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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 184/89

198

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DATE OF DECISION 17.6.1991

Popat Gopala Sarode, Petitioner

Mr. Paul Sunderajan Advocate for the Petitioner(s)

Versus

The Union of India & ors. Respondent

Mr. S. R. Atre Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C. SRIVASTAVA, 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 ?



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

ORIGINAL APPLICATION NO.184/89

Shri Popat Gopala Sarode,
residing at Nasik Road,
Occ.Mazdoor, India Security Press
Nasik Road, Dist.Nasik.

.... Applicant

Vs.

The Union of India
and others.

CORAM : HON'BLE JUSTICE SHRI U.C.SRIVASTAVA, Vice-Chairman
HON'BLE SHRI M.Y.PRIOLKAR, MEMBER(A)

Appearance:

None for the applicant

Mr.S.R.Atre, Adv,
for the respondents

ORAL JUDGMENT

DATED : 17.6.1991

(PER : JUSTICE U.C.SRIVASTAVA)
Vice-Chairman

The applicant who was driver in the India Security Press has approached to this Tribunal against the punishment given to him by the Departmental authority. He has challenged the suspension order dated 19.7.1975 as well as terminating his services. Certain other reliefs including permission to prosecute the officers concerned, placing of applicant to the post, grant promotion and continuity in the seniority and compensation for deliberately causing financial hardship, mental tension regarding which he had suffered by termination etc. There have also been claimed which cannot be granted by the Tribunal.

(S)

The applicant joined his services on 5.1.1966 as a Mazdoor in India Security Press. Later on he was appointed as M.T. Driver in the pay scale of 125-3-131-4-139-140-5-175. It was alleged by the Sub-Inspector Nashik Road on 15.12.1974, that the applicant is involved in a theft case and the matter was under the investigation. According to the charge, the applicant was involved in a loss of stepney of Departmental Truck No.BYP 1716 of Respondent No.2 on 29.11.1974 but did not report the loss to the authorities concerned and hastily took non return Gate Pass at 4.15 p.m. Then the said truck was given thereafter to another M.T.Driver who came out with the complaint about the loss of stepney. On the report of Sub-Inspector, Nasik Road, the applicant was placed under suspension on 7th December 1974 and was prosecuted in the Court of Judicial Magistrate, First Class, Nasik Road under Section 381 of the I.P.C.. The applicant was convicted by the Court of Magistrate on 23.5.1979 and thereafter he was dismissed from service on 19th July 1979. The applicant filed an appeal against the same in the Session Court, Nasik vide Criminal appeal No.1198 of 1979. The Session Judge, Nasik allowed the said appeal and passed an order of acquittal of the applicant. On the judgment of the Sessions Judge, Nasik the Department has filed appeal to the High Court and on 7.10.1982 the same was dismissed. The High Court observed in that judgment as under:

"I am unable to agree with Mr.Suryawanshi that there is any evidence to show that the accused was in possession of the stepney wheel. As the learned Additional Sessions Judge has pointed out, the house which was broken open with the help of the accused is not shown to be tenanted or occupied by the accused. It is surprising that the prosecution did not lead any evidence to show that the house in which they accidentally stumbled upon from which a stephy

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wheel was recovered was either owned by the accused or tenented by him or was otherwise in his occupation in any other capacity. If this is so, I do not see how it can be said that the accused was found in possession of the stepney wheel.

It is also brought to my notice that even the officials of the Indian Security Press have not been able to identify the stepney wheel as the one belonging to them".

Thereafter, on 7th December 1983 the applicant was reinstated and was placed under suspension on the same day and the inquiry were stated against the applicant and three charges were framed against the applicant on 21.12.1983 these were as under:

Article I :

That the said Shree Popat Gopala Sarode, W-429 while functioning as a Driver, during the period on the 29th November, 1974 has lost the stepney of department truck No.BYP 1716.

Article II:

That the said Shri Popat Gopala Sarode, W-429 while functioning as a Driver, during the period on the 29th November 1974 did not report about the loss of stepney of the departmental truck No.BYP-1716 to the concerned authorities. That he remained absent from duty from 30.11.1974 to the date of arrest by the Nasik Road Police, without prior permission of the competant authority.

ARTICLE III:

That by the aforesaid act Shri Popat Gopala Sarode W-429 exhibited lack of integrity which was unbecoming of the Government servant and contravened the provision of Rule 3(1)(ii) of the Central Civil Services (Conduct)Rule, 1984.

After two years lapse an Enquiry Officer was appointed. Later on it appears that first Enquiry Officer changed and another Enquiry Officer was appointed on 27.7.1987, one year three months after the date of last proceeding. The applicant's mother died but he was granted only 3 days leave for funeral rites. The inquiry proceeded thereafter against the applicant. The Enquiry Officer held, that the article No.1 was not proved and articles No.2 and 3 were proved.

2. It is to be seen that the chargesheet was served on the applicant after 9 years and the disciplinary inquiry took some five years, for its completion. The applicant has challenged the said inquiry proceeding on the ground that, he was not given full opportunity of being heard and by lingering the enquiry for years together he was harrassed and mentally tortured. He was challenged the inquiry proceeding on the following grounds:

- i) that he was not allowed crossexamination of the witness particularly V.K.Pagare who was the main architect of the case.
- ii) that he was not allowed to examine himself.
- iii) that he also not allowed to submit his defence statement and he was not issued day to day proceedings and his defence assistance was frequently forbidden to appear before the Enquiry Officer and every entry of the said assistance was refused.


(11)

3. In the reply submitted by the respondent it has been stated that, he was provided opportunity to cross-examine witnesses Mr. Pagare, and that as a matter of fact he was examined by the Enquiry Officer and Presenting Officer, and was given opportunity to submit his defence statement and his defence assistance agreed to submit defence statement in writing on 23rd November 1987, but no statement was filed. Proceedings were maintained day to day and his signature were obtained on it every day.

4. It is obvious that the applicant was not allowed to examine himself, but the so called examination, was nothing but a sort of cross-examination. He could have been given an opportunity to submit defence statement which was not done. The reply of the respondents on the point is cryptic. Even otherwise after the applicant was dismissed, as the Session Judge has pointed out, the house which was broken open is not shown to be tenanted or occupied by the accused himself. There was no finding nor was the stepney recovered from his possession. There was no evidence that he took one or was seen carrying away the stepney. It was true that he was absent from duty but the charge regarding absence as he has been penalised was not a mis-conduct on which he could have been punished having committed misconduct. The second charge against him was absence not a charge, third one was legal conclusion which could have been arrived from the facts so established and in the opinion of Enquiry Officer one charge was not proved. The legal conclusion would not tantamount to establishment of any charge as such. The proceedings against the applicant who was not allowed full opportunity to

defendant and argue when no charge of misconduct as such was established are vitiated and cannot be allowed to stand. As such the application is allowed and the punishment order dated 17.12.1974 in this circumstances is quashed. It is directed that the applicant will be treated to be in continuous service. He will not be paid back wages or salary upto the date of the judgment of High Court, from the date of punishment but after that date, he shall be paid full salary including back wage. The period during which he will not be paid salary or wages will be counted towards continuity in service. In the circumstances of the case there will be no order as to costs.


(M.Y. PRIOLKAR)
Member (A)


(U.C. SRIVASTAVA)
Vice-Chairman