

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.21/944/2014

Hyderabad, this the 25th day of February, 2020

*Hon'ble Mr. Justice L Narasimha Reddy, Chairman
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)*



Jaweed Ashraf,
S/o. late M.A. Rasheed, aged 60 years,
Occ: Ex. Regional Controller of Mines,
(Under the order of dismissal from service)
North Zone, O/o. The Controller of Mines,
North Zone, Indian Bureau of Mines,
Ministry of Mines, Ajmer,
R/o. H. No.8-1-402/380, Rafath Manzil,
Gulashan Colony, Shaikpet, Hyderabad – 500 008.

... Applicant

(By Advocate: Mr. K.R.K.V. Prasad)

Vs.

1. Union of India, Rep. by
The Secretary, Government of India,
Ministry of Mines, 3rd Floor,
'A' Wing, Sastry Bhavan, New Delhi – 110 001.
2. The Controller General,
Indian Bureau of Mines,
2nd Floor, Indira Bhavan,
Civil Lines, Nagpur – 440 011,
Maharashtra State.
3. The Director, Ministry of Mines,
Government of India, 3rd Floor,
A Wing, Sastry Bhavan, New Delhi – 110 001.
4. The Regional Controller of Mines,
Indian Bureau of Mines,
Hyderabad Regional Office, CGO Complex,
Kavadiguda, Hyderabad, AP.

... Respondents

(By Advocate Mrs. K. Rajitha, Sr. CGSC)

ORDER (ORAL)
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA is filed challenging the dismissal of the applicant from service vide Memo dated 03.06.2014 based on UPSC advice.



2. Applicant was working as Regional Controller of Mines in the respondents organization at Hyderabad in the year 2010. C.B.I. registered a case under Prevention of Corruption Act (for short "PCA") against the applicant, in connection with a complaint lodged by a mine owner. Respondents placed the applicant under deemed suspension on 21.04.2010. Since it was continued for a long time, applicant approached the Tribunal by filing OA Nos. 74/2012 and 368/2012. Vide the orders passed therein, respondents were directed to revoke the suspension, which, in turn, was complied with, on 31.10.2012.

3. The applicant joined at Ajmer on 15.11.2012 on transfer. He was convicted in the CBI case on 16.08.2013 and was placed under deemed suspension vide memo dtd. 4.11.2013. Notice proposing to impose a major penalty of dismissal was issued, vide memo dated 4.11.2013. The applicant was due to retire on 30.06.2014. He approached the Tribunal by filing OA No.63/2014 challenging the order of suspension as well as the show cause notice. When the said OA was pending, applicant was served with the UPSC advice dtd. 26.02.2014 and he filed MA 202 of 2014 in the above referred OA, seeking a direction to stall the proceedings based on the advice of UPSC. The OA No. 63/2014 was allowed on 27.06.2014 directing

revocation of suspension. However, the applicant was dismissed from service on 03.06.2014. Aggrieved by the dismissal, he filed this OA.



4. The applicant contends that the dismissal was pre-mediated and a non-speaking order was passed based on the wrong advice of UPSC, without properly considering the representation made on different issues. He submitted that the action of the respondents in dismissing him from service has led to deprivation of pension, which, in fact, is a right to property under Article 300-A of the Constitution of India. He contends that he has put in 35 years of unblemished service and the order of dismissal was passed, even while the OA filed in relation to the issue, was pending. He contends that the impugned order is violative of the Principles of Natural Justice, Articles 14, 16 & 21 of the Constitution of India as well as the settled law laid down by Hon'ble Apex Court. It is stated that though he was convicted by the Trial Court, an appeal filed by him is pending.

