries (Development and Regulation) Act, 1951, does not exclude absolutely, by necessary implication, the application of the audi alteram partem rule, 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 Union of India and Another Vs. Tulsiram Patel and Others, 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 at the inquiry 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 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 given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing should be given."

2. The Counsel also relied on the ruling of the Full Bench decision of the Patna and Haryana High Court in RAM NIWAZ BANSAL v. STATE BANK OF PATIALA 1998(4) SLR 711. In para 13 of the following observations are made."

"13. It is not necessary that the duty to adhere to this principle always and necessarily must emerge from the statutory provisions, but can also be inferred from the provisions, the scheme of the legislation, the attendant circumstances like the nature of the proceedings and its likely effect on the delinquent etc. In some places where the statute does not provide for such a right by use of positive words, the principles of natural justice would supply such omission to grant hearing may be an obligation of the statute while in other case the duty to hear may arise as an obligation of natural justice. The right of hearing to explain his position by a delinquent officer in regard to the alleged misconduct; the conclusions arrived at by the disciplinary authority/inquiry officer; insufficiency of material; and punishment being excessive are the factors, amongst others, which the delinquent officer may like to voice before the appellate authority, while

addressing the authority in person. The rule of Audi Alteram Partem is the more far reaching of the principles of natural justice since it can embrace almost every question of fair procedure or due process. Exclusion of the applicability of this basic principle should arise from a patent negative intention on the part of the legislature or where it is excluded on the ground of urgency in the facts peculiar to that situation. The need to hear has been held to be indispensable at the initial stage and extension of such a principle at the appellate stage would also be a proper application of the principles of natural justice"

3. Per contra the Counsel for the Respondent relied on the ruling of the Supreme Court in Union of India and another Vs. M/s. Jesus Sales Corporation, , the following observations are made:

"5.....It need not be pointed out that under different situations and conditions the requirement of compliance of the principle of natural justice vary. The Courts cannot insist that under all circumstances and under different statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and applications are disposal of by the competent authorities who have been vested with powers to dispose of the same. Such authorities which shall be deemed to be quasi judicial authorities are expected to apply their judicial mind over the grievance made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. When the principles of natural justice requires an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing."

4 The Supreme Court in State Bank of India v. S. S. Koshal . At para 8 the following observations are made;

"8. The High Court has taken the view that the rule requires the appellate authority to pass a speaking order even if it is an order of affirmance. For the purpose of this case, we shall assume the said view to be the correct one. Even so we are not satisfied that the appellate order is not a speaking order. We have already extracted the appellate order in full hereinbefore, which shows that it considered at length the facts of the case including the fact that the appellate authority (sic disciplinary authority) had differed from the findings of the Enquiry Officer in respect of the two charges. The appellate authority then says that it considered the relevant grounds of appeal and after considering the facts of the case came to the conclusion that there was no substance in the appeal. In view of the fact that it was an order of affirmance, we are of the opinion that it was not obligatory on the part of the appellate authority to say more than this as the order as it is, shows application of mind. The order cannot be characterised as a non-speaking order."

5. The ratio laid down in Ram Chander Vs. Union of India (UOI) and Others, has

no application to the facts of the case since it deals with the case of post decisional hearing of the appellant for the first time in the appeal. On the other hand, the ratio laid down by the Supreme Court in Union of India and another Vs. M/s. Jesus Sales Corporation, cited above has a direct bearing on the facts.

6. Regulation 32 of the Karnataka State Road Transport Corporation Servants (Conduct & Discipline) Regulations 1971 reads thus:

"32. Period of limitation for appeals:-

No appeal preferred under these Regulations shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against is delivered to appellant;

Provided that the Appellate Authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time."

The provision of the Regulation mandates personal hearing only in the case of enhancement of penalty and in other cases, there is no duty on the part of the appellate authority to give personal hearing. Academically also I feel that personal hearing may not be of any practical effect nor enhance the case of the appellant. The elaborate appeal grounds and written arguments can fully take care of the interests of the delinquent. Ultimately it is to be seen whether the appellate authority has adverted to the grounds of appeal and the material points raised in appeal while passing the order in appeal.

7. In the instant case the appellate authority has not formulated any points for consideration inferable from the grounds of appeal and not answered any points and the grounds raised in the appeal in its order. The order of the appellate authority although elaborate it only repeats the findings of the enquiry authority without testing the same in the light of the points raised in the grounds of appeal and without giving its independent opinion by duly adverting to the grounds of appeal.

8. In that view of the matter, the order in appeal appears to be a perfunctory order without application of the mind. Accordingly, the WP is allowed. The order at Annexure-D is quashed. The appellate authority is directed to reconsider the appeal and pass necessary orders in accordance with law within five months from the date of the order.