

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 797/1999

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New Delhi this the 5th day of January, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)
Hon'ble Shri S.A.T. Rizvi, Member(A)

Shri Mohd. Umar
S/O Sh. Mohd Shafi,
T-4/1, Vayusenabad,
New Delhi-110062

.. Applicant

(By Advocate Shri S.K. Gupta)

Versus

Union of India- Through
The Joint Secretary/Director(Admn.)
Prime Minister's Office,
South Block,
New Delhi-11

.. Respondent

(By Advocate Shri Madhav Panikar)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)

The applicant is aggrieved by the action/in-action of the respondents in not reinstating him in service and revoking their earlier order passed by them dismissing him from service dated 22.4.1997.

2. The brief relevant facts of the case are that the applicant was appointed as Carpenter and was working in the office of Respondent i.e. Hon'ble Prime Minister's office. He was suspended w.e.f. 7.11.1994 after his arrest on 31.10.1994 in a criminal case. He was convicted by the Trial Court by orders dated 20.11.1996 and 22.11.1996(Annexures A-4 and A-5). He had filed an appeal against the order of conviction to the higher Court. In the meantime, the respondents issued show cause notice to the applicant on 28.2.1997, to which he gave his reply. The respondents, after considering his reply acting

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under the provisions of Rule 19(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as 'the Rules') dismissed him from service by order dated 22.4.1997 (Annexure A-3). The appeal filed by the applicant against this order was also rejected by the appellate authority by order dated 7.7.1997 (Annexure A 9). On the appeal filed by the applicant against his conviction by the Hon'ble Metropolitan Magistrate, Delhi, the learned Special Judge, Delhi by his order dated 5.9.1998 acquitted him giving ~~the~~ benefit of doubt. Thereafter, the applicant had made a representation to the respondents to re-instate him in service which has not been agreed to by the respondents, on the ground that the Central Bureau of Investigation (CBI) had filed an appeal against the order of the learned Special Judge, Delhi dated 5.9.1998 in the Hon'ble Delhi High Court, which is still pending. Shri S.K.Gupta, learned counsel relies on the order of the Tribunal in C.J.C.V.Cheema Vs. The Union of India and others (ATR 1986 CAT(PB) 109). He has submitted that the facts in C.V.Cheema's case (supra) and the present case are similar and accordingly ^{the} he has prayed that OA may be allowed with a direction to the respondents to re-instate the applicant in service with all consequential benefits with interest and to set aside the impugned orders dated 22.4.1997 and 7.7.1997, which have been passed earlier by the disciplinary authority as well as the appellate authority.

3. We have perused the reply filed on behalf of the respondents and heard Shri Madhav Panikar, learned counsel for the



respondents. Learned counsel has submitted that necessary disciplinary action as provided under Rule 19(i) of the Rules has been taken against the applicant before the aforesaid punishment orders have been passed. He has submitted that Paragraph 2 of the Govt. of India's instructions under Rule 19 of the Rules however, permits the Govt. to do so in case where a Govt. servant has been convicted in a Court of Law of an offence which is such as to render ^{his} / further retention in public service ^{undesirable} / . He has drawn our attention to the nature of the charges of the criminal case levelled against the applicant and has submitted that they were all serious in nature and hence, it would not be in public ^{and} interest to retain the applicant in Govt. service, / that too in the Hon'ble Prime Minister's office as a Carpenter. He has further submitted that the judgement in C.V. Cheema's case (supra) relied upon by the learned counsel for the applicant had not taken into account this aspect of the matter or the provisions of Rule 19(ii) read with Rule 19(i) of the Rules and hence, he has submitted ^{that} / that case may not be followed. He has further emphasised that acquittal of the applicant has been on technical grounds of "benefit of doubt" and not on merits. He has also submitted ^{as} that / appeal filed by the CBI against the order passed by the Special Judge, Delhi, quashing the sentence imposed on the applicant by the Trial Court is still pending before the Hon'ble High Court, no direction for re-instatement of the applicant may be granted at this stage.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

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5. A perusal of the C.V.Cheema's case(Supra) and the facts of the present case show that the relevant facts are similar, namely, that while the trial Court had convicted both Sh.Cheema and the applicant of the criminal charges, the appellate Court had acquitted them and an appeal against the same was preferred by the respondents before the High Court, which has been admitted and ^{is} pending ~~for~~ adjudication. In the circumstances, the Tribunal in C.V.Cheema's case(Supra) has held as follows:-

"The central point which falls for consideration in this case is as to whether in the event of setting aside of the conviction by the first appellate court, the order of dismissal passed in exercise of the powers conferred on the disciplinary authority by rule 19(i) of the Central Civil Services(Classification, Control and Appeal)Rules, 1965 (for brevity's sake called 'the Rules'), would survive and remain valid in a case where an appeal against the acquittal has been filed in the superior court. A plain perusal of rule 9(i)(19)(sic.) makes it plain that the sine qua non to the invoking of the said rule is the conduct of the delinquent Government servant which has led to his conviction on a criminal charge. In case the order of conviction is set aside, the very foundation of the order of dismissal disappears. As a necessary corollary to this, it would follow that the edifice built on such foundation would also fall. That being so, the impugned order would not remain valid."

Further the Tribunal held that "there is every likelihood of the Government servant concerned suffering ad-infinitum. The suffering is likely to spread over a fairly long period i.e. till the appeal is decided by the High Court. There is no knowing when the appeal is likely to be decided" In the present case we are informed that the appeal filed by the CBI against the order of the Special Judge, Delhi on 9.11.1998

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stands admitted in the Delhi High Court on 3.3.2000. The observation of the Tribunal with regard to the fact that there is no knowing when the appeal is likely to be decided would appear to be equally applicable to the present case, as the parties are not in a position ^{to say} or even to make a guess when the appeal is likely to be decided.

6. In the particular facts and circumstances of the case, we are in respectful agreement with the judgement of the Tribunal in C.V.Cheema's case(supra). We are unable to agree with the contention of the learned counsel for the respondents that the Tribunal had failed to consider the provisions of Rule 19(ii) of the Rules read with the Govt.of India's instructions, that in such circumstances it would not be desirable to continue such persons in public interest. Indeed, the judgement is otherwise. It is relevant to note that at the time when the impugned orders dated 22.4.1997 and 7.7.1997 were passed by the disciplinary authority and the appellate authority against the applicant under Rule 19(i) of the Rules, the applicant was under suspension.

7. In the result for the reasons given above, the OA succeeds and is allowed with the following directions:-

(i) The impugned orders dated 22.4.1997 and 7.7.1997 are quashed and set aside;

(ii) The respondents are directed to re-instate the applicant in service within two months from the date of receipt of a copy of this order. We, however, make it clear

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that the re-instatement of the applicant would also be subject to the out come of the appeal pending in the High Court,

(iii) In view of what has been stated above the applicant shall continue to be placed under suspension for a period of not more than four months, within which period the respondents should take a decision regarding initiation of any departmental proceedings/against him, if they so desire. The respondents shall also determine the question of consequential benefits in accordance with the relevant rules/fundamental rules and instructions;

(iv) The claim of the applicant for interest on consequential benefits is, however, rejected taking into account the facts and circumstances of the case.

Parties to bear their own costs.

S.A.T. Rizvi

(S.A.T. Rizvi)
Member (A)

Lakshmi Swaminathan

(Smt.Lakshmi Swaminathan)
Vice Chairman(J)

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