

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(2)

O.A. NO: 833/92

199

~~XXXXXXXX~~

DATE OF DECISION 9.11.1992

P T John

Petitioner

Mr. D V Gangal

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Mr. V S Masurkar

Advocate for the Respondent(s)

CORAM:

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

The Hon'ble ~~Mr.~~ Ms. Usha Savara, 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.
V.C.

mbm*

TRK

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

OA No. 833/92

Mr. P.T. John
R/o. Quarter No.T-25
Room No. 2; SPDC QUARTERS;
Mankhurd; Bombay 88

..Applicant

V/s.

1. Union of India
through the Flag Officer
Commanding in Chief
Western Naval Command
Bombay 23

2. Admiral Superintendent
Naval Dock Yard; Bombay - 23

..Respondents

Coram: Hon. Shri Justice S K Dhaon, V.C.
Hon. Ms. Usha Savara, Member(A)

APPEARANCE:

Mr. D V Gangal
Counsel
for the applicant

Mr. V S Masurkar
Counsel
for the respondents

ORAL JUDGMENT:
(PER: S K Dhaon, Vice Chairman)

DATED: 9-11-1992

The order dated 18.11.1991 passed by the Vice Admiral in the purported exercise of powers under sub-rule (4) of Rule 10 of CCS (CCA) Rules, 1965 is being impugned in the present application. This Tribunal by a common order disposed of no less than 40 original applications. The applicant was one of the applicants in one of the said original applications. This Tribunal accepted the application of the applicant and set aside the order of removal from service passed by the Vice Admiral on the ground that in view of the fact ^{that} a copy of the Inquiry Officer's report was not given

to the applicant by the punishing authority before it passed the order of punishment, it acted illegally in doing so. This Tribunal relied upon the judgment of the Supreme Court in Md. Ramzan Khan case. However, this Tribunal left it free to the authority concerned to proceed with the disciplinary proceedings from the stage of giving of the report of the inquiry officer to the applicant.

2. It is admitted that during the pendency of the earlier disciplinary proceedings the applicant, at any stage, had ^{not} been suspended from service. Therefore, it is clear that the order of deemed suspension was passed for the first time by the impugned order.

3. In the case of NELSON MOTIG V. UNION OF INDIA & ORS, 1992(2)(SCALE) page 476 the Supreme Court has now held that sub-rule 4 of Rule 10 will apply to a situation where the order of punishment has been set aside on technical grounds and the disciplinary authority has taken a fresh decision that it should re-initiate the disciplinary proceedings. It has firmly ruled that it is immaterial as to whether the delinquent was at any stage in the earlier proceedings ~~was~~ placed under suspension or not. We have seen the impugned order. It ^{the authority} ~~regites~~ that ~~it~~ has decided to reinitiate the ^{disciplinary} ~~same~~ proceedings. We have already stated above that the order of punishment was set aside on the ground that the Inquiry Officer's report was not given to the applicant. On the face of it, the requirement of sub-rule (4) of Rule 10 read with the proviso thereto has been fully complied with. Therefore, the applicant cannot get any relief from us.

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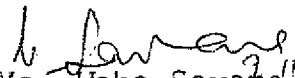
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4. Shri Gangal has argued that the proviso of sub-rule (4) of Rule 10 emphasises that the order of punishment should have been set aside on a technical ground. He urges that, when in a situation where the order is set aside on the ground that the principles of natural justice have been violated, the ground will be substantive and substantial one and not a mere technicality. He, therefore, urges sub-rule(4) of Rule 10 should not be invoked in the instant case. In Nelson Motis' case the order of the punishing authority had been set aside on the precise ground as in the instant case that the report of the inquiry officer has not been furnished to the delinquent. Their Lordships upheld the orders purported to have been passed under sub-rule (4) of Rule 10. Therefore, by pre-implication their Lordships have taken the view that if an order of punishment is set aside on the ground that the report of the inquiry officer was not furnished to a delinquent the same would be an order passed on technical ground within the meaning of Sub-rule (4) of Rule 10.

5. We have heard Shri Masurkar in opposition of this application.

6. This application fails and is dismissed summarily.

There shall be no order as to costs.


(Ms. Usha Savara)
Member (A)


(S K Dhaon)
Vice Chairman