

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 357/93

T.A. NO.

DATE OF DECISION 11-8-1995

Shri Kataria Laxman. R Petitioner

Mr. S. Brahmbhatt Advocate for the Petitioner (s)

Versus

Union of India and Ors. Respondent

Mr. Akil Kureshi Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. N.B. Patel, Vice Chairman

The Hon'ble Mr. K. Ramamoorthy, Member (A)

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 ?

} Yes

Kataria Laxman R.
C/o. Juna Rabariwada
Subhash Road, Veraval

.. Applicant

(Advocate : Mr. S. BNrahmbhatt)

Vs.

1. The Union of India
(notice to be served through the
Secretary) Ministry of Telecommunications,
Sanchar Bhavan,
New Delhi - 1.
2. The General Manager (Chief),
Telecom (Gujarat circle),
Opp. Khanpur Post Office,
Khanpur, Ahmedabad - 1.
3. The Telecom District Manager,
Junagadh Telecom District,
New Telecom Building,
Genda Agad Road,
Junagadh - 362 001.
4. The Telecom District Engineer,
Junagadh Telecom District,
New Telecom Building,
Genda Agad Road,
Junagadh - 362 001

.. Respondents

(Advocate : Mr. Akil Kureshi)

Date : 11-8-1995

OA/357/93

J U D G M E N T

Per : Hon'ble Mr.N.B. Patel, Vice Chairman

The applicant seeks quashing of the order dated 7.8.1991 (Annexure-A2) by which he is dismissed from service.

2. The relevant facts and the chronology of events are not in dispute and may first be set out. The applicant was appointed as Telephone Operator in the respondent-department in 1975. Somewhere in

1986, it was felt that the applicant had procured the job on the basis of a false caste certificate. After necessary inquiry and investigation, charge-sheet was issued against the applicant in July, 1987 alleging commission of offences under Sections 465, 471 and 420 of the I.P. Code. Thereupon, Criminal Case No.5 of 1987 was registered against the applicant in the Court of the Judicial Magistrate (First Class), Ahmedabad (Rural) District. On conclusion of the trial, the applicant came to be convicted by the learned Magistrate by his judgment dated 30.4.1991 of the offence under Section 420 of the I.P. Code only and was acquitted of the other offences. He was sentenced to 1½ year R.I. and to pay a fine of Rs.2000/-, in default, to undergo further R.I. for three months. On the basis of his conduct resulting into this conviction, the applicant first came to be suspended by an order dated 29.7.1991 (Annexure-A1) and thereafter, on the basis of the some conduct, he came to be dismissed from service by the impugned order Annexure-A2 dated 7.8.91.

Meanwhile, the applicant had preferred Criminal Appeal No.12 of 1991, probably on the same date on which he was convicted i.e. on 30th April, 1991, in the Court of the learned Session Judge, Ahmedabad (Rural) District. This criminal appeal was admitted and the sentence of imprisonment awarded to the applicant was suspended and he was released on bail. It is said that the fact of the admission of the applicant's appeal against his conviction as also of his release on bail was known to the administration and, yet, the suspension order (Annexure-A1) dated 29.7.1991 and then the dismissal order dated 7.8.91 (Annexure-A2) were

passed. The criminal appeal filed by the applicant came to be allowed by the learned Session Judge by his judgment dated 16.3.1992. In other words, the conviction recorded against the applicant by the learned Magistrate was set aside by the learned Session Judge and the applicant was acquitted even of the offence under section 420 I.P. Code of which he was convicted. Soon after the allowing of his appeal, the applicant served the department with a notice dated 1.4.1992 and followed it up by a representation dated 1.7.1992 urging that the order dismissing him from service and the order suspending him from service may be revoked and he may be reinstated in service. However, the department did not do so on the ground that it had filed a Criminal Revision Application against the judgment of the Session Court on 3.7.1992 and the said revision application was admitted by the High Court. The order of dismissal from service is passed by the respondent No.4 Telecom District Engineer in exercise of the powers conferred on him by Rule 19(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

2. The dismissal order and the suspension order are challenged on several grounds including the ground that, as they were passed without giving any opportunity of hearing or making representation to the applicant, they were illegal. We are however, not going into these contentions and confine ourselves to the challenge posed against the continuance of the

dismissal order and the suspension order after the criminal appeal filed by the applicant was allowed, as we find that this contention, raised on behalf of the applicant by his learned advocate, deserves to be accepted and it is sufficient to dispose of the present OA in favour of the applicant.

