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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

CA~~XX~~ NO: OA 421/87

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Tx~~XX~~ NO~~XX~~

DATE OF DECISION 4.11.92

Shri Hemant Padakar Khande Petitioner

Shri D.S.Purendare Advocate for the Petitioners

Versus

Union of India and others. Respondent

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

Shri V.M.Bendre Advocate for the Respondent(s)

CORAM:

DATE OF DECISION

The Hon'ble Mr. Justice S.K. Dhaon, Vice Chairman

The Hon'ble ~~Mr.~~ Ms. Usha Savara, 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 ?

ND

By
(S.K.DHAON)
VICE CHAIRMAN.

mbm*

CORAM:

The Hon'ble Mr.

The Hon'ble Mr.

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 421/88

Shri Hemant Padmakar Khanade,

... Applicant.

V/s.

Union of India through respondent No.3.

Deputy Collector (P & E)
Central Excise,
Central Excise, Huilding
Maharshi Karve Road,
Opposite Churchgate Station
Bombay.

The Collector of Central Excise,
Central Excise Building
Maharshi Karve Road
Opposite Churchgate Station
Bombay.

... Respondents.

CORAM: Hon'ble Shri Justice S.K. Dhaon, Vice Chairman

Hon'ble Ms. Usha Savara, Member (A)

Appearance:

Shri D.S. Purendare counsel
for the applicant.

Shri V.M. Bendre for Mr.
P.M. Pradhan, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 4.11.92.

{ Per Shri S.K. Dhaon, Vice Chairman }

The applicant was ^{during} at the relevant period functioning as Inspector of Central Excise in charge of M/s. Piramal Spinning and Weaving Mills Limited, Bombay. The basic charge against him was that as an Inspector he was required to enter into the register the particulars of samples drawn and sent by him to the Deputy Chief Chemist. Some samples were drawn by him on 18.6.76 and sent to Deputy Chief Chemist on 19.6.76, but he failed to enter the particulars of those samples in the register of sample maintained by him.

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A charge-memo was given to him containing five articles. An Enquiry Officer was appointed. He on 1.5.82 gave a detailed report. He ultimately came to the conclusion that none of the charges were found proved against the applicant. The punishing authority on 24.2.85, while disagreeing with the recommendation of the Enquiry Officer, came to the conclusion that the charge as contained in article 2, 4 and 5 were established. He however, thought it proper to award the punishment of "Censure" to the applicant. The appellate authority on 8.5.85 dismissed the appeal preferred by the applicant.. He passed a reasoned and detailed order. The two orders are being impugned in the present application.

In paragraph 6(h) of the application it is averred that neither any personal hearing was given by the disciplinary authority nor any opportunity was given to him to submit before it the relevant materials and points related to the recommendation of charge against him. A reply has been filed on behalf of respondents. In it, the reply given to the averments given in paragraph 6(h) ^{is} that under the statute the disciplinary authority was not obliged to give a personal hearing to the applicant.

The argument advanced on behalf of the applicant in the forefront is that the punishing authority having disagreed with the recommendation of the Enquiry Officer, the applicant was atleast entitled to an opportunity to show cause as to why the punishing authority should agree with the findings of the Enquiry Officer. In view of the averments made in paragraph 6(h) and the reply to the same, it is apparent that no such opportunity was given to the applicant by the punishing authority. This assertion of the applicant also finds corroboration from the fact that

that in the order of punishing authority no mention of the fact that he had, before coming to the conclusion that he should disagree with the finding of the Enquiry Officer, given an opportunity to the applicant. We, have, therefore, no alternative but to come to the conclusion that principles of natural justice were observed in their breach by the punishing authority in so far as he failed to give any opportunity to the applicant to show cause against his decision to disagree with the recommendation of the Enquiry Officer. In view of the decision of the Supreme Court in Narain Mishra's case the order of the punishing authority is not sustainable. The same infirmity will attach to the appellate order.

The question still remain as to what should be the proper order passed at this stage. We may note that even the punishing authority had come to the conclusion that the applicant committed a technical breach. Proceedings are going on against the applicant since 1.5.80. More than 12 years have elapsed. We feel that the interest of justice requires, that the proceeding should now come to an end. We, therefore, do not consider expedient in the interest of justice that the punishing authority should be given a fresh opportunity to give a show cause notice to the applicant and, thereafter, he should be given a chance to pass a fresh order.

This application succeeds and is allowed. The orders passed by the punishing authority as well as the appellate authority are quashed. We also direct that the disciplinary proceedings as against the applicant shall stand quashed.

There shall be no order as to costs.

J. Savaraj
(J.SHA SAVARAJ, II, '92)
MEMBER (A)

S.K. Dhaon
(S.K. DHAON)
VICE CHAIRMAN