5. Respondents oppose the OA by filing a reply. They contend that the dismissal was consequent to conviction by the Trial Court and pendency of appeal is of no consequence. It is stated that, the applicant was caught by the CBI while accepting a bribe of Rs.10,000 from a mine owner, to revoke cancelled mining lease, which was cancelled based on Task Force recommendation. Reference is made to the detention of the applicant for more than 48 hours, and the deemed suspension from 21.04.2010. It is stated that charges were framed by the Trial Court on 06.08.2012 and on CBI advice, no disciplinary proceedings were initiated awaiting outcome of the criminal case, and that in the meanwhile, applicant moved the Tribunal



in OAs referred to supra and as per directions therein, deemed suspension was revoked on 31.10.2012 and applicant reported for duty on 15.11.2012 at Ajmer on transfer. They stated that applicant was convicted by the CBI Court and sentenced to 3 years simple imprisonment with a fine of Rs.40,000 vide judgment dated 16.8.2013 and he was placed under deemed suspension on 04.11.2013 with effect from the date of conviction and simultaneously notice, proposing action to dismiss him from service was issued. It is stated that the advice tendered by the UPSC was served on the applicant on 6.3.2014 and after due consideration of the representations made by him on 13.11.2013 & 21.03.2014, the applicant was dismissed from service on 03.06.2014. Respondents submit that though the applicant filed OA No.63/2014 challenging two Memos dt. 4.11.2013, the Tribunal upheld the proposed action to dismiss the applicant but deemed suspension was set aside vide order dated 27.06.2014. It is stated that the order of dismissal does not suffer from any factual or legal infirmity.

6. We heard Sri K.R.K.V. Prasad, learned counsel for the applicant and Smt. K. Rajitha, learned Senior Central Government Standing Counsel for the respondents.

7. I) It is evident from the facts of the case that the applicant was found by the CBI while accepting illegal gratification from a mine owner, leading to filing of an FIR, and thereafter, a charge sheet under P.C. Act. The Trial Court convicted the applicant and sentenced him, as under:

“In view of the nature of service put in, age and health condition, it is a fit case to take lenient view and therefore the sole accused is sentenced to suffer S.I. for a period of three (3) years and to pay a

fine of Rs.20,000/- (Rupees Twenty thousand only) IDSI for six months, for each of the offence punishable under Sections 7 and 13(1)(d) r/w. 13(2) of the P.C. Act (total fine of Rs. Forty Thousand only).



II) The sentence of imprisonment alone was suspended by the Hon'ble High Court in CRLAMP No. 1298/2013 in CRLA No. 718/2013, but not the conviction. The dismissal of the applicant is on account of the conviction by the CBI Court. It also needs to be noticed that the Tribunal, in its order dated 27.06.2014 in OA No.63/2014, has observed that the issue of notice proposing to dismiss the applicant is legally tenable. The relevant portion reads:

“19. Admittedly, applicant was not detained in custody after pronouncement of the judgment by the Trial Court, hence, the question of deemed suspension does not arise. We are, therefore, of the considered view that respondent authorities misinterpreted sub-rule (2)(b) of Rule 10 of CCS (CCA) Rules, 1965 while passing the deemed suspension order dated 4/5.11.2013 and hence, the same is liable to be quashed and set aside. With regard to the proposed punishment of “dismissal from service” order dated 4.11.2013, since the applicant was convicted by the competent court of law, the respondents issued impugned memorandum dated 4.11.2013 as per Rule 19(1) of the CCS (CCA) Rules, 1965 and directed the applicant to submit a written representation on the major penalty mentioned in the memorandum is in order. Hence, we do not find any illegality or irregularity in passing proposed major penalty of “dismissal from service” on the applicant vide memorandum No. 34/5/2013-M.III (Annexure -2 to the OA) dated 4/5.11.2013. Hence, the same is legally sustainable one.”

III) Once the applicant was convicted by the Criminal Court, the dismissal from service becomes inevitable. Nothing remains for the Tribunal to adjudicate upon the issue. Different averments made by the applicant such as, the advice of UPSC is wrong, he needs to be treated as on duty on revocation of suspension as per Tribunal order dtd.27.06.2014,

issue of notices as mere rituals etc. become irrelevant, once he is dismissed, based upon the conviction.

IV) We do not find any merit in the OA. It is accordingly dismissed.



V) There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN

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