

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1087/89 198
T.A. No.

DATE OF DECISION 2.3.1990.

(5)

Shri Ramesh Kumar _____ Applicant (s)

Shri R. K. Mehta with Shri _____ Advocate for the Applicant (s)

Virender Mehta

Versus

Delhi Admn. & Another _____ Respondent (s)

Shri M. M. Sudan _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P. K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D. K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(delivered by Hon'ble Shri P. K. Kartha, V.C.)

The applicant, who had been employed with the respondents as Inspector in Food & Civil Supplies Department of the Delhi Administration, filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

(i) that the action of the respondents in depriving him from drawing the subsistence allowance at the rate admissible under the provisions of the Fundamental Rules for the period from 30.8.1983 and rejecting his submissions and dismissing him vide impugned order dated 30.8.1983, be set aside and quashed; and

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(ii) that the respondents be directed to pay him subsistence allowance at the rate admissible under F.R.53 wrongly withheld w.e.f. 30.8.1983 till date and continue to pay the same till the final decision about his conviction.

2. The pleadings in this case are complete. The case has not yet been admitted. After going through the records of the case and hearing the learned counsel for both the parties, we feel that the application could be disposed of at the admission stage itself.

3. The facts of the case are not disputed. The applicant was involved in a criminal case under Section 5(2) of the Prevention of Corruption Act, 1947. The Special Judge, Delhi, by his judgement dated 30.7.83, convicted him to undergo rigorous imprisonment for three years and a fine of Rs.500 in default of which, he was to undergo further six months' rigorous imprisonment. Both the sentences were to run concurrently. The applicant filed a criminal appeal in the Delhi High Court in which the following order was passed by the High Court on 30.8.1983:-

"Pending hearing of the appeal, the petitioner to be released on bail on furnishing a personal bond of Rs.5,000/- and a surety of the like amount subject to the satisfaction of the trial court." (Civil Appeal 184/83).

4. On the same day, the Delhi Administration passed the impugned order whereby the applicant was dismissed from service with immediate effect. Aggrieved by this,

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he made several representations which did not yield any result.

5. During the pendency of the trial before the Special Judge, Delhi, the applicant had been placed under suspension w.e.f. 16.3.1982. His contention is that as his criminal appeal against the conviction was pending before the Delhi High Court, he should be deemed to have continued under suspension and should have been paid subsistence allowance in accordance with the provisions of the Fundamental Rules. He has relied upon the decision of the Supreme Court in State of Maharashtra Vs. Chander Bhan, A.I.R. 1983 S.C. 803, ^a wherein it was observed as follows:-

"A civil servant under suspension, is entitled to the normal subsistence allowance even after his conviction by the trial court pending consideration of appeal filed against his conviction until the appeal is disposed of finally one way or the other."

6. The case of the respondents is that the disciplinary authority had considered the whole aspects of the case and come to the conclusion that the offences committed by the applicant and his conviction by the competent court of law render his further retention in Government service as undesirable. Accordingly, the impugned order of dismissal was passed.

7. The applicant has produced before us the order dated 29.8.1989 passed by the Delhi High Court in modification of its earlier order dated 30th August, 1983

which reads as under:-

"Pending hearing of the appeal, the execution of the sentence shall remain suspended and he shall be released on furnishing a personal bond in the sum of Rs.5,000/- with one surety in the like amount to the satisfaction of the trial court."

8. The Delhi High Court had also noted that the applicant had already furnished the bail bond and was no longer in jail.

9. The applicant has also produced before us a copy of an order passed by the Supreme Court in a similar case on 21.7.1988 which reads as under:-

"It appears that there is some misunderstanding about the order granting bail by this Court. It may be stated that the grant of bail means suspension of the sentence. No more further clarification is necessary." (Ram Kumar V. State of (W.P., Civil Appeal No.108/87).

