

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 566 of 1993.
~~TA No. 2~~

DATE OF DECISION 28th March, 1994.

Shri Manoj Misra _____ Petitioner

Shri M.R.Anand _____ Advocate for the Petitioner(s)

Versus

Union of India, Department of Revenue _____ Respondent

Shri M.R.Bhatt _____ Advocate for the Respondent(s)

CORAM :

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

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

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 ?

NO

: 2 :

1. Shri Manoj Misra
A-5, Income-tax Flats,
Opp. High Court,
Ahmedabad - 380 009.

...Applicant.

(Advocate : Mr. M. R. Anand)

Versus

1. Union of India,
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi - 110 001.

...Respondent.

(Advocate : Mr. M. R. Bhatt)

JUDGMENT

O.A.NO. 566 OF 1993.

Dated : 28th March, 1994.

Per : Hon'ble Mr. K. Ramamoorthy : Member (A)

1. By way of Original Application No. 566 of 1993, the applicant has sought a direction to quash the order of suspension dated 11.12.1992, served on him by the Government of India, Ministry of Finance, Department of Revenue, under their order no. C-14011/80/92-V & L, dated 11.12.1992. The applicant was serving as Deputy Commissioner of Income-tax in Ahmedabad and the suspension order is consequent to a conviction order against him passed by the Special Judge, Greater, Bombay, in the case for a criminal offence. In that case, he was convicted and sentenced to 3 years' rigorous imprisonment and fine of Rs. 50,000/-. However, the applicant had obtained suspension of the conviction from the High Court

of Bombay in the Criminal Appeal No. 29 of 1993.

This order was passed on 11.3.1993. The applicant's contention is that this interim order passed by the High Court should necessarily result in quashing of the suspension order and hence this application.

2. The main argument advanced by the applicant is that suspension of a conviction would necessarily imply almost nullification of all other adverse effects including departmental action. The applicant's thrust is on the fact that the High Court chose not merely to suspend the execution of the sentence but also chose to suspend the order of conviction itself. This had a wider implication, since it *prima facie* questioned the applicant's culpability in the offence with which he was charged.

3. The respondents in their written reply dated 22nd November, 1993, stated that since a criminal case had been filed against the applicant on which a conviction had also been secured, the mere fact of the admission of an appeal should not come in the way of the suspension order. The respondents have also cited Ministry of Home Affairs O.M.NO. 43/56-64-A VD, dated 22nd October, 1964, in support of their decision since there was a need to demonstrate the policy of the Government "to deal strictly with officers involved in

such scandals, particularly corruption."

4. When the matter was taken up for hearing, the Tribunal suggested that the respondents could have obtained clarification from the Bombay High Court which had ordered : "the operation of the impugned order of conviction and sentence is suspended." We had also clarified, by the order dated 18.1.1994, that the applicant could also move the Bombay High Court, for such a clarification. On 18.1.1994, we were however, informed that the applicant himself had earlier filed a M.A. before the Bombay High Court to declare the order as null and void. However, when enquired about the result of this M.A., it was pointed out by the applicant that any relief regarding any administrative measure such as suspension could be given only ^{by} the Central Administrative Tribunal and hence this particular application.

5. The Tribunal, therefore, has to decide this issue on merits.

6. At the ~~out~~ set the Central Administrative Tribunal cannot accept the proposition put forward by the counsel for the applicant that the suspension of the conviction would automatically lead to suspension of all other consequential acts. While it is conceded that suspension of conviction could certainly restrain

terminal orders such as dismissal or removal consequent to the conviction, the analogy cannot be extended to even initiation of other action. It is an admitted fact that the officer concerned was subject to a criminal inquiry in respect of a corruption case. A special Bench of Greater Bombay had also convicted the applicant. Even a final order levying a major penalty could be passed in a case of criminal conviction (even when an appeal is pending). It should also be borne in mind that a suspension order is only one act in the chain of actions undertaken by the department in a disciplinary case, like issue of the charge sheet, etc. Per se, an interim action like a suspension ~~is not~~ automatically ruled out in the case of a suspension of a conviction. As a legal proposition, therefore, the contention of the applicant is not accepted, in this regard.

