

(2)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING No.6
PREScot ROAD; BOMBAY-1

O.A. Nos.427 to 447 of 1992

1.	Shri A V Waingankar	Applicant in OA 427/92
2.	Shri P G Mhatre	Applicant in OA 428/92
3.	Shri P S Pawaskar	Applicant in OA 429/92
4.	Shri A D Tawde	Applicant in OA 430/92
5.	Shri V B Nagare	Applicant in OA 431/92
6.	Shri A R Pingale	Applicant in OA 432/92
7.	Shri A H Kale	Applicant in OA 433/92
8.	Shri V G Kadam	Applicant in OA 434/92
9.	Shri P S Bhogale	Applicant in OA 435/92
10.	Shri R K Singh	Applicant in OA 436/92
11	Shri N B Khobrekar	Applicant in OA 437/92
12	Shri P M Thapania	Applicant in OA 438/92
13	Shri V B Hadawale	Applicant in OA 439/92
14	Shri L G Dhanawade	Applicant in OA 440/92
15	Shri K. Bodanna	Applicant in OA 441/92
16	Shri B V Bhosle	Applicant in OA 442/92
17	Shri J P Mane	Applicant in OA 443/92
18	Shri G G Sonawane	Applicant in OA 444/92
19	Shri L R Topare	Applicant in OA 445/92
20	Shri K G Pokharkar	Applicant in OA 446/92
21	Shri S V Kulkarni	Applicant in OA 447/92

v/s.

1. Union of India through
Chief of Naval Staff
Naval Head Quarters,
South Block, New Delhi
2. Flag Officer Commanding
in Chief, Western Naval
Command, Fort, Bombay-23
3. Admiral Superintendent
Naval Dockyard
Bombay-23.

Respondents in all the
above 21 OAs.

Coram: Hon. Shri Justice S K Dhaon, Vice Chairman
Hon. Shri M Y Priolkar, Member (A)

APPEARANCE:

Mr. D V Gangal, Counsel for applicants.
Mr. V S Masurkar, Counsel for respondents.

ORAL JUDGMENT:

(PER: S K Dhaon, Vice Chairman)

DATED: 17-06-1992

Disciplinary proceedings were initiated against the applicants. They were punished. They came to this Tribunal. This Tribunal took a view that the inquiry proceedings were vitiated as the Inquiry Report of the Inquiry Officer was not furnished to the applicant. This Tribunal, however, left it free to the department to continue with the inquiry from the stage of furnishing of the report of the Inquiry Officer.

18-11-1992

An order has been passed on 6-3-1992 by the respondents purporting to suspend the petitioners from service in exercise of powers of sub-rule 4 of Rule 10 of CCS (CCA) Rules, 1965 (hereinafter referred as the Rules). This order is being challenged in the present application.

Undisputedly, the applicants had not been placed under suspension at any stage during the course of disciplinary proceedings. A combined reading of sub-rules 3 and 4 of Rule 10 of the Rules indicate that the ^{situation contemplated} evocation created in sub-rule 4 can come into existence only if a delinquent had been placed under suspension during the course, either before or during course, of disciplinary proceedings. That not being the position in the present cases, the order of suspension is not sustainable.

Written statement has been filed on behalf of the respondents and we have heard the counsel for the respondents.

We are not inclined to go into other grievances raised in this application. We, however, make it clear that it ^{will be} is open for the applicants to raise the other

(a)

grievance, if possible under law, as and when a final order is passed by the disciplinary authority against the applicants.

The application succeeds and is allowed. The impugned order of suspension dated ~~6.3.1992~~ ¹⁸⁻¹¹⁻¹⁹⁹² is quashed.

Correction done (M.Y. PRIELKAR)
M(A)

Say
(S.K.DHAON)
V.C.

12.10.92

Mr. D V Gangal, Counsel for the applicant.
Mr. V S Masurkar, Counsel for the respondents.
M.P. No. 809 /92 is for correcting certain typographical errors.

M.P. allowed. Necessary corrections implemented in our order dated 17.6.92

(M Y Priekar)
M(A)

Say
(S K Dhaon)
V.C.

R.P.NO. 165/92

(S)

O.A.No. 438/92 Date: 19.10.92

Mr. V.S. Masurkar for Review
Petitioner (Original respondent)

Mr. D.V. Gangal for review respon-
dent (Original applicant)

Let notice be issued to the
original applicant under RP
AD

Adjourned to 21-12-1992

17/6/92
order/Judgement despatched
to Appellant/Respondent(s)
on 27/92



Judgement dtd: 17.6.92
was served on Appellant
dtd: Nil.

17/12/92

M.prc.809/92 for
correcting Clerical
mistake, fixed on
10.2.92
A.P.O. exp 28/12

R.P.No. 165/92 for
order by circulation

Execl
15/10

Notice is issued to
Applicant on 23.10.92

MD

Notice dt. 23/10/92
Served on Appnt./Resp.
on dtd. Nil.

18/11/1992

Recd. reply to RP 165/92
from applicant on 17/12/1992

18/12/1992

(M.Y.PRIOLKAR) (S.K.DHAON)
M(A) VC

Sy
VC

Original order in O.A. 427/92.

OA Nos. 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 747, 750, 751, 777, 775, 776, 813 and 762 of 1992.

Tribunal's order

Dated : 21.12.92.

Mr. V.S. Masurkar for the Review Petitioners (Original Respondents) and Mr. D.V. Gangal for the Review Respondents (Original Applicants).

