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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 161 & 228 / 1988.

~~Ex-Parte~~

DATE OF DECISION 11-4-1989

SHRI A.S.PARMAR & SHRI N.A.SHAIKH Petitioners

MR. B.J. SHETHNA Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondent s

MR. J.D.AJMEERA Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL 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. Whether it needs to be circulated to other Benches of the Tribunal. *Yes*

(O.A.No. 161/88)

Shri A.S. Parmar,
At & Post Detroj
Taluka Viramgam,
Dist: Ahmedabad.

..... Petitioner.

(Mr. B.J. Shethna)

Versus.

1. Shoba Koshy
or her successor in her
office of Senior Supdt.
of Post Offices,
Mehsana Division,
Mehsana.
2. A.K. Bhatnagar
or his successor in his
Office of Director Postal
Services, Rajkot Region,
Rajkot - 360 001.
3. Union of India,
through Telecommunication Deptt.
Parliament Street,
New Delhi.

..... Respondents.

(Mr. J.D. Ajmera)

(O.A.No. 228/88)

Shri N.A. Shaikh,
At & Post Untadi
Taluka & District: Bulsar.

..... Petitioner.

(Mr. B.J. Shethna)

Versus.

1. Shri G.A. Trivedi or his
successor in his office
of the Sr. Superintendent of
Post Offices,
Valsad Division, Valsad.
2. Shri P.K. Gopinath or his
successor in his office of
Director, Postal Services,
Vadodara Region, Vadodara.
3. Shri S.S.Sakal Kale, or his
successor in his office of the
Post Master General,
Gujarat Circle, Ahmedabad.
4. Shri P.S. Raghavachari
Secretary/Member or his
successor in his office of
Postal Board, Union of India,
Department of Posts,
Dak Tar Bhavan, New Delhi.

..... Respondents.

(Mr. J.D. Ajmera)

COMMON JUDGMENT

O.A.NO. 161 OF 1988

&

O.A.NO. 228 OF 1988

Date : 11-4-1989.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

Both the petitioners: (i) Shri A.S. Parmar, a Postal Assistant at Kadi Post Office (in O.A. No. 161/88 filed, on 7.3.1988) and (ii) Shri N.A. Shaikh also a Postal Assistant at Vapi, (in O.A.No. 228/88 filed, on 5.4.1988) have challenged the validity of the orders imposing the penalty of dismissal of service and confirmed in appeal.

2. It is their common plea that they could not be dismissed from service under Rule 19(ii) of C.C.S (CCA) Rules 1965, as the orders of conviction and sentence passed against them in the respective criminal cases filed against them, have not become final. According to them, they have preferred appeal /revision against the orders of conviction and sentence and on their admission, they have been released on bail. It is therefore, contended that this power should not be exercised until the appeal/revision pending before the High Court of Gujarat is disposed of. The petitioners also submitted that the disciplinary authority did not apply its mind judiciously and failed to appreciate the fact that the appeal was pending and the sentence was suspended before ordering the dismissal from service. The petitioners have therefore, prayed that the impugned order be quashed and set aside and the respondents be directed to treat

them in service with continuity in service as if no order of dismissal was ever passed against them and give all benefits of the service including arrears of salary etc. The petitioner Shri A.S. Parmar in O.A.No. 161/88 has been protected by way of interim relief so far as continuing the payment of subsistence allowance is concerned by keeping him under suspension until the disposal of the case.

3. The respondents, in both the cases have contested the application filed by the petitioners, they have denied the assertions and allegations made against them. It is their common defence that the contention of the petitioners that during the pendency of the appeal or Revision before High Court the respondents ought not to have passed the impugned order, is misconceived. According to them so long as the conviction stands and is recorded by a competent Court of law on a criminal charge, it remains effective so long as it is not set aside and the disciplinary authority would be perfectly justified in imposing the penalty under Rule 19 of the C.C.S. (CCA) Rules 1965.

4. Relying on the case of Ajit Kumar Banerjee V/s. Union of India & Ors. (A.T.R. 1987(1) C.A.T. 258) it was vehemently contended by Shri B.J.Shethna, the learned counsel for the petitioners that the disciplinary authority is not competent to impose penalty on the basis of the conviction when the order of conviction passed by the Trial Court is challenged in the criminal revision or criminal appeal, which are pending before the High Court. According to him, when the appeal or revision is

admitted, the matter becomes "res-integra" and the entire matter has been reopened for final adjudication by the appellate court. In his submission the order of conviction passed by the criminal court [↑] ceases to have any effect or will not ^{operate} till the appeal is finally decided and hence the impugned order be quashed and set aside.

5. During the course of his arguments Mr. B.J. Shethna also relied on other cases including one decided by the Gujarat High Court, on 16.1.1985, in Special Civil Application No. 4791/84 (Laxman Waghjimal V/s. K.N. Sharma, D.S.P. Kutch & Anrs.), 1985 G.L.H. (U.J.) 28), in support of his submission.

