

16

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A.32/92

DATE OF DECISION : 8-10-1999

Devji Lakha Kargatia : Petitioner [s]

Mr.P.H.Pathak : Advocate for the petitioner [s]

Versus

Union of India Respondent (s)

Mr.B.N.Doctor Advocate for the Respondent (s)

CORAM

THE HON'BLE MR. V.RADHAKRISHNAN : MEMBER [A]

THE HON'BLE MR A.S.SANGHAVI : MEMBER [J]

JUDGMENT

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

Devji Lakha Kargatia
Ex. Postman
Madhavpur,
Dist. Junagadh.

Applicant

Advocate **Mr. P. H. Pathak**

Versus

1. Union of India, Through:
Chief Post Master General,
Navrangpura,
Ahmedabad.
2. Superintendent of Post Offices,
Bhuj Division,
Bhuj. [Kutch].

Respondents

Advocate **Mr. B. N. Doctor**

J U D G M E N T

IN

O. A. NO. 32/92

Dt. 8-10-1999

Per Hon'ble Mr. A. S. Sanghavi Member [J]

The applicant who was serving as a Postman, Madavpur was compulsorily retired from the service w.e.f. 1.8.82 on account of his conviction in the criminal case No.344/78 by the JMFC, Porbandar. The applicant had preferred appeal before the Sessions Court against his conviction and the same was rejected. However, in his criminal revision application no.326/84, the High Court set aside the conviction of the applicant and acquitted him for offences under section 420 of IPC by the judgment delivered on 1.2.91. The applicant had therefore, demanded his reinstatement in the service but his demand was not acceded by the respondents and therefore this O.A. is preferred by the applicant. Prior to filing of this O.A., the applicant had filed the civil suit No. 159/85 before Civil Judge Senior Division, Porbandar challenging his compulsory retirement and on the constitution of this Tribunal under the Administrative Tribunal Act, 1985 the said suit was transferred to this Tribunal and was given the No.TA 129/87. In this TA129/87, the Tribunal noted that the criminal revision application preferred by the applicant against his conviction was pending before the High Court and observed that if the orders of conviction and sentence passed against the applicant are set aside by the High Court, he would be entitled to be reinstated to his former post. With

these observations, the TA was disposed of by the Tribunal on dated 21.6.89. The High Court has subsequently acquitted the applicant for the offence for which he was charge sheeted and pursuant to his acquittal, the applicant had asked the respondents to reinstate him in service. However, since the respondents have not reinstated him in the service, this O.A. has resulted.

2. The respondents in their reply have conceded that the applicant was compulsorily retired from the service on account of his conviction in criminal case No.344/78 and that the High Court had acquitted him in the civil revision application No.326/84. It is however, contended by the respondents that the applicant was compulsorily retired not only on the basis of the conviction in criminal case No.344/78 but also on the basis of two other criminal cases bearing No.58/78 and 21/79. In both these cases vizly 58/78, and 21/79 the applicant was found guilty and convicted for the offence under section 420, 465, 471, 489 of IPC but instead of passing any sentence on him, the learned JMFC had given benefit of Probation under the Probation of Offenders Act. However, since he was found guilty of the offences mentioned above, and was not acquitted by any

court, he is not entitled to be reinstated in service. They have therefore contended that the O.A. cannot be allowed and the same deserves to be rejected.

3. We have heard the learned advocates of both the parties at length and have perused the documents produced on record. So far as the question of conviction of the applicant is concerned, it is an undisputed position that he was proceeded with in three criminal cases and all the three cases had resulted into his conviction before the Magistrate Court. Except the criminal case No.344/78 where he was convicted for the offence under section 420 of IPC and was sentenced to RI for one year and fine of Rs.500/-, the rest of the two cases though resulting into conviction, the applicant was successful in obtaining the benefit of probation under the Probation of Offenders Act. It is also an undisputed position that the applicant had preferred appeal before the Sessions Court against his conviction in 344/78 and having been unsuccessful there, had moved the High Court by preferring civil revision application no. 326/84. The High Court has vide its judgment dated 1.2.91 acquitted the applicant and set aside the sentence. It is also not in dispute that this Tribunal had in T.A. 129/87 while disposing of the same observed

that if the applicant succeeds in the civil revision application pending before the High Court and if the orders of conviction and sentence passed against him are set aside, he will be entitled to be reinstatement to his former post as a consequence thereof.

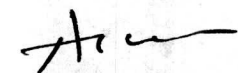
4. The only question therefore requires to be examined is whether the conviction of the applicant in other two cases vizly 58/78 and 21/79 by the JMFC, Porbandar can act as an hindrance to his reinstatement in the service. So far as the order of the compulsory retirement of the applicant is concerned, a bare reading of the same leaves no room for doubt that he has been retired from the service solely on the ground of conviction in the criminal case no.344/78. However, in any case, since it is conceded that he has not been acquitted in other two cases vizly 58/78 and 21/79 then also under the provision of section 12 of the Probation of Offenders Act, his conviction in those cases cannot come in his way to obtain the reinstatement in the service. Mr.Doctor for the respondents has conceded that prior to compulsorily retiring the applicant from the service, no departmental inquiry was held and his retirement was solely on his conviction in these three criminal cases. Since his conviction in the criminal case no.344/78 is set aside by the High Court and he had been acquitted,

22

the question of considering the two conviction in the other cases arises and when it is considered that in both the remaining criminal cases, the applicant was given the benefit of provision under section 4 of Probation of Offenders Act, this conviction in both the criminal cases cannot come in his way of asking reinstatement in the service in view of the section 12 of Probation of Offenders Act. Section 12 of the Act states that a person found guilty of an offence and dealt with under the Provisions of Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. Hence, the persons convicted by the court and released under the provision of Probation of Offenders Act are not liable to be removed or dismissed from service merely on the ground of their conviction. The applicant therefore becomes entitled to be reinstated in the service from the date of his acquittal by the High Court i.e. w.e.f. 1.2.91. Mr. Doctor learned advocate appearing for the respondents has submitted that the applicant had been paid retirement benefits and is also getting pension on account of his compulsory retirement. If that is so, the applicant will have to refund the retiral dues received by him while the pension amount received by him can be deducted from the salary to be paid from the date of his reinstatement.

23

5. Under the circumstances and for the reasons discussed above, we direct the respondents to reinstate the applicant in his service w.e.f. 1.2.91 with all consequential benefits of the service. The applicant will have to refund the amount of retirement benefits received by him, if any, and the respondents will be entitled to deduct the pension amount or any other amount paid to the applicant while re-fixing his salary. The O.A. is allowed with the above directions. No order is passed as to costs.



[A.S.SANGHAVI]
MEMBER [J]



[V.RADHAKRISHNAN]
MEMBER [A]

S.Solanki