

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 1091/92

Transfer Application No.

Date of Decision 10.12.1997

Katamain Ankaya

Petitioner/s

Shri D.V.Gangal

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V.S.Masurkar

Advocate for
the Respondents


CORAM :

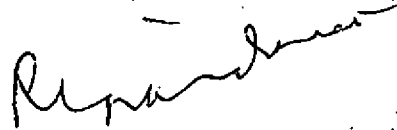
Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri. P.P.Srivastava, Member (A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?


(R.P.SRIVASTAVA)
MEMBER (A)


(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1091/92

Wednesday this the 10th day of December, 1997

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

Katamain Ankaya
R/o Reidinynt Room No.488,
Kamla Nehru Road,
Dharavi Nagpur, Bombay-400017.

By Advocate Shri D.V.Gangal ... Applicant

V/S.

1. The Union of India through
The Flag Officer Commanding in
Chief, Western Naval Command,
Bombay.
2. The Admiral Superintendent,
Naval Dock Yard, Bombay.

By Advocate Shri V.S.Masurkar ... Respondents
C.G.S.C.

ORDER

(Per: Shri Justice R.G.Vaidyanatha, VC)

This is an application under Section 19
of the A.T.Act. Respondents have filed reply.
We have heard both the sides.

2. Few facts which are necessary for disposal
of this application are as follows :- The applicant
was appointed in 1981 as a Mazdoor in the Naval Dockyard
at Bombay. It appears on the allegation that the
applicant had produced a fake certificate and got
appointment order, the disciplinary enquiry was
initiated against the applicant. After the enquiry
the disciplinary authority, viz. Admiral Superintendent,

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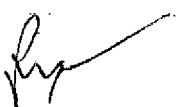


Naval Dock Yard passed an order dated 20.2.1986 imposing penalty of with-holding of increment for a period of 3years with cumulative effect. The applicant did not challenge that order. But 1½ years later Vice Admiral, Chief of Personnel, Naval Headquarters, New Delhi passed an order dated 5.4.1988 purporting to exercise power of revision under Rule 29 of the CCS(CCA) Rules, 1965 and enhanced the punishment of the penalty of removal from service. Being aggrieved by this order, the applicant had filed an OA. in this Tribunal in OA.NO. 941/89. This Tribunal by order dated 13.2.1992 held that the officer who passed the revisional order was not competent and therefore quashed the order of removal from service. An observation was made that it is for the competent authority to decide whether any fresh action can be taken according to law.

It appears in pursuance of the observation made by this Tribunal in the above order, the disciplinary authority issued a show cause notice to the applicant which is dated 3.9.1992 calling on the applicant to submit representation regarding punishment to be imposed. The disciplinary authority had observed in this order that he is issuing the show cause notice by virtue of order of this Tribunal dated 13.2.1992.

Being aggrieved by the show cause notice cum order dated 3.9.1992, the applicant has approached this Tribunal by way of this present application.

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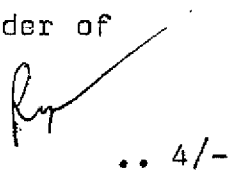


3. The contention of the applicant is that the order dated 3.9.1992 is illegal and without jurisdiction and that the disciplinary authority has over-stepped his authority by issuing such an order. It is, therefore, the contention of the applicant that the said order and further proceedings should be quashed.

On the other hand, the respondents' contention is that the present application is premature since the applicant has not exhausted the statutory remedy. Then on merits the respondents have justified the order dated 3.9.1992.

4. Even at the time of arguments the learned counsel for the respondents contended that as provided under Section 20 of the A.T.Act, the applicant should first exhaust his departmental remedy and then only he can approach this Tribunal after the final order is passed. The learned counsel for the applicant ^{rebutted} ~~rebutted~~ his contention.

After hearing both the sides, we do not find any merit in the respondents' contention. It is not a simple case of show cause notice issued by the disciplinary authority. Here the show cause notice is issued in pursuance of the observation made by this Tribunal in the order dated 13.2.1992. This Tribunal never gave any authority to the disciplinary authority to pass any fresh order of punishment. This Tribunal was concerned only with the illegality of the order passed by the revisional authority. This Tribunal has quashed only the order of the revision authority. The order passed by the disciplinary authority has not been disturbed by this Tribunal. Once the order of


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revisional authority is set aside, naturally the order passed by the disciplinary authority ^{revives} ~~survives~~. This is an elementary principle of law that when an order of revisional authority is set aside, the order of original authority automatically ^{revives} ~~survives~~. It is also argued that the applicant did not challenge the order passed by the disciplinary authority. Even in the order passed by the Tribunal dated 13.2.1992, it was made clear that the order of removal of service was challenged and was set aside solely on the ground that the officer who passed the order was not ^a competent authority under Rule 29.

5. When once we reached the conclusion that the order of disciplinary authority has not been disturbed then there is no escape from the conclusion that the disciplinary authority has no jurisdiction to consider the case of the applicant's punishment. As rightly argued by the learned counsel for the applicant, the disciplinary authority has become functus officio. Once he passed the order ^{of punishment} ~~to review~~ and he has no right to review his order particularly when there is no direction remitting ^{matter to} ~~the order~~ of disciplinary authority. Hence, on the face of the order, it is clear that the impugned order is without application of mind and contrary to rules. In such a situation, the applicant need not go to the formality of approaching the higher authority. Even the restriction placed under Section 20 of the A.T. Act on which the learned counsel for the respondents placed reliance says that ordinarily the Tribunal should not admit a matter unless the party exhausts other remedies. There is no complete bar on the powers of this court to admit applications without exhausting other remedies. In the peculiar facts and circumstances of the case and when the impugned order

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is passed on the wrong interpretation or wrong inference from the order passed by this Tribunal, This Tribunal has every right to interfere at this stage. Further we may also notice that we are not at the stage of admission. May be at the time of admission if this point had been pressed and this Tribunal had been convinced, that was ^{or} ~~the~~ ground to ~~dismiss~~ ^{reject} the application. But since the application has been admitted and five years ^{have} ~~has~~ lapsed, to reject the application on the ground that the applicant has not exhausted his other remedies and that too particularly when we find that the order of disciplinary authority is with jurisdiction ^{out} ~~is~~ ^{would be too hyper technical.} Hence the preliminary objection raised by the learned counsel for the respondents is not sustainable.

6. As far as merit ^{are} is concerned, this Tribunal has never interfered with the order passed by the disciplinary authority and therefore the disciplinary authority has no right to take upon himself the question of imposing punishment again. This Tribunal has ^{separate} ~~the~~ order of revisional authority. It is open to the competent authority to take any action ^{as it} ~~if it~~ feel deemed ^{fit} according to law. It is, therefore, for the competent revisional authority under Rule 29 ~~who is~~ to take a decision whether further action is necessary and if so what action to be taken. The order of Tribunal does not confer any power on the disciplinary authority to re-open this matter. On this short ground the impugned order is liable to be quashed.

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7. In the result, the impugned order cum show cause notice is hereby quashed. However, we say that the period of suspension in that order shall continue for a period of two months from today. The competent authority under Rule 29 to decide what action if necessary to be taken according to law. No costs.



(P.P.SRIVASTAVA)

MEMBER (A)



(R.G.VAIDYANATHA)

VICE CHAIRMAN

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