

NO
suspension

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No.
~~T.A. No.~~

106 OF 1992.

DATE OF DECISION ~~is~~ 3rd Feb. 1993.

Shri H.P.Prajapati Petitioner

Shri K.K.Shah, Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Shri Mukesh Patel for
Shri Jayant Patel Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V.Krishnan : Vice Chairman

The Hon'ble Mr. R.C.Bhatt : Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

H.P.Prajapati,
Draftsman (H.G.)
115, Ghanchis Pole,
Manekchowk, Ahmedabad.

...Applicant.

(Advocate:Mr.K.K.Shah)

vs.

1. Union of India
Notice to be served through
Secretary,
Dept. of Post, Dak Bhavan,
New Delhi - 110 001.
2. Director General,
Dept. of Post, Dak Bhavan,
New Delhi - 110 001.
3. Chief Post Master General,
Office of the Chief Post Master General,
Gujarat Circle,
Ahmedabad-380 009.
4. Director Postal Services,
(Head Quarter),
Office of PMG,
Gujarat Circle,
Ahmedabad-380009.Respondents.

(Advocate :Mr.Mukesh Patel for
Mr.Jayant Patel)

ORAL JUDGMENT
O.A.NO. 106 of 1992.

Dated :3rd Feb.1993.

Per : Hon'ble Mr.R.C.Bhatt : Member(J)

Shri K.K.Shah, for the applicant and Shri Mukesh Patel for Shri Jayant Patel, learned advocate for the respondents present.

2. The applicant serving as Draughtsman (HG)Circle, Office, Ahmedabad-380 009, has filed this application under Section-19 of the Administrative Tribunals Act, 1985, seeking the relief that the action of the respondents by putting of the applicant from duty even after acquittal in a criminal case amounts to illegality and hence the order under challenge Annexure-A dated 28th April, 1992,

should be held to have automatically ceased operating against the applicant because of his acquittal in a criminal case and that the impugned order of suspension dated 28.4.1982, vide Annexure-A, be quashed and set aside and the respondents be directed to pay the difference of salary and all consequential and other benefits to the applicant.

3. The case of the applicant as pleaded in the application is that the respondents had passed impugned order dated 28.4.1982, vide Annexure-A, against the applicant suspending him under sub-rule(2) of Rule-10 of CCS (CCA) Rules-1965, as case against him in respect of a criminal offence was under investigation and as he was detained in custody for a period exceeding forty eight hours. It is alleged by the applicant that in a criminal case filed against him being case no.129/86, before ~~Adv.~~ Chief Metropolitan Magistrate, Ahmedabad, ~~hence the applicant was~~ hence ^{he} was acquitted on 8.3.1991 by judgment Annexure-A/5, the applicant requested the respondents to quash order of suspension by letter dated 13.3.1991, A/6, which was followed by the reminder Annexure-A/7, and telegram. It is alleged by the applicant that inspite of reminders to the respondents to revoke suspension orders against him and to reinstate him etc. because of clean acquittal in a criminal case, the respondents did not pay any heed to it and hence this application.

4. The applicant has produced at Annexure-A/5, the copy of the judgment of the criminal case no.129/86, filed against him in which he was acquitted by the learned Additional Chief Metropolitan Magistrate, Ahmedabad, by order dated 08.03.1991, which reads as under :

"ORDER"

By reading Section 135(2) of the customs Act to be read with Section 120/B of I.P.C. the accused are found innocent and are discharged from offices under Section 135 (2) of Customs Act under the provisions of Section 248 (2) of C.R.P.C. and are hereby acquitted."

This judgment makes the position clear that the present applicant who was tried with other accused have been found innocent and have been acquitted as per the above judgment.

5. The respondents have filed reply contending that though it is true that the applicant has been acquitted by the learned Additional Chief Metropolitan Magistrate, Ahmedabad as stated in the application, the customs authorities who were complainant before the Chief Metropolitan Magistrate, has preferred appeal no.228/91, on 8.4.1991, before the High Court of Gujarat, at Ahmedabad, which is pending. It is contended that therefore, it cannot be said that the criminal case pending against the applicant is finally concluded. It is also contended that the respondents have prosecuted the applicant under Rule 14 of CCS (CCA) Rules 1965, on the grounds that the applicant has not paid

penalty imposed upon him by the Customs Authority, etc. and a memorandum of charges was issued on 19.2.1992, vide Annexure-R/6. It is therefore, contended that the action of the respondents to continue the applicant under suspension is quite legal and valid.

6. We have heard the learned advocates for the parties. The learned advocate Mr. Mukesh Patel for the respondents submitted that though the applicant has been ~~as per~~ acquitted in a criminal case ~~in view of~~ the judgment (Annexure-A/5), it cannot be said that the criminal matter is not pending, in view of the criminal appeal no. 228/91, before the High Court of Gujarat, Ahmedabad. He submitted that no doubt the respondents have revoked the suspension order against the applicant, in view of the interim order passed by this Tribunal on 1.4.1992, and also because the respondents thought that the investigation against the applicant was already over and as there was no harm in reinstating ~~the~~ applicant. The submission of the learned advocate Mr. Mukesh Patel, that the respondents have reinstated the applicant because the respondents thought that as the investigation was over, there was no harm in reinstating him, seems to be due to misapprehension of facts and law, because after the interim order was passed by the Tribunal, the respondents either had to assail it by filing an appeal before the appellate forum and to obtain stay order failing which they had to abide by the said order, no matter such order was likely to cause any harm to them. In our opinion, it is ~~that~~ not proper to urge before us

that as they thought that there was no harm in reinstating the applicant, ~~and~~ hence they reinstated the applicant.

