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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXX~~
NEW BOMBAY BENCH

O.A. No. 711/91

~~XXXXXX~~

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DATE OF DECISION 11.9.1992

Shri S.N.Kale Petitioner

Shri A.S.Gopujkar Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri J.G.Sawant Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice S.K.Dhaon, 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 ?

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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OA.NO. 711/91

Shri Sadashiv Narayan Kale

... Applicant

V/S.

Union of India & Ors.

... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice S.K.Dhaon
Hon'ble Member (A) Shri M.Y.Priolkar

Appearance

Shri A.S.Gopujkar
Advocate
for the Applicant

Shri J.G.Sawant
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 11.9.1992

(PER: S.K.Dhaon, Vice Chairman)

The applicant was given a punishment. He preferred an appeal. Before the decision of the appeal he came to this Tribunal by means of this application. The appeal was disposed of on 2.12.1991. The legality of the appellate order is being impugned in the present application. We may state that the applicant has not made any formal application seeking the amendment of this application so as to enable him to challenge the legality of the appellate order. However, in the pleadings exchanged between the parties, it is clear that the order was passed during the pendency of this application. Shri Sawant, learned counsel for the applicant has produced before us a copy of the order.

2. In the reply it was asserted on behalf of the respondents that the applicant was afforded an oral hearing by the appellate authority. This fact had been controverted in the rejoinder affidavit. The applicant prayed that the respondents may be called upon to demonstrate ^{to} this Tribunal the manner in which the applicant was informed ^{by} the date of hearing.


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On the last hearing we had directed that the relevant record should be produced before us for our perusal so as to enable us to come to the conclusion whether the applicant was, in fact, informed^{of} the date of hearing.

3. Shri Sawant, learned counsel for the respondents has very fairly stated that no record is available to show whether any notice was sent to the applicant of the date of hearing and if so in what manner. He has, however, urged that there is a clear recital in the appellate order that the applicant was given due opportunity of a personal hearing. He also urged that there is no reason as to why the recital contained in the order should not be accepted.

4. We do not consider it necessary to go into the question as to whether the officer concerned rightly or wrongly recorded in the order that the applicant was given due opportunity. The fact remains that the respondents have not been able to satisfy us that any notice was in fact sent to the applicant of the date of hearing. This factor assumes importance because of the fact that in the rejoinder affidavit the applicant has categorically averred that he had been served with no notice of the date of hearing. We are not only to be satisfied that the applicant was given opportunity of an oral hearing but also of the fact that the applicant was given^a reasonable opportunity.

5. Having given a thoughtful consideration to the matter, we feel that it is a fit case where we should direct that the appeal should be reheard after giving adequate opportunity to the applicant to appear in person in support of his appeal. We accordingly quash the appellate order dated 2.12.1991 and direct that the appeal should be heard and disposed of afresh on merit in accordance with the law and in the light of observations made above. There should be no order as to costs.


(M.Y. PRIOLKAR)
Member (A)


(S.K. DHARON)
Vice Chairman

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

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Contempt Petition No.74/93
in
Original Application No.711/91.

Shri S.N.Kale.

.... Petitioner

V/s.

Union of India.

.... Contemnors.

Coram: Hon'ble Shri Justice, M.S.Deshpande, Vice-Chairman,
Hon'ble Shri M.Y.Priolkar, Member(A).

Appearances:-

Applicant by Shri A.S.Gopujkar.
Respondents by Shri J.G.Sawant.


Oral Judgment:-

[Per Shri M.S.Deshpande, Vice-Chairman] Dt. 9.7.1993.

Applicant by Shri A.S.Gopujkar. Respondents by
Shri J.G.Sawant.

2. The grievance of the applicant is that the appeal has not been re-heard as was required by the Tribunal's Order dt. 11.9.1992. Shri Sawant for the respondents states that he has no instructions as to whether the appeal has been heard. All that we need do is to ask the Respondents to re-hear the appeal after giving an opportunity to the applicant to put forward his case, within six weeks from the communication of this order to the Respondents.

3. The Contempt Petition is disposed of.


(M.Y.PRIOLKAR)
MEMBER(A)


(M.S.DESHPANDE)
VICE-CHAIRMAN

B.