

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 785/91
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DATE OF DECISION 11.6.1992

Shri M.Gopalan

Petitioner

Shri S.P.Saxena

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri P.M.Pradhan

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 ?

N O

by

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 785/91

Shri M. Gopalan

... Applicant

V/s.

Union of India and others.

... Respondents.

CORAM: Hon'ble Shri Justice S.K. Dhaon, Vice Chairman

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

Appearance

Shri S.P. Saxena, advocate
for the applicant.

Shri P.M.Pradhan, advocate
for the respondents.

ORAL JUDGEMENT

Dated: 11.6.1992.

(Per Shri Justice S.K. Dhaon, Vice Chairman)

By an order dated 9.10.1991 this Tribunal disposed of a number of petitions. The petitioner was an applicant in one of the said petition. This Tribunal quashed the order of dismissal on the technical ground that the report of the Enquiry Officer had not been furnished to the applicant. This Tribunal observed: - " We would clarify that this decision may not preclude the disciplinary authority from reviving the proceeding and continuing with it in accordance with law from the stage of supply of the inquiry report in cases where dismissal or removal was the punishment.".

2. On 14.11.1991 the disciplinary authority in the purported exercise of powers under sub-rule(40 of Rule 10 of the CCS (CC&A) Rules, 1965 passed an order to the effect that the petitioner would be deemed to have been placed under suspension with effect from 6.6.1988, and shall continue to remain under suspension until further orders. This order is being impugned in the present application.

3. It is conceded by the applicant that he was under suspension on the date on which the order of dismissal was passed. Sub-rule (4) as read with proviso to it clearly provides that where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and he shall continue to remain under suspension until further orders. The proviso emphasises that further inquiry can be ordered only in a situation where the court has set aside the order of punishment on a purely technical ground. We have already indicated that this Tribunal set aside the order of dismissal on a technical ground. In fact, the disciplinary authority is proceeding with the original inquiry from the stage of furnishing a copy of the report of the Enquiry Officer. Thereafter, an order will be passed in accordance with the law. In our opinion, sub-rule (4) is squarely attracted to facts of the instant case.

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The application fails and is dismissed.

We, however, make it clear that respondents shall pay to the applicant such subsistence allowance as is admissible under the law.


(M.Y. PRIOLKAR)

MEMBER (A)


(S.K. DHAON)

VICE CHAIRMAN

NS/