CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

...

OA No. 2757/97

New Delhi, this the 17th day of May, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P.BISWAS, MEMBER(A)

14

S.P.Aggarwal
s/o Shri B.D. Agarwal,
formerly Assistant in the
Ministry of Home Affais,
resident of Sector -
Faridabad (Hr.). ...Applicant

(By Advocate: Shri T.C.Aggarwal)

Versus

Union of India through

Secretary to Govt. of India,
Ministry of Home Affair,
North Block, New Delhi. ...Respondents

(By Advocate: Shri N.K.Aggarwal)

O R D E R

By Hon'ble Shri T.N.Bhat, Member (J)

The applicant who belongs to the Central Secretariat Service and was working as Assistant in the Staff Selection Commissioner from 1981 to 1984 was allegedly involved in a fake recruitment racket in the said Commission and the Central Bureau of Investigation had registered a case in respect of the aforesaid Racket. During the course of investigation, it was alleged, the applicant's house was searched and four pages of office notes belonging to the official records of the Commission were recovered from the house. After completing investigation the C.B.I. filed a criminal chargesheet against the applicant for the alleged commission of an offence under Sections 381 and 411 IPC.

17.5.99.

2. On conclusion of the trial the Metropolitan Magistrate held the applicant guilty, convicted him and sentenced the applicant to imprisonment for the period already undergone by him (a period of 5 days spent by him in custody from 29.8.1986 to 2.9.1986) and fine of Rs. 3,000/-. In default of payment of fine the applicant was to undergo rigorous imprisonment for a period of two months. The judgement of the Metropolitan Magistrat was passed on 4.5.1987.

15

3. Shortly thereafter, on 15.7.1987, a Memo was issued by the Ministry of Home Affairs directing the applicant to show cause why he should not be dismissed from service. The Memorandum purported to have been issued under Rule 19 of the CCS (CCA) Rule, 1965. The applicant filed a detailed reply and the President of India after consulting the Union Public Service Commission passed an order on 7.4.1986 dismissing the applicant from service.

4. Aggrieved by the aforesaid order the applicant filed an appeal. However, since an appeal did not lie against the order passed by the President, on the direction of the respondents, the applicant filed a review/revision petition which came to be dismissed by the order dated 5.1.1993. The applicant accordingly appraoched this Tribunal by filing OA No. 797/93 assailing the order dated 7.4.1988 as also the order in appeal/review dated 5.1.1993.

5. It needs to be mentioned here that the applicant had assailed the order of conviction passed by the Metropolitan Magistrar before the Additional District & Sessions Judge which was disposed of by the judgement dated 25.7.1992. The Appellate Criminal court while maintaining the conviction of the applicant under Section 411 IPC gave him the benefit of the provisions of Probation of Offenders Act.

16

6. In the OA filed before this Tribunal the applicant took many pleas, but the main plea was that respondents had failed to hold a skeleton enquiry and to consider the points agitated by the applicant in his review/revision petition. According to the applicant the order of dismissal as also the order of review were passed in a mechanical manner. The applicant further sought to raise the plea that from the evidence produced by the Metropolitan Magistrate the commission of the offence by the applicant did not stand established. While admitting that note sheets had been found in the possession of the applicant, he sought to make out that the said papers had come from the Raddiwala and not from the Staff Selection Commission office.

7. The Tribunal by the order dated 30.4.1997 disposed of the OA No. 797/93 with the following directions:-

> "15. In the result, without interfering with the punishment of dismissal from service imposed on applicant in any way at this stage, the impugned order dated

5.1.1993 is quashed and set aside and the case is remitted back to the revision authority to give the applicant a reasonable opportunity of being heard in person, and thereafter pass a detailed speaking and reasoned order in accordance with law as expeditiously as possible and preferably within 4 months from the date of receipt of a copy of this Judgement. No costs."

(17)

8. After the matter was remitted to the respondents a fresh order has been passed on the applicant's revision petition and the petition has been rejected once again by the order dated 12.11.1997 passed by the Ministry of Home Affairs in the name of the President.

9. Aggrieved by the aforesaid order dated 12.11.1997 the applicant has filed this fresh O.A. raising grounds similar to those which had been raised in OA 797/93 and which have already been referred to hereinabove.

10. The respondents have filed a detailed counter in which it has been stated that all the points raised by the applicant in his review/revision petition have been considered by the respondents and after consideration of those points a speaking order has been passed which is the order impugned in this O.A.

11. To the counter filed by the respondents the applicant has filed a rejoinder.

12. We have heard the learned counsel for the parties at length and have also gone through the judgements cited by the learned counsel for the applicant, copies whereof have been furnished in the shape of a compilation which has been placed on record.