7. However, having stated the position of law as above, it is also necessary to consider the matter in the special circumstances of this case.

8. Having obtained a conviction in the case of the corruption case as tried by the special Judge, Bombay, the Department was well within its rights to initiate further Departmental action starting with suspension. However, when on an appeal, the conviction itself had been suspended and (not merely the execution of the sentence)

the department should have reconsidered the decision taken earlier on the basis of a conviction. A fresh order to continue the suspension should have been more proper if the department wanted to continue the suspension, in view of clauses (ii) and (iii), of Ministry of Home Affairs, dated 22nd October, 1964, referred to earlier. This has not been done.

9. The official action initiated against this officer has had also a history behind it. Even when the prosecution was launched for corruption before the Special Judge, Bombay, it had been preceded by a suspension order which has been quashed by the High Court considering the suspension as unnecessary. In that order itself the High Court had made observations on ~~one~~ prima facie considerations.

10. On appeal against the judgment and order dated 09th November, 1992, passed by the Learned Special Judge, for Greater Bombay in Case No. 25 of 1986, the High Court chose to suspend the conviction vide its order dated 29.1.1993, as under :

"Perused the order dated 8.4.1987 in O.S. Appeal No. 284 of 1987. The operation of the impugned order of conviction and sentence is suspended."

It is also true that only in special circumstances that the High Courts normally order such suspension of conviction itself as distinguished from suspension of the execution of a sentence. The Counsel for the applicant has cited the case of Andhra Pradesh High Court as reported in 1990, CRI L.J. 167, to point out the special importance of suspension of the operation of the judgment itself. A Court suspends an order of conviction "only in appropriate or substantial cases" and "the suspension of conviction as such cannot ordinarily be ordered in a routine manner":

11. Even otherwise there are standing instructions that if a Government servant is under suspension or is placed under suspension, the competent authority should also "review the case from time to time, in accordance with the instructions on the subject and take a decision about the desirability of keeping him under suspension till the disposal of the case by the Court". This extract is taken from the Ministry of Home Affairs O.M.NO. 43/81/64-AVD, dated 23rd October, 1964.

12. No evidence has been forthcoming regarding such a review being taken from time to time since the official has been under suspension now for about 15 months. In fact this Tribunal had specifically to observe on the need for this review in its order of 07.12.1993, when the applicant himself had come forward for increase in his

subsistence allowance, which had become due on the expiry of first three months of the suspension period.

13. Now that a 15 months period has passed, if a review were to be taken the following points would obviously have to be considered.

(i) Government is already paying subsistence allowance at the rate of 75% of the salary without taking any work whatsoever from an official who is admittedly a highly paid official in the Indian circumstances.

(ii) As remarked by the High Court of Judicature, Bombay, in the earlier order of 08.04.1987, in Appeal No. 287/87, "there is a very little chance for the applicant to temper with thefindings," since the only proceeding now is the appellate case where the records are already completed.

(iii) The matter also refers to a incident which took place way back in 1983, and its value as a matter of public memory has much diminished by now, within the meaning of the O.M. dated 22nd October, 1964, to either "seriously subvert discipline or the matter being a matter of public scandal."

(iv) The purpose of the demonstration of the public policy of the Government to deal strictly with such cases can also communicated by way of the official being placed in non-sensitive assignments where direct

contact with the members of the public can be at a minimum level.

14. Ideally, the department by now could also have got an early hearing of the appeal because of the suspension of the conviction and sentence.

15. In view of the peculiar circumstances of the case and the time that has elapsed since the event, we direct the respondent to review the order of suspension and decide as to whether alternate administrative action as stated in the foregoing paragraphs, will by now suffice to meet with the requirements of the case. Such a review may be undertaken within a period of six weeks. The decision taken may be communicated to the applicant within the period of a week thereafter, so that if the applicant is aggrieved, he can take further necessary action in the matter. The application is disposed of with these directions with no order as to costs.


(K. Ramamoorthy)
Member (A)


(N.B. Patel)
Vice Chairman

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★ A-5, Income-tax Flats,
Opp.High Court,
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Through the Secretary,
Department of Revenue,
Ministry of Finance,
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JUDGMENT

O.A.NO. 566 OF 1993.

