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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI  
NEW BOMBAY BENCH

O.A. No. 387/87.  
T.A. No.

198

DATE OF DECISION 30.8.90.

M.B. Kadam

Petitioner

Shri S. Natrajan,

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

Shri M.I. Setha

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? ✕

MGIPRRND-12 CAT/86-3-12-86-15,000

  
G. Sreedharan Nair)  
Vice Chairman.

(12)

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

O.A. 387/87.

M.B.Kadam ... Applicant.  
versus  
Union of India and others ... 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.Natrajan, Advocate.

For the respondents- Shri M.I.Sethna, Advocate.

Date of hearing - 28.8.90.

Date of Judgment and Order- 30.8.90.

JUDGMENT & ORDER :

G.Sreedharan Nair, Vice Chairman :-

The applicant who was Superintendent (P) in the Collectorate of Customs and Central Excise, was proceeded against by the issue of a Memorandum of Charges dated 28.8.1984 for failure to maintain absolute integrity and devotion to duty and for acting in a manner unbecoming of a government servant. The applicant denied the charge. An enquiry was conducted. The Inquiry Officer reported that the charge is established. Accepting the report of the Inquiry Officer, the Disciplinary Authority by the order dated 7.5.1985 imposed upon the applicant the penalty of removal from service. The applicant filed an appeal to the President of India. By the communication from the Under Secretary to the Government of India dated 19.12.1986, the applicant was informed that the appeal has been rejected.

2. The applicant assails the order imposing the penalty. It is alleged, inter alia, that there has been denial of reasonable opportunity of defence and that the Disciplinary ought to have found the report of the <sup>Inquiry</sup> Investigating Officer as vitiated not being based on any evidence.

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3. The respondents have filed reply traversing the various averments in the application.

4. Counsel of the applicant placing reliance on the decision of a Bench of this Tribunal on which one of us ( G.Sreedharan Nair, Vice Chairman) was a member in Ram Nath Narsingha Naik v. Government of India ( OA 349/86, decided on 5.7.1990) submitted that the impugned order cannot be sustained as there has been violation of Clause (2) of Article 311 of the Constitution of India and denial of reasonable opportunity of defence, since copy of the report of the Inquiry Officer was not furnished to the applicant and he was not heard on the same before the Disciplinary Authority passed the impugned order. After referring to the decision of the Madras Bench of this Tribunal in V.Shanmugham vs. Union of India ( 1986 (2)ATR (CAT) 226) and to the decision of the Full Bench in P.K.Sharma's case, the order of the Disciplinary Authority imposing the penalty of dismissal from service was quashed in the decision in OA 349/86.

5. Following the said decision, the order of the Disciplinary Authority dated 7.5.1985 imposing upon the applicant <sup>the penalty of</sup> removal from service, as confirmed by the order of the Appellate Authority dated 19.12.1986, is hereby quashed.

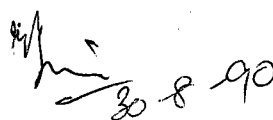
6. The applicant shall be reinstated in service and shall be treated as having been in continuous service. The competent authority shall pass order under Clause (1) of Sub-rule (2) of FR 54-A with respect to the pay and allowances during the period from the date of removal till such reinstatement.

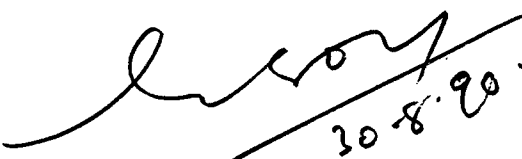
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7. It is made clear that as a copy of the report of the Inquiry Officer has now been furnished to the applicant alongwith the copy of the order imposing the penalty, in case the Disciplinary Authority desires to proceed with the enquiry, the Disciplinary Authority will be free to do so, in which case the applicant shall be afforded an opportunity of making representation with respect to the report of the Inquiry Officer, and a personal hearing if the Disciplinary Authority is of the view that the circumstances of the case warrant the same. If the enquiry is to be proceeded with, the Disciplinary Authority will be free to treat the applicant as under deemed suspension in accordance with sub-rule (4) of Rule 10 of the CCS(CC&A) Rules during the pendency of the proceedings and to defer the issue of the order under Clause (1) sub-rule (2) of FR 54-A till the termination of such proceeding.

7. The application is disposed of as above.

  
( M.Y. Priolkar )  
Member (Admn)

  
( G. Sreedharan Nair )  
Vice Chairman.

S.P. Singh/  
29.8.90.

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