

Central Adminisrative Tribunal
Principal Bench

O.A.No.2848/2002

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Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 1st day of May, 2003

Ashwani Kumar Arya
s/o Sh. Hom Pal Singh
r/o B-79, Vivek Vihar, Phase-II
Delhi - 95. ... Applicant

(By Advocate: Sh. U.Srivastava)

Vs.

1. Govt. of NCT of Delhi, through
The Secretary
Govt. of NCT Delhi
5, Sham Nath Marg
New Delhi.
2. The Principal
Industrial Training Institute
Shahadara, Delhi.
3. The Director
Dir. of Training & Tech. Education
Muni Maya Ram Marg
Pitampura
Delhi. .. Respondents

(By Advocate: Sh. Vijay Pandita)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant impugns respondents' order dated 16.7.2002 wherein, on conviction of the applicant in FIR No.298/95 at PS. Vivek Vihar Delhi, a penalty of dismissal from service under Rule 19(1) of the CCS (CCA) Rules, 1965 has been inflicted upon him. Applicant has sought quashment of the aforesaid order with all consequential benefits.

2. Applicant while working as Craft Inspector (Elect.) was involved in a criminal case ^uinstituted vide FIR No.298/95 at PS, Vivek Vihar Delhi for the offences u/s 498A/34 and 304B/34 IPC on 4.9.1995.

3. By an order dated 10.10.2002 in a Cr. Miscellaneous Application No.2647/2002 in Crl. Appeal No.661/2001 applicant's sentence was suspended and he was released on bail. On receipt of the reply, respondents by an order dated 16.7.2002, keeping in view of the nature of offence and further retention of applicant in service respondents imposed upon him penalty of dismissal, giving rise to the present OA.

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4. Shri U.Srivastava, learned counsel for applicant, placing reliance on a decision of Hon'ble Punjab and Haryana High Court in Jagtar Singh v. State of Punjab, 1989(5) SLR 109 as well as decision of Division Bench of this Tribunal in S.G.Choudhary v. Union of India, 1990(13) ATC 868 contended that if on against conviction in appeal, sentence is suspended, applicant is to be treated as on deemed suspension pending disposal of the applicant.

5. However, at Bar, learned counsel for applicant stated that as he has been suffering from severe financial crises, as a consequent relief, respondents be directed to accord of compassionate allowance under Rule 41 of the CCS (Pension) Rules, 1972.

6. On the other hand, respondents' counsel, vehemently denied the contentions and stated that dismissal of the applicant is in the wake of his conviction, on serious charges, amounting to moral turpitude, is in accordance with Rule 19(1) of the Rules ibid and before that reasonable opportunity of show cause notice was given to applicant.

7. It is contended that applicant remained under suspension from 6.9.2001 to the date of his dismissal on 16.7.2002. As the appeal is still pending before the High Court, applicant will be deemed to be exonerated of the charges and the conviction is still not obliterated.

8. I have carefully considered the rival contentions of the parties and perused the material on record. As applicant was convicted of a serious offence, involved moral turpitude, the decision of the respondents resorting to Rule 19(1) of the CCS (CCA) Rules, 1965, cannot be found fault. This has been followed by complying the principles of natural justice after issuing show cause notice to applicant.

9. In so far as deeming the applicant under suspension till the criminal pendency of the criminal appeal and his resort to the fact that as the sentence has been suspended as per the decision of the Punjab and Haryana High Court, dismissal is unwarranted and illegal and cannot be countenanced.~

10. The Apex Court in Union of India v. Ramesh Kumar, 1997(7) SCC 514 dealing with an identical issue where the conviction was suspended on appeal, observed as under:

"6. A bare reading of Rule 19 shows that the disciplinary authority is empowered to take action against a government servant on the ground of misconduct which has led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of execution of sentence by the appellate court the order of

(12)

dismissal based on conviction stands obliterated and the dismissed government servant has to be treated under suspension till disposal of appeal by the appellate court. The rules also do not provide the disciplinary authority to await disposal of the appeal by the appellate court filed by a government servant for taking action against him on the ground of misconduct which has led to his conviction by a competent court of law. Having regard to the provisions of the rules, the order dismissing the respondent from service on the ground of misconduct leading to his conviction by a competent court of law has not lost its sting merely because a criminal appeal was filed by the respondent against his conviction and the appellate court has suspended the execution of sentence and enlarged the respondent on bail. This matter may be examined from another angle. Under Section 389 of the Code of Criminal Procedure, the appellate court has power to suspend the execution of sentence and to release an accused on bail. When the appellate court suspends the execution of sentence, and grants bail to an accused the effect of the order is that the sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence under Section 389 CrPC an accused avoids undergoing sentence pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a government servant on a misconduct which led to his conviction by the court of law does not lose its efficacy merely because the appellate court has suspended the execution of sentence. Such being the position of law, the Administrative Tribunal fell into error in holding that by suspension of execution of sentence by the appellate court, the order of dismissal passed against the respondent was liable to be quashed and the respondent is to be treated under suspension till the disposal of criminal appeal by the High Court."

11. If one has regard to the aforesaid decision which prevails[“] over the decision of the Punjab and Haryana High Court and is a binding precedent under Article 141 of the Constitution of India, merely because sentence has been suspended

would not amount to ~~obliteration~~^l of the criminal charges and conviction, accordingly the decision taken by respondents, to dispense the services of applicant, is in accordance with law. However, on a consequent acquittal, law shall take its own course.

(B)

12. In so far as the relief claimed for accord of compassionate allowance under Rule 41 of the Pension Rules *ibid* as the same has not been specifically prayed in the present OA, and mere reference of consequential benefits would not be a justifiable ground to issue any directions to this regard. However, as per the Rule 41 *ibid* even in case of removal or dismissal, if request is made by the concerned employee, it is for the Government to consider the same. However, applicant shall be at liberty to make such a request to respondents in accordance with rules.

13. In the result, for the foregoing reasons, OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

/rao/