

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI.

OA.No.870 of 1988

Dated this the 18th of March, 1994.

Shri C.J. Roy, Hon. Member(J)

Shri P.T. Thiruvengadam, Hon. Member(A)

Shri M.K. Sharma

S/o Shri Badri Prashad Sharma

R/o C-70, Mahavir Enclave,

Palam Road, New Delhi 110 045.

...Applicant

By Advocate: Shri B.S. Charya

versus

Union of India through
Secretary,
Ministry of Communication,
Department of Telecommunication,
Dak Tar Bhavan, New Delhi.

Director General,
Telecommunication,
20, Ashoka Road, New Delhi.

Secretary,
Telecom Board,
Dak Tar Bhavan, New Delhi. ...Respondents
By Advocate: Shri N.S. Mehta

O R D E R

(Delivered by Hon.Member(J) Shri C.J.ROY)

This OA has been filed by the applicant Shri M.K. Sharma under Section 19 of the Administrative Tribunal Act, 1985 against the Order No.8/27/85-Vig.II dated 5.2.87 passed by the respondents by which, the services of the applicant was dismissed with immediate effect under Rule 19(i) of the CCS(CCA) Rules, 1965.

2. The facts of the case are that the applicant was originally appointed as Engineering Supervisor in the P&T Department (Delhi Telephones) w.e.f. 16.2.64 and was promoted as Assistant Engineer in June 1974. Thereafter, he was posted as S.D.O.(Telephones) at Telephone Exchange, Chanakyapuri, New Delhi and was later on transferred as Assistant Engineer (Cable

Planning) from May 1983. On 29.11.1983, he was suspended from service under Rule 10 of the CCS(CCA) Rules, 1965 on the ground of pendency of the criminal trial/investigation in the Court of Special Judge, Delhi and subsequently on 31.8.85 the applicant was convicted under Section 5(2)/47 of the Prevention of Corruption Act read with Section 161 IPC and was sentenced to one year rigorous imprisonment with a fine of Rs.2000/-. On an appeal, the applicant was granted bail and operation of the above judgement was stayed and vide order dated 24.9.85, the Hon. Court extended the bail till the final decision of the appeal thereby the sentence awarded vide judgement dated 31.8.85 also remained consequently suspended till the final decision/disposal of the criminal appeal. The applicant brought this to the notice of the respondents vide number of representations along with a copy of the judgement dated 31.8.85. He continued to get subsistence allowance as per the order of the General Manager Delhi Telephones dated 20.3.85 till the end of January 1987. In spite of the above, on 5.2.87 the applicant was issued the impugned order stating that he has been convicted on a criminal charge under Section 161 IPC and Section 5(2) read with Section 5(1)(d) of the POC Act and that the alleged conduct of the applicant which led to his conviction is such as to render his further detention in service undesirable and, therefore, he proceeded to pass the order of dismissal in exercise of powers under Rule 19(i) of the CCS(CCA) Rules, 1965. According to the applicant, while passing the order of dismissal, the respondents had deliberately omitted the fact regarding pendency of appeal in the High Court of Delhi and suspension

(20)

of the operation of his sentence till the final decision/disposal of the criminal appeal. Further, the applicant was also not given an opportunity of personal hearing before passing the impugned order on 5.2.87. The applicant claims that the impugned order of dismissal is illegal, invalid, arbitrary and is liable to be set aside. He has prayed for the following reliefs:-

- a' quash the impugned order of dismissal dated 5.2.87 (Annexure P-1)
- b' Call upon the respondents to reinstate the applicant in service while treating that the applicant has never been lawfully removed from service by a valid order of dismissal and that the applicant is entitled to full salary, allowances and all attendant benefits
- c' In the alternative call upon the respondents to restore to the applicant the position which he held immediately prior to 5.2.87 by treating him under suspension with entitlement of subsistence allowance etc. at the rate last drawn by him till final decision of the appeal by the High Court of Delhi and thereafter reinstate the applicant in service by revoking the order of suspension and pay him the entire arrears and other attendant benefits for the intervening period after his appeal is accepted and the judgement of the Special Judge, Delhi dated 31.8.85 is set aside.
- d' Call upon the respondents to await final decision of the criminal appeal bearing No.196/1985 and not to take any action till the same is finally decided.
- e' pass any other order that may be deemed just and proper in the circumstances of the case, so as not to give effect to the impugned order of dismissal dated 5.2.87. Costs of the proceedings may also be awarded to the applicant.

3. The respondents have filed the counter in which they have stated that the applicant has been sentenced to imprisonment for a period of one year under Sec.161 IPC and for further R.I. for one year under Sec.5(2) read with Section 5(1)(d) of the Prevention of

