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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCH

~~XXXXXXXX~~ St.No. 241/89 198
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DATE OF DECISION 24.4.1989

Shri R.P.Sahni Petitioner

Shri S.Natarajan Advocate for the Petitioner(s)

Versus

Secretary, Deptt.of Atomic Energy Respondents
and another.

Shri J.D.Desai (for Sh.M.I.Sethna) 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? *Yes*

2. To be referred to the Reporter or not? *Yes*

3. Whether their Lordships wish to see the fair copy of the Judgement? *No*

4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(2)

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

St.No. 241/89

Shri R.P.Sahni
Residing at 14B,
Almora, Anushakti Nagar,
Bombay 400 094.

... Applicant

V/S.

1. Secretary,
Deptt. of Atomic Energy,
C.S.M.Marg, Bombay.

2. Union of India
through Respondents No. 1. ... Respondents

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

Appearances :

Mr. S. Natarajan
Advocate
for the Applicant

Mr.J.D.Desai
(for Mr. M.I.Sethna)
Advocate
for the Respondents

ORAL JUDGMENT

Dated: 24.4.1989

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

Heard Mr. Natarajan for the applicant and Mr.J.D.
Desai for Mr.M.I.Sethna for the respondents.

2. The applicant is working as Scientific Officer (SE) in the Civil Engineering Division of the Bhabha Atomic Research Centre. By order dated 24/26.6.87 is placed under suspension. Alongwith Memorandum dated 3.8.1988 a statement containing one article of charge is served on him. Though a copy of the charge is not produced, a reference to the charge is made in para 5 of the application. It appears that the charge is that the applicant in connivance with

his senior officers recorded false measurements, recorded the false dates of commencement and completion in respect of 8 works executed during the period from 1984 to 1987, without carrying out the said works at site. An Enquiring Officer as well as Presenting Officer are appointed.

3. The memorandum is signed by the Secretary, Govt. of India, Department of Atomic Energy. The case of the applicant is that he was appointed by the President, placed under suspension by the President and hence the Secretary to the Department has no power of authority to frame or serve charge against him.

4. For understanding the argument of Mr. Natarajan, learned advocate for the applicant, we shall have to refer to some provisions of CCS (CCA) Appeal Rules, 1965 (briefly the Rules). Rule 2 (g) defines 'Disciplinary Authority' to mean the authority competent under the rules to impose on a Government servant any of the penalties specified in Rule 11. Rule 11 specifies the penalties which can be imposed on a Government servant. It divides rule in 2 categories — Minor Penalties and Major Penalties. Minor Penalties are specified in clauses (i) to (iv) while Major penalties are specified in clauses (v) to (ix).

5. Rule 12 (1) is the next relevant rule in this case. Only sub-rules (1) & (2) are material in this case and they are as under : (1) The President may impose any of the penalties specified in Rule 11 on any Government servant. (2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in Rule 11 may be imposed on —



- (a) a member of a Central Civil Service other than the General Central Service, by the appointing authority or the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President;
- (b) a person appointed to a Central Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf.

6. We may point out here that a notification dated 11.6.1985 is issued by the Government of India and that notification is as follows :

"S.O. In exercise of the powers conferred by clause (b) of sub-rule (2) of rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and all other powers enabling him in this behalf and in supersession of the Government of India in the Department of Atomic Energy notification S.O.No. 752 dated the 26th February, 1974, the President hereby directs that in respect of persons appointed the Central Civil Posts included in the General Central Service Gr.A in or under the Department of Atomic Energy, the power to impose any of the penalties specified in clauses (i) to (iv) of rule 11 of the said rules shall be exercised by the "Secretary" as defined in rule 2 (1) of the said rules."

7. The Rule 13 mentions down authorities who can institute disciplinary proceedings. As that rule is relevant, we quote it below :

"13. (1) The President or any other authority empowered by him by general or special order may :

- (a) institute disciplinary proceedings against any Government servant ;
- (b) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in Rule 11.

(2) A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of Rule 11 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in clauses (v) to (ix) of Rule 11 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties.

8. Mr. Natarajan vehemently submitted, relying on the wording of the sub-rule (2) of Rule 13 that as the Secretary is not authorised under the rule to impose any of the penalties specified in clause (i) to (iv) of Rule 11 i.e. Minor penalties, the Secretary cannot institute the disciplinary proceedings against the applicant by submitting the charge-sheet. According to Mr. Natarajan it is not under the rules but under the notification dated 11.6.1985, that the Secretary is authorised to impose any of the Minor penalties.


9. But we are not inclined to accept this submission of Mr. Natarajan. The notification itself was issued by the President in exercise of the powers conferred by Rule 12 (2) (a) of the rules. So when the notification authorises the Secretary to impose any of the minor penalties, then he will be the competent person to initiate disciplinary proceedings also.

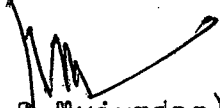
10. Then Mr. Natarajan relied on Article 311 of the Constitution of India. That Article is regarding dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State and Sub-article (1) lays down that no person who is a member of a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. But in this case, we are not concerned about the final penalty, but we are concerned about the competence of the Secretary of the Department to initiate disciplinary proceedings only. This Article in our view is not relevant in the present case.

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11. In result, we find no merit whatsoever in this application. Hence, we reject the application summarily under Section 19 (3) of the Administrative Tribunals Act, with no orders as to costs.


(M.Y. Priolkar)
Member (A)


(M.B. Mujumdar)
Member (J)