

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 673/89
~~XXXXXX~~

198

DATE OF DECISION 13.12.1989

Shri R.S.Katamale

Petitioner

Advocate for the Petitioner(s)

Versus

Union of India and others.

Respondent's

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.B.Mujumdar, Member (J)

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yc*
2. To be referred to the Reporter or not ? *Yes*
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 ? *X6*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

3

OA. NO. 673/89

Shri R.S.Katamale
Polisher (Semi Skilled)
9/32/7, Defence Project,
Ambajhari, Nagpur-440021.

... Applicant

v/s.

1. Union of India through Secretary, Ministry of Defence (Production), New Delhi.
2. Director General, Ordnance Factories, 10-A, Aukland Road, Calcutta 700 001.
3. The General Manager, Ordnance Factory, Ambjhari, Nagpur.

... Respondents

CORAM: Hon'ble Member (J) Shri M.B.Mujumdar
Hon'ble Member (A) Shri M.Y.Priolkar

ORAL JUDGMENT

Dated: 13.12.1989

(PER: M.B.Mujumdar, Member (J))

None present for the applicant.

2. On the complaint of the first wife of the applicant under Section 494 of the Indian Penal Code, namely for bigamy, the applicant was convicted by the Judicial Magistrate, First Class at Nagpur in criminal case No. 97/1984 and sentenced to undergo rigorous imprisonment for 4 months and to pay a fine of Rs.250/-.

Session Court at Nagpur

The applicant has preferred an appeal against that order in the ~~Court~~ and the Additional Session Judge by his order dated 21.12.1988 has suspended the sentence. The appeal preferred by the applicant is still pending.

3. By order dated 1.2.1989 passed by Respondent No. 3, i.e. General Manager of the Ordnance Factory, Ambajhari, Nagpur in which the applicant was working, the applicant was placed under suspension. However, thereafter a show cause notice dated 8.2.1989 was given to him and after considering his

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representation he is removed from service by order dated 15.5.1989. Without preferring an appeal, the applicant has filed this application challenging the order of removal from service.

4. In our view the point urged by the applicant is covered by the Full Bench judgment of this Tribunal in Om Prakash Narang v. Union of India, Full Bench Judgements of Central Administrative Tribunals (1986-1989) at page 21. It is held in that case that the department may impose penalty when a Government servant has been convicted by the trial court even if he has filed an appeal and his release on bail does not amount to suspension of his conviction. In para 4 this is what the Full Bench has pointed out :

"As is evident from the judgment of the trial court, the applicant is charged with having abetted suicide of his wife, an offence punishable under Sec.306 IPC and sentenced to 5 years R.I. As already noticed, this conviction has not been suspended. He was only released on bail. If an accused is released on bail, the conviction itself does not stand suspended. May be, ultimately when the appeal is heard, he may be acquitted but during the pendency of the appeal, the conviction of the applicant for the offence with which he is charged very much stands. While during the trial, the applicant was merely an accused, after he was convicted and sentenced by the trial court, the accused became a contract only a convicted person undergoes a sentence. In releasing the applicant on bail what the appellate court directs is to suspend the sentence not the conviction. It does not suspend the findings of the Trial Court on the charges levelled against the convicted appellant. That stage is not reached until the appeal is heard and on an appreciation of the evidence on record the appellate court finds that the offence is not proved."

5. We are bound by the above decision and hence we do not find anything wrong in the impugned order of removal from service. When the applicant is held guilty by criminal court for bigamy, we do not think that the Respondent No. 3

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were not justified in awarding penalty to him after giving him a show cause notice. The penalty cannot be said to be disproportionate to the gravity of the offence. Needless to say, if the conviction is set aside by the Appellate Court or the High Court, the applicant would be entitled to request for reinstatement.

6. We, therefore, reject the application summarily, with no order as to costs.

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

M.B.MUJUMDAR
(M.B.MUJUMDAR)
MEMBER (J)

Judgment dt. 13.12.89
sent to parties
on 29.1.90.

Abbas

Judgment dt. 13.12.89
served on R. No. 2
on 12/1/90.

SS4
26/12/90