

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A. NO. 2395/1995

New Delhi this the 19th day of December, 1995.

HON'BLE SHRI N. V. KRISHNAN, ACTING CHAIRMAN
HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J)

P. C. Jain,
Ex-Electrical & Mechanical
Technician, Directorate
General of Civil Aviation,
New Delhi.
R/O G-35, I.N.A. Colony,
New Delhi - 110023.

... Applicant

(By Shri K. N. R. Pillai, Advocate)

-Versus-

Union of India through the
Director General,
Civil Aviation,
East Block 2 & 3,
R.K.Puram, New Delhi.

... Respondent

O R D E R (ORAL)

Shri N. V. Krishnan, Acting Chairman —

The applicant was convicted of a criminal charge under Section 5 of the Imports & Exports (Control) Act, 1947 and under Sections 120-B, 420 and 471 of the Indian Penal Code and awarded a sentence of Rs.1,500/- for the offence under the Imports & Exports (Control) Act; a fine of Rs.1,500/- for the offence under Section 420 IPC; a fine of Rs.1,000/- for the offence under Section 120-B IPC; and a fine of Rs.1,000/- for the offence under Section 471 IPC. In default of the total fine or a part thereof, the applicant was to undergo rigorous imprisonment for a period of six months. This conviction and sentence has been passed by ~~the~~ special Judicial Magistrate, 1st Class, Ambala on 6.5.1991. The applicant preferred a criminal revision petition before the High Court of Punjab and Haryana in which

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the High Court directed, "Operation of the impugned judgment stayed till further orders."

2. Consequent upon this conviction, notice was issued to the applicant under Rule 19 of the C.C.S. (C.C.A.) Rules, 1965 to show cause why he should not be dismissed from service, Annexure A-I. However, a penalty of removal from service was imposed after representation of the applicant was considered. The Annexure A-V order imposing the penalty of removal from service has been issued on 26.10.1995.

3. The applicant has come before us challenging this order on the ground that this order could not have been passed so long as the orders of the High Court staying the judgment until further orders are in force.

4. The learned counsel admits that if only the sentence has been stayed, the disciplinary authority can still act upon the orders of conviction and impose the penalty under Rule 19. If, however, the conviction itself is stayed, then such an action cannot be taken until final orders are passed in the criminal case.

5. The learned counsel contends that the order of the High Court dated 20.4.1993 has to be construed to mean that the conviction ^{also} has been stayed. He also refers to the authority of the Supreme Court in JT 1995 (3) SC 32 : The Deputy Director of Collegiate Education (Administration), Madras vs. S. Nagoor Meera.

6. We have considered the matter. In the aforesaid judgment of the Supreme Court it has been envisaged that in certain situations the appellate court may also

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have the power to suspend the conviction if a proper request was made to the Court about the adverse consequences that would follow, if the conviction itself was not stayed. The Court could then have applied its mind to this specific question and if it thought that a case was made out for grant of interim stay of the conviction, it could order stay of conviction also with or without conditions.

7. It would, therefore, appear that staying the order of conviction itself is done exceptionally and the order should indicate application of mind. We are unable to presume from the order of the High Court reproduced above that the court intended to stay the conviction also. Staying of conviction is a serious matter and unless the order of stay specifically contains such a direction, it cannot be presumed, even though the judgment itself has been stayed. The applicant has no case that in the Revision Application before the High Court he sought stay of conviction also for some specific reason. Further, normally, the stay is confined to that part of the order that hurts immediately. In this case, the portion of the judgment which hurts the applicant was the sentence which required payment of fine failing which jail sentence was threatened. Hence, the order of the High Court can be construed to have stayed the sentence only.

8. In this view of the matter, we do not find any merit in this O.A., which is filed on this ground alone. Accordingly, the O.A. is dismissed. We, however, make it clear that it is open to the applicant

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to seek a proper clarification from the High Court, after stating the background seeking such clarification and if he thinks, on the basis of that clarification he has a case, it is open to him to seek such further remedy admissible under law as may be advised.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

N. V. Krishnan
18/12/85

(N. V. Krishnan)
Acting Chairman

/as/