

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

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O.A. NO: 324/91

199

T.A. NO: ---

DATE OF DECISION 2-4-1992

Gangadhar Sitaram Tambe

Petitioner

Mr. M.A. Mahalle

Advocate for the Petitioners

Versus

Deputy Commissioner of I.T. and another

Respondent

Mr. P.M. Pradhan

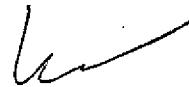
Advocate for the Respondent(s)

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 ? ✓



(U.C. SRIVASTAVA)

MD

mbm*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.324/91

Gangadhar Sitaram Tambe,
C/o.Deepak Dattaram Dhamanaskar,
16/136, Kanjur Co-operative
Hsg.Scty.,
Datar Colony,
Bhandup
Bombay - 400 078.

.. Applicant.

vs.

1. Deputy Commissioner of
Income Tax(Administration),
Bombay, Aayakar Bhavan,
M.K.Road,
Bombay - 400 020.

2. Smt.A.D.Teredesai,
Income Tax Officer
working under
Respondent No.1 at
Income Tax Department,
Aayakar Bhavan,
M.K.Road,
Bombay - 400 020.

.. Respondents

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

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

Appearances:

1. Mr.M.A.Mahalle
Advocate for the
Applicant.

2. Mr.P.M.Pradhan
Counsel for the
Respondents.

ORAL JUDGMENT: Date: 2-4-1992
(Per U.C.Srivastava, Vice-Chairman)

The applicant who was appointed as LDC in place of his father on compassionate ground as he took voluntary retirement for certain reasons before attaining the age of superannuation was earlier chargesheeted because of his absence and was reduced to the post of Daftarbandal in the year 1985. It appears that the applicant absented himself and that is why a show cause notice was issued to him on 5-3-90 for holding the enquiry. The said notice ^{was} returned back unserved. The notice was issued to the applicant at his old address and in the meantime he has shifted to elsewhere intimation of which said

to have been given by him to the office where he was working but the intimation of the same was not given to the headquarter and it appears that office where he was working and the change of address given by him also did not intimate this fact. With the result notice was not actually served upon the applicant. In newspaper notice was published showing the name of the persons against whom enquiry was contemplated and in the said notice also name of the applicant did not find a place. It appears that even thereafter notices were sent to the applicant and the applicant who was not residing there and was residing at Avadhoot Co-operative Hsg. Society Ltd, Sunder Nagar did not get the notice. As the notices were sent to the applicant and the applicant did not appear in response of the same the department concluded that the applicant is no longer interested in service and that is why removal order was passed.

2. The applicant has challenged the removal order on the ground that no proceedings could have taken place behind him without serving notice of the same and in any case without holding an enquiry no order of removal can be passed. Respondents have tried to justify their action taken by stating that no such address has been given by the applicant and that is why notices were sent to the address which was available in the office. Ev

3. Even if it was the applicant's duty to intimate the address to the head quarter, when the not the department, notices were not served efforts should have been made by the head quarter to ~~find out~~ serve the notice on him. Even otherwise

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if it was to be deemed that service have been affected without holding an enquiry, rather *ex parte*, and taking evidence coming to a particular conclusion merely because he did not appear in response to the notice for which there is no proof that the same was actually served upon him it could not have been concluded that he is guilty of absenteeism and removal order in this circumstance could not have been passed.

4. Accordingly this application deserves to be allowed and the removal order dtd. 28-3-1990 is quashed. However, it will be open for the respondents to issue a chargesheet and hold an enquiry against him in case ~~so~~ they so desire. No order as to costs.


(M.Y. PRIOLKAR)
Member(A)
(U.C. SRIVASTAVA)
Vice-Chairman

MD