6. As against this Mr. J.D. Ajmera, the learned counsel for the respondents submitted that merely the appellate court is seized of by the matter, the conviction and sentence does not stand suspended. According to him, neither Rule 19(i) of the C.C.S. (CCA), Rules 1965 nor Clause (a) to the Second proviso to Article 311(2) of the Constitution, speaks of a final order of conviction, they only speak of conduct disclosed which has laid to his conviction on a criminal charge. Along with his written submission he has relied on the cases including (i) Shri Vithal Bava V/s. Divisional Signal & Tele Communicating Engrs., & Ors. decided on 22.6.1988 by this Bench in O.A.No. 322/88 wherein we have held that the petitioner can be removed from his service by the disciplinary authority on the basis of order of conviction and sentence passed by the criminal court, even though an appeal or revision is pending against him. During the hearing it was brought to

the notice of Mr. B.J. Shethna that Calcutta Bench of Central Administrative Tribunal (in Arjun Prasad V/s. Union of India and Ors.) (1988) 6 Administrative Tribunal Cases 546), has taken a similar view after the decision rendered in the case of Ajit Kumar Banerjee (supra). Mr. B.J. Shethna, however, stated that he is not aware of the same. Later on, he has been permitted to file his written submissions and citations.

7. The brief facts of the case which are not in dispute can be summarised as follows :

The petitioner Shri A.S. Parmar was indicted of the offence punishable under section 5(2) of the Prevention of Corruption Act and for the offences punishable under section 409 & 477-A of I.P.C. on the accusations that he committed misappropriation of the funds (in the sum of Rs. 16,500/-) entrusted to him and in order to suppress his fraudulent act, he has forged the documents of the record of the Post Office. He was tried for the said offences by the learned Special Judge, Ahmedabad, who convicted him and sentenced him to undergo the R.I. for one year and to pay a fine of Rs. 12,000/- in default imprisonment under section 5(2), of the Prevention of Corruption Act and also sentenced him under section 409 of I.P.C. for one year and six months R.I. under section 477-A of I.P.C. All the three sentences were ordered to run concurrently under his judgment and order dated 31.7.1984. Similarly the petitioner Shri N.A. Shaikh (in O.A.No.228/88) was indicted of the offence punishable under section 409 of I.P.C. It was alleged against him that he misappropriated the stamps worth Rs. 4,450/02, on or about 3.12.1982., while he was discharging his

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duties as Sub Post Master at Valsad. The learned J.M.F.C., Valsad held him guilty for the offences for which he was charged and under his judgment dated 28.6.1985 convicted and sentenced him to suffer 9 months R.I. and fine of Rs. 250/- in default of 15 days R.I. The said order of conviction and sentence was confirmed by the Session Court on 12.12.1985 in criminal appeal No. 525/85. Being aggrieved by the said decision, he preferred Criminal Revision Application No. 525/86 in the High Court on 12.12.1985. The order of sentence passed against him has been suspended against him and he was enlarged on bail. Similarly, the petitioner Shri A.S. Parmar, in O.A.No.161/88 has filed Criminal Appeal No. 1235/84 in the High Court of Gujarat against the order of conviction and sentence passed against him in Special Case No. 35/83. The sentence imposed upon him has been suspended and he has been granted bail on 26.9.1984.

8. In view of the order of conviction and sentence passed by the criminal court, both the petitioners were placed under suspension. Later on, the departmental authorities served the petitioners with notice to show cause, why they should not be removed or dismissed from service. After giving such opportunities as required, an order of penalty of dismissal was imposed in the case of Mr.A.S.Parmar vide order dated 15.1.85, whereas in the case of the petitioner Shri N.A. Shaikh, similar orders of dismissal were passed vide order dated 11.8.86, by the disciplinary authority. Both the petitioners filed appeals before the appellate authority before whom it was pleaded that the appeal/revision filed

by them is still pending before the High Court for final decision and hence the orders imposing the penalty be quashed and set aside. The appellate authority rejected the appeal filed by the petitioners, which action has given rise to this present applications before this Tribunal.

9. The main grievance of the petitioners is that since the appeal/revision is pending in the High Court of Gujarat against the order of conviction and sentence passed against them, no departmental proceedings could be initiated against them or no order of penalty of removal of service or dismissal can be imposed against them under Rule 19 of the C.C.S. (CCA) Rules, 1965.

10. Rule 19 of the C.C.S.(CCA),1965, vests power in the disciplinary authority to consider the circumstances of the case and to make such orders thereon as it deems fit notwithstanding anything contained in Rule 14 to Rule 18 where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. This Rule is in consonance with clause (a) of the second proviso to Article 311(2) of the Constitution. Rule 14 to Rule 18 of the C.C.S.(CCA) Rules, provide for an inquiry into the allegation of misconduct before any penalty is imposed in a disciplinary proceeding against a public servant governed by the said Rules. This inquiry is dispensed with by Rule 19(i) where any penalty is sought to be imposed on a Civil servant on the ground of conduct which has led to his conviction on a criminal charge.

