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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 NEW DELHI
 NEW BOMBAY BENCH

O.A. No. 366/87 198
 TAX NO.

DATE OF DECISION 19.2.1988

Shri D.C.Sankhe

Petitioner

Shri R.K.Shetty

Advocate for the Petitioner(s)

Versus

The Chief Superintendent, G.O.I. and Anr. Respondent

Shri S.R.Atre (for Shri P.M.Pradhan)
 Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C.Gadgil, Vice-Chairman,

The Hon'ble Mr. J.G.Rajadhyaksha, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No. 366/87.

Shri D.C.Sankhe,
At Kurgaon, Post Kudan,
Taluka Palghar,
Dist. Thane.

... Applicant

V/s.

1. The Chief Superintendent,
Government of India,
Department of Atomic Energy,
Tarapur Atomic Power Station,
Post TAPP,
Dist. Thane. 401 504.

2. Chairman,
Government of India,
Department of Atomic Energy,
Nuclear Power Board,
Homi Bhabha Road,
Bombay - 400 005.

... Respondents.

Coram : Hon'ble Vice-Chairman, Shri B.C.Gadgil,
Hon'ble Member(A), Shri J.G.Rajadhyaksha.

JUDGMENT:

(Per. Shri B.C.Gadgil, Vice-Chairman) Dated: 19.2.1988

The applicant who was working as a Helper with Tarapur Atomic Power Station is challenging the order dt. 25.6.1985 whereunder he was removed from service after holding a departmental inquiry.

2. The gravamen of the charge that was framed against the applicant was two fold. It was contended that he collected house rent though he lived with someone else in the staff quarters. Another allegation was that he was engaged in money lending business, inasmuch as he had advanced some petty advances. An Enquiry Officer was appointed. On 19.2.1985, the applicant admitted the correctness of the first allegation in the charge. He however, denied the allegation of money lending. At a subsequent stage of the inquiries he has on 23.5.1985 also admitted the

second charge. Thus no further inquiry was required and on the basis of the admission of the guilt the appropriate authority passed an order on 25.6.1985 removing him from service. The applicant had preferred appeal against this order. However, that remedy proved fruitless and hence he filed the present application.

3. Mr.R.K.Shetty for the applicant frankly stated that the applicant had admitted one head of the charge viz. collection of house rent though living with someone else in the latter's staff quarters. His contention is that the admission of the second charge was a result of undue pressure under which he was asked to plead guilty. This contention was raised by the applicant in his appeal memo and the appellate authority had rejected it. Mr.Shetty urged that there was no occasion on 23.5.1985 for the inquiry officer to record the plea of the applicant on the second charge about money lending when the applicant had already denied that charge in February, 1985. He argued that recording of such a plea at a subsequent stage would itself be an indication that the Inquiry Officer had put some pressure and compelled the applicant to admit the second charge. In our opinion, it will not be open for the applicant to ask us to record such a finding about the alleged pressure, when the jurisdiction of the Tribunal is limited. The view taken by the appellate authority is quite legal and proper and we would not like to interfere with that view.

4. Mr.Shetty then urged that, at any rate, the quantum of penalty of removal from service is grossly disproportionate to the nature of his mis-conduct. He argued that the applicant was originally residing in a village when he started getting ^{House} ~~Rent~~ Allowance and that for educational purposes of his children the applicant

shifted his residence to a tenement that had been allotted to another employee. The applicant thus continued to live with that other employee and that the applicant was not aware that he was not entitled to get any House Rent Allowance in the background of such occupation with another employee. As far as the second charge is concerned, he contended that the amount was really advanced by his wife. This aspect however, would not be relevant in view of his admission of the guilt. He also submitted that the amount that was advanced was a meagre one. According to him, removal from service in the background of these circumstances would not only be unjust, but would be disproportionate to the nature of mis-conduct. Mr. Atre for the Respondents contended that the claim of H.R.A. by the applicant though he was living with an employee in the staff quarters allotted to that employee would be a fraudulent act. In our opinion, inference of fraud need not be drawn as contended by Mr. Atre. This is more so when the applicant was holding a petty post of a helper. As far as the advancement of loan is concerned it is true that it would be a mis-conduct, but the nature of the mis-conduct would not be so serious as to entail loss of service.

5. Thus, the penalty imposed on the applicant requires interference at our hands. Mr. Shetty contending that withholding of increment for a year or two would meet the ends of justice. In our opinion, such an order would be showing unwarranted mercy and it would be too light a penalty. We think that the applicant

should be reinstated in service, but at the same time he should not get back wages. Disallowing that claim would be a sufficient penalty and hence we pass the following order:

O R D E R

The application partly succeeds. The mis-conduct alleged against the applicant is held proved. However, the quantum of penalty is modified and hence the removal from service ordered on 25.6.1985 and confirmed in appeal is altered. The applicant should be reinstated in service. However, he would not get any monetary benefits for the period from 25.6.1985 till his reinstatement. The said period should be treated as leave as may be permissible to the applicant and in case no leave would be at his credit to cover all this period he should be granted E.O.L. without pay. We make it specifically clear that there would not be any break in the service of the applicant. Parties to bear their own costs of this application.

B.C. Gadgil
(B.C. GADGIL)

VICE - CHAIRMAN

J.G. Rajadhyaksha
(J.G. RAJADHYAKSHA)
MEMBER (A).