

M.A./39/88

in

O.A./640/87

Shri S.M. Nadkarni (IAC)

.. Applicant
(Ori.respondent)

Versus

Shri A.U. Malek

.. Respondent
(Ori. petitioner)

O R A L - O R D E R

28.1.1988

Per : Hon'ble Mr. P.H. Trivedi .. Vice Chairman

Heard Mr. R.P. Bhatt and Mr. B.J. Shethna, learned advocates for the applicant and respondent respectively. Mr. Bhatt has urged that our orders dated 21.1.1988 be reviewed on the following grounds :

- (1) Immediately after pronouncing those orders, he had asked that they be not signed and he be heard on which he was to be given an opportunity on the next opening date and until 27/1/1988, this not having been found possible or feasible without hearing him, the orders are signed on 27/1/1988;
- (2) The orders dated 21/1/1988 on the one hand permits the case to the appellate authorities on the basis of the applicant not having exhausted his jurisdiction and on the other hand granted interim relief. This is a contradiction in terms;
- (3) This Tribunal has no jurisdiction in such cases to grant such interim relief as the case is governed by the provisions of section 24 of the Administrative Tribunals Act, 1985. He has also cited 1987 March ATR 246, 1987 Nov. ATR 498, 1985 GLH 774 and 1985 SC 330 in support of his contention whereby the power of granting interim relief is severely regulated and constrained and in the cases cited there are clear guidelines governing

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this case in which such interim relief should not have been granted;

- (4) The effect of orders dated 21.1.1988 would be to demoralise the staff and adversely affect discipline, in so far as a person convicted of criminal charge would be able to state that since October, 1987 he would be paid subsistence allowance and reinstatement until the disposal of the appeal;
- (5) The respondent is prepared to dispose of the appeal within one month and on that the orders dated 21.1.1988 be suitably modified so that interim relief is not allowed to him;
- (6) The petitioner is free to approach the Tribunal after seeking the fate of the application in appeal and only thereafter if he has any cause he could ask for appropriate orders regarding interim relief.

Learned advocate for the respondent Mr. Shethna has resisted this contention principally as follows :

- (1) The petition has been altered and amended in which the prayer for review has been added by clause A in para - 3 and in para - 2. This has not been corrected in the copy furnished to him;
- (2) A review petition has to be filed by the aggrieved party. The respondent authorities have not filed it. The advocate has no authority to file such review petition;
- (3) The petitioner has taken the stand that the Tribunal has granted mandatory relief which was not prayed for and this is incorrect because in para 8 of his petition, he has specifically asked for this interim relief;

(4) The petitioner has not made out any error or omission on the face of the record and has sought in effect a re-hearing of the case. This is not permissible because the case has been disposed of by the orders dated 21.1.1988;

(5) The petitioner had made another application on 21.1.1988 in which he had stated that due to certain reasons, the learned advocate could not be present and had to bring to notice of the Tribunal certain judgments, on the copy thereof learned advocate for the respondent Mr. Shethna has stated that an opportunity was given to the petitioner to be heard and the orders having been pronounced further hearing was neither possible nor necessary.

2. After hearing the learned advocates for both parties, we find that the orders dated 21.1.1988 were pronounced in the open court and the application dated 21.1.1988 was for permission to continue the hearing of the case which is objected to by the learned advocate for the petitioner in OA/640/87. Due to various circumstances, the orders could not be signed until 27.1.1988 when learned advocates for the parties were present and were signed thereafter in their presence. It is not material whether these orders should not have been signed because they were pronounced and it is not disputed that the orders signed were in accordance with those which were pronounced. The competence of the Tribunal to which give interim relief is governed by Section 24 of the Administrative Tribunals Act, 1985. It is not disputed that the conditions in granting interim relief have been satisfied in so far as (A) and (B) of that section are concerned. So far as grant of interim relief is concerned,

the order of disposing of the case dated 21.1.1988 gives adequate reasons for them and we are not persuaded that those reasons are inadequate or unsatisfactory. After hearing the learned advocate for the petitioner in MA/39/88, we do not find any error or omission on the face of the record which justifies any review of the case. Whether interim relief in such terms should have been granted or not is a matter in which there should be more than one opinion but a plea on that basis for review cannot be accepted. There is no reason why relief cannot be allowed by this Tribunal. On a perusal of our order, we find that the disposal of the appeal expeditiously for which we have directed the petitioner in OA/640/87 is within the control of the respondent authorities and the period for which the petitioner in that case needs to be kept under suspension until the disposal can be as long or short as the respondent authorities take in disposing of the appeal. There is nothing in the order which requires the petitioner in that case to be reinstated unless the vacating of the order of suspension under the rules so requires the respondent authorities so to do. So far as the grave effects on the morale or the discipline is concerned, as stated by the learned advocate, we must observe that similar considerations on the morale for doing justice also need to weigh with us and we do not see how retaining the petitioner under suspension effects the working of the respondent's office as the petitioner will not be allowed to work in the office during the period of in which the appeal is disposed of. The only substantial point of the petitioner in the Miscellaneous Application 39/88 is whether such interim relief should have been allowed. While the case is remitted to the appellate authority for disposing of the appeal, we had asked on 21.1.1988

and we did so to-day whether the appellate authority had powers to grant interim relief in terms of keeping the applicant under suspension until the disposal of it and we were informed that the appellate authority do not have such powers. In the circumstances, the only alternatives were : (a) the applicant should have been asked to face the appellate authority from the stage of dismissal by the disciplinary authority without reinstatement and (b) the applicant should have been restored to the stage at which he was under suspension before the dismissal orders were passed until the disposal of the appeal. The facts that the High Court entertained an appeal against the order of conviction and that the applicant was being directed to exhaust the remedy and until the disposal of the appeal should be economically and otherwise be placed in the same situation in which he was at the time when the disciplinary authority passed the orders we were inclined that the cause of justice will be best served if the applicant were kept under suspension until the disposal of the appeal. Whether the learned advocates for the respondent Mr. Bhatt had or had not the power to file an application on behalf of the respondent authorities for review is not a matter on which we feel it necessary to express any views as they are not required for disposal of the case.

3. We therefore do not find any satisfactory or adequate ground to review our orders dated 21.1.1988.

4. Learned advocate for the respondent requested that our orders dated 21.1.1988 be stayed in their operation until he is given an opportunity to file an appeal against them in the Supreme Court. He has urged this on the ground of urgency and also on the ground of its effect on the morale of the services. We are impressed by the plea for urgency and we have ourselves stated in our order that the appeal be disposed of and

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the orders regarding interim relief will be operative only until the disposal of the appeal by the appellate authority. If the respondent is able to dispose of the appeal within a period of one month as stated by the learned advocate for it, it should not be necessary to keep the orders of suspension for it, it should not be necessary to keep the orders of suspension to be operative beyond that period. For the same reasons, staying our orders dated 21.1.1988 is likely to delay, the hearing of the appeal. We have directed and we are not therefore inclined to allow the prayer for stay of our orders dated 21.1.1988. So far as the effect of the morale of the staff is concerned we have dealt with the matter in the preceding paragraphs:

5. We therefore do not allow the request for stay of our order dated 21.1.1988.


(P.H.Trivedi)
Vice Chairman


(P.M.Joshi)
Judicial Member

a.a.bhatt