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Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. DA-1255/88

Date:

9.8.1988

Shri Madan Mohan Arora Applicant

Versus

Union of India & Ors. . . . Respondents

For the Applicant Shri G.D. Bhandari, Advocate.

For the Respondents Smt. Raj Kumari Chopra,
Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman(Judl.)
Hon'ble Shri A. Johri, Administrative Member.

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was working as Sub-Postmaster at Daryaganj (Delhi) Post Office, has challenged the validity of order dated 14.5.1976 (Annexure III) whereby the respondents dismissed him from service w.e.f. 14.5.1976. The impugned order of dismissal was passed in exercise of the powers conferred under Rule 19(i) of the C.C.S. (CCA) Rules, 1965. Under this rule, penalty of dismissal could be imposed on a Government servant on the ground of conduct which had led to his conviction on a criminal charge.

2. In the present case, the impugned order of dismissal refers to the conviction of the applicant on criminal charge under Sections 161 IPC/5(2) read with 5(1)(d) of the Prevention of Corruption Act, 1947.

3. The applicant filed an appeal on 14.4.1976 in the the Delhi High Court against the judgement passed by the Special Judge, Delhi on 31.3.1976. By its order dated

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12.2.1987, the Delhi High Court allowed the appeal and set aside the conviction and sentence of the appellant on the ground that the sanction for prosecution had been accorded by an officer not competent to do so. In other words, the appeal was allowed on a technical ground.

4. Thereafter on 23.7.1987, a fresh prosecution had been launched against the applicant in the criminal court in Delhi and the same is pending.

5. The applicant had been placed under suspension from 9.7.1974 till his dismissal on 14.5.1976 by the impugned order at Annexure-III. He had also been paid the subsistence allowance admissible under the rules during this period.

6. The applicant had submitted representations to the respondents praying that he should be deemed to be in service/reinstated in view of his acquittal by the Hon'ble High Court. No reply has been received by him in respect of these representations.

7. The relief sought in the application is that the impugned order dated 14.5.1976 should be quashed in view of the judgement of the Delhi High Court dated 12.2.1987 and that the applicant 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.

8. The case was listed for admission on 8.9.1988 when the learned counsel for both the parties argued the matter at length. Admittedly, the judgement of the Special Judge, Delhi dated 31.3.1976, whereby the applicant was convicted and sentenced to undergo rigorous imprisonment of one year,

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was not stayed by the Delhi High Court. Rule 19(1) of the CCS(CCA) Rules, 1965 corresponds to Clause (a) of the second proviso to Article 311 (2) of the Constitution which provides, inter alia, that a person could be dismissed on the ground of conduct which has led to his conviction on a criminal charge. The Supreme Court has held in the State of U.P. Vs. Mohd. Nooh, AIR 1958 SC 86 that to apply this clause, it is not necessary to wait until the disposal of appeal or revision presented against the convict. The Supreme Court observed in this context as follows:-

all "There is nothing in the Indian law to warrant the suggestion that the decree or order of the Court or Tribunal of the first instance becomes final only on the termination of proceedings by way of appeal or revision. The filing of the appeal or revision may put the decree or order in jeopardy but until it is reversed or modified, it remains effective".

9. The Supreme Court has held in Union of India Vs. ^{or 1985(3) SC 398} Tulsi Ram Patel that the disciplinary authority is empowered under Clause (a) of the second proviso to Article 311(2) of the Constitution to dismiss a Government servant who has been convicted on a criminal charge. The only remedy available to him is to agitate the matter in appeal, revision or review.

10. The learned counsel for the applicant relied upon the decision of the Rajasthan High Court in Dr. Trilochan Singh Vs. State of Rajasthan, 1983(1) SLR 456 which has taken a contrary view. In that case, the Rajasthan High Court has held that so long as the appeal against the conviction is pending before the Appellate Court, the service of a Government servant cannot be terminated on the basis of the conduct which has led to his conviction. In view of the aforesaid authoritative pronouncements of the Supreme Court, it appears to us that the view taken by the Rajasthan High Court is not correct.

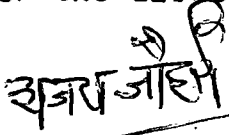
11. The learned counsel for the applicant has also referred to the decision of this Tribunal in Shri Ajit Kumar Banerji Vs. Union of India & Others, ATR 1987 (1) C.A.T., 258. The decision in that case is clearly distinguishable as the order of dismissal had been stayed by the High Court.

12. In view of the foregoing, we are of the opinion that the validity of the impugned order of dismissal at Annexure-A-3 cannot be assailed in the present proceedings. Admittedly the respondents have launched a fresh prosecution against the applicant and the same is pending in the criminal court. It is unnecessary for us to go into the validity of the fresh prosecution in the criminal court.

13. 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 ^{or due 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.

14. 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. ^{or therefor direct or} We ~~consider~~ ^{consider} 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 ^{or any other retirement benefits or} admissible to him in accordance with the rules, ^{or three or} within a period of ~~two~~ months from the date of communication of this order.

15. The present application is disposed of on the lines of the directions indicated above with no order as to costs.


(A. Johri)
Administrative Member


9/9/88
(P.K. Kartha)
Vice-Chairman(Judl.)