

**(1995) 01 MP CK 0039**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** Writ Petition No. 348 of 1984

ACME Fabrik Plast Co.

APPELLANT

Vs

Income Tax Officer and Others

RESPONDENT

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**Date of Decision:** Jan. 12, 1995

**Acts Referred:**

- Income Tax Act, 1961 - Section 154

**Citation:** (1995) 125 CTR 339 : (1997) 225 ITR 826 : (1996) 86 TAXMAN 543

**Hon'ble Judges:** T.S. Doabia, J

**Bench:** Single Bench

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**Judgement**

T.S. Doabia, J.

The Commissioner of Income Tax, Bhopal, while passing the order on February 7, 1983, made the following observations :

"The Income Tax Officer is directed to pass a fresh order u/s 154 of the Income Tax Act, 1961, rejecting the petition of the assessee claiming development rebate at the higher rate of 25 per cent. The Income Tax Officer must reject the petition of the assessee by a separate order to be passed u/s 154."

2. On the basis of the aforementioned direction, learned counsel for the petitioner contends that the Commissioner of Income Tax, Bhopal, gave a positive direction to the Income Tax Officer to pass an order in a particular manner. No discretion has been left with the Income Tax Officer. According to him, he has merely to sign on the dotted line. According to him, this is in utter violation of the principles of natural justice and is not in line with the procedure adopted by quasi-judicial Tribunals.

3. Apart from this, learned counsel for the petitioner has submitted that he was not afforded opportunity of hearing. No doubt, he had filed written submissions but this alone was not enough not to grant personal hearing to the petitioner.

4. I have considered the matter. The requisite averments with regard to non-grant of personal hearing are mentioned in the order itself. It has been stated that as written submissions were there on the file, it is not found necessary to afford a personal hearing. I am of the view that even though the petitioner had taken precautions to file written submissions, this was not enough to assume that oral hearing is not required to be given. This has definitely prejudiced the case of the petitioner. While dealing with this aspect of the matter that is with regard to the grant of hearing at the first stage and whether it can be cured by affording hearing at the appellate stage, the Supreme Court noticed the views expressed by Professor H. W. R. Wade in his Administrative Law, 5th Edition, at page 487. This was quoted in [Ram Chander Vs. Union of India \(UOI\) and Others](#), This runs as under (at page 1182) :

" Whether a hearing given on appeal is an acceptable substitute for a hearing not given, or not properly given, before the initial decision is in some cases an arguable question. In principle, there ought to be an observance of natural justice equally at both stages ... If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal as a corrected initial hearing ; instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial."

After referring to Megarry J.'s dictum in a trade union expulsion case holding that as a general rule, a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in the appellate body, the learned author observes :

"Nevertheless it is always possible that some statutory scheme may imply that the "appeal" is to be the only hearing necessary" .

5. After noticing the aforementioned quotation, it was observed 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 [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 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 this 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 [Union of India and Another Vs. Tulsiram Patel and Others](#), 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. "

6. As there has been violation of principles of natural justice to afford opportunity of hearing, it would be just and proper to direct the Commissioner of Income Tax, Bhopal, to rehear the matter and pass fresh orders.

7. Another reason which has led me to direct rehearing of the case is that the Commissioner of Income Tax while passing the order has made the observations referred to above. This leaves no option to the Income Tax Officer. The direction given is in positive terms to the Income Tax Officer to decide in a particular manner. This would also vitiate the principles of natural justice. Thus, taking all these aspects in view, the order passed by the Commissioner of Income Tax, Bhopal, and the further orders passed by the Income Tax Officer in pursuance of the above order are quashed and the case is sent back to the Commissioner of Income Tax for rehearing.