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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**NEW BOMBAY BENCH**

O.A. No.
T.A. No. 159/86

198

DATE OF DECISION 18-4-1990Anil Janardhan Joshi PetitionerApplicant in person Advocate for the Petitioner(s)

Versus

Union of India and Ors. RespondentMr. S.R. Atre for Mr. P.M. Pradhan Advocate for the Respondent(s)**CORAM**

The Hon'ble Mr. G. Sreedharan Nair, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, 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?

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(11)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr. Appln. No. 159/86

Anil Janardhan Joshi

.. Applicant

vs.

Union of India and others

.. Respondents

Coram: Hon'ble Shri G. Sreedharan Nair, Vice-Chairman

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

Appearances:

1. Applicant in person.
2. Mr. S.R. Atre
for Mr. P.M. Pradhan
Advocate for the
respondents.

ORAL JUDGMENT

(Per G. Sreedharan Nair, Vice-Chairman) Date: 18-4-1990

The applicant who was an Assistant Superintendent, Government Medical Stores Depot was proceeded against by issuing a memorandum of charge dtd. 10-6-1981. The imputation was that he committed gross misconduct by handing over 3263 kgs. of cut pieces bandages to the bidder instead of 500kgs. The charge was denied by the applicant. An enquiry was conducted.

The Inquiry Officer reported that there is no convincing evidence to prove that 500kgs. only were actually put to auction and it is difficult to decide against the applicant whether he has wilfully handed over excess material. The Disciplinary Authority considered the report of the Inquiry Officer and by his proceedings dated 24-12-1981 (Ex.G) disagreed with the findings of the Inquiry Officer and observed that the Inquiry Officer has taken partisan attitude in favour of the applicant. By his order dated 1-1-1982

he ordered to revert the applicant to the substantive post of Pharmacist-cum-Clerk. Copy of the aforesaid order was sent by him to the applicant along with the copy of the report of the Inquiry Officer and calling upon the applicant to make the representation, if any, on the penalty proposed. The applicant submitted his reply. By order dtd. 2-2-1982 the Disciplinary Authority imposed upon the applicant the penalty of reversion ~~in~~ ⁱⁿ the substantive post with effect from 5-6-1981 and ordered recovery of Rs.1,170/- from the applicant. An appeal was preferred by the applicant which was ^{Appealed} rejected by the Disciplinary Authority by its order dtd. 2.4.1985.

2. The applicant has prayed for quashing the order imposing the penalty and for consequential benefits. It is alleged inter-alia that there has been violation of principles of natural justice.

3. The respondents have filed their ^{Cravassing} reply opposing the averments made in the application.

4. We have heard the applicant who appeared in person as well as the counsel for the respondents Mr. S.R. Atre.

5. This is a case where a penalty of reduction in rank has been imposed on the applicant. In view of clause (2) of Article 311 of the Constitution of India it is mandatory that before the imposition of such a

penalty the civil servant is given reasonable opportunity of being heard. Failure to do so will be violative of the well recognised principle of natural justice that no one shall be condemned unheard.

6. The inquiry has been conducted in this case not by the Disciplinary Authority itself but by an Inquiry Officer appointed by him. The Inquiry Officer had reported that the imputation as such is not established. The Disciplinary Authority before arriving at the truth of the imputation did not supply a copy of the report of the Inquiry Officer to the applicant; nor was the applicant given an opportunity of being heard. What has transpired is that the Disciplinary Authority has gone through the report of the Inquiry Officer and the evidence recorded in the course of the enquiry, on his own, arrived at a conclusion of the truth of the imputation by his proceedings dtd. 24.12.81. It was only thereafter that an opportunity of being heard was offered to the applicant, which be it noted, was not in respect of the truth of the imputation, but was only in respect of the penalty that was to be imposed upon the applicant. This amounts to denial of reasonable opportunity of being heard and clear violation of principle of natural justice. If only an opportunity ~~of~~ was afforded to the applicant before the Disciplinary Authority issued the proceedings dated 1-1-1982, perhaps the applicant ~~could have~~ convinced the Disciplinary Authority that on the

evidence recorded the finding of the Inquiry Officer has to be accepted, and that the imputation against him is not true.

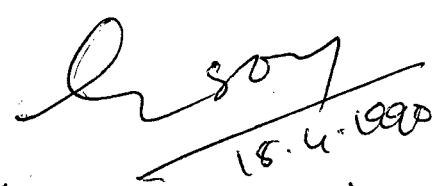
7. In the decision of the Madras Bench of this Tribunal on which one of us was a member (G.Sreedharan Nair) in K.S.Shekharankutty's case it was held that the order imposing penalty in such circumstances is vitiated and cannot be sustained. This proposition has gained recognition in the decision of the Full Bench of this Tribunal in Premnath Sharma's case.

8. It is seen from the records that when the applicant filed memorandum of appeal before the Appellate Authority he raised the contention that the Disciplinary Authority should not have in the circumstances deferred from the report of the Inquiry Officer. But the Appellate Authority holding that the finding of the Inquiry Officer is not binding upon him, and he is at liberty to reach a conclusion of his own, repelled the plea. However the question whether there has been denial of reasonable opportunity of defence was not considered by the Appellate Authority.

9. In the result we quash the order of the Disciplinary Authority dtd. 2-2-1982 as confirmed by the Appellate Authority by its order dated 2-4-1985 and remit the matter to the Disciplinary Authority for

fresh disposal after affording the applicant an opportunity of being heard in respect of the Inquiry Officer's report, now that the copy of the report has been furnished to him. This shall be done by the Disciplinary Authority within a period of two months of the receipt of a copy of this order.

10. The application is disposed of accordingly.

 
(M.Y. PRIOLKAR) (G. SREEDHARAN NAIR)
Member(A) Vice-Chairman

Judgement dt 18.4.90
Served to parties on
20.5.90.


Judgement dt 18.4.90
Served on R.N. No 1,3 of Application
dt. 1.6.90

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