

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

LIBRARY

O.A./351/00250/ 2017

Dated: 29.11.2019



**Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. N. Chatterjee, Administrative Member**

Smt. Prem Shanti,
Aged about 52 years,
Wife of Shri Nagesh Ram,
By occupation-Government Servant
Under Department of Agriculture,
Andaman & Nicobar Administration, Haddo,
Port Blair,
Residing at Shadipur, Port Blair Tehsil,
South Andaman, Pin – 744 102.

..... Applicant.

Versus

1. Union of India,
Service through the Secretary,
Ministry of Agriculture,
Krishi Bhawan,
New Delhi – 110 002.
2. The Andaman & Nicobar Administration,
Service through the Chief Secretary,
Andaman & Nicobar Administration,
Secretariat,
Port Blair – 744 101.
3. The Secretary (Agricultural),
Andaman & Nicobar Administration,
Secretariat,
Port Blair – 744 101.
4. The Directorate of Agricultural,
Andaman & Nicobar Administration,
Post Office – Haddo,
Port Blair – 744 101.
5. The Assistant Director (Administration),
Office of the Directorate of Agricultural,
Andaman & Nicobar Administration,

Post Office Haddo,
Port Blair – 744 101.

..... Respondents.



For the applicant : Mr. P.C. Das, Counsel

For the respondents : Mr. R. Halder, Counsel

ORDER (Oral)

Per : Bidisha Banerjee, Judicial Member

This application has been preferred to seek the following reliefs:

"8.a) To quash and/or set aside the impugned termination order being No. 2165 dated 23rd December, 2016 issued by the Directorate of agricultural, Andaman & Nicobar Administration against the applicant despite the orders passed by the Hon'ble High Court at Calcutta, Circuit Bench at Port Blair in C.R.M. No. 24 of 2015 arising out of C.R.A. No. 18 of 2015 dated 16th December, 2015, 17th December, 2015 and 21st December, 2015 being annexure A-7 of this original application;

b) To quash and/or set aside the impugned order of deemed suspension order being No. 278 dated 09.02.2016 being Annexure A-5 of this original application.

c) To declare that the action of the respondents by passing the impugned termination order terminating the applicant from service is otherwise bad in law and illegal since the bail has been granted by the Hon'ble High Court at Calcutta and appeal has been admitted.

d) To pass an appropriate order directing upon the respondent authority to allow your applicant to resume duty to the post which she was holding and to release the salary after quashing and/or setting aside the deemed suspension order dated 09.02.2016 as well as termination order dated 23.12.2016;

e) Any other relief or reliefs as Your Lordships may deem fit and proper;"

2. The facts as narrated by the applicant, in this application, are as follows:

"The applicant was initially appointed to the post of Mazdoor by the Andaman & Nicobar Administration, Directorate of Agriculture dated 8th August, 1995. The name of the applicant appeared at Serial No. 6 in the said appointment order. The applicant is a regular employee under the Directorate of Agriculture, Andaman & Nicobar Administration.

The applicant was placed on the suspension vide office order No. 1662 dated 04.09.1995 by the respondent department on the basis of the FIR chalked out under Section 147/148/149/307/144 of the Indian Penal Code read with Section 3/25/30 of the Arms Act, 1959. It is pertinent to mention here that the applicant was given subsistence

allowance time to time and the said suspension order also revoked vide office order dated 10th August, 2004.

Since the FIR was registered against the applicant and others on 11.08.1995 and after trial the Learned Sessions Judge, Andaman & Nicobar Islands, Port Blair pronounced judgment on 14.10.2015 and passed the order inter alia as follows:

"That the convicts namely Balwant Singh, Nagesh Ram, Prem Shanti, Malti Devi, Sunita Devi, Pramod Ram and Hardeep Ram are punished with Simple Imprisonment for 3 (three) years and for fine of Rs. 3,000/- (Rupees three thousand only) each i/d to Simple Imprisonment for 3 (three) months each for the offence punishable under Section 147/148/149 of Indian Penal Code. The convicts also sentenced with Simple Imprisonment for 8 (eight) years and fine of Rs. 5000/- (Rupees Five Thousand Only) each i/d to Simple imprisonment for 3 (three) months each for the offence punishable under Section 307 of Indian Penal Code.