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11. Relying on the case of Laxman Waghjimal (supra), it was urged on behalf of the petitioners that when their appeal/revision filed by the petitioners is pending, no action on the basis of conviction at an intermediate stage before the final verdict on the conviction is pronounced, would be sustainable. The said case is quite distinguishable as the petitioner in the said case being a state employee was governed by the provisions made in the Government circular dated 1.8.1966, wherein it was laid down that any action on the basis of conviction by a court of law could be taken only after the matter is finally decided in appeal or appeals, till then no action regarding the dismissal, removal or compulsory retirement has to be taken. The petitioners are governed by the C.C.S. (CCA) Rules 1965. Obviously, therefore, in absence of any circulars or instructions to the contrary the decision of the Gujarat High Court cited by the petitioner would not be applicable. Next reliance was placed on the case of Ajit Kumar Banerjee (Supra), wherein the Bench ~~was~~ observed as under :-

"When the appeal is admitted, the matter becomes res-integra (that is to say to be treated as a matter not yet decided) and the entire matter has been reopened for final adjudication by the appeal court. In the eye of law, the order of conviction passed by the said Learned Special Judge ceases to have any effect or operative till the appeal is finally decided."

12. At the very outset it may be stated that the view taken by the Bench in the said case is now no more a good law, as the judgment rendered in the said case has been overruled by the Full Bench of the Tribunal (comprising of Hon'ble Mr. Justice

K. Madhava Reddy, Chairman, Hon'ble Mr. Kaushal Kumar, Member (Administrative), Hon'ble Mr. Ch. Ramkrishna Rao, Member (Judicial), Full Bench was constituted in the case of Shri Om Prakash Narang V/s. Union of India & Ors., noticing the divergent opinions expressed in R.P. Sharma V/s. Medical Superintendent & Anrs. (1), decided by the Principal Bench of the Central Administrative Tribunal and Ajit Kumar Banerjee V/s. Union of India & Ors., (2), decided by the Calcutta Bench of the Tribunal and a few other judgments of the High Courts. The Full Bench of the Central Administrative Tribunal in their decision in O.A.No.624/88 after dealing with the entire case law in detail, dis-approved the view held by the Calcutta Bench of the Tribunal in Ajit Kumar Banerjee V/s. Union of India & Ors., (A.T.R. 1987(1) C.A.T., 258). While dis-agreeing with the view taken in the said case it was held as under :

"We are unable to agree with this." While the right of an appeal is a vested right and the order of conviction and sentence made by the trial court may be set aside by the appellate court, after a review of the entire evidence, but until the appeal is heard and allowed, the conviction and sentence very much operate. In fact, unless the accused appellant, who now stands convicted of the offences is released on bail, he would also undergo the sentence and the period of suspension which he undergoes under the amended code of criminal procedure is set off against the sentence, if any, ultimately imposed by the appellate or revisional court. Unless the conviction operates, the sentence could not have been undergone. Only because the convicted accused is undergoing the sentence, the appellate court may release him on bail. Merely because the appellate court is seized of the matter, the conviction and sentence does not stand suspended. Even the sentence stands suspended only if the appellate court choose to suspend it and release the appellant on bail. The basic assumption that on a mere filing of the appeal or upon the appeal being admitted the conviction and sentence itself does not stand, cannot be accepted as

correct position of law. Neither Rule 19(i) of the CCS(CCA) Rules nor Clause (a) to the second proviso to Article 311(2) of the Constitution speaks of a final order of conviction, they only speak of conduct disclosed which has led to his conviction on a criminal charge. We are, therefore, unable to agree with the view taken by the Calcutta Bench in the aforesaid case."

13. Thus, in Shri Om Prakash Narang V/s. Union of India & Ors.(supra), the Full Bench has clearly held that an order of conviction and sentence which is the subject matter of an appeal and in which the court merely released the accused-appellant on bail, does not operate as a suspension of the conviction, much less does it take away the power of the disciplinary authority to take action under Rule 19(i) of the CCS(CCA) Rules 1965.


14. In the instant case, both the petitioners are held guilty of the offences of which they were charged and they are convicted and sentenced by the Criminal Court. Both of them are placed under suspension. After their conviction, the disciplinary authority has found that their conviction renders their retention in the public service undesirable. The disciplinary authority has power to impose any penalty under Rule 19(i) of the CCS(CCA) Rules, on the ground of conduct which has led to his conviction on a criminal charge, even if an appeal against the conviction and sentence is pending and even if the sentence is suspended and the delinquent-petitioner is enlarged on bail.

15. In this view of the matter, we find that the orders of dismissal made against the petitioners are based on the conduct which have led to their conviction and they do not suffer from any illegality

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or irregularity as contended. We however, observe that the petitioners would not be without remedy for ever. If they, ultimately, succeed in the Hon'ble High Court and if order of conviction and sentence passed against them are set aside, they will be reinstated to their former posts as a consequence thereof. Hence, we find no merits in the present application and accordingly dismiss the same. We however, direct the parties to bear their own costs. Rule discharged.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN