

(12)

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

O.A.771/87.

1. Shri D.A. Pradhan,
Navpada, Milan Nagar,
Premier Road, Gate No.6,
Kurla (W), Bombay -400 070.
2. Shri D.M. Sahu,
A. Varsha Nagar Chawl,
LBS Marg, Navpada, Kurla,
BOMBAY - 400 070.
3. Shri D.D. Shetty,
C/o. Swadesh Dal Mill,
Oriya Ration Shop No.8,
T.J. Road, Sewree,
BOMBAY - 400 015.

.. Applicants.

V/s.

1. Flag Officer C-N-C,
Western Naval Command,
Shahid Bhagat Sing Road,
BOMBAY - 400 001.
2. Secretary,
Ministry of Defence,
New Delhi.
3. Secretary,
Union of India, New Delhi
through Ministry of Defence.

.. Respondents.

CORAM : Hon'ble Shri Justice U.C. Srivastava, Vice Chairman
Hon'ble Shri M.Y. Priolkar, Member (A).

ORAL JUDGMENT

DATE: 18.6.1991.

¶ PER : Hon'ble Shri M.Y. Priolkar, Member (A) ¶

This application is filed by three employees who were employed as Manual Labourers in the Naval Dockyard, Bombay. They were recruited during 1977 and 1978. In 1984-85 charge sheets were issued to them for the mis-conduct of securing employment by fraudulent means i.e. by producing fictitious School Leaving Certificates. The applicants pleaded guilty to the charges. Inquiries were conducted and penalty of withholding of increments for three years with cumulative effect was awarded by the Disciplinary Authority, against all the applicants.

13

O.A.771/87.

2. In 1987, the reviewing authority issued show cause notice to the applicants proposing to enhance the penalty to removal from service. After considering the representations they were all removed from service.

3. The removal orders are challenged by the applicants on the grounds mainly that at the time of recruitment no educational qualification was prescribed for the post of unskilled labourers and therefore the insistence of School Leaving Certificates was illegal, that admission of charges was procured from the applicants by misrepresentation, that review order on a date two years after the original penalty order was barred by limitation and orders of termination are violative of Articles 300 and 311 of the Constitution and principles of natural justice.

4. An identical case has been decided by this Tribunal, New Bombay Bench on 28.8.1990, where we have held that since even in the application filed before the Tribunal the applicants have not denied that they have produced the false certificates and have also not specified the principles of natural justice that have not been complied with, it is difficult to accept that even if there were any procedural deficiencies in the disciplinary proceedings, ^{at} ~~they~~ would have adversely affected the defence of the applicants.

5. The only additional ground taken by the applicants in the present application is that a number of ~~other~~ employees similarly situated have been awarded much lesser punishment than that of removal from service, which is the penalty awarded to the applicants in the present application. It has been averred that the punishment awarded in the other cases is only of withholding of one or

14

O.A.771/87.

two increments for similar mis-conduct as the present applicants. The Tkt. numbers of almost 30 employees who are stated to have been awarded much lesser punishment have been given at page 23 of the paper book which is at Annexure 'C' to a mercy appeal made to the Flag Officer, Commanding-in-Chief, Western Naval Command dt. 4th August, 1987 against the removal order passed by the Commodore, Chief Staff Officer.

6. It is seen that in the Appellate Order dt. 19.10.1987 which deals with this mercy petition, the Appellate Authority had merely stated that the appellants' statements that some other persons involved in similar offences were awarded lesser punishments and are presently in service are not relevant and does not lessen the seriousness of their misdemeanour. The learned counsel for the respondents stated that he does not have any information regarding the cases of these allegedly similarly situated persons, since the details of such persons have been given only in an Annexure to the mercy petition and not in the main application. This point also has not been touched by the respondents in their written statement.

7. In the circumstances, we set aside the three orders of the Appellate Authority dt. 9.10.1987, nil and 7.10.1987 rejecting the appeals respectively of the applicants Nos. 1,2 and 3 and remand the cases back to the Appellate Authority for reconsideration and disposing of the these appeals after specifically considering this particular ground of discrimination as alleged by the appellants and after passing a reasoned and speaking order and also after giving an opportunity of hearing to the applicants. This application is accordingly disposed of with the direction as above. No order as to costs.

(M.Y. PRIOLKAR)
MEMBER (A)

(U.C. SRIVASTAVA)
VICE CHAIRMAN.