3. The neat question which arises for our determination is whether the dismissal order, which was based on the conduct of the applicant resulting in his conviction on a criminal charge, could have been continued after the conviction order was set aside by the Appellate Court, simply because the Criminal Revision Application filed against the setting aside of the conviction order is admitted by the High Court and is pending for adjudication. As already stated, the orders of suspension and dismissal from service are passed in exercise of Rule 19(1) of the CCS (CCA) Rules, 1965. This Rule, as amended by G.I.C.S. (Department of Personnel, OM No.371/3/74-AVD(III)) dated 19th September, 1975 may be reproduced as it is produced at Annexure-R1.

"(i) In a case where a Government servant has been convicted in a Court of Law of an offence which is such as to render further retention in public service of a Government servant prima facie undesirable, the disciplinary authority may, if it comes to the conclusion that an order with a view to imposing a penalty on the Government servant on the ground of conduct which had led to his conviction on a criminal charge should be issued, issue such an order without waiting for the period of filing an appeal, or, if an appeal has been filed, without waiting for the decision in the first Court of appeal. Before such an order is passed, the Union Public Service Commission should be consulted where such consultation is necessary.

(ii) As soon as a Government servant is convicted on a criminal charge, he may, in appropriate cases, be placed under suspension, if not already suspended.

(iii) In a case where the conviction is not for an offence of the type referred to in sub-paragraph (i) above, the disciplinary authority should call for and examine a copy of the judgment with a view to decide on taking such further departmental action, as might be deemed appropriate" (Emphasis supplied)

4. It is obvious from a plain reading of the above that a penalty order, or, a dismissal order as in the present case, passed under Rule 19(1) of the CCS (CCA) Rules, 1965 has to be based on the conduct of the employee which has led to his conviction. Conviction of the employee for a certain conduct of his, is, therefore, made the basis of the penalty order. In the present case, the applicant was convicted on 30th April, 1991 and the order of suspension was passed on 29.7.1991 and the order of dismissal was passed on 7.8.1991. The question is whether on the two dates on which the suspension order and the dismissal order were passed, was ^{there} any conviction in existence against him? It is true that the applicant had preferred an appeal on or soon after 30.4.1991 against his conviction and the said appeal was pending when the suspension order and the dismissal order were passed on 29.7.1991 and 7.8.1991 respectively. It is also true that the appeal filed by the applicant was admitted and the sentence of imprisonment awarded to him was suspended by the Appellate Court. However, merely because the appeal was

admitted and the sentence of imprisonment was suspended, it cannot be said that the conviction itself which was recorded against the applicant was also suspended. There is an authoritative pronouncement of the Supreme Court on this point in the case of the Deputy Director of Collegiate Education (Administration) Vs. S. Nagoor Meera reported in 1995(1) SC Services Law Judgments 429. Situation

aken to the situation which arose in this case, after the filing of the appeal against ^{his} conviction by the applicant, arose in that case also and it was argued that the admission of the appeal and the suspension of sentence debarred action under Rule 19(1) of the CCS (CCA) Rules, 1965. The Supreme Court negated this contention holding that the dismissal, removal, or reduction in rank of a Government servant who has been convicted by a criminal court is not barred merely because the order of sentence is suspended by the appellate court or on the ground that government servant-accused has been released on bail pending the appeal. In other words, what is laid down by the Supreme Court is that conviction itself does not become non-existent merely by reason of an appeal against it having been admitted even if such admission of appeal is coupled with suspension of the sentence awarded to a government servant. Thus, in the present case, when the suspension order and the dismissal order were passed on 29.7.1991 and 7.8.1991 respectively, the conviction recorded against the applicant was very much in force despite the admission of his appeal against conviction and even the suspension of the sentence awarded to him. Thus, it cannot be said that there was any illegality about the suspension order and

