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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO. 2392/1989

DATE OF DECISION 20.01.1992

SHRI MADAN MOHAN ARORA

...APPLICANT

VS.

CHIEF POST MASTER GENERAL & ORS.

...RESPONDENTS

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SHRI I.K. RASGOTRA, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI SANT LAL

FOR THE RESPONDENTS

...SHRI M.L. VERMA

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 against the order dt. 20.12.1988 issued by Director Postal Services, Delhi Circle, New Delhi (Annexure AI). By the said order, the representation of the applicant was decided in the manner that the suspension allowance payable to the applicant between 9.7.1974 to 14.5.1976 may be restricted to whatever he has already drawn; for

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the period beginning 14.5.1976, i.e., on the date on which the official is deemed to have been placed under suspension vide memo of even date (dt. 2.12.1988) upto 13.9.1982. The applicant be paid pay and allowances at the same rate as admissible, vide orders of SSPO, Delhi Division dt. 18.1.1975 and lastly the entire period from 9.7.1974 to 30.9.1982 will be treated as non duty for all purposes.

2. The applicant has prayed for the following reliefs:-

- (a) Set aside the impugned order dt. 20.12.1988.
- (b) Direct the respondents to treat the said period of suspension as spent on duty for all purposes with full pay and allowances.
- (c) Direct the respondents to grant the retirement benefits of pension, gratuity, leave encashment and insurance fund money etc. without delay with interest.

3. The facts in brief are that the applicant was working as Sub Post Master since 1.1.1973 and since there was investigation of a corruption case against him, he was placed under suspension on 9.7.1974 by SSPO. The applicant was convicted by Sub Judge, Delhi under Section 5(1)(d) of Prevention of Corruption Act, 1947 and Section 161 I.P.C. on 31.3.1976. The applicant preferred an appeal before the Hon'ble High Court, but

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in the meantime DPS, Delhi Circle terminated the service of the applicant w.e.f. 14.5.1976 on ground of conviction under Rule 19(i) of CCS(CCA) Rules, 1965. The High Court by the order dt. 12.2.1987 (Annexure AV) allowed the appeal and the conviction and sentence of the applicant was set aside. The respondents, however, on 23.7.1987 again filed the prosecution against the applicant in the Criminal Court in Delhi and the same is still pending. The applicant has earlier filed Original Application No.1255/1988 before the Principal Bench challenging the impugned order of dismissal dt. 14.5.1976. The applicant has further prayed in the said OA that he should be deemed to have continued in service from the date of suspension till his retirement on attaining the age of superannuation with all consequential benefits. That OA was finally disposed of by the order dt. 9.9.1988 (Annexure A10). Paras-13 & 14 at p-4 of the judgement are relevant, which are reproduced below :-

"The question whether the applicant would be entitled to full pay and allowances from the date of his suspension to the date of his retirement on superannuation and to other consequential benefits can be gone into after the criminal court takes a decision in the fresh prosecution pending against him in the criminal court.

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However, it is not known as to when the criminal court will deliver its judgement in the fresh criminal proceedings. The applicant has already retired from service. We, therefore, direct that in the interest of justice, the respondents should consider the representations submitted by the applicant and take a decision regarding the pay and allowances and other retirement benefits admissible to him in accordance with the rules, within a period of three months from the date of communication of this order."

4. The applicant was thus given an option to make a representation to enable the respondents to take a decision regarding the pay and allowances and the retirement benefits admissible to the applicant in accordance with the rules. The representation filed by him was disposed of vide impugned order dt. 20.12.1988 (Annexure A1) by the respondents. Since the applicant was still aggrieved, he filed the Original Application for the reliefs mentioned above.

5. The respondents contested the application and stated in the counter that the application is bad for non joinder of Union of India as a party to the pleadings and for want of the same, the application is liable to be dismissed. In this

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connection, the respondents have quoted a number of judgements.* It is further stated that the applicant was trapped in a corruption case and was caught red handed accepting bribe of Rs.100 and a case was registered against him and was filed in the Court of Sub Judge, Delhi, who convicted applicant by the order dt. 31.3.1976 imposing the punishment of one year R.I. and with a fine of Rs.200. The applicant

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1. Kapil Kumar Vs. D.R.M.
1989(1) ATR 575
2. State of Kerala Vs. General Manager, S.Rly.
1976 SC 2538
3. Ranjit Mal Vs. General Manager, N.Rly.
1989 (10) ATC 485
4. Udit Narayan Singh Vs. Board of Revenue
1973 SC 786
5. Surinder Kumar Vs. U.O.I.
1988 (1) ATR 554
6. T.R. Gupta Vs. General Manager, C.Rly.
1989(10) ATC 845
7. Abdul Hussain Vs. State of Haryana
1989 (3) SLJ 64
8. Shanker Damte Vs. U.O.I.(PB)
1989 (2) SLJ 681
9. C.S. Barodia Vs. U.O.I.
1989(2) ATLJT 282
10. Union of India Vs. Permananda
1989 SC 1185
11. Kalimuddin Ahmad Vs. General Manager, N.Rly.
1987(4) ATC 574.

