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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 504/87
~~TXAxxxNo.~~

198

DATE OF DECISION 20-6-1991

J.Gonsalves Petitioner

Mr.N.M.Shivkar Advocate for the Petitioner(s)

Versus

The Flag Officer Commanding inChief Respondent
and another

Mr.V.S.Masurkar Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.S.Chaudhuri, Member(A)

The Hon'ble Mr. T.Chandrasekhara Reddy, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? 1

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.504/87

J.Gonsalves,
 of Uttan Patan Bunder,
 P.O.Bhayander,
 Dist.Thane.

.. Applicant

vs.

1. The Flag Officer Commanding
 in Chief,
 (Western Naval Command),
 Shahid Bhagat Singh Marg,
 Bombay 400 001.

2. The Admiral Superintendent,
 Naval Dockyard,
 Bombay - 400 023.

.. Respondents

Coram: Hon'ble Shri P.S. Chaudhuri, Member(A)

Hon'ble Shri T. Chandrasekhara Reddy, Member(J)

Appearances:

1. Mr.N.M.Shivkar
 Advocate for the
 Applicant.

2. Mr.V.S.Masurkar
 Advocate for the
 Respondents.

JUDGMENT:

Date: 20-6-1991

(Per P.S.Chaudhuri, Member(A))

This application under Section 19 of the Administrative Tribunals Act, 1985, was filed on 3.8.1987. In it the applicant who was working as Electric Fitter Gr.II, in the Naval Dockyard, Bombay is challenging the order dtd. 11.12.1984 and the appellate order thereon dtd. 9.6.1987, by which he is removed from service.

2. The applicant joined the Naval Dockyard at on 1.11.1980. It is the applicant's case that from 3.5.1982 till 8.12.1986 he was suffering from mental depression and was treated for severe psychosis. By chargesheet dated 31.12.1983 he was charged with

unauthorised absence from duty. This chargesheet was received by his relatives and not by the applicant as he was mentally sick. The applicant did not send any reply nor did he participated in the inquiry as he was suffering from Psychosis. The inquiry proceeded ex-parte and the applicant was removed from service by the impugned order dtd. 11.12.1984. The applicant contends that a friend of his had sent a registered letter dtd. 9.6.1982 to the applicant's Foreman intimating the applicant's ailment but this is denied by the respondents. The applicant also contends that he was under the treatment of various doctors, certificates from two of whom he has attached with the application.

3. The respondents have opposed the application by filing their written statement. We have heard Mr.N.M. Shivkar, learned counsel for the applicant and Mr.V.S. Masurkar, learned counsel for the respondents.

4. Mr. Shivkar urged four grounds before us on why ~~he~~ ^{the applicant} deserves to succeed. His first submission was that the inquiry was not attended by the applicant as he was mentally sick. He contended that such an enquiry is not valid against a mentally sick person. Mr. Shivkar also sought to contend that the applicant's marriage had been annulled by the Roman Catholic Church authorities who had by their same order permitted the applicant's former wife to remarry but had imposed a bar on the applicant's remarriage. He fairly conceded that this was an ecclesiastical order and that there was no civil order to that effect. We are unable to be persuaded by these arguments as nothing has been adduced before us

to support the legal status which would render the enquiry proceedings void. In any case, there is nothing on record to show that the applicant or his guardians so informed the authorities.

5. Mr. Shivkar's second contention was that the Inquiry Officer did not find out why the applicant did not come for the inquiry. But we find no such requirement in the CCS(CCA) Rules which are the rules under which action was taken against the applicant. On the contrary these rules specifically provide that if the charged government servant does not submit his written statement of defence or does not appear in person before the inquiring authority, that authority may hold the inquiry ex-parte.

6. Mr. Shivkar's third submission was that ~~the applicant~~ even if it was contended that the applicant had been absent, this did not amount to misconduct but was only long absence for good reasons beyond his control. We are unable to go along with this submission as it is not for us to assess the gravity of an offence unless the conclusion drawn is either arbitrary or utterly perverse - see UNION OF INDIA v. PARMA NANDA, AIR 1989 SC 1185.

7. Mr. Shivkar's final submission was that the punishment was too severe for so minor an offence and that the applicant deserves mercy as he ~~was~~ is now 37 years of age and so not in a position to find fresh employment. While we sympathise with the plight in which the applicant finds himself, we are unable to substitute our own discretion for that of the

Disciplinary Authority as the adequacy of penalty unless ~~unless~~ it is mala fide is certainly not a matter for the Tribunal to concern with - see Parma Nanda's case(supra). We do not find anything mala fide in the penalty that has been imposed.

8. In this view of the matter, we see no merit in this application and are of the opinion that it deserves to be dismissed.

9. We accordingly dismiss this application. In the circumstance of the case there will be no order as to costs.

T. C. S. Reddy
(T.C.S. REDDY)
Member(J)

P. S. Chaudhuri
(P.S. CHAUDHURI)
Member(A)

20.6.1991