

(2)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: O.A 616/90

199

T.A. NO: ---

DATE OF DECISION 7-2-1992

S.B.Mishra

Petitioner

Applicant in person

Advocate for the Petitioners

Secretary, Min.of Defence and another Versus

Respondent

Mr.R.K.Shetty

Advocate for the Respondent(s)

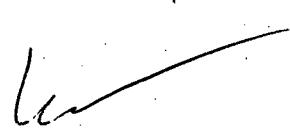
CORAM:

The Hon'ble Mr. Justice 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 ?

mbm*


(U.C.SRIVASTAVA)

MD

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.616/90

S.B.Mishra,
22, Indrayani Society,
Lawrence Road,
Deolali 422 401.

.. Applicant

vs.

1. Secretary ,
Ministry of Defence,
South Block,
New Delhi.

2. Engineer in Chief,
Army Headquarter,
DHQ, PO NEW DELHI - 11 .. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice Chairman.

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

Appearances:

1. Applicant in person.
2. Mr.R.K.Shetty
Counsel for the Respondents.

ORAL JUDGMENT: Date: 7-2-1992
¶Per U.C.Srivastava, Vice-Chairman

The applicant at the relevant time was working as AE E/M at CME Pune. After departmental enquiry he was imposed with penalty of compulsory retirement from service. Thereafter he filed an appeal against that order to the President and after dismissal of the same he approached this Tribunal challenging the same.

2. The applicant was chargesheeted on 28th August, 1986 and there are six charges against him viz. (i) when the applicant while employed as Supdt. E/M Gde I in the office of CWE Deolali during a particular period had sent a pseudonymous complaint in the name of S S Wagh of Nasik to Lt Gen P.R. Puri making allegations against MES officials in Deolali (ii) the [redacted]

21/10/92

allegations contained in the complaint were found to be baseless (iii) Manuscript of the said complaint has been proved by Govt. Examiner to be in the hand of applicant (iv) the contents of the typed complaint dtd. 29th Feb. '84 exactly tally with that of the manuscript aforesaid (v) applicant also gave a false statement to the Investigating officer and (vi) the applicant by his above actions has committed an offence of grave misconduct and an act of unbecoming of a Govt. servant, thereby violating Rule 3 of CCS(Conduct)Rules,1964.

3. The applicant submitted ^{his} reply to the same and departmental enquiry proceeded. The Inquiry Officer submitted his report to the Disciplinary Authority holding the applicant guilty of charges. The Disciplinary Authority relying on the report of the Inquiry Officer passed the penalty order and the appeal against which also dismissed.

4. The applicant has challenged the entire proceedings on various grounds, including that he was not given reasonable opportunity to defend himself and the documents which was relied was not shown to him. He has detailed out various flaws in the inquiry proceedings and according to him the ~~enquiry~~ entire enquiry proceeding is vitiated. But one of the ground which has been taken in this ~~enquiry~~ case is that the Inquiry Officer's report was not given to the applicant representation to enable him to file effective ~~represent~~ against the same with the result the applicant was deprived of reasonable opportunity to defend himself in violation of principles of natural

justice. This assertion made by the applicant is factually correct and the application thus deserves to be allowed in this ground alone and it is not necessary to enter into any other grounds.

5. It has been held in the case of Union of India v. Mohd. Ramzan Khan, AIR 1991 SC 471, that wherever an Inquiry Officer has appointed and the Inquiry Officer holds an enquiry, holding the employee to be guilty and submits his report to the Disciplinary Authority, giving the ~~an~~ enquiry report to the delinquent employee by the Disciplinary Authority is a must and in case it is not done the same offends the principles of natural justice notwithstanding the deletion of Article 311(2) of the Constitution of India. This vitiates the enquiry proceedings. The same position has arisen in this case.

6. Accordingly this application deserves to be allowed and accordingly order of compulsory retirement is quashed and set aside and the applicant will be deemed to be in continued service. However, this judgment will not preclude the Disciplinary Authority to proceed with the enquiry proceedings giving ~~him~~ Inquiry Officer's report to the applicant and giving him reasonable time to file objections if any against the same. It is expected that the Disciplinary Authority ^{it decides to} may in case go ahead with with enquiry proceedings will pass a speaking order taking into consideration all the pleas taken by the

applicant. The application is disposed of accordingly. There will be no order as to costs.



(M.Y.PRIOLKAR)
Member(A)



(U.C.SRIVASTAVA)
Vice-Chairman

MD

(X2)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
BOMBAY-1

C.P. NO. 130/92 in OA No.616/90

S B Mishra, AE(E/M)
22 Indrayani Society
Lawrence Road
Deolali 422401

...Applicant

V/s.

Union of India
(through Lt.Gen. V N Kapur)
Engineer-in-Chief
Army Headquarters
DHQ, PO New Delhi

..Respondent

Car am: Hon. Shri Justice S.K. Dhaon, V.C.
Hon. Shri M Y Pricalkar, Member (A)

APPEARANCE:

Applicant present
in person

Mr. Ravi R Shetty
for Mr. R K Shetty
Counsel
for the respondents

TRIBUNAL'S ORDER:
(PER: S K Dhaon, Vice Chairman)

DATED: 1-9-1992

In this contempt application the allegation is that the direction given by this Tribunal on 7.2.92 in OA No.616/90 has not been carried out by the respondents, hence they may be punished for having committed contemp of this Tribunal.

A reply has been filed on behalf of the respondents. To the reply a copy of the order passed on 31.7.92 has been filed as Annexure-A. A perusal of this annexure indicates that disciplinary proceedings were reinitiated against the petitioner by means of a communication dated 27.4.1992 whereby he was called upon to give his explanation.

It should be noted that the order of compulsory retirement was quashed by this Tribunal on the technical ground that before passing the same to the authority concerned had not furnished the applicant a copy of the inquiry officer's report.

The order dated 31.7.92 discloses that in the purported exercise of powers under rule 10(4) of the CCS(CCA) Rules 1965 the applicant has been placed under deemed suspension with effect from the order of compulsory retirement i.e., 27.7.87.

Learned counsel for the respondents has stated at the Bar, after taking instructions from the official present in the court, that prior to the passing of the order of compulsory retirement the applicant had not been suspended from service. This fact stands corroborated by the fact that normally when an order of compulsory retirement is passed an order of suspension does not precede it. We have taken the consistent view that the provisions of Rule 10(4) are not applicable to a case where in the earlier disciplinary proceedings a Government servant has not been suspended from service. The order of deemed suspension, therefore, is not sustainable and must be struck down. Accordingly it is quashed.

The learned counsel for the respondents states at the Bar that the respondents will pay to the applicant the arrears of salary etc., from 27.7.1987 onwards (up-to-date) within a period of two months from to-day. We direct the respondents to calculate the salary and other emoluments as permissible under the rules on the footing that the applicant has been in continuous and uninterrupted

service of the respondents from 27.7.1987.

The respondents shall also continue to pay the applicant the regular emoluments month by month till a final order is passed in the proceedings which have been re-initiated.

With these directions this contemp application is disposed of.

(M Y Priolkar)
Member(A)

(S K Dhaon)
Vice Chairman

trk