All these Review Petitions are to be heard by the same Bench which had heard the Original Applications, namely, Hon'ble V.C. and Administrative Member Mr. Priolkar. It may be placed before the same Bench on 4.1.1993.

A copy of this order be kept in all the above mentioned cases.

Sd/-

(V.D. Deshmukh)
Member (J)

Sd/-

(M.Y. Priolkar)
Member (A).

R.Ps. in OA.Nos. 427/92 to 447/92 and
OA.No. 742/92, 747/92, 750/92, 751/92,
752/92, 757/92, 775/92, 776/92,
777/92.

Tribunal's Order

Dated : 4-1-93.

Heard Mr. D.V. Gangal for the applicants and Mr. V.S. Masurkar for the respondents.

Orders reserved.

Sd/-

(M.Y. PRIOLKAR)
Member (A)

Sd/-

(S.K.DHAON)
Vice Chairman

(Original OA No. 427/92)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

(7)

Review Applications
in
DA.Nos. 427/92 to 447/92

Shri A.V.Waingankar & Ors. ... Applicants

v/s.

Union of India & Ors. ... Respondents

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

Appearance

Shri D.V.Gangal
Advocate
for the Applicants

Shri V.S.Masurkar
Advocate
for the Respondents

Tribunal's Order
(PER: S.K.Dhaon, Vice Chairman)

Dated: 25/6/93

The decision of the Supreme Court in Nelson Motis vs. Union of India & Ors. 1992(2) SCALE page 410 has given rise to this bunch of review applications in the original applications decided by us on 17.6.1992.

2. The original applications came up before us on 17.6.1992 together. We had disposed them of by a common judgement. In those cases disciplinary proceedings had been initiated against the Government servants. They were punished. They came to this Tribunal by means of separate original applications challenging the order of punishment passed against them. This Tribunal took the view that the disciplinary proceedings stood vitiated since the punishing authority, before passing its order, did not furnish to the Government servants a copy of the report of the Enquiry Officer.

However, this Tribunal left it free to the Disciplinary Authority to reinitiate disciplinary proceedings from the stage of the handing over of the report of the Enquiry Officer. The disciplinary authority, while taking a decision that proceedings should be reinitiated, passed an order suspending the Government servants concerned in the purported exercise of powers under sub-rule (4) of the CCS(CCA) Rules (hereinafter referred to as Rules). The order of suspension was challenged by the Government servants by means of separate original applications. And that order was quashed by us in each case on the ground that a combined reading of sub-rule (3) and sub-rule (4) of Rule 10 of the Rules indicated that an order of "deemed suspension" could be passed only in those cases where earlier in the disciplinary proceedings a Government servant had been placed under suspension. We took the view that an order under sub-rule (4) of Rule 10 suspending a Government servant could not be passed for the first time after taking a decision that disciplinary proceedings should be reinitiated.

3. In Nelson Motis's case their Lordships of the Supreme Court held that the order of suspension could be passed under sub-rule (4) of Rule 10 in those cases where earlier a Government servant had not been placed under suspension either during the pendency of disciplinary proceedings or in contemplation of the same. We may note that the decision in Nelson Motis's case was rendered on 2.9.1992.

4. Sub-section (3) of Section 22 of the Administrative Tribunals Act (hereinafter referred to as Act) provides that a Tribunal shall have, for the purposes of discharging its functions under the Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of reviewing its decision. Order

(16)

C.P. in OA Nos. 429/92; 435/92; 438/92,
440/92; 442/92; 443/92 & 445/92

Mr. Gangal for the applicants.

27/9/93

Mr. Masurkar counsel for the respondents.

This contempt petition has been filed by the applicants for non-implementation of our judgment dated 17.6.92.

According to Mr. Masurkar and S.L.P. has been filed before the Hon. Supreme Court against the judgment but no stay has been granted.

We, therefore, direct the respondents to ~~to~~ implement the judgment within two months from to day unless in the meanwhile they obtain a stay from the Hon. Supreme Court.

With these directions the CP in all the above OAs disposed off.

Copy of this order be given to the parties.

JS
(Lakshmi Swaminathan)

M(J)

MP
(M.Y. Priolkar)

M(A)

27/9/93
order/Judgement despatched
to Applicant/Respondent(s)
on 6/10/93

12/10/93

Appeal against C.A.
Jt. dt 17/6/92, ~~Sett.~~
R.A. Set aside the
judgment & allow
the appeal, by the
Supreme Court
order ~~dt~~ 15/11/93.

11/12/93 SIC Case kept
Deseen on recd 20/12/93

AI 28/193
Order/Judgement despatched
to Applicant/Respondent (s)
on 3/12/93

15

4/12/93

C.P. No. 98/93
For order Fixed
on 16/8/93

Yeli
2617

Received C.P. No 98/93
in OA 438/92

S.Sarkar
T.C.P.

C.P. 102/93 in OA 429/92, C.P. 96/93 in OA 435/92, C.P. 98/93 in
OA 438/92, C.P. 94/93 in OA 440/92, C.P. 95/93 in OA 442/92
and C.P. 97/93 in OA 445/92.

Dated: 16.8.93

Shri D.V.Gangal, counsel for the applicant, Shri V.S.
Masurkar, counsel for the respondents.

Shri Masurkar accepts notice on behalf of the alleged
contemner. They may file the written reply within four
weeks with an advance copy to the counsel for the applicant,
who may file rejoinder within one week thereafter. List the
cases for orders on C.P. on 20.7.93.

L.S.
(Lakshmi Swaminathan)
Member (J)

M.Y.P.
(M.Y. Priolkar)
Member (A)