13. Though, as already indicated, a large number of judgements of the Tribunal have been relied upon by the applicant, it would suffice to refer to just one judgement which has been delivered by the Apex Court and on which also strong reliance is placed by the applicant. This judgement is reported in AIR 1985 SC 772 and has been delivered in the case Shankar Dass vs. Union of India & Anr. The judgement specifically deals with cases where, in exercise of the power under Article 311 (2) Second Proviso clause (a) of the Constitution of India a public servant is dismissed from service even though he had been granted the benefit of the provisions contained in Probation of Offenders Act. The Apex Court has in clear terms laid down the law that merely because Section 12 of the Probation of Offenders Act states that a person who has been dealt with under the provisions of Section 3 and 4 of that Act shall not suffer disqualification, it would not follow that an order of dismissal from service based upon such conviction could not be passed. In this regard a distinction has been made between cases where the conviction in a criminal case entails certain disqualifications for Membership of Parliament and State Legislatures under Chapter III and IV of the

Representation of the People Act, 1951 and a case where conviction in a criminal case would entail disciplinary action by the department. The following observations made in the judgement bring home the point:

19

> "The order of dismissal from service consequent upon a conviction is not a "disqualification" within the meaning of Section 12 of Probation of Offenders Act. There are statutes which provide that persons who are convicted for certain offences shall incur certain disqualifications. For example, Chapter-III of the Representation of the People Act, 1951 entitled "Disqualifications for meambership of Parliament and State Legislatures" and Chapter IV entitled "Disqualifications for Voting" at elections to legislatures. That is the sense in which the word "disqualification" is used in Section 12....."

14. Thus, manifestly, the grant of benefit under Section 3 or Section 4 of the aforesaid Act by the appellate court to the applicant would not debar the respondents from passing any order of punishment against the applicant. In this regard it is necessary to state that before the appellate court the applicant's counsel did not at all contest the applicant's conviction under Section 411 IPC. The counsel only sought the benefit of

provisions of Probation of Offenders Act to the applicant which the appellate court granted. This would not wash out the applicant's conviction.

15. However, the learned counsel for the applicant has sought to lay much emphasis on the other principle laid down by the Apex Court in that judgement (supra). In para 7 of that judgement the Apex Court has held that the employer is required to apply his mind to the penalty which could appropriately be imposed upon the Govt. servant in so far as the service career was concerned and that the mere conviction in a criminal case would not necessarily entail the punishment of dismissal or removal from service. In this regard the Court gave the example of a person who has been convicted for a petty offence of parking his scooter in a 'no parking area' and has held that in such a case the Govt. servant would surely not deserve the penalty of dismissal or removal. It has further been observed that such a Govt. servant may perhaps not be entitled to be heard on the question of penalty but that the right of the employer to impose a penalty carries with it the duty to act justly.

16. It is vehemently argued by the learned counsel for the applicant that in the instant case there has been no application of mind on question as to what penalty should be imposed upon the applicant departmentally. The learned counsel in this regard draws our attention towards the fact that even according to the trial court and the appellate court only a technical offence had been established. Learned counsel further argued that the order passed now is in no way better than

the order which had been passed earlier and whereby the revision/review petition of the applicant had been dismissed on 7.4.1988.

17. It is further contended by the learned counsel that according to the provisions contained in Rule 19 of CCS (CCA) Rules, 1965 even on conviction in a criminal case dismissal or removal from service would not automatically follow and that there is a requirement of holding some sort of a skeleton enquiry and after due application of mind a reasoned order has to be passed. He also relies upon sub rule 4 below Note (4) to Rule 19 of CCS (CCA) Rules (Swamy's compilation) wherein it has been stated that having come to know of the conviction of a Government servant on a criminal charge the disciplinary authority must consider whether the misconduct which had led to his conviction was such as warrants the imposition of a penalty and if so what that penalty should be. It is further laid down that for the above purpose the competent authority will have to peruse the judgement of the criminal court and consider all the facts and circumstances of the case, taking into account the entire conduct of the delinquent employee about the gravity of the misconduct committed by him, the impact which his miscondut is likely to have on the administration and other extenuating circumstances or redeeming features.

18. In support of this plea the learned counsel has referred to a few judgements of the Tribunal notably those delivered by the Full Bench in M. Abdul

Karim vs. Deputy Director General, NCC (K&L) reported in 1993 (1) SLJ (CAT) 519 and K.L.Gulati vs. Union of India, reported in (1996) 32 ATC 644.

19. We have carefully gone through the aforesaid judgements and find that those judgements do not deal specifically with cases of misconduct leading to conviction in a criminal court, though general principles regarding application of mind and consideration of all the attendant circumstances have been laid down in those judgements. The judgement of the Apex Court already referred to above specifically deals with the question of punishment to be awarded by the employer after conviction of the Govt. servant on a criminal charge.