Dated : 28.3.1994.

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

1. By way of Original Application No.566 of 1993, the applicant has sought a direction to quash the order of suspension dated 11.12.1992, served on him by the Government of India, Ministry of Finance, Department of Revenue, under their order no.C-14011/80/92-V & L, dated 11.12.1992. The applicant was serving as Deputy Commissioner of Income-tax in Ahmedabad and the suspension order is consequent to a conviction order against him passed by the Special Judge, Greater, Bombay, in the case for a criminal offence. In that case, he was convicted and sentenced to 3 years' rigorous imprisonment and fine of Rs.50,000/-. However, the applicant had obtained suspension of the conviction from the High Court

of Bombay in the Criminal Appeal No. 29 of 1993.

This order was passed on 11.3.1993. The applicant's contention is that this interim order passed by the High Court should necessarily result in quashing of the suspension order and hence this application.

2. The main argument advanced by the applicant is that suspension of a conviction would necessarily imply almost nullification of all other adverse effects including departmental action. The applicant's thrust is on the fact that the High Court chose not merely to suspend the execution of the sentence but also chose to suspend the order of conviction itself. This had a wider implication, since it prima facie questioned the applicant's culpability in the offence with which he was charged.

3. The respondents in their written reply dated 22nd November, 1993, stated that since a criminal case had been filed against the applicant on which a conviction had also been secured, the mere fact of the admission of an appeal should not come in the way of the suspension order. The respondents have also cited Ministry of Home Affairs O.M.NO. 43/56-64-A VD, dated 22nd October, 1964, in support of their decision since there was a need to demonstrate the policy of the Government "to deal strictly with officers involved in

such scandals, particularly corruption."

4. When the matter was taken up for hearing, the Tribunal suggested that the respondents could have obtained clarification from the Bombay High Court which had ordered : "the operation of the impugned order of conviction and sentence is suspended." We had also clarified, by the order dated 18.1.1994, that the applicant could also move the Bombay High Court, for such a clarification. On 18.1.1994, we were however, informed that the applicant himself had earlier filed a M.A. before the Bombay High Court to declare the order as null and void. However, when enquired about the result of this M.A., it was pointed out by the applicant that any relief regarding any administrative measure such as suspension could be given only by the Central Administrative Tribunal and hence this particular application.

5. The Tribunal, therefore, has to decide this issue on merits.

6. At the outset set the Central Administrative Tribunal cannot accept the proposition put forward by the counsel for the applicant that the suspension of the conviction would automatically lead to suspension of all other consequential acts. While it is conceded that suspension of conviction could certainly restrain

terminal orders such as dismissal or removal consequent to the conviction, the analogy cannot be extended to even initiation of other action. It is an admitted fact that the officer concerned was subject to a criminal inquiry in respect of a corruption case. A special Bench of Greater Bombay had also convicted the applicant. Even a final order levying a major penalty could be passed in a case of criminal conviction (even when an appeal is pending). It should also be borne in mind that a suspension order is only one act in the chain of actions undertaken by the department in a disciplinary case, like issue of the charge sheet, etc. Per se, an interim action like a suspension is not automatically ruled out in the case of a suspension of a conviction. As a legal proposition, therefore, the contention of the applicant is not accepted, in this regard.

7. However, having stated the position of law as above, it is also necessary to consider the matter in the special circumstances of this case.
8. Having obtained a conviction in the case of the corruption case as tried by the special Judge, Bombay, the Department was well within its rights to initiate further Departmental action starting with suspension. However, when on an appeal, the conviction itself had been suspended and (not merely the execution of the sentence),

the department should have reconsidered the decision taken earlier on the basis of a conviction. A fresh order to continue the suspension should have been more proper if the department wanted to continue the suspension, in view of clauses (ii) and (iii), of Ministry of Home Affairs, dated 22nd October, 1964, referred to earlier. This has not been done.

9. The official action initiated against this officer has had also a history behind it. Even when the prosecution was launched for corruption before the Special Judge, Bombay, it had been preceded by a suspension order which has been quashed by the High Court considering the suspension as unnecessary. In that order itself the High Court had made observations on *prima facie* considerations.

