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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

C.P. No. 132/93 in
O.A. no. 446/92

Shri K.G. Pakarkar

.. Applicant

-versus-

Union of India & Ors. .. Respondents

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

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Appearances:

1. Mr.D.V.Gangal
Advocate for the
Applicant.

2. Mr.V.S.Masurkar
Counsel for the
Respondents.

TRIBUNAL'S ORDER:

Date: 2-11-93

Mr.D.V.Gangal for the applicant.

Mr.V.S.Masurkar for the respondents.

This contempt petition has been filed
by the applicant for non-implementation of our
judgment dt. 17-6-92.

According to Mr.Masurkar ~~as~~ an 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 implement the judgment within two months from
today unless in the meanwhile they obtain a stay
from the Hon. Supreme Court.

With these directions the CP is
disposed of.

Copy of this order be given to the
parties.

L.S.
(Mrs.Lakshmi Swaminathan)
M (J)

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

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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.

17-1-1992
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 the 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

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~~ 9-1-1992 is quashed.

Correction done

Sy
M.Y PRIOUKAR
M(A)

(M.Y PRIOUKAR)
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. 817 /92 is for correcting certain typographical errors.

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

(M.Y PRIOUKAR)
M(A)

(S.K.DHAON)
V.C.

17/6/92
order/Judgement despatched
to Applicant/Respondent(s)
on 27-9-92

17/6/92

R.P.No. 173192
O.A.No. 446/92 Date: 19-10-1992
Mr.V.S.Mesurkar for Review
Petitioner(Original respondent)
Mr.D.V.Gangal for review
respondent(Original applicant)
Let notice be issued to the
original applicant under RP
A.D.

Adjourned to 21-12-1992

Judgement dtd: 17.6.
is served to applicant
dtd. Nil

17/6/92

M.P.No. 817192 for
correcting clerical
mistake, fixed on
12-10-92.

Appeal
28/9

R.P.No. 173192 for
order by circulation.

12/10/92

Notice is issued to
applicant on 23.10.92

MD

Notice dtd. 23/10/92
unseen on applicant
& came back with
remark 'not claimed'

18/10/92

18/11/92

Recd reply to RP 173192
from applicant on 13/12/92

18/12/92

18/12/92

(6)

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. L.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 respondents.

Orders reserved.

Sd/- Sd/-
(M.Y. PRIOLKAR) (S.K. DHAON)
Member (A) Vice Chairman
(Original OA No. 427/92)

(1)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

Review Applications
in
OA.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

XLVII rule (1) of the Code of Civil Procedure (hereinafter referred to as the Code) provides, inter-alia, that any person considering himself aggrieved may apply for a review of the judgement upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. The explanation inserted by the Amendment Act of 1976 runs : "The fact that the decision on a question of law on which the judgement of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment".

5. The explanation aforesaid bars the jurisdiction of this Tribunal to review the judgement/order passed by us on the ground that the decision on the question of law on which our judgement is based has been reversed by the Supreme Court.

6. The question still remains whether this Tribunal has jurisdiction to review its judgement/order independent of the provisions of the Code. It is not necessary for us to enter into the controversy as to what effect should be given to the provisions of sub-section (3) Section 2 of the Act while considering the said question on the footing that this Tribunal is a substitute of a High Court in service matters. We may proceed on the assumption that, while passing the orders which are sought to be reviewed, we exercised powers under Article 226 of the Constitution. If that be so, it is evident that we exercise plenary powers and, therefore, we have inherent power to review our judgement/orders. Such a power is unhampered by the provisions of the Code. We are saying so not because of the Explanation