the dismissal order when they were passed. What is material to be noted is whether at that time the order of conviction was in existence or not and it is laid down that such an order does not get suspended merely by the filing of an appeal against it or the suspension of sentence on the admission of the appeal. However, the question which further arises in the facts of the present case is whether the continuance of the suspension order and the dismissal order was legal after the appeal filed by the applicant was allowed and conviction recorded against him was set aside and he was totally acquitted of the charge against him by the judgment of the Session Court dated 16.3.1992. The ratio of the aforesaid Supreme Court judgment is that the mere filing of an appeal or even its admission does not render non-existent the whole of the order. Applying the same analogy conversely, the mere fact of the filing and admission of a criminal revision application against the acquittal of the applicant will not render the acquittal recorded against the applicant non-existent. The continuance of the suspension order and the dismissal order cannot, therefore, be justified by the filing and admission of the Criminal Revision Application as contended by the learned Additional Standing Counsel. The learned Additional Standing Counsel submitted that the scope in a revision application would be far narrower than the scope in an appeal and, therefore, the admission of a revision application against an acquittal order must be given more weight than the weight to be attached to the admission of an appeal against a conviction judgment. We are not inclined to accept this argument so far as the question of the effect of the filing of an appeal

or a revision against an order of conviction or acquittal is concerned. We have no hesitation in holding that the filing and admission of the revision application against the acquittal judgment of the Session Court does not have the effect of suspending the acquittal order which the applicant earned from the Appellate Court. Once this is so held, it must follow that the very basis on which the impugned orders are passed, namely, the conviction of the applicant, disappears. What was in existence was the acquittal of the applicant from 16.3.1992 onwards when his appeal against the conviction was allowed by the Session Court and he was acquitted even of the charge under Section 420 I.P. Code which was the sole charge for which he was convicted by the learned Magistrate. We, therefore, find that the applicant had rightly represented by his notice dated 1.4.1992 and the communication dated 1.7.1992 that the dismissal order against him should be revoked and he should be reinstated in service. So far as the suspension order is concerned, it would ipso facto fall to the ground the moment the dismissal order or its continuance is quashed because the suspension order passed on 29.7.1991 had come to an end with effect from 7.8.1991 when the applicant was dismissed from service. Of course, it was rightly argued by the learned Additional Standing Counsel, Shri Kureshi, that if the continuance of the dismissal order after 16.3.1992 is struck down, the department should be left free to pass a suspension order against the applicant, if it thought fit to do so. However, here also, we may observe in passing that if the department considers ^{the} ~~a~~ question of

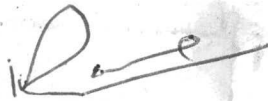
suspension of the applicant after his reinstatement in service pursuant to the order which we are presently going to pass, it would be necessary for them to bear in mind some very important and relevant circumstances including the circumstance that the applicant was not placed under suspension till, for the first time, the order of suspension was passed on 29.7.1991 though the charge-sheet against him was filed on 30.4.1987. It must also be borne in mind that the suspension order was passed on the basis of the conviction recorded against the applicant which conviction has not remained in existence from 16.3.1992 when the appeal filed by the applicant was allowed and he was acquitted by the Session Court.

5. In the result, we allow the OA to the extent of declaring that the continuance of the impugned dismissal order (Annexure-A2) and the suspension order (Annexure-A1) after 16.3.1992 is illegal and both the orders are set aside with effect from 16.3.1992. The respondents are directed to reinstate the applicant in service **within not less than seven days hereof,** leaving it open to them to consider the question of proceeding with the applicant departmentally after the disposal of the criminal revision application filed in the Court and subject to the result thereof. The respondents will be free to consider the question of suspending the applicant from service after his reinstatement pursuant to this judgment, but, in the light of the observations made by us above in that connection. The question of payability of wages to the applicant for the period from 16.3.1992 to

reinstatement

the date of his ~~/~~ may be decided by the department in accordance with the result of the Criminal Revision Application pending before the High Court or departmental inquiry, if any, that may be instituted against the applicant and bearing in mind all other relevant considerations.

No order as to costs.



(K. Ramamoorthy)
Member (A)



(N.B. Patel)
Vice Chairman

sr.

S28/96

Central Administrative Tribunal
Ahmedabad Bench,
Inward No. 2440
Date 04.06.96

SECTION-IX

D.No. 514/96/Sec.IX
Supreme Court of India
New Delhi.
Dated: 7th May, 1996

Recd
M.R.V.
04.06.96

From
Section Officer,
Supreme Court of India,
New Delhi.

DR
CO (D)

To:
The Registrar,
Central Administrative Tribunal,
Ahmedabad Bench,
Ahmedabad.

PETITION FOR SPECIAL LEAVE TO APPEAL(C) NO. 10407 of 1996
(Under Article 136 of the Constitution of India, from the
Judgment and Order dated the 11th August, 1995 of the Central
Administrative Tribunal, Ahmedabad Bench in O.A.No.357 of 1993)

Union of India & Ors.