The convict Negash Ram is also punished with Simple Imprisonment of life and fine of Rs. 10,000/- (Rupees Ten Thousand only) i/d to Simple Imprisonment for 6 (six) months for offence punishable under Section 302 of Indian Penal Code. The convict Nagesh Ream is also sentenced to simple Imprisonment for 3 (three) years and fine of Rs. 2000/- (Rupees Two Thousand only) i/d to Simple Imprisonment for 2 (two) months for the offence punishable under Section 26 read with Section 3 of Arms Act.

The accused Balwant Singh is also sentenced to further Simple Imprisonment for 6 (six) months and fine of Rs. 1000/- i/d to Simple Imprisonment for 1 (one) month for the offence punishable under Section 30 of Arms Act.

All the substantiate sentences of the convicts except the convict Nagesh Ram shall run concurrently.

The period of detention undergone by the convicts except convict Nagesh Ram during the investigation, inquiry and trial of this case shall be set off against the sentence of imprisonment under Section 428 of Cr. P.C.

Let a copy of this order be handed over to all the Convicts free of cost.

Let a copy of this order be served to the District Magistrate for his information.

Case property, if any, be confiscated to the State after Appeal Period is over."

After the order passed by the Learned Sessions Judge, Andaman & Nicobar Islands, Port Blair dated 14.10.2015, the applicant filed an appeal being C.R.A. No. 20/2015 before the Hon'ble High Court at Calcutta, Circuit Bench at Port Blair. The applicant also prayed for bail in C.R.M. No. 002 of 2016. Both the applications were served by the Hon'ble High Court at Calcutta, Circuit Bench at Port Blair on 16th December, 2015, 17th December, 2015 and 21st December, 2015 and ultimately the bail was granted and appeal has been admitted in favour of the applicant by the Hon'ble High Court at Calcutta.

Thereafter despite the bail granted by the Hon'ble High Court at Calcutta and as per the request made by the applicant, the order of suspension has not been revoked. The respondent authority vide office order No 278 dated 09.02.2016 passed an order of deemed suspension by suspending the applicant under further order which is absolutely bad in law and illegal.

The applicant thereafter made a representation before the Directorate of Agriculture, Andaman & Nicobar Administration, Port Blair that on the basis of admission of the appeal by the Hon'ble High Court at Calcutta and on the basis of bail granted by the Hon'ble High Court at Calcutta, the order of suspension may be revoked and she may be allowed to resume duty but the respondent authority did not consider the same.

Despite the appeal has been admitted by the Hon'ble High Court at Calcutta and the bail granted by the Hon'ble High Court at Calcutta in favour of the applicant, the Directorate of Agriculture vide office order No. 278 dated 9th February, 2016 issued an order of

deemed suspension with effect from 14.10.2015 which is absolutely illegal and bad in law.

The Learned Advocate on behalf of the applicant vide his letter dated 18.11.2016 duly communicated to the respondent authority in respect of the order passed by the Hon'ble High Court at Calcutta that the sentence of conviction has been suspended till the final hearing of the appeal which is pending before the Hon'ble High Court at Calcutta, Circuit Bench at Port Blair.

Despite receiving such intimation and without initiation of any disciplinary proceedings, the respondent authority issued an office order of termination being No. 2165 dated 23rd December, 2016 against the applicant by which your applicant was terminated from service with effect 26.12.2016 and this order has been passed on the basis of the order of the Learned Sessions Judge, Andaman & Nicobar Islands, Port Blair which has already been challenged before the Hon'ble High Court at Calcutta, Circuit Bench at Port Blair where the appeal has been admitted and suspension has been stayed. Therefore, the aforesaid termination on the basis of the Learned Sessions Judge, Andaman & Nicobar Islands, Port Blair is absolutely bad in law and illegal.

The respondents authority at the time of passing the impugned order dated 23rd December, 2016 did not take care the orders passed by the Hon'ble High Court at Calcutta, Circuit Bench at Port Blair in C.R.M. No. 24 of 2015 arising out of C.R.A. No. 18 of 2015 dated 16th December, 2015, 17th December, 2015 and 21st December, 2015. Since the Hon'ble High Court at Calcutta admitted the appeal and granted the bail in favour of the applicant despite such order, the impugned order of termination is wholly bad in law and illegal. The question will arise, if the Hon'ble High Court at Calcutta set aside the judgment and order dated 14.10.2015 passed by the Learned Sessions Judge, Andaman & Nicobar Islands, Port Blair then what will happen in respect of the applicant. If the trial Court Judgment is set aside by the Hon'ble High Court before that the department cannot say that the applicant is a convicted person. Before deciding the appeal by the Hon'ble High Court at Calcutta, the action of the respondent authority by treating the applicant as a convicted person is otherwise bad in law and illegal. Therefore, the impugned order of termination dated 23rd December, 2016 may liable to be quashed and/or set aside.

