

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO: 681/91

Shri Nivrutti Sopan Pawar,
Ex. Mason, Garrison Engineer,
(North) Santacruz, Bombay-29
R/o Saigar Chawl, Mountbatten Camp.
Dehuroad, Pune - 412101

....Applicant

v/s

1. The Union of India,
through Secretary Ministry of Defence
South Block,
New Delhi-110001

2. The Garrison Engineer(Uttar)
Garrison Engineer(North),
Santacruz, Bombay-29.

3. The Vice Chief of Army Staff,
Sena Mukhyalaya, Army Headquarters
DHQ PO New Delhi-110011.

....Respondents.

CORAM : HON'BLE MR.JUSTICE S.K.DHAON, Vice-Chairman,
HON'BLE MEMBER SHRI M.Y.PRIOLKAR, MEMBER (A)

Appearance :

Mr.J.N.Tanpure, Adv.
for the applicant.

Mr.R.K.Shetty, Adv.
for the respondents.

ORAL JUDGEMENT

(PER : S.K.DHAON, Vice-Chairman)

10TH JUN 1992

On 24th July 1980, the applicant was removed from service with effect from 31st July 1980. On 28th February 1991, his appeal was allowed and the Appellate Authority directed the Inferior Authority to proceed with disciplinary proceedings afresh. On 30th June 1991, the applicant retired from service. On 25th May 1992 an order was passed by the Garrison Engineer(N). This order makes a reference to the order passed in the appeal. By this order the applicant was re-instated in service with effect from 28.2.1991.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 681/91 199
T.A. NO:

DATE OF DECISION 10.6.1992

SHRIN.S.PAWAR Petitioner

Mr.J.N.Tapure Advocate for the Petitioners

Versus

THE UNION OF INDIA AND ORS Respondent

SHRI R.K.SHETTY Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. JUSTICE S.K.DHAON, Vice-Chairman

The Hon'ble Mr. ~~MEN~~ M.Y.PRIOLKAR, MEMBER(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? No
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

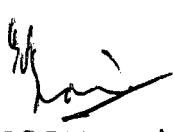
(S.K.DHAON)
Vice-Chairman

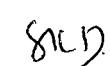
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commencement of the disciplinary proceedings or during the pendency of such proceedings an order of suspension has not been passed. The net result is that the applicant is entitled to be reinstated with effect from 31st July 1980.

3. We direct the respondents to treat the applicant as being in service with effect from 31st July 1980, He shall be treated to be in service till 8th June 1992, when, as already stated, a fresh order of dismissal or removal had been passed. It follows that the applicant shall be entitled to get the entire back wages from 31st July 1980 to 8th June 1992, on the footing that he continued to be in continuous and un-interrupted service during the said period. We make it clear that we are not expressing any opinion on the propriety or legality of the order dated 8th June 1992. It will be open to the applicant to challenge the legality of the said order, if so advised, before an appropriate forum.

4. With these directions, the O.A. as well as M.P. are disposed off. Copies of the order may be given to the parties concerned.


(M.Y.PRIOLKAR)
MEMBER(A)


(S.K.DHAON)
Vice-Chairman

srl

Modified by SLE order dt 19-7-93 in ca 3332/93

10/8/93

Learned counsel for the respondents has produced before us a copy of the order passed on 8th June 1992 removing the applicant from service in the remanded disciplinary proceedings.

2. The controversy in this application is confined to the limited question, as to whether, the applicant should have been re-instated in service with effect from 31st July 1980 and not with effect from 28th February 1991. It is to be remembered, that the Appellate Order was passed on 28th February 1991. In the absence of any rule, there can be no getting away from the fact, that the applicant, in pursuance of the Appellate order, was entitled to be re-instated with effect from 31st July 1980. However, reliance is placed by the learned counsel for the respondents, upon Sub-Rule 3 of Rule 10 of the Classification Control and Appeal Rules, (hereinafter referred to as the Rules). A bare reading of the said rule will immediately indicate that it has application only to a limited situation and that is, when a penalty of removal or compulsory retirement of service imposed upon a government servant under suspension is set aside. Therefore, the substance of the rule is that, when an order of dismissal, removal or compulsory retirement is passed, then the government servant must be under suspension. That is why, the rule says that inspite of setting aside of the order of dismissal removal or compulsory retirement, as the case may be, the government servant concerned shall be deemed to be under suspension. Obviously, this rule has been framed with the avowed object of not doing the exercise of passing a fresh order of suspension again. We are clearly of the opinion that this rule would have no application to a situation where either before the

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CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

C.P. 20/93 in
Original application No. 681/91

Shri Nivrutti Sopana Pawar

... Applicant

V/s.

Shri A. Bhargava
Garrison Engineer (North)
Santacruz, Bombay.

... Respondent.

CORAM: Hon'ble Ms Usha Savara, Member (A)
Hon'ble Shri V.D. Deshmukh, Member (J)

Appearance:

Shri J.N. Tanpure, counsel
for the applicant.

Shri R.K. Shetty, counsel
for the respondents.

Tribunal's order

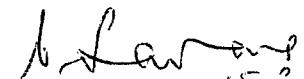
Dated: 15.3.93

Contempt Petition No.20/93 has been filed
with the grievance that our judgement dated 10.6.92
has not been complied with. Respondents however have
filed S.L.P. 2409 /93 and we have received the writ
of the Hon'ble Supreme Court under which the judgement
and order dated 10.6.92 of this Tribunal has been stayed.
Cause for
No case for contempt proceedings is available, therefore,
at present. In view of the above the learned counsel
for the applicant requests for withdrawal of this C.P.
C.P. is permitted to be withdrawn and is disposed of
as such with liberty to the applicant to approach
this Tribunal if his grievance ^Ssurvive after the S.L.P.
is disposed of.

There shall be no order as to costs.

Copy of this order may be given to both the
parties as early as possible.


(V.D. DESHMUKH)
M(J)


(USHA SAVARA) 15.3.93
M(A)

NS