..Petitioner(s)

-Vs-

Kataria Laxman R.

..Respondent(s)

Sir,

I am directed to inform you that the Petition above-mentioned for Special Leave to Appeal to this Court was filed by Mr.C.V.Subba Rao, Adv. on behalf of the Petitioner(s) above-named against the Judgment and Order of the ~~High Court~~ ^{Central Administrative Tribunal} noted above and that the same was dismissed/disposed of by this Court on the 24th April, 1996. A certified copy of the Record of Proceedings of this Court dated the 24th April, 1996 is enclosed herewith for your information and necessary action.

Yours faithfully,

For personal please

Encl. As above.

Section Officer

- ① Honble vice chairman
- ② Honble Mr. V. Radhakrishnan, member
- ③ Honble Mr. J.C. Ramaswamy, member AJ

[Signature]
25/5/96
K. H. K.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

83489

Petition(s) for Special Leave to Appeal(Civil)... /(CC1801/96)
(From the judgement and order dated 11/08/95 in OA357/93
of the CAT,Ahmedabad Bench)

U O I & ORS

Petitioner (s)

VERSUS

KATARIA LAXMAN R.

Respondent (s)

(With Appln(s). for c/delay in filing SLP)

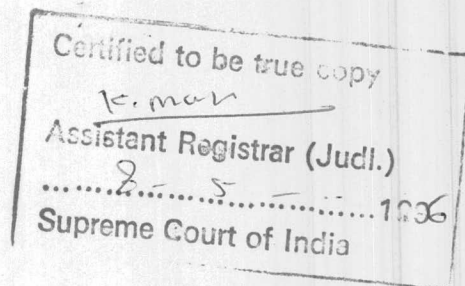
Date : 24/04/96 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.P. SINGH
HON'BLE MR. JUSTICE S. SAGHIR AHMAD

For Petitioner (s) Mr.K.T.S.Tulsi,ASG,
Mr.T.C.Sharma,Adv.
Mr.C.V.Subba Rao,Adv.

For Respondent (s)



UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

We are not inclined to interfere with the order of the Tribunal at this stage directing reinstatement of the respondent. However, in the event the revision/appeal filed on behalf of the CBI is allowed by the High Court, it will be open to the petitioners to proceed in accordance with law.

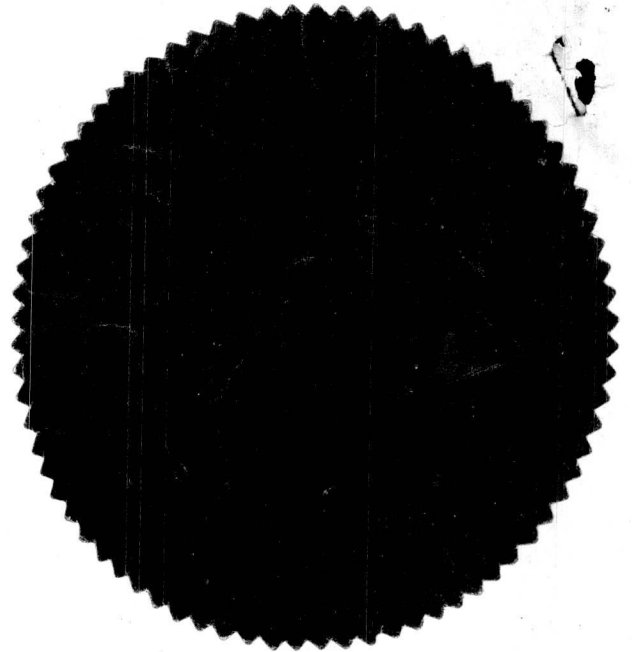
The Special Leave Petition is dismissed.

Sukadw Sarangi
(S.Sarangi)
Court Master

N. Moorjani
(N.Moorjani)
Court Master

24/4
25/4C16
27/4

08837



SEALED IN MY PRESENCE

[Handwritten signature]
287/7/11

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Application No. 04/357/93

Transfer Application No. _____

CERTIFICATE

Certified that no further action is required to be taken and
the case is fit for consignment to the Record Room (Decided)

Dated : 17.08.95

Countersign :

Su 22/8/95
Section Officer.

ccclap
Signature of the Dealing
Assistant

