

Amar Singh Vs. Indian Tourism Development Corporation and ors.

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Court : Jammu and Kashmir

Decided On : Oct-31-2003

Reported in : 2004(1)JKJ158

Judge : Permod Kohli, J.

Acts : [Constitution of India](#) - Articles 14 and 226; ;Indian Tourism Development Corporation Conduct, Discipline and Appeal Rules, 1978 - Rule 23B

Appeal No. : SWP No. 1497/2K

Appellant : Amar Singh

Respondent : Indian Tourism Development Corporation and ors.

Advocate for Def. : S. Bhat, Adv.

Advocate for Pet/Ap. : B.S. Salathia, Adv.

Judgement :

Permod Kohli, J.

1. Challenge is made to order dated 22-1-1999 passed by the appellate authority of the Indian Tourism Development Corporation Ltd. whereby appeal preferred by the petitioner against imposition of penalty by the disciplinary authority has been rejected.

2. From the resume of facts as mentioned in the petition, it appears that disciplinary proceedings were initiated against the petitioner for commission of theft in as much as he was caught removing 1 Kg of 'Dhara' cooking oil from Hotel Ashoka, Jammu. Though the petitioner admitted the fact of removal of the material, but he tendered his explanation. The disciplinary authority ordered an inquiry in terms of the Conduct Rules. Inquiry Officer found the petitioner guilty of the charge. On consideration of the inquiry report the disciplinary authority passed the following order on 29-2-1996:

'On a careful consideration of the enquiry proceedings and findings, I agree with the findings of the Enquiry Officer and hold that the serious charges leveled against you stand established. In view of the gravity of the misconduct proved against you and taking into consideration extenuating and aggravating circumstances,. I hereby impose upon you the penalty of reduction to a lower grade of post with immediate effect under Rule 23(B) (vii) of the I.T.D.C Conduct, Discipline and Appeal Rules 1978. Accordingly you are hereby demoted to the post of Commis-IV in the pay scale of 1070-1465 with a basic pay of Rs 1465 + Rs 30.00 P.P. to be merged in your next annual increment) with immediate effect.'

3. An appeal under the Rules was preferred which was rejected by the appellate authority on 9-7-1997 by a non-speaking order. The order passed by the appellate authority became subject matter of challenge in SWP No. 1793/97 and the writ Court after hearing the parties passed the following order:

'Aperusal of the petition and the orders attached herewith indicates that the Appellate order which has been passed in this case on 9-7-1997 is not a speaking order. This is placed on record as Annexure 'D'. The consistent view of the Supreme Court is that the appellate order should also disclose process of reasoning. The view expressed in 'Ram Chander v. Union of India and Ors., AIR 1996 SC 1173 indicates that the Appellate Authority should pass a speaking order. It should contain the process of reasoning.

This petition is accordingly disposed of with a direction that the Appellate Authority shall pass a fresh orders to be passed within a period of four months. The period of four months would begin from the date, the copy of the order passed by this

Court is made available to the respondents by the petitioner alongwith the copy of writ petition and annexures.'

4. Consequent upon the afore-said direction of the Court the appellate authority has passed a fresh order dated 27-1-1999 by recording reasons. However, the punishment imposed by the disciplinary authority has been maintained. The main ground of challenge to this order is that the same is in violation of order of the Court dated 26-12-1997 passed in SWP No. 1713/1997 as also the dictum of the judgment of the Apex Court in case Ram Chander v. Union of India and Ors., AIR 2986 SC 1173 relied upon by this Court in SWP No. 1713/1997, referred to above.

5. It is urged by Mr. Salathia that this Court while passing the judgment dated 26-12-1997 specifically observed that the order passed by the appellate Court is in violation of the judgment of the Apex Court in Ram Chandra's case (supra) and accordingly basing its decision on the afore-said judgment of the Supreme Court, a direction was issued to the respondents to pass a fresh order. According to him, the respondents are not only obliged to give reasons but also to afford an opportunity of being heard to the petitioner before the appellate authority could pass the final order. For this he has relied upon Ram Chandra's case wherein the Apex Court stated as under:

'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 (AIR 1985 SC 1416) 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 shoeing that the evidence adduced 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.'

6. In the reply filed by the respondents in para 3 thereof, it is specifically stated that the appellate authority was not required to give fresh opportunity of hearing at the appellate stage. No right of personal hearing is available to the petitioner either under the direction of the Court dated 26-12-1997 or under law.

7. Mr. S. Bhat, Advocate appearing for the respondents has reiterated the stand taken in the reply. It is in-disputed that the petitioner has been awarded punishment of reduction in rank/scale on the basis of inquiry conducted against him. The inquiry proceedings have not been challenged in any manner.

8. The only question is whether the appellate authority was under an obligation to afford an opportunity of being heard to the petitioner before passing the final order pursuant to the judgment of the Court dated 26-12-1997. From the perusal of judgment passed by this Court in SWP No. 1713/1997 it appears that the only direction issued by the Court was to pass a reasoned order, though this direction was based upon the judgment in Ram Chandra's case (Supra). In Ram Chandra's case the Apex Court relying upon a constitution Bench judgment in Tulsi Ram Patel's case (AIR 1985 SC 1416) held that the appellate authority is also required to afford an opportunity of being heard, before taking a final decision. Therefore, whether the judgment passed by this Court issued any mandate or not, the fact remains that in view of the law laid down by the Apex Court, respondents were under an obligation to afford an opportunity of being heard to the petitioner before taking a final decision. The dictum having not been complied with the impugned order passed by the appellate authority though reasoned one is violative of principles of natural justice and is thus liable to be quashed on this ground alone.

This writ petition is accordingly allowed. Impugned order dated 27-1-1999 is hereby quashed, same having been passed without affording an opportunity of being heard to the petitioner. Consequently, the order of punishment which has emerged in the appellate order is also quashed. The appellate authority is however, at liberty to pass a fresh order after due compliance to the principles of natural justice by providing adequate opportunity of being heard to the petitioner as laid down in Ram Chandra's case (Supra).

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