10. On appeal against the judgment and order dated 09th November, 1992, passed by the Learned Special Judge, for Greater Bombay in Case No. 25 of 1986, the High Court chose to suspend the conviction vide its order dated 29.1.1993, as under :

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It is also true that only in special circumstances that the High Courts normally order such suspension of conviction itself as distinguished from suspension of the execution of a sentence. The Counsel for the applicant has cited the case of Andhra Pradesh High Court as reported in 1990, C.R.I. L.J. 167, to point out the special importance of suspension of the operation of the judgment itself. A Court suspends an order of conviction "only in appropriate or substantial cases" and "the suspension of conviction as such cannot ordinarily be ordered in a routine manner".

11. Even otherwise there are standing instructions that if a Government servant is under suspension or is placed under suspension, the competent authority should also "review the case from time to time, in accordance with the instructions on the subject and take a decision about the desirability of keeping him under suspension till the disposal of the case by the Court". This extract is taken from the Ministry of Home Affairs O.M.NO. 43/81/64-AVD, dated 23rd October, 1964.

12. No evidence has been forthcoming regarding such a review being taken from time to time since the official has been under suspension now for about 15 months. In fact this Tribunal had specifically to observe on the need for this review in its order of 07.12.1993, when the applicant himself had come forward for increase in his

subsistence allowance, which had become due on the expiry of first three months of the suspension period.

13. Now that a 15 months period has passed, if a review were to be taken the following points would obviously have to be considered.

- (i) Government is already paying subsistence allowance at the rate of 75% of the salary without taking any work whatsoever from an official who is admittedly a highly paid official in the Indian circumstances.
- (ii) As remarked by the High Court of Judicature, Bombay, in the earlier order of 08.04.1987, in Appeal No. 287/87, "there is a very little chance for the applicant to temper with thefindings," since the only proceeding now is the appellate case where the records are already completed.
- (iii) The matter also refers to a incident which took place way back in 1983, and its value as a matter of public memory has much diminished by now, within the meaning of the O.M. dated 22nd October, 1964, to either "seriously subvert discipline or the matter being a matter of public scandal."
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contact with the members of the public can be at a minimum level.

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(K.Ramamoorthy)
Member (A)

(N.B.Patel)
Vice Chairman

alt.

DRAFT.

JUDGMENT.
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1. By way of ~~Original Petition~~ no.566/93, the applicant has sought a direction to quash the order of suspension dated 11.12.1992, served on him by the Government of India, Ministry of Finance, Department of Revenue, under their order no.C-14011/80/92-V & L, dated 11.12.1992. The applicant was serving as Deputy Commissioner of Income-tax in Ahmedabad and the suspension order is consequent to a conviction order against ~~the~~ him passed by the Special Judge, Greater, ~~Bombay~~, in the ~~reference~~ ^{case} ~~of~~ a criminal offence, ^{In that case,} where he was convicted and sentenced to 3 years' rigorous imprisonment and fine of Rs.50,000/-. However, the applicant had obtained suspension of the ~~conviction~~ ^{conviction} sentence from the High Court of Bombay in the Criminal Appeal No. 29 of 1993. This order was passed on 11.3.1993. The applicant's contention is that this interim order passed by the High Court should necessarily result in quashing of the suspension order and hence this application.

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13. Now that a 15 months period has passed, if a review were to be taken the following points would obviously have to be considered.

(i) Government is already paying subsistence allowance at the rate of 75% of the salary without taking any work whatsoever from an official who is admittedly a highly paid official in the Indian circumstances.

(ii) ~~As already remarked by the High Court~~ the official is in no position to influence or tamper with the records of the proceedings against him since the only proceedings now is the appellate case in the High Court in which case the records are already completed.

(iii) The matter also refers to a incident which took place way back in 1983, and its value as a matter of public memory has much diminished by now, within the meaning of the O.M. dated 22nd October, 1964, to either "seriously subvert ~~was~~ discipline or the matter being a matter of public scandal."