Being highly aggrieved and/or dissatisfied with against the order of termination dated 23.12.2016, your applicant files original application before this Hon'ble Tribunal for redressal of her grievances.*

3. The order of termination, the legality of propriety of which is under challenge in this O.A., is extracted hereinbelow for clarity,

“
ANDAMAN & NICOBAR ADMINISTRATION
DIRECTORATE OF AGRICULTURE

Port Blair, Dated the 23rd December, 2016

OFFICE ORDER No. 2165

WHEREAS Smti Prem Shanti, Regular Mazdoor has been convicted on Criminal Charges under Sections 147/148/307/302/114 of IPC read with section 3/25/30 of Arms Act, 1959;

AND WHEREAS it is considered that the conduct of the said Smti Prem Shanti, Regular Mazdoor which has led to her conviction is such as to render her further

retention in the Public Service desirable/the gravity of the charge is such as to warrant the imposition of major/minor penalty;

Now therefore in exercise of the powers conferred by Rule 19(i) of the CCS (CCA) Rules, 1965, and in consultation with the Legal Department of A & N Administration, the undersigned hereby dismisses Smti Prem Shanti, Regular Mazdoor from her service w.e. from 26.12.2016.

This order has been issued on the approval of the Competent Authority.

Sd/-

Padmini Arumugam

Assistant Director (Admn)

File No.GC-122/DA/CC/2016"

4. The challenge to the termination is on the following grounds, inter alia:

"For that after the order passed by the Learned Sessions Judge, Andaman & Nicobar Islands, Port Blair dated 14.10.2015, the applicant filed an appeal being C.R.A. No. 20/2015 before the Hon'ble High Court at Calcutta, Circuit Bench at Port Blair. The applicant also prayed for bail in C.R.M. No. 002 of 2016. Both the applications were heard by the Hon'ble High Court at Calcutta, Circuit Bench at Port Blair on 16th December, 2015, 17th December, 2015 and 21st December, 2015 and ultimately appeal was been admitted and the bail was granted.

For that despite the appeal being admitted by the Hon'ble High Court at Calcutta, and the bail being granted by the Hon'ble High Court, Directorate of Agriculture vide office order No. 278 dated 9th February, 2016 issued an order of deemed suspension with effect from 14.10.2015 which is absolutely illegal and bad in law.

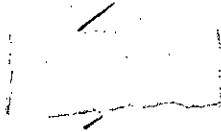
For that the Learned Advocate on behalf of the applicant vide his letter dated 18.11.2016 duly communicated to the respondent authority in respect of the order passed by the Hon'ble High Court at Calcutta that the sentence of conviction has been suspended till the final hearing of the appeal which is pending before the Hon'ble High Court at Calcutta, Circuit Bench at Port Blair.

For that despite receiving such intimation and without initiation of any disciplinary proceedings, the respondent authority issued an office order of termination being No. 2165 dated 23rd December, 2016 against the applicant by which your applicant was terminated from service with effect 26.12.2016 and this order has been passed on the basis of the order of the Learned Sessions Judge, Andaman & Nicobar Islands, Port Blair which has already been challenged before the Hon'ble High Court at Calcutta, Circuit Bench at Port Blair where the appeal has been admitted and suspension has been stayed."

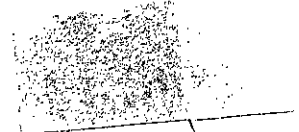
5. Ld. Counsel for the respondents would submit that stay of sentence does not construe stay of conviction, hence termination is in order and that no appeal has been preferred against the termination.

6. Therefore in the interest of justice, the O.A. is disposed of with a liberty to the applicant to prefer an appeal to the appellate authority against termination, who upon perusal of the conviction order, stay order etc. shall decide whether Rule 19(i) of CCS (CCA) Rule was correctly invoked to punish the employee, and issue appropriate order within 2 months.

No costs.



(Dr. N. Chatterjee)
Administrative Member



(Bidisha Banerjee)
Judicial Member

drh