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05/12/97

Applicant (s)

~~Advocate for the Applicant (s)~~

Respondent (s)

Advocate for the Respondent (s)

Advocate for the Respondent (s)

The Hon'ble Mr.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? ~~Yes~~ / NO.
2. To be referred to the Reporter or not? ~~Yes~~ / NO.

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(R. K. AHUJA)
Member (A)

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Central Administrative Tribunal
Principal Bench

O.A.No.1953/97

67 Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 5th day of December, 1997

M.F.Gedam
s/o Late Shri F.K.Gedam
aged about 54 years
r/o 12/243, Lodhi Colony
New Delhi.
Last worked as Assistant in
the National Informatics Centre(NIC)
A Block, CGO Complex, Lodhi Road
New Delhi.

... Applicant

(By Shri J.K.Bali, Advocate)

Vs.

Union of India through

1. The Secretary
Planning Commission
Govt. of India
Yojana Bhavan
New Delhi.
2. The Director General
NIC and Special Secretary
Planning Commission
A Block, CGO Complex
Lodhi Road
New Delhi.
3. The Director of Estates
Ministry of Urban Development
Govt. of India
Nirman Bhawan
New Delhi.

... Respondents

(By Shri V.S.Mehta, Advocate)for Respondents No.1 & 2
Shri S.Muham. Arif, Advocate for Respondent No.3)

O R D E R

The applicant while working as SO in the National Informatics Centre (NIC), of the Planning Commission was convicted in a criminal case under Section 420, IPC and sentenced to undergo rigorous imprisonment for one year and also to pay a fine of Rs.5000/-, by the court of Metropolitan Magistrate, New Delhi on 7.7.1994. Against this order of conviction, the applicant has filed an appeal dated 26.7.1994 before the Additional Sessions Judge, New Delhi who suspended the substantive sentence of imprisonment pending the disposal of the

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appeal. The applicant was compulsorily retired under Rule 19(i) of the CCS (CCA) Rules 1965 vide order dated 23.4.1997, Annexure A2. The applicant says that he filed an appeal, Annexure A-3 against the order, Annexure A2 which is still pending. He had also requested for permission to retain the quarter No.12/243, Lodhi Road, New Delhi, till ~~decision on~~ his appeals both in the Sessions Court against his conviction by the Metropolitan Magistrate and the appellate authority in the disciplinary matter were disposed off. However, by the impugned order Annexure A1 issued by the Assistant Director of Estates, Directorate of Estates, he has been directed to handover vacant possession of the aforementioned quarter on or before 23.8.1997 failing which necessary action for eviction would be taken. He has also been informed that he will be liable to pay the damage rent at the rate of Rs.55.00 per Sq. meter of the living area in respect of the period of his over stay. The applicant's case is that he would be put to extreme hardship if he is made to vacate the Government accomodation pending the decision of his appeals in the criminal case as well as against the disciplinary order.

2. The respondents in reply say that the appeal to the President of India against the imposition of penalty of compulsory retirement is under consideration. However, considering that the conviction in the criminal case has not so far been set-aside, The applicant is not entitled to consideration of reliefs sought for by him.

3. I have heard the counsel. The learned counsel for the applicant has relied on the Judgment of Full Bench of this Tribunal (CAT(FB) Vol.II Page-1) i.e. Shri D.N.Singh & Others Vs. Union of India & Others, wherein it has been held as follows:

Or

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"The second request of the applicants must, however, be upheld. Even the standing orders direct that if the dismissal or removal of a government servant is questioned, the order to vacate the quarters need not be issued. In several cases where public servants are removed or dismissed from service, when those orders are challenged before the Appellate Authorities or before this Tribunal, they are being allowed to retain the quarters until the appeals are disposed of by this Tribunal. Unless such an order is made, applicants would be exposed to great hardship. It would also be difficult to secure allotment of quarters even if their appeals are allowed. In the circumstances, the respondents are directed to allow the petitioners to retain their quarters, of course, subject to payment of such rent as was paid by them before their dismissal from service."

4. The main ground taken by the learned counsel for the applicant is that the order of compulsory retirement having been questioned in an appeal he is entitled to retain the Government quarter on the strength of the above quoted orders of the Full Bench of the Tribunal. I am however not convinced of the merits of this argument. The Supreme Court, in a recent judgment, Union of India & Others Vs. Ramesh Kumar, JT 1997(7) SC 645, while setting aside the judgment of this Tribunal in OA No.1087/99 observed as follows:

"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 dismissal based on conviction stands obliterated and 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."

5. In view of the above decision of the Apex Court, the ratio of the decision of the Full Bench case, Shri D.N.Singh & Others (Supra) would not be applicable. The applicant stands convicted and based on that conviction, an order of compulsory retirement from service has been passed. The mere fact of the pendency of the appeal either in the criminal court or before the

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appellate authority does not change the basic ground provisions of his compulsory retirement. Therefore, no benefits available to the applicant as a Government servant can be retained. Accordingly, he cannot be permitted to continue in Government accommodation till such time that his appeals are disposed off. Of course, if the applicant tomorrow succeeds in his appeals, and in case he comes back into service, he could seek restoration of the same or a suitable Government accommodation to him.

In view of the above discussion, the OA is dismissed. No costs.

R. K. Ahooja
(R.K.AHOOJA)
MEMBER(A)

/rao/