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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. TR 116/87.
T.A. No.

198

DATE OF DECISION 30.8.90.

Shantaram Y. Kalangutkar Petitioner

Shri S.R. Atre, Advocate for the Petitioner(s)

Versus

Chief Secretary to the Respondent
Government of Goa, Daman and Diu and another

Shri G.U. Bhole, Advocate for the Respondent(s)

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The Hon'ble Mr. G. Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. M.Y. Priolkar, Member (Admn).

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?

[Signature]
(G. Sreedharan Nair)
Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : NEW BOMBAY BENCH
NEW BOMBAY.

TR 116/87.

Shantaram Y. Kalangutkar Applicant.

versus

Chief Secretary to the Government of Goa,
Panaji and another Respondents.

P R E S E N T :

The Hon'ble Shri G. Sreedharan Nair, Vice Chairman.

The Hon'ble Shri M.Y. Priolkar, Member(Admn).

For the applicant - Shri S.R. Atre, Advocate.

For the respondents - Shri G.U. Bhobe, Advocate.

Date of hearing - 28.8.90.

Date of Judgment and Order - 30.8.90.

JUDGMENT & ORDER :

G. SREEDHARAN NAIR, VICE CHAIRMAN :

This relates to Writ Petition No. 22/86 on the file of the High Court of Bombay, which has been received on transfer.

2. The applicant, as Head Constable in the Police Department, Government of Goa, Daman and Diu, was proceeded against by the issue of a Memorandum of Charges issued in February, 1980. The imputation was that on the night of 6th July, 1979, the applicant deceptively made Smti Gulab T. Vernekar, wife of Shri T.D. Vernekar, Police Sub-Inspector, to open the room occupied by her in a hotel at Veraval and forcibly committed sexual intercourse with her. The applicant denied the charge. An enquiry was conducted. The Inquiry Officer reported that the charge is established. The Disciplinary Authority agreeing with the report of the Inquiry Officer, by the order dated 23.7.1982 imposed upon the applicant the penalty of dismissal from service. The applicant filed appeal before the first respondent, the Chief Secretary to the Government of Goa, Daman and Diu.

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By the order dated 9.7.1985, the appeal was allowed in part by reducing the penalty to one of compulsory retirement from service.

3. The applicant has prayed for quashing the order passed by the appellate Authority. It is urged that since the appellate authority held that "the establishment of the charge of committal of rape is not free from doubt", the applicant should have been exonerated. It is pointed out that the order of the appellate authority contains serious contradictions.

4. The respondents have filed reply resisting the relief.

5. This is a case where the Disciplinary Authority has imposed upon the Government servant the penalty of dismissal from service, which has been modified by the appellate authority to one of compulsory retirement from service. The applicant has prayed only for quashing the order of the appellate authority. Even if the version of the applicant that there are certain contradictions in the reasoning of the appellate authority and as such the order is bad, and deserves to be is accepted, set aside, it will not follow that the finding arrived at by the Disciplinary Authority with respect to the truth of the imputation is rendered non est. So long as there is no challenge against the order of the Disciplinary Authority, that order holding that the imputation is true and imposing the penalty of dismissal from service will become effective. It is needless to highlight that the result will manifestly be to the disadvantage of the applicant, for if the

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order of the appellate authority is allowed to stand, the applicant need only suffer the lesser penalty of compulsory retirement.

6. We would like to point out in this context that in disciplinary proceedings when the Government servant against whom the disciplinary authority imposes a penalty prefers an appeal before the appellate authority, and the appellate authority modifies the penalty, ^{by allowing the appeal in part,} it cannot be said that there is actually a merger of the order of the Disciplinary Authority in that of the appellate authority. No doubt, so long as the order of the Appellate Authority survives, the order of the Disciplinary Authority cannot have operation. But if the Government servant challenges both the orders and the Tribunal accepts the challenge with respect to the order of the appellate authority alone, the order of the Disciplinary Authority revives. It is to be noted that in accordance with the relevant Rules, the grounds available to the Government servant for assailing the order of the Disciplinary Authority are not identical to those to attack the order of the Appellate Authority. The Disciplinary Authority is expected to follow the prescribed Rules in the conduct of the enquiry and if there is violation of the same resulting in the denial of reasonable opportunity of defence to the Government servant, the order of the Disciplinary Authority becomes vitiated and is liable to be set aside, irrespective of the approach made by the Appellate Authority in considering the appeal of the Government servant. Similarly, the Rules prescribe certain specific obligations on the part of the appellate Authority while considering the appeal of the Government servant, and if there is an infraction of the same, the order of the appellate authority will be bad in law to warrant quashing of the same.

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7. We are conscious of the recent decision of the Supreme Court in *S.S.Rathore v. State of Madhya Pradesh* (AIR 1990 SC 10), where it was held that the order of dismissal made by the Collector did merge into the order of the Divisional Commissioner when the latter dismissed the appeal of the appellant. Apart from the fact that it was a case where the appeal was dismissed by the appellate authority, the more important aspect to be noticed is that the Supreme Court was considering the question as to the date of accrual of cause of action to challenge the order in the disciplinary proceedings when the order of the disciplinary authority has been subjected to appeal before the appellate authority and the latter has ~~not~~ dismissed the appeal. It was in that context, it was held that it would be appropriate to hold that the cause of action ~~ar~~ first arises when the remedies available to the public servant under the relevant service rules as to redressal are disposed of and that the cause of action shall be taken to arise not from the date of ~~original~~ adverse order, but on the date when the order of the appellate authority is passed.

8. The concerned file relating to the enquiry was made available by the counsel of the respondents. On a perusal of the same, we are satisfied that *prima facie* the Disciplinary Authority has acted on the basis of the evidence adduced in the course of enquiry to arrive at the truth of the imputation and that there has not been any denial of reasonable opportunity of defence to the applicant. As such, as pointed out earlier, the setting aside of the order of the appellate authority would only result in the revival of the order of the Disciplinary Authority, with the higher penalty imposed by it.

9. In the circumstances, we dismiss the application.

M.Y. Priolkar
(M.Y. Priolkar)
Member(Admn)

G.Sreedharan Nair
(G.Sreedharan Nair)
Vice Chairman.