Corruption Act and to a fine of Rs.2000/-, In default of payment of fine, the accused shall further undergo R.I. for 3 months. Both the sentences of imprisonment however, shall run concurrently. The applicant was dismissed from service on 5.2.87. There is no provision under the rules to give an opportunity of hearing before the said order was passed. The appeal of the applicant has been received and is under consideration. The appeal of the applicant in the High Court is still pending. Neither the conviction of the applicant has been suspended nor the appellate court ~~has done~~ so. Under the provisions of rule 19(i) of the CCS'CCA' Rules, 1965, when penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, the disciplinary authority may consider the circumstances of the case and ~~make~~ such orders thereon as it deems fit. Therefore the disciplinary authority was fully competent to take action against the applicant in the way it was done. Further, in terms of Government of India's decision below Rule 19 of the CCS'CCA' Rules, 1965, in a case where a Government servant has been convicted in a court of law of an offence which is such as to render further retention in public service of the Government servant *prima facie* undesirable, the disciplinary authority, may if it comes to the conclusion that an order with a view to imposing a penalty on the Government servant on the ground of conduct which has led to his conviction on a criminal charge should be issued, issue such an order without waiting for the period of filing an appeal, or, if an appeal has been filed, without waiting for the decision in the

first court of appeal. Therefore, the disciplinary authority was not required to await the outcome of the appeal of the applicant. The disciplinary authority was competent to take a decision about the applicant's dismissal under Article 311(2) proviso (a) of the Constitution of India after the applicant had been convicted for taking illegal gratification. The quantum of penalty which should be imposed on the delinquent employee has also to be decided by the disciplinary authority. Therefore, they have rightly proceeded against the applicant and absolutely there is no provision in law for service of show cause notice as per the latest orders contained in DOP&R OM.No.11012/11/85-Estt'A' dated 11.11.1985. Further the Government of India decision below Rule 19 of the CCS/CCA RULES, 1965 states that the disciplinary authority need not wait for the decision of the appellate court/courts. The applicant has been dismissed from service by the competent disciplinary authority strictly in accordance with the provisions of the rules and the disciplinary authority was satisfied that further retention of the applicant in public service is undesirable. As such, the applicant is not entitled to any subsistence allowance, since he has been dismissed from service long ago and therefore the OA may be dismissed.

4. We have heard the learned counsel for both parties and perused the documents on record. The short point involved in this case is whether the applicant is entitled for show cause notice before dismissal or not?

M

.....6.....

(23)

5. The claim of the applicant is that dismissing him from service on the ground of his being convicted on a criminal charge under Section 161 IPC and Section 592 read with Section 5(1)(d) of the POC Act and his further continuance in service is undesirable without notice, is illegal and arbitrary. He submits that the respondents have not taken into account while passing the above impugned order of termination, that the Hon. High Court has considered his appeal and has stayed the operation of the sentence passed to undergo R.I. for a period of one year under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act and to a fine of Rs.2000/- and in default of payment of fine, the accused shall further undergo R.I. for three months. Further he was not given an opportunity of personal hearing before terminating his services.

6. The respondents submitted that no notice is required to be serviced before termination of the service. It is not applicable because Rule 19/1 of the CCS/CCA Rules, 1965 was amended only after the date of his termination. Prior to that, it was not applicable to him. It is pertinent here to note that this amendment came into force only on 20.3.87 wherein, he was dismissed from service with immediate effect from 5.2.87. It may further be seen that there is a lot of distinction between suspension of sentence and conviction. When a sentence is suspended conviction will remain. Merely because the sentence is suspended, it cannot be said that the applicant is entitled for the benefit of being considered as if he is acquitted. According to the applicant before dismissing him from service, a show cause notice should have been issued to him under Rule-19 of the CCS/CCA Rules, which is not acceptable to us.

(24)

The Rule-19 of the CCS 'CCA' Rules, 1991 reads as follows:-

19. Special procedure in certain cases

Notwithstanding anything contained in Rule 14 to Rule 18-

- 'i' Where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or
- 'ii' Where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
- 'iii' where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules,

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

** Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause 'i':

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule."

7. This proviso is added from that date and the conviction is given prior to that date. Therefore, the applicant cannot claim benefits under this prospectively. Besides, the word used in the proviso is 'may'. It is therefore, not mandatory to issue a notice but it is only discretionary on the part of the respondents. Further the proviso was introduced only on 28th March 1987, wherein the conviction was given on 31.8.85. Therefore, the applicant is not entitled for this proviso.

** Substituted by G.I., Dept. of P.&T., Notification No, 1101/13/86-Est.(A), dated the 11th March, 1987, published in Gazette of India as S.O.No.830, dated the 8th March, 1987.

...8...

8. That apart, the Hon. Supreme Court in the case of Managing Director, ECIL, Hyderabad vs. B. Karunakar reported in JT 1993 '6' S.C.1, has held in para 3(v) as follows:-

".....Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

9. In view of this, the judgements referred to by the learned counsel for the applicant in support of his case is not applicable to him. ***

10. Taking the ratio of the above observations of the Hon. Supreme Court, we are unable to find any merit in the case. Therefore, we hold that the applicant is not entitled for the show cause notice before dismissal from service and after being convicted by the High Court and his criminal appeal pending consideration before the court. After he is acquitted by the Hon. High Court, it is always open to the applicant to approach his department for his redressal. Pending disposal of the criminal appeal, if the OA is allowed, it would amount to giving a premium to the applicant to gain all arrears as well as future subsistence allowance till the matter is disposed of by the Hon. High Court especially, when the result is not known since the matter is subjudicest.

*** 1. (1988) 6 ATC 152 (C.A.T. Jabalpur)
2. (1990) 12 ATC 553 (C.A.T. Madras)

26

10. In the circumstances, we are not inclined to accept the contention of the learned counsel for the applicant that a show cause notice should be given to the applicant before dismissing him from service and dismiss this case as devoid of merits with no costs.

R.T. A.

'P.T. THIRUVENGADAM'
MEMBER 'A'

18/3/94
'C.J. ROY' 18/3/94
MEMBER 'J'

kam090394