

(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<br>Chief of Naval Staff<br>Naval Head Quarters;<br>South Block, New Delhi |                                         |
| 2. | Flag Officer Commanding<br>in Chief; Western Naval<br>Command; Fort, Bombay-23                   |                                         |
| 3. | Admiral Superintendent<br>Naval Dockyard<br>Bombay-23.                                           | Respondents in all the<br>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 <sup>the</sup> 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.

An order has been passed on <sup>18-11-1992</sup> ~~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.

Undisputably, 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 <sup>situation contemplated</sup> the ~~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 <sup>the</sup> 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 <sup>will be</sup> ~~is~~ open for the applicants to raise the other

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~~ <sup>18-11-1992</sup> is quashed.

Corrected done

(M.Y. PRIOLKAR)  
M(A)

(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 Priolkar)  
M(A)

(S K Dhaon)  
V.C.

17/6/92  
Order/Judgement despatched  
to Applicant/Respondent (s)  
on 2-7-92

*[Signature]*  
6/7/92

Judgement dtd. 17.6.92  
was served on Applicant  
dtd. Nil.

*[Signature]*  
17/9/92

Memo 809/92 for  
correcting clerical  
mistake, fixed on  
10-2-92.

apex 2819

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

*[Signature]*  
15/10

Notice is issued to  
applicant on 23-10-92  
*[Signature]*

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

*[Signature]*  
18/11/1992

Recd reply to RP 165/92  
from applicant on 17/12/92  
*[Signature]*  
18/12/1992

R.P. NO. 165/92

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

*[Signature]*  
(M.Y. PRIOLKAR)  
M(A)

*[Signature]*  
(S.K. DHANON)  
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. Leshmukh)  
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)

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

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

Dated: 25/1/93

(PER: S.K.Dhaon, Vice Chairman)

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.

Mr. Masurkar counsel for the respondents.

27/9/93  
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)

*h*  
(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.7.  
It dt 17/6/92, ~~set~~  
R.A. set aside the  
judgment & allow  
the appeal, by the  
Supreme Court  
order dt 15/11/93.

*Q*  
11/2/93 S/C Case kept  
Deemed on next 28/12



21.28/193  
Order/Judgement despatched  
to Applicant/Respondent (s)  
on 3/2/93

15

m  
4/24

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

Yali  
26/7

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

Sswark  
1/8

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