The respondents have to bear in mind that irrespective of ~~their~~ personal belief, they had to comply with the interim order of the Tribunal. Therefore, the submission of the respondents on that score cannot stand at all.

7. There is also no substance in the submissions of the learned counsel for the respondents that as the criminal appeal against the acquittal is pending before High Court of Gujarat, the respondents were not bound to revoke the suspension order. We have referred to the decisions on this point while passing a interim order namely, a decision in B.C.Gupta Vs. Union of India and Ors. (1984) 2, S.C.C. P.433, which has been followed by a Full Bench of this Tribunal in S.Samson Martin Vs. Union of India and Ors., (1990) 12 A.T.C. P.643, according to which, when an official has been suspended only on the fact of criminal proceedings, acquittal in a criminal case will invariably entitle him to the full pay and allowances for the period of suspension. The appeal against the acquittal pending in the High Court of Gujarat, ~~Mr~~ Ahmedabad, would not entitle the respondents to continue the suspension order. We therefore, do not agree with the submissions of the learned advocate for the respondents, that as the criminal appeal no.228/91, against the acquittal of the applicant is pending before the High Court of Gujarat, the suspension order should continue till final order. The other submission made by the learned advocate for the respondents is that the suspension order Annexure-A

was in two parts and therefore, if either of them survives, the suspension order should continue. The learned advocate for the respondents tried to impress us that the suspension order against applicant ~~consisted~~ ^{in effect} of two different events namely - (1) the custody of the applicant for a period exceeding 48 hours and (2) Secondly, the investigation in a criminal offence. He submitted that the applicant is acquitted in a criminal case but still the other part of suspension survives. He also tried to submit that the applicant was put in custody for some other charge, but he was not able to ~~not~~ sustain this submission because there was no charge against applicant at that time. Reading the suspension order Annexure-A/1, dated 28.4.1982, there is no doubt in our mind that the applicant was detained in custody because of the investigation in a criminal offence against him and not for any other independent charge. Therefore, the submission of the learned advocate for the respondents that one part of the suspension order still survives is without substance.

8. The learned counsel for the respondents submitted that the applicant is not entitled to any difference of salary etc. as prayed for namely, the applicant's usual salary less, subsistence allowance received by him from the date of suspension till the date of reinstatement till the time the criminal proceeding against him is finally disposed of. We do not agree with this submission, in view of the judgment of acquittal which we have quoted earlier. We hold that the ~~deemed~~ order of suspension Annexure-A shall have to

be quashed and set aside w.e.f. 28th April, 1982, in view of the applicant having been acquitted in a criminal case and the applicant would be entitled to the difference of salary from the date of suspension order till the date of reinstatement.

9. The learned advocate for the respondents further submitted that the respondents have issued the charge sheet against the applicant under Rule - 14 of the CCS (CCA) Rules 1965, on 19.2.1992, for the applicant having not paid penalty imposed upon him by the Customs Authority and if he is paid the difference of salary now, it would be extremely difficult if not impossible to recover that amount and therefore, it is not safe at this stage to grant him the back wages. We cannot accept this submission because the suspension was based ~~on the~~ ^{in one} namely ⁱⁿ ~~on the~~ different event of ⁱⁿ criminal offence and the applicant is acquitted in that criminal case for which the suspension order was passed against him. We therefore, cannot link that event with the memorandum of charges dated 19.2.1992, vide Annexure-R/6, issued by the respondents against the applicant and we cannot allow the respondents to retain the amount of difference of salary which the applicant is entitled to get. It is open to the respondents to take adequate measures for that remedy but that would not mean that the respondents should not pay the back wages on that ground in this matter. The learned advocate for the respondents further submits that if the back wages are paid to the applicant, it would be difficult to recover from him that amount.

in case he is convicted by the High Court and in pursuance of which he is either dismissed or suspended by the applicant later on. In our opinion, even on such apprehension, the respondents cannot keep back the applicant's past salary.

10. We have considered all the submissions made before us by the learned advocates of the parties mentioned above. No other submission is made. In view of our finding that the suspension order Annexure-A dated 28.4.1982, deserves to be revoked in view of the acquittal of the applicant in a criminal case, the respondents have to pay the difference of the salary ~~to~~ the applicant from the date of original suspension till the date of reinstatement. Hence we pass the following order :

" ORDER

The application is allowed. The order of suspension passed by respondent no.4 dated 28.4.82, is quashed and set aside and the respondents are directed to pay to the applicant the difference of salary and all other consequential benefits from the date of suspension till the date of reinstatement, including arrears according to revised pay scales within four months from the date of receipt of the copy of this order. We make it clear that any order passed by any Revenue Authority for recovery of amount against the applicant will not come in the way of the respondents nor this order will come in their way for recovery. We also make it ~~not~~ clear that this order will not come in the way of the Revenue Authority making any recovery in accordance with law. As the respondents

have already reinstated the applicant, it is not necessary to pass an order of reinstatement. Rule is made absolute. NO order as to costs."

Rene
(R.C.Bhatt)
Member(J)

293
3
(N.V.Krishnan)
Vice Chairman

AIT