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filed appeal before the Hon'ble High Court, Delhi against the judgement of the lower Court and the Hon'ble High Court allowed the appeal on technical grounds as sanction for prosecution was accorded by an officer not competent to do so, without application of mind. Thereafter a fresh prosecution has been lying against the applicant in the Criminal Court and the same is pending. As such provisional pension has been paid. No provisional DCRG is payable to the applicant in view of para-1(G) of Rule 69 of the CCS(Pension) Rules, 1972 until the conclusion of the judicial proceedings and issue of final orders therein. The trial against the applicant is in progress on the chargesheet filed in the criminal case. It is said that the judgement has already been delivered in the earlier Original Application No.1255/1938 filed by the applicant in the Principal Bench, in which the Bench had ordered that entitlement of the applicant to full pay and allowances from the date of his suspension to the date of his retirement on superannuation and to other consequential benefits, can be gone into after the Criminal Court takes a decision in the fresh prosecution pending against the applicant in the Criminal Court.

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6. We have heard the learned counsel for the parties at length and have gone through the record of the case. Regarding the non joinder of Union of India, the learned counsel for the applicant has referred to the case of T.S. Gopi Vs. Deputy Collector of Customs, a Full Bench decision reported in 1989(2) SLJ CAT 337 where it is held that when the relief claimed in an application can be given by an authority subordinate to the Union of India, it is not necessary to implead the Union of India as the former party. The learned counsel for the applicant has also referred to the decision in the case of State of Vs. G.M., Southern Railway, 1976 SC 2638 and U.N. Singh Vs. Board of Revenue, 1973 SC 786. The learned counsel for the respondents has also referred to a number of judgements referred to in para-5. However, the matter in controversy need not be decided as we find that this application is premature on the reasons stated hereinafter.

7. It is not disputed that a criminal case is still pending against the applicant and at the time when he filed the earlier Original Application No.1255/1988, that criminal prosecution was also pending. In that Original Application also, the applicant had claimed the

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same relief and in para 13 of the judgement quoted above, it has been specifically held that the reliefs claimed by the applicant can only be gone into after the Criminal Court takes a decision in the pending criminal proceedings. In view of the above facts, the present application is patently premature if not barred by the principles of *res judicata*.

8. The learned counsel for the applicant has referred to para-14 of the said judgement as quoted above. But that was only a direction given to the respondents to consider the representation, if any, of the applicant. The Tribunal would not like to act as an appellate authority against the administrative order of the competent authority passed on the representation of the applicant because a matter was almost in issue in the earlier OA and it has been specifically held that the reliefs claimed by the applicant can only be gone into after the conclusion of the criminal trial.

9. It is not open to the Tribunal to go into the merits of the case whether the fresh proceedings can be

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initiated against the applicant in the Criminal Court and also whether such proceedings are in continuation of the earlier chargesheet filed against the applicant under Prevention of Corruption Act, 1947. The said prosecution as stated by the applicant himself has been launched against the applicant only after a few months in 1987 and that is still pending. That prosecution was also pending at the time when the applicant filed earlier Original Application No.1255/88. The facts have not at all changed when the applicant has filed the present application because the respondents decided the representation and gave some relief to the applicant as stated in the impugned order dt. 20.12.1988.

10. As regards payment of DCRG, the learned counsel for the respondents has referred to Rule 69(1)(c) of the CCS(Pension) Rules. The learned counsel has referred to the case of D.V. Kapoor Vs. UOI and Ors., Judgement Today(JT) 1990 (3) SC 403, wherein the Hon'ble Supreme Court has held that the order to withhold the gratuity as a measure of penalty is obviously illegal and devoid of jurisdiction. Here the question of withholding gratuity does not arise because it is a case where a

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person is facing a criminal case in a competent Criminal Court on corruption charges and in the event, the prosecution succeeds, then the services of the applicant which already stood terminated by the order dt. 14.5.1976 and that order has not been set aside and there is no specific order to treat the period from 14.5.1976 till the date of superannuation of the applicant, i.e., 30.9.1982. As a result of the appeal having been allowed by the Delhi High Court, the applicant has been kept under suspension, probably under Rule 10(4) of CCS (CCA) Rules, 1965.

11. The learned counsel for the applicant has relied on the authority of Union of India Vs. R. Akbar Sharif, reported in AIR 1961 Madras 486. In this reported case, the criminal proceedings against the respondent-Akbar Sharif had concluded and no prosecution was pending against him. The learned counsel for the applicant has also referred to the case of M.L. Mallick Vs. Lieutenant Governor, Delhi, reported in ATLT 1988(2) CAT (Principal Bench) 498. This case also does not apply to the applicant as in this case, it has been held that on the date of superannuation of the applicant, no

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disciplinary proceedings had been instituted or pending against him, while in the present case the criminal proceedings are still pending before the Criminal Court.

12. Taking all these facts into account, we are of the view that the present proceedings are premature and the relief claimed by the applicant cannot be gone into at this stage unless and until pending criminal proceedings are decided. In the circumstances, the OA is dismissed leaving the parties to bear their own costs.

J.P. Sharma

(J.P. SHARMA) 20.1.92
MEMBER (J)

I.K. Rasgotra

(I.K. RASGOTRA)
MEMBER (A)

20/1/92

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