10. The applicant has also drawn our attention to a similar case in which one, Shri Avinash Chander Midha, who had been dismissed from service w.e.f. 20.1.1981 on the ground of misconduct which led to his conviction on a criminal charge. In the appeal against the order of the Special Judge filed by Shri Midha, the Delhi High Court passed an order on 9.10.1978 suspending the sentence awarded to him by the Sessions Court till the final decision of the criminal appeal filed by him. In view of this, the Delhi Administration, vide its order dated 24.8.1984, set aside the order of dismissal from service by of Shri Midha and directed that he shall

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be deemed to have been continued under suspension until further orders. It was further directed that Shri Midha shall draw subsistence allowance during the period of his suspension at the rate equal to the leave salary which he would have drawn had he been on 3/4 of the pay in addition to dearness allowance if admissible on the basis of such leave salary (vide Annexure-H to the rejoinder affidavit, p.47 of the paper-book).

11. The applicant has also drawn our attention to the case of one, Shri R.S. Rathi, who was also dealt with in the same manner as Shri Midha. Shri Rathi, while working as Supervisor in the Industries Department of the Delhi Administration, was placed under suspension pending investigation in a criminal case against him. He was convicted under Section 5(2) of the Prevention of Corruption Act, and sentenced to undergo rigorous imprisonment for 1½ years and a fine of Rs.200/-, in default to undergo further R.I. for two months. He was also convicted under Section 161 I.P.C. for which he was sentenced to undergo R.I. for 1½ years by the Special Judge, Delhi with the orders that both the sentences shall run concurrently. He went in appeal to the Delhi High Court against the impugned order of the trial court. The Delhi High Court granted stay against the said orders till the disposal of the appeal on his furnishing a bond in the sum of Rs.5,000 with a surety of the like amount to the satisfaction of the Special Judge. While the appeal was pending, the Director of Industries dismissed him from service.

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He preferred a representation against the order of dismissal stating, inter alia, that the appeal against the orders of the trial Court has been admitted by the Delhi High Court, who has stayed the conviction till the disposal of the appeal and, therefore, his dismissal orders be cancelled and that he should be deemed to be under suspension and should be paid subsistence allowance. The Chief Secretary, Delhi Administration, considered the appeal and by his order dated 31.10.1986, set aside the order of dismissal and directed that the period from the date of dismissal will be treated as period of suspension for which Shri Rathi would be entitled to get normal subsistence allowance. It was also added that this was without prejudice to any proceeding pending against him in any court of law. The disciplinary authority would also be free to take any action in accordance with the C.C.S. (CCA) Rules, 1965 after the decision of the High Court on the appeal filed by him against the order of conviction passed by the trial court was available to him.

12. The applicant has preferred an appeal to the Chief Secretary, Delhi Administration, on 6.10.1989, quoting the precedents of Midha and Rathi's cases, mentioned above.

13. In our opinion, the case of the applicant is on all fours with that of S/Shri Midha and Rathi and in the interest of justice, the applicant should also be given ~~of~~ similar treatment.

13. Accordingly, the application is disposed of at the admission stage itself with the following orders

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and directions:-

(i) As the Delhi High Court vide its order dated 30.8.1983, has released the applicant on bail, pending the hearing of the appeal filed by the applicant and as the said High Court has further clarified in its order dated 29.8.1989 that the execution of the sentence shall remain suspended during the pendency of the appeal, the impugned order of dismissal dated 30.8.1983 is set aside and quashed;

(ii) we also set aside and quash the order dated 20.12.1988 passed by the Chief Secretary, Delhi Administration, rejecting the representation preferred by the applicant;

(iii) the period from the date of his dismissal till the date of the judgement in the criminal appeal 184/83 filed by him in the Delhi High Court, will be treated as period of suspension for which he would be entitled to get normal subsistence allowance in accordance with the relevant rules;

(iv) the disciplinary authority will be at liberty to take any action in accordance with the C.C.S.(CCA) Rules, 1965 after the decision of the Delhi High Court in the appeal filed by the applicant against

the order of conviction passed by the trial Court is available to him.

There will be no order as to costs.

Deekshant

(D. K. Chakravorty)
Administrative Member
2nd March, 1990

Arrived
2/3/90

(P. K. Kartha)
Vice-Chairman (Judl.)