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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

R.P. NO. 29/94 AND

R.P. NO.: 111/95 IN O.A. NO.: 977/92.

Dated this 10<sup>th</sup> the Twelve day of December 1996.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

N.H. Babar ... Applicant

(By Advocate Shri D.V. Gangal).

VERSUS

Union Of India & Another ... Respondents

(By Advocate Shri V.S. Masurkar) (Review Petitioner).

: O R D E R :

Heard Shri D. V. Gangal for the applicant and  
Shri V. S. Masurkar for the respondents (Review Petitioner).

2. The respondents have filed a review petition seeking review of the judgement dated 16.08.1995 and to restore the original application to the file for fresh hearing. It may be recalled, initially the O.A. was dismissed summarily vide Tribunal's order dated 23.06.1993 stating that the order of removal came to be passed upon the admission of the applicant himself and we, therefore, see no merit in the application. Against this order, the applicant filed a Review Petition No. 29/94 which was disposed by the Tribunal vide its order dated 12.06.1995

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stating that "on the basis of the submission made by the Counsel for the respondents, the final order was passed in this case. There is some substance in the plea raised on behalf of the applicant in R.P. No. 29/94 that there was no un-equivocal admission on the basis of which the termination have been ordered. The Learned Counsel for the applicant was not heard at that time. We think that there was an error apparent on the face of the record. We, therefore set aside the impugned order and direct that the O.A. be placed for final hearing. Reply within four weeks. List the case for final hearing on 16.08.1995." The Tribunal vide order dated 16.08.1995 stated that "the applicant in the O.A. has challenged the finding holding him guilty of the charges and the order of removal passed against him on 20.09.1990 and 20.02.1992. The learned counsel for the respondents, Shri S.C. Dhawan, wanted to urge that the factual position was different, but since no written statement had been filed nor were original records produced before the Tribunal inspite of opportunities available to the respondents, the Tribunal declined to hear Shri Dhawan in the matter any further on facts not pleaded because we had to proceed on the basis of the averments in the petition which remained uncontraverted. The position which emerges now is that the factual words which were used by the applicant were not mentioned in the charge-sheet. No witnesses were examined at the time of the enquiry and no opportunity was given to the applicant to cross-examine those witnesses, etc.... In these

circumstances, it is impossible for us to support the finding of guilt." Accordingly, the order passed by the Disciplinary Authority on 20.09.1990 and the Appellate Authority dated 22.02.1992 holding the applicant guilty and imposing the punishment of removal are set aside and the the respondents were directed to reinstate the applicant to his original post within one month from the date of communication of the order.

3. The present Review Petitioner urged that since they could not file the written statement in time, the O.A. was disposed of without hearing their contention, therefore they are compelled to file the present Review Petition restoring the O.A. for further hearing. It is also stated that the applicant was working at the relevant time at Manmad and their H.O.D. is D.R.M., Solapur Division, which has not been made a party-respondents in the present case purportedly by the applicant. On the contrary, the applicant has made D.R.M., Bombay V.T. as party-respondents, who has no locus-standi in the present case and that is why the written statement could not be filed in the present case and the matter was decided without the written statement of the respondents and without D.A.R. proceedings. The disciplinary authority of the applicant was Executive Engineer B and F, Manmad, who had passed the impugned order under challenge in the present case. The applicant with ulterior motive did not make the disciplinary authority as party-respondents. In the facts and

circumstances of the case, the applicant ought to have made the General Manager, Central Railway, Mumbai V.T., as party-respondents, who has jurisdiction over other Divisions, which he has not made. Due to counsel's inaction, the written statement could not be filed.

Since the matter pertains to ~~Sholapur~~ Sholapur Division and the D.R.M., ~~Sholapur~~ has not been made a party-respondents, for want of communication the respondents could not file the reply in time.

4. In the light of the above, the matter requires to be heard in the Court, therefore, the respondents have filed this Review Petition urging the Court to hear the matter on merits. Since the necessary parties have not been impleaded in this O.A., this requires further hearing keeping in view the principles of natural justice and the order passed by the Tribunal without having the respondents written version would cause considerable damage.

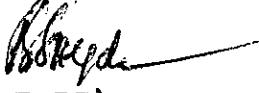
5. For the reasons stated above, we are of the view, that the Review Petition filed by the respondents is sustainable and accordingly, we direct the respondents to file their written statement, which is to be taken on record and the copy of the same be given to the applicant's counsel in advance before the next date of hearing. Since the applicant has already filed reply to the R.P. filed by the respondents, the R.P. as well as O.A. will be heard on the next date of hearing which is fixed on 14.01.1997.

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Since we are allowing the review petition, the C.P. No. 169/95 filed by the applicant becomes infructuous and the same is discharged. R.P. No. 29/94 filed by the applicant also stands disposed of.

  
(P.P. SRIVASTAVA)

MEMBER (A).

  
(B. S. HEGDE)

MEMBER (J).

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