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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

[REDACTED]
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NEW BOMBAY BENCHO.A. No. 314/91
T.A. No. 198DATE OF DECISION 5.2.1992Shri Clement Sahil Bara PetitionerMr. M.A. Mahalle Advocate for the Petitioner(s)

Versus

The Director of Supplies and Respondent
Disposals, Bombay-38Mr. 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?

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

ORIGINAL APPLICATION NO. 314/91

Shri Clement Sahli Bara
Upper Division Clerk
in charge in the Office
Director of Supplies and Disposals, Sapt.bldg.
J.N.Heredia Marg,
Ballard Estate, Bombay - 400038
...applicant

V/s

Director of Supplies and
Disposals, Sapt.Bldg.
Ballard Estate, Bombay - 400038
and ors.

...respondents.

CORAM : HON'BLE JUSTICE MR.U.C.SRIVASTAVA, Vice-Chairman.

HON'BLE MEMBER SHRI M.Y.PRIOLKAR, MEMBER (A)

Appearance:

MR. M.A.MAHALLE, Adv.
for the applicant.

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

ORAL JUDGEMENT

5TH FEB 1992

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

The applicant is an employee in the Department of Director of Supplies and Disposals, Government of India. He was absent from duties from 29.6.1981. He had come to join the duties on 21.10.1982, but was not allowed to join the duties on that day. He joined the duties only on 1.12.1982, in the mean time, the chargesheet was issued against the applicant on the ground that he remained absent from duties from 29.6.1981, and he has shown utter disregard to the memos issued to him asking him to report for duty, and that he also completely ignored the warning that severe disciplinary action will be taken against him if he fails to report for duty.

b)

The Enquiry Officer was appointed and the Enquiry Officer submitted his report, and on the basis of Enquiry Report, the applicant was punished inasmuch as his pay reduced by 8 stages from Rs.416 to Rs.330/- in the time scale of Rs.330-10-380-EB-12-500-EB-15-560 for a period of 5 years with effect from 1.7.1983, with a further direction that he will not earn increment of pay during the above mentioned period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his future increments of pay. The applicant filed the representation to the higher authorities and thereafter to the President, ultimately he filed this application under Section 19 of the Administrative Tribunals Act 1985, before this Tribunal, which was dismissed on the ground that it was barred by time. Again, subsequently, by an order dated 26.4.1989, it was ordered that the applicant remained absent from duty on unauthorised leave ~~and~~ and came to join duty without proper documents. As such, he was not allowed to join duty on 21.10.1982. His entire absence from duty has been treated as unauthorised and Extra ordinary leave entailing loss of pay under proviso to Fundamental Rule 17, thereby resulting a break in service which will not count for pensionary period. The applicant has challenged this order on the ground that this order amounts to double jeopardy and this matter has been taken cognizance by the Enquiry Officer, who made a particular recommendations in this behalf as applicant has already been punished and further without notice under Fundamental Rule 17 no such order should have been passed as it affects the Civil rights of the applicant and in this connection, a reference to some cases decided by the Administrative Tribunals

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as well as O.M. of Government of India, Department of Personnel and Training O.M.No.33011/2-SM/84(Estt(B) dt.20/23 May 1985 has been made which provides that, if there are occasions for the invoking of Fundamental Rule 17 A, that claim should be specified by extending to the person concerned a reasonable opportunity of the representation or of being heard so desired by him/her. In this case, no opportunity whatsoever was given to the applicant nor called upon to say anything against it, but abruptly the order in question was passed. In view of the facts no opportunity was given to the applicant for making any representation and no personal hearing given before inflicting the penalty, which is bad in law and therefore the application deserves to be allowed, and the impugned order dated 26.4.1989 is quashed. However, it is open for the respondents to proceed in the matter after giving an opportunity of hearing to the applicant and taking into consideration the plea raised by the applicant. In case the respondents decide to take a fresh action in the matter they will pass a speaking order. No order as to cost.


(M.Y.PRIOLKAR)
MEMBER(A)


(U.C.SRIVASTAVA)
VICE-CHAIRMAN

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