(iv) The purpose of the demonstration of the public policy of the Government to deal strictly with such cases can also be communicated by way of the official being placed in non-sensitive assignments where direct contact with the members of the public can be at a minimum level.

14. Ideally, the department by now could have got an early hearing on the appeal because of the suspension of the ~~sentence~~ ^{also} ~~suspension and~~ sentence itself. They could have perhaps sought an early hearing on the limited point of the interlocutory order because of its specific implication on the suspension

aspect. [In fact in disposing of the M.A.2105/93 Justice Justice Agrwal has passed the following order dated 26-7-93, which states :

* Appeal is expedited.
liberty to the Appellant to prepare paper book and thereafter to apply for an early hearing. The present application is disposed of."

[This Tribunal had also observed for certain action to be taken. None of this has however, has not happened.]

15. In view of the peculiar circumstances of the case and the time that has elapsed since the event, we direct the respondent to review the order of suspension and decide as to whether alternate administrative action as stated in the forgoing paragraphs, will by now suffice the requirements of the case. Such a review may be undertaken within a period of six weeks. The decision taken may be communicated to the applicant within the period of a week thereafter, so that if the applicant is aggrieved, he can take further necessary action in the matter. The application is disposed of with these directions with no order as to costs.

(K.Ramamoorthy)
Member (A)

(N.B.Patel)
Vice Chairman

OA/566/93

(ii) As remarked by the High Court of Judicature, Bombay, in the earlier order of 8.4.87, in appeal no. 287/87, "there is a very little chance for the applicant to temper with thefindings."

Since the only proceeding now is the appellate case ~~now in the case~~, the records are already completed

CENTRAL ADMINISTRATIVE TRIBUNAL
Ahmedabad Bench

Application No. 04/566/93 of 19

Transfer Application No. _____ Old W.Pett 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 : 06/04/94

Countersigned :

ANKURVIL
8/4/94
Section Officer/Court officer

cecelaf
Signature of the Dealing
Assistant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT ~~NEW DELHI~~ AHMEDABAD

INDEX SHEET

CAUSE TITLE..... 041566695..... OF 198□.

NAMES OF THE PARTIES..... Manoj Mishra **VERSUS** C. O. I. 804 **PART A B & C**

PART A B & C

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

Submitted :

C.A.T./Judicial Section.

Original Petition No 566

of 1993

Miscellaneous Petition No _____

of _____

Shri

Manoj Mishra

Petitioner(s)

versus

U.O.I

Respondent (s)

This application has been submitted to the Tribunal by

Shri

MR. Anand

Under Section 19 of the Administrative Tribunal Act, 1985.

It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules 1985.

The application has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant advocate may be asked to rectify the same within 14 days/draft letter is placed below for signature. An urgent note has been filed by the learned Advocate to place the matter before Hon. Bench on ASSTT. 01-10-93.

29/9/93

S.O.(J)

May be placed for adm. on

01-10-93

D.R.(J)

Pradeep
29-9-93

Bhafan
29-9-93

Court]

DA SI- 545/93

M. R. Ansari

Learned Advocate for Petitioners
with second set & 1 copies
served/not served to other side

APPLICATION UNDER SECTION- 19 OF THE

ADMINISTRATIVE TRIBUNALS ACT, 1985
Dy. Registrar C.A.T.(J)
2nd Bench

O. A. No. 566 of '93

Manoj Misra

... Applicant

VERSUS

Union of India

... Respondent

:: INDEX ::

S. No.	Description of documents relied upon:	Exhibit:	Page Nos.
1	Application		1 to 18
2	Copy of suspension- order dated 11- 12- '92	'A'	19 to 20
3	Copy of Bombay High Court's order dt 29- 1- '93 in Cr. Appeal No. 29/93	'B'	21 to 23
4	Copy of Applicant's representation dt 13-3- '93	'C'	24 to 39
5	Copy of Respondent's letter dated 14- 5- '93 rejecting the representation	'D'	40
6	Copy of Applicant's representation Dt 29- 7- '93	'E'	41 to 50
7	Indian Post-order with the first copy only		
8	Vakalatnama		

27/5/93
(MANOJ MISRA)
Applicant

M. R. Ansari
Advocate