

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.153 of 1988.

Date of decision : August 27 ,1990.

Rabinarayan Das ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant ... M/s.Devanand Misra,
Deepak Misra,
R.N.Naik, A.Deo,
Advocates.

For the respondents ... Mr.P.N.Mohapatra,
Addl. Standing Counsel (Central)

C O R A M:

THE HONOURABLE MR.B.R.PATEL, VICE-CHAIRMAN
A N D

THE HONOURABLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *yes*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

N.SENGUPTA, MEMBER (J) The facts of this case, briefly stated, are that the applicant was appointed as Junior Engineer, Telecommunications on the strength of a mark list in the B.Sc.Examination. In the year 1982 or thereabout on the report of the Central Bureau of Investigation a criminal case for offences punishable under sections 420, 468 and 471 of the Indian Penal Code was filed against the applicant. The allegation in the criminal

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case was that the applicant inflated his marks obtained in the B.Sc.Examination held in the year 1967. The criminal case was tried by Additional Chief Judicial Magistrate at Bhubaneswar and the said Magistrate convicted the applicant and sentenced him to a term of imprisonment. Thereafter the applicant was removed from service. The applicant preferred an appeal to the Sessions Judge which was eventually heard and decided by the learned Additional Sessions Judge, Bhubaneswar. Learned Additional Sessions Judge by his judgment dated 24.11.1987 allowed the appeal and acquitted the applicant of the charges levelled against him. On 6.4.1988 the Assistant General Manager for General Manager, Telecommunications, Orissa Circle, Bhubaneswar passed an order directing further enquiry under the provisions of sub-rule (4) of Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. In that order it is stated that the applicant would be deemed to have been under suspension from 11th December, 1986. This order is impugned in this application. The applicant has prayed for quashing that order at Annexure-3 and to give a direction to the respondents to allow him to join in the service, and not to proceed further with the proposed enquiry.

2. The respondents in their counter have stated that while applying for the post of Junior Engineer the applicant annexed an attested copy of mark list showing that he had obtained 620 marks out of total of 900 though in fact he secured 363. On the basis of that mark list he

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was selected and appointed. When the C.B.I. discovered the fraud they filed a criminal case and the case ended in conviction in the trial court. Thereafter it was decided to take disciplinary action against him and for that notices were sent to the applicant but he evaded to accept the notice as a result of which notices had to be published in the daily Sambad on 27.11.1986 but he in spite of that notice through the newspaper did not present himself so the order of dismissal was passed. After the acquittal of the applicant in the criminal appeal, having regard to the circumstances of the case, it was thought necessary to have a further enquiry. So, the impugned notice at Annexure-3 was issued. The respondents have relied on Rules 10 and 19 of the C.C.S. (C.C.&A) Rules in support of the actions taken. They have also referred to an earlier application filed by the applicant which was registered in this Tribunal as O.A.No.113 of 1986 in which the applicant prayed for quashing the order of the respondents calling upon him to show cause as to why no action should be taken on the basis of the order of conviction recorded by the learned Additional Chief Judicial Magistrate, Bhubaneswar which was rejected by this Tribunal on 6.10.1986.

3. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. P.N. Mohapatra, learned Additional Standing Counsel (Central) for the respondents. Mr. Deepak Misra has urged that in the present case Rule 10(4) of the C.C.S. (C.C.&A) Rules, could not apply. His contention is that the order of dismissal was not set aside by any

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court of law or in consequence of any order passed by the Court. Admittedly, the order of dismissal was not set aside by any court of law, yet it is to be examined if in consequence of an order passed by the Court of law the order of dismissal ceased to exist. For better appreciation, for what is going to be stated below, it would be pertinent to quote below sub-rule (4) of Rule 10 of the abovesaid rules.

- " (4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Govt. servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Govt. servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders :

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case. "

We have underlined the portion to bring into bold relief the fact that the penalty of dismissal or removal from service may cease to exist if set aside, or declared void by a decision of court of law and there is also a third possibility i.e. the penalty of dismissal or removal may be rendered void in consequence of a decision by a court of law. There cannot be any quarrel about the Additional Sessions Judge being a court of law. From the impugned order at Annexure-3 it would be found that the applicant was dismissed from service with effect from the afternoon

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of 11.12.1986 on the ground of conduct which led to his conviction on criminal charge. Under rule 19 of the above Rules the disciplinary authority may, considering the circumstances of the case, pass such order as it deems fit against a government servant and impose any penalty on such government servant on the ground of conduct which led to his conviction on a criminal charge. From the averments in the application and in the counter and the recitals in the annexures to the application it would be clear that the order of dismissal was passed on the ground of conviction of the applicant in a criminal case, to put it in other words, the foundation of the order of dismissal was the conviction of the applicant on criminal charges and this foundation vanished as soon as the order of acquittal was passed by the appellate court and the order of dismissal was rendered void. Though we are not able to accept the argument of Mr. Deepak Misra that after acquittal and on the order of dismissal being set aside by a specific order passed by the disciplinary authority, no further enquiry could be held yet in the facts and circumstances of this case we would agree with him that a further enquiry could not really be ordered. To Rule 10(4) of the C.C.S. (C.C. & A) Rules, 1965 there is a proviso which reads;

" Provided that no such further enquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case".

The order of the learned Additional Sessions Judge has been

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made Annexure-1 to the application. On going through it, it would be found that the learned Judge dealt with the case on merits and he examined the evidence and gave his comments on the evidence adduced in the trial court. By no standards can the judgment of the learned Additional Sessions Judge be said to be a judgment on purely technical grounds. Therefore, the embargo of the proviso to rule 10(4) of the C.C.S. (C.C.A.) Rules, 1965 would apply.

4. Through the facts of the case of K.G. Sugunan Vs. The Administrator U.T. of Lakshadweep and another reported in II(1990) ATLT, CAT 96 were different yet some of the reasonings stated there in would apply to the facts of the present case. There, of course the person at fault was the Administrator. Here the allegations were made against the applicant. But all the same, there is a similarity of one situation namely, that the proceeding was started long after the applicant entered into the service and the conviction by the trial court was almost a decade and half after the applicant served the Department. It is not the case of the respondents that the applicant's service was unsatisfactory. In the reported case referred to above, it was observed that it was difficult to reconcile to the fact that in the last decade of the 20th Century and with the ^{-type-} ~~life~~ of constitution that we have given to ourselves, a graduate teacher who had been working satisfactorily and continuously for more than ten years though on an ad-hoc basis should be booted out

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and deprived of his livelihood when the avenues of another employment have more or less closed on him. These observations can aptly be applied to the facts of the present case.

5. For the reasons above mentioned we would quash the order at Annexure-3, but there would be no order as to costs.

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VICE-CHAIRMAN



Member
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MEMBER (JUDICIAL)

Central Administrative Tribunal,
Cuttack Bench, Cuttack/ August 27,
1990/ S. Sarangi