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CAT/3/12

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 360/88

~~XXXXXX~~

198

DATE OF DECISION 21-8-91

Holaram G. Sidhwani Petitioner

Mr.S.U. Balani Advocate for the Petitioner(s)

Versus

Union of India. Respondent

M.A.I.Bhatkar for M.I. Sethna Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. M.Y. PRIOLKAR, MEMBER (A).

The Hon'ble Mr. T.C. REDDY, MEMBER (J).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether in needs to be circulated to other Benches of the Tribunal ? *No*

*M.Y. Priolkar*  
( M.Y. PRIOLKAR )  
MEMBER(A).

(13)

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

ORIGINAL APPLICATION NO.360/88.

Holaram G. Sidhwani,  
A-7, Tulsi Niwas,  
Prabhat Colony,  
Santacruz (E),  
BOMBAY - 400 055.

.. Applicant.

V/s.

1. The Union of India,  
through the Secretary  
to the Government of India,  
Ministry of Finance,  
Department of Revenue,  
New Delhi.

.. Respondent.

Coram : Hon'ble Member (A) Shri M.Y. Priolkar.  
Hon'ble Member (J) Shri T.C. Reddy.

Appearances:-

Mr.S.U. Balani, Advocate  
for the applicant.

Mr.A.I. Bhatkar for Mr.  
M.I. Sethna, Counsel for  
the respondents.

JUDGMENT

DATED: 21-8-91

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

In this application, the applicant challenges the order dated 14.5.1987 of the President of India imposing 50% cut in the pension applicable to him on a permanent basis. The applicant while working as Examiner in Bombay Customs was proceeded against departmentally and after he was found responsible for the commission of the action whereby the export of certain prohibited narcotic drugs was made possible, he was punished under the above order.

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-: 2 :-

D.A.360/88.

2. This order has been assailed on the ground that it is contrary to law, equity and good conscience as it has been passed by the Respondent without applying his mind and also in excess of jurisdiction as the departmental proceedings were instituted in respect of an event which had taken place more than four years before such institution. It is also contended that the enquiry is vitiated because of a number of serious procedural deficiencies.

3. The learned counsel for the applicant argued <sup>that</sup> under Rule 9(2)(b)(ii) of the Central Civil Services Pension Rules the departmental proceedings, if not instituted while the Government servant was in service, shall not be in respect of any event which took place more than four years before such institution and shall not be instituted ~~save~~ with the sanction of the President. His contention was that the President's sanction for institution of departmental proceedings in this case was dated 29.6.1984 whereas the event had taken place on 19.6.1980, i.e. more than four years earlier and, therefore, the sanction was not valid. The learned counsel for the respondents countered this by saying that Rule 9(6)(a) specifically provides inter alia that the departmental proceedings shall be deemed to be instituted on the date of suspension, in the case of a Government servant placed under suspension from an earlier date. Since the applicant was admittedly under suspension prior to 19.6.1984, the President's sanction should be held to have been validly given in view of Rule 9(6)(a) of the C.C.S. Pension Rules.

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-: 3 :-

O.A.360/88.

4. However, after hearing the learned counsel on both sides, we are of the view that this application deserves to be allowed on the ground of violation in another respect of Rule 9 of the C.C.S. Pension Rules. Evidently, the departmental proceedings in this case should be deemed to have been instituted while the applicant was still in service under Rule 9(2)(a) read with Rule 9(6)(a). However, the Department has obtained the sanction of the President for institution of these proceedings under Rule 9(2)(b) which is required only when the proceedings are to be instituted after the retirement of a Government servant. We, therefore, agree with the contention raised on behalf of the applicant that the impugned order imposing the 50% cut in his admissible pension is vitiated being based on proceedings instituted in violation of the procedure specified in Rule 9 of the C.C.S.(Pension) Rules. Since we propose to set aside this impugned order on this short point alone, we do not think it is necessary for us to go into the other issues raised in this application.

5. The application is accordingly allowed, and the impugned order dated 14.5.1987 set aside, with consequential benefits in accordance with law. There is no order as to costs.

*T. Chandrasekhar*  
( T.C. REDDY )  
MEMBER(J).

*M.Y. Priolkar*  
( M.Y. PRIOLKAR )  
MEMBER(A).