

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH.

Original Application No. **1086/92**

~~Transfer Application No.~~  
~~XXXXXXXXXXXXXXXXXXXXX.~~

Date of decision **30.8.1993**

**Shri S.R.Shivasaran** Petitioner

**Shri G.K.Masand** Advocate for the Petitioner

Versus

**Union of India & Anr.** Respondent


**Shri P.M.Pradhan** Advocate for the Respondent(s)

Coram :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

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

1. Whether the Reporters of local papers may be allowed to see the Judgement ? *ger.*
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*

  
(M.Y.PRIOLKAR)  
MEMBER (A)

  
(M.S.DESHPANDE)  
VICE CHAIRMAN

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

OA.NO. 1086/92

Shri S.R.Shivasaran

... Applicant

V/S.

Union of India & Anr.

... Respondents

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

Appearance

Shri G.K.Masand  
Advocate  
for the Applicant

Shri P.M.Pradhan  
Advocate  
for the Respondents

ORAL JUDGEMENT

Dated: 30.8.1993


(PER: M.S.Deshpande, Vice Chairman)

The reliefs which are claimed in the present application are that the respondents should not be permitted to effect recovery from the subsistence allowance towards the alleged earnings of Rs.400/-p.m. as mentioned in order dated 8.8.1992, a prayer for passing an order under FR 53 regulating subsistence allowance and payment of H.R.A. during the period of suspension at the rate payable for the city of Solapur.

2. An inquiry was held against the applicant and by order passed by this Tribunal the penalty of removal was set aside with liberty to the respondents to hold fresh enquiry. The respondents passed an order stating that the applicant be deemed to have been placed under suspension with retrospective effect from 13.1.1987 (Ex.'A'). By the order dated 8.8.1992 acting upon the certificate of the Talati, it was held that the applicant was doing business with annual income of Rs.4,800/-, i.e. Rs.400/-p.m. and there should be a reduction of Rs.400/-p.m. in the subsistence allowance and the HRA should be paid to the applicant as if he was residing at Chapalagaon.

3. Though in the counter reference was made that a notice had been issued to the applicant, no date of such enquiry was mentioned in para 18. Shri P.M.Pradhan states that no rejoinder <sup>has</sup> been filed by the applicant. But we find that the allegation in para 18 is so vague that no one will believe that the enquiry was held. Obviously, when the application of rules of natural justice have not been expressly excluded, the applicant could not have been deprived of the benefits without following the rules of natural justice or atleast without issuing a notice to show cause and hear him against the action supposed to be taken. The applicant's rights and the respondents powers will be governed under Fundamental Rules and Rule 34 of the Posts and Telegraphs Manual, Vol. 3. The applicant would also be entitled to show that he was not, in fact, making money and that no deduction could be made of Rs.400/- or any amount p.m. and further that he would be entitled to an increase of 50% over the subsistence allowance of 50% which is granted under Rule 53 of the Fundamental Rules.

4. We, therefore, set aside the impugned order and direct the respondents to make an order after holding proper enquiry into the <sup>matter</sup> ~~action~~ after issuing a show cause notice to the applicant. The enquiry should be completed within one month from the date of receipt of this order. Shri Masand, on behalf of the applicant, states that he will fully cooperate in the enquiry and that he would not make it impossible to the respondents to complete the enquiry within one month. The application is disposed of.

  
(M.Y. PRIDKAR)  
MEMBER (A)

  
(M.S. DESHPANDE)  
VICE CHAIRMAN

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3. Though in the counter reference to the notice, no date of such notice have been issued to the applicant, no date of such notice was mentioned in para 18. When the applicant stated that no rejoinder have been filed by the applicant, but we find that the allegation in para 18 is no vague statement. It is obvious that the enquiry was held. Obviously, when the application of rules of natural justice have not been expressly excluded, the applicant could not have been deprived of the benefits without following the rules of natural justice or atleast without issuing a notice to show cause and hear him against the action proposed to be taken. The applicant's rights and the respondents' rights will be governed under Fundamental Rules and Rule 24 of the Posts and Telegraphs Manual, Vol. 3. The applicant would also be entitled to show that the action was not, in fact, taken money and that no deduction could be made of Rs. 400/- or any amount p.m. and further that he would be entitled to an increase of 50% over the subsistence allowance of 50% which is granted under Rule 25 of the Fundamental Rules.

4. We, therefore, set aside the impugned order and direct the respondents to make an order after holding proper enquiry into the action after issuing a show cause notice to the applicant. The enquiry should be completed within one month from the date of receipt of this order. The respondent, on behalf of the applicant, states that he will fully cooperate in the enquiry and that he would not make it impossible to the respondents to complete the enquiry within one month. The application is disposed of.

(A.S. DESHPANDE)  
JUDGE

(M.Y. PRICHA)  
JUDGE