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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.: 1292/93

Texts for the instruction of

DATE OF DECISION 11.2.1994

Shri Arjun Malhari More Petitioner

Shri A.D.Sugdare Advocate for the Petitioners

VERGIL

Union of India & Ors. Respondent

Shri P.R.Pai Advocate for the Respondent(s)

GODARD

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri M.R.Kolhatkar, Member (A)

1. ~~whether reporters of local papers may be allowed to see the Judgement ?~~
2. To be referred to the Reporter or not ? Yes-
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

Mr. Kollek

(M.R.KOLHATKAR)
MEMBER (A)

(M.S.DESHPANDE)
VICE CHAIRMAN

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(5) ✓
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 1292/93

Shri Arjun Malhari More ... Applicant

v/s.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande
Hon'ble Member (A) Shri M.R.Kolhatkar

Appearance

Shri A.D.Sugdare,
Advocate
for the Applicant

Shri P.R.Pai
Advocate
for the Respondents

ORAL JUDGEMENT

Dated: 11.2.1994

(PER: M.S.Deshpande, Vice Chairman)

We have heard the learned counsel for the applicant and the respondents on the question of interim relief and by the consent of the learned counsel also on the point of final relief which can be granted to the applicant. [Signature]

2. The applicant was subjected to a departmental enquiry in respect of an incident ³ for which he was charged under Section 3(A) of R.P.U.P. Act on 27.3.1981. The learned J.M.F.C. Railways at Bhusawal convicted him and sentenced him to pay a fine of Rs.500/- and in default to suffer rigorous imprisonment for two months. The applicant preferred an appeal before the Session Judge, Jalgaon who confirmed the conviction. The matter was then taken by the applicant by criminal revision application No. 20 to 1989 before the Aurangabad Bench of the Bombay High Court and the learned Single Judge while confirming the conviction gave relief to the applicant under Section 4

of Probation of Offenders Act. The applicant's contention is that in view of provisions of Section 12 of that Act no disqualification would attach to the conviction and he has referred to several decisions in this respect which we need not mention in detail here, because the matter stands concluded by the decision of a three Judge Bench of the Supreme Court in Shankar Dass vs. Union of India & Anr. AIR 1985 SC 772 where it was observed as follows :-

"Section 12 of the Probation of Offenders Act must be placed out of way first. It provides that notwithstanding anything contained in any other law a person found guilty of an offence and dealt with under the provisions of S.3 or 4 "shall not suffer disqualification" attaching to a conviction for an offence under such law. The order of dismissal from service consequent upon a conviction is not a "disqualification" within the meaning of S.12. There are statutes which provide that persons who are convicted for certain offences shall incur certain disqualifications. For example, Chapter III of the Representation of the People Act, 1951, entitled "Disqualifications for membership of Parliament and State Legislatures" and Chapter IV entitled "Disqualifications for Voting" contain provisions which disqualify persons convicted of certain charges from being members of legislatures or from voting at elections to legislatures. That is the sense in which the word "disqualification" is used in S.12 of the Probation of Offenders Act. Therefore, it is not possible to accept the reasoning of the learned single Judge of the Delhi High Court."

3. It is, therefore, clear that the effect of Section 12 of the Probation of Offenders Act would not be to lift the ban on removal or dismissal in the departmental enquiry should the employee be convicted but released under Section 4 of the Probation of Offenders Act. No other point was raised before us and we find that there is no merit in the contention raised by the applicant.

4. The application is dismissed.

M.R.K. Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

M.S. Deshpande
(M.S.DESHPANDE)
VICE CHAIRMAN