20. Let us now examine the facts of the instant case on the touch-stone of the principles laid down by the Hon'ble Supreme Court in Shankar Dass (Supra). In this regard the first point to be noted is that the misconduct leading to the applicant's conviction in a criminal court is established beyond any doubt as is clear from the judgement of the Matropolitan Magistrate as also the judgement of the criminal appellate court. The contention of the learned counsel for the applicant that the offence was not established is misconceived and it would not lie in the mouth of the applicant to raise such a plea. His defence in the criminal court that the note sheets had come to his possession from the Raddiwala has already been considered by the criminal court and has been rejected.

21. The second important factor to be taken note of is that after the applicant's conviction the respondents did give him the show cause notice in which it was specifically stated that the penalty of dismissal from service was proposed to be awarded to him. The applicant did furnish his explanation. The competent authority considered the same and passed an order awarding the extreme punishment of dismissal from service on the applicant. It is significant to note that the aforesaid punishment order was passed after obtaining the opinion of the Union Public Service Commission.

22. It is true that the order dated 7.4.1988 was too cryptic and non-speaking to be sustained by the Tribunal. But it is equally true that after the matter was remitted back to the revisional authority for reviewing / revising the order of punishment, the said authority gave the applicant the opportunity of personal hearing. Not only that but also the points raised by the applicant in the review/revision petition were duly considered and dealt with in the impugned order dated 12.11.1997. On a careful reading of the said order we find that cogent and convincing reasons have been given for imposing the extreme punishment of dismissal from service on the applicant. On the point as to whether the criminal offence was established against the applicant the revisional authority has held in para 12 (i) that the note sheets recovered from the possession of the applicant had correctly been held by the trial court to be stolen property and that the applicant was not authorised or even permitted to hold these documents in his possession at his

residence. It was further held by the revisional authority that the applicant had failed to satisfactorily explain about the stolen property in his possession.

23. Dealing with the question as to whether the applicant's reliance on the provision of Probation of Offenders Act would entitle him to imposition of a lesser punishment than dismissal from service, the competent authority has in the impugned order stated that since the applicant's conviction was maintained by the appellate court this could not be held to be a case where the appellate court had in any manner interfered with the order of conviction, even though the benefit of provisions of Probation of Offenders Act had been granted to the applicant.

24. Dealing with another point it has been held in the impugned order that even assuming that the revisional authority had not earlier given the applicant an opportunity of personal hearing, the said opportunity had now been granted to him on two occasions and that apart from making oral submissions the applicant had also produced written submissions before the designated authority which have been considered and it has been found that there is no additional evidence which would warrant interference with the orders of the disciplinary authority.

25. On the question as to whether the penalty of dismissal from service imposed upon the applicant was grossly excessive the revisional authority has given in sub para (iv) of para 12 convincing reasons for holding

that in the fact and circumstances of the case the penalty of dismissal from service was not excessive. In this regard it was held that by virtue of the applicant's position as a Govt. servant he was required to uphold the trust reposed by the Govt. in him which trust he has breeched by unauthorisedly taking possession of the stolen property/documents.

26. In our considered view the impugned order dated 12.11.1997 is a well reasoned one and we find no grounds to interfere with the same.

27. We are also convinced that the requirement of holding some sort of a skeleton enquiry has been fulfilled in this case. The respondents have not only given a show cause notice to the applicant on his conviction in the criminal case but have also considered the points raised by him in reply. Further, they have also consulted the UPSC. If this is not the skelton enquiry we do not know what else would be.

28. We may also mention that the scope of judicial review in matters such as the instant case would not extend to examining the question of quantum of punishment awarded as this Tribunal is not supposed to sit in appeal over the orders passed by the disciplinary authority.

29. The judgements cited by the applicant do not seem to be relevant so far as the question of imposition of punishment on the basis of the applicant s conviction in a criminal case is concerned. We have,

therefore, not considered it necessary to refer to those judgements except the one delivered by the Apex Court and already referred to hereinabove.

26

30. The respondents have raised an objection that this OA is hit by the principle of res judicata, in that, identical pleas had been raised in OA 797/93. This contention of the respondents is clearly misconceived. The instant OA is directed against the reasoned order passed by the revisional authority on 12.11.1997 while the earlier OA was directed against the order dated 7.4.1988. In K.L. Gulati vs. Union of India & Ors (Supra) the Tribunal held that where in an earlier case the Tribunal had directed the departmental authority to reconsider the matter and the opportunity was given to the applicant to agitate the matter afresh if he was not satisfied with the decision rendered on reconsideration, the fresh OA filed against the decision on reconsideration would not be hit by the principle of res judicata. We are convinced that the judgement in OA 797/93 would not operate as res judicata so far as the instant OA is concerned.

31. In view of what has been held and discussed hereinabove we are convinced that there are no grounds for interference with the impugned order dated 12.11.1997. This OA is devoid of merit and is accordingly dismissed, but without any order as to costs.

(S.P.Biswas)
Member (A)

17.5.99
(T.N.Bhat)
Member (J)

na