(4)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW~~ BOMBAY BENCH

O.A. No. 775/92
~~T.A. No.~~

198

DATE OF DECISION 11.9.1992

Shri K.Majhi Petitioner

Shri D.V.Gangal Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri V.S.Masurkar Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice S.K.Dhaon, Vice Chairman

The Hon'ble Mr. M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

NO

(S.K.Dhaon)

(5)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 775/92

Shri K.Majhi ... Applicant

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 Applicant

Shri V.S.Masurkar
Advocate
for the Respondents

ORAL JUDGEMENT Dated: 11.9.1992

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

The order dated 18.11.1991 passed by the Vice Admiral in so far as it purports to suspend the applicant from service under sub-rule (4) of Rule 10 of the CCS(CCA) Rules, 1965 is being impugned in the present application.

2. Shri Masurkar who appears on behalf of the respondents has been heard in opposition to this application.

3. It appears to be an admitted position that in the earlier disciplinary proceedings the applicant was, at no stage, suspended from service. The order of deemed suspension has therefore been passed for the first time in the proceedings which have been reinitiated in pursuance of order passed by this Tribunal. We have already taken the view in a number of cases that sub-rule (4) of Rule 10 have no application to a case where a delinquent had not been placed under suspension at any time during the pendency of earlier disciplinary proceedings. The impugned order therefore is not sustainable. It is accordingly quashed. We, however, make it again clear that our order is confined to the order of suspension. There shall be no order as to costs.

(M.Y.PRIOLKAR)
MEMBER (A)

(S.K.DHAON)
VICE CHAIRMAN

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

Review Applications in O.A.Nos.
742/92, 747/92, 750/92, 751/92,
752/92, 775/92, 776/92, 777/92.

Shri K.M.Panigrahi & 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: 28.1.93.
(PER: S.K.Dhaon, Vice Chairman)

This is a bunch of Review applications. The judgement/order passed by us in different original applications on 11.9.1992 are the subject matter of the review applications. The controversy involved in all the applications is the same. They have been heard together and therefore they are being disposed of by a common order.

2. The Government servants who are parties to these applications were subjected to disciplinary proceedings and were punished. They challenged the order of their punishment by separate original applications before this Tribunal. Their applications were allowed and orders of punishment were quashed on the technical ground that the punishing authority, before passing its order, did not furnish to them a copy of the report of the Enquiry Officer.

This Tribunal left it free to the punishing authority to proceed afresh from the stage of the handing over of a copy of the Enquiry Officer's report. The punishing authority,while taking a decision that disciplinary proceedings should be reinitiated,passed an order of "deemed suspension" in the purported exercise of power under sub-rule (4) of Rule 10 of the CCS(CCA) Rules (hereinafter referred to as Rules). The said orders were challenged by the Government servants concerned by separate original applications which were disposed of by us on 11.9.1992. We quashed the orders of deemed suspension on the ground that under sub-rule (4) of Rule 10 of the Rules, the disciplinary authority had no jurisdiction to do so, since the Government servants concerned had not been suspended from service either in contemplation of or during the pendency of disciplinary proceedings.

3. On 2.9.1992 the Supreme Court gave its decision in the case of Nelson Motis vs. Union of India & Anr. 1992(2) SCALE page. 410. Their Lordships held that the power of deemed suspension could be exercised even though during the earlier disciplinary proceedings a delinquent servant had not been suspended from service at all. To put it differently, the view taken by us had been reversed by their Lordships of the Supreme Court.

4. The declaration of law by the Supreme Court in Nelson Motis's case was in existence on 11.9.1992 when we passed our orders. The said declaration had not been brought to our notice and we were not aware of the same. Nonetheless, there can be no escape from the conclusion that we passed our orders in disregard to the law of the land. We, therefore, acted without jurisdiction and our order was void-ab-initio. It follows that our orders suffer

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from an error apparent on the face of the record within the meaning of Order XLVII of the Code of Civil Procedure. We are, therefore, under an obligation to review our orders as ~~what it may be meant,~~ sub-section (3) of Section 22 of the Administrative Tribunals Act, 1985 confers upon us the powers of a Civil Court, inter-alia, in matters of reviewing our decisions.

5. These applications succeed and are allowed. The orders passed by us on 11.9.1992 are recalled and set aside.

6. There shall be no order as to costs.