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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 809/88. 199
T.A. NO:

DATE OF DECISION 10/1/92

Shri P. K. Ingale Petitioner

Advocate for the Petitioners

Versus

The Supt. of Post Office & another Respondent

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C. Srivastava, Vice-Chairman,

The Hon'ble Mr. A.B. Gorai, 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 ?

mbm*

u
(U.C. Srivastava)
V/C.

(S)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

Original Application No.809/88.

Shri P.K.Ingale.

... Applicant.

V/s.

Union of India & Ors.

... Respondents.

Coram: Hon'ble Shri Justice U.C.Srivastava, Vice-Chairman,
Hon'ble Shri M.B.Gorthi, Member(A).

Oral Judgment:-

(Per Shri Justice U.C.Srivastava, Vice-Chairman) Dt.10.1.1992

The applicant who was a Postal Assistant in the office of Superintendent of Post Offices, Jalgaon was placed under suspension w.e.f. 28.2.1984 in view of the criminal offence which was under inquiry. The charge against the applicant was that he attacked one Shri S.R.Joshi the then Post Master, Jalgaon with a knife and extended threat to him. A criminal case followed, but it was compounded between the parties and as a result of the compounding the applicant was acquitted. As a result of which vide order dt. 18.12.1986 the suspension order was revoked with immediate effect. A departmental inquiry was also initiated against the applicant in respect of those mis-conduct. A domestic inquiry took place and the disciplinary authority held the applicant guilty and he was awarded a punishment of withholding next increment for a period of three months from the date it was due. But vide order dt. 27.11.1987 the R-I directed that the period from 29.2.1984 to 18.12.1986 be treated as suspension for the purpose of pay and allowances and for the purpose of leave, increment and pension and as the applicant was not entitled for pay and allowance and leave, increment and pension during the period of suspension. The applicant filed an appeal against the same which was dismissed by the order dt. 27.11.1987. The contention of the applicant is that the said order was passed without

proper application of mind and that it was in violation
of the Circular No.11012/15/85.Estt.(A) which clearly
instructed all its department including the department
of R-1 that in case of minor penalties as defined in
Rule.1 of CCS(CCA) Rules, the period during which the
delinquent was kept under suspension should be treated
as a period of valid service and these orders are not only
against the said Circular, but they are extremely harsh
and consequently are to be quashed.

2. The respondents have opposed this application.
The learned counsel for the respondents contended that
as a result of compounding the department was within its
right to hold departmental inquiry and the punishment
which was awarded was accepted by the applicant and the
department gave notice under F.R.54 and it is thefeafter
the said decision was taken. The department in exercise
of powers took the decision for treating the particular
period of suspension in a particular manner and there was
no error and that this was done in accordance with the
F.R. 54 (b)(5) and in the schedule the competent authority
has powers to decide the period of suspension after giving
notice to the government servant and to give adequate
opportunity to represent against the quantum of
punishment proposed and in fact notice was given to the
applicant and the relevant fact was also taken into account
so far as the instructions referred to by the applicant
are only applicable to the general departmental offence
wherein the government servant against whom an inquiry
has been held for imposition of major penalty is
finally awarded a minor penalty in such cases the suspen-
sion is unjustified.

3. In the instant case no inquiry was held for imposition of major penalty. Moreover, it was a criminal case and was beyond the purview of the said instructions. In the instant case as seen the applicant was departmentally punished and even after awarding the punishment in respect of the same matter his period was to be treated as period of suspension for the purposes of pay and allowances etc. As a matter of fact the applicant having already been punished it was some sort of yet another punishment which was being given to the applicant in respect of the same matter. The circular of 3.12.1985 a reference to which has been made by both the parties also indicates that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. It also states that the suggestions which was given was accepted by the government, in these terms that in cases where a government servant against whom an inquiry has been held for imposition of a major penalty has been awarded and not a minor penalty the suspension should be considered unjustified and full pay and allowances for the suspension period be paid. But the proceedings in respect of minor penalty takes place there appears to be no occasion for treating the said period as a period of suspension. Obviously instead of giving a double punishment the period could have been treated as on leave without pay and consequently this punishment order in question dated 8.9.1988 is quashed and the respondents are directed to pass a fresh order treating the said period to be a period on leave without pay. The application stands disposed of finally in these terms. No order as to costs.

Abu

(A.B.GORTHI)
MEMBER (A)

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(U.C.SRIVASTAVA)
VICE-CHAIRMAN.