

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 565 OF 1999
Cuttack this the 20th day of November/2000

Paramananda Mallick ... Applicant(s)

• • •

Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

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Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 45
2. Whether it be circulated to all the Benches of the ~~no~~ Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

(G.NARASIMHAM)
MEMBER (JUDICIAL)

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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

Paramananda Mallik, aged about 55 years,
Son of Late Sridhar Mallik, Vill: Brahmankanda
PO: Alla, Via: Raghunathpur, PS & District-
Jagatsinghpur, working as Postal Assistant -
attached to the Office of Athagarh Head Post
Office, Dist - Cuttack (under suspension)

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Applicant

By the Advocates

M/s. U.K. Mohanty
H.K. Mallick

-VERSUS-

1. Union of India represented by it's Secretary
Department of Posts, Dak Bhawan, New Delhi
2. Chief Post Master General, Orissa Circle,
Bhubaneswar
3. Director of Postal Services, Orissa, Bhubaneswar
4. Superintendent of Post Offices, Cuttack South
Division, Cuttack-1

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Respondents

By the Advocates

Mr. J.K. Nayak
Addl. Standing Counsel
(Central)

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): In this Original Application filed on 12.11.1999, applicant, who is a Postal Assistant has been convicted under Section 13 and Section 7 of the Prevention of Corruption Act in T.R. Case No. 39/91 by the learned Special Judge, Bhubaneswar and was sentenced to undergo R.I. for six months and pay fine of Rs.500/-, in default to further R.I. for one month for the offence under Section 7 of the P.C. Act and to undergo R.I. for one year and fine of Rs.5000/- in default to further R.I. for two months for the offences under Section 13 of the P.C. Act. He preferred Criminal Appeal 169/98 challenging

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this conviction and sentence before the High Court of Orissa and by order dated 27.8.1998, the High Court ordered released of the applicant on bail on furnishing Bail Bond of Rs.10,000/- with one solvent surity for the like amount and the realisation of the fine was stayed. Thereafter ⁱⁿ Memo dated 16.3.1999 (Annexure-2) the Superintendent of Post Offices, Cuttack South Division (Respondent No.4) issued notice to the applicant directing him to appear before him for personal hearing on 31.3.1999 in connection with summary inquiry to be held under the provisions of Rule 19 of the C.C.S. (CCA) Rules, 1965 (in short Rules) for taking a penal action inview of his conviction and punishment by a Criminal Court. The applicant then submitted representation under Annexure-3 against the proposed penal action challenging the maintainability and also personally attended the inquiry. In Memo dated 21.10.1999 (Annexure-4) Respondent No.4 issued another notice directing the applicant to show cause as to why he should not be dismissed from service under Rule-19 of the Rules. Along with that notice his report (Annexure-5) on the inquiry was also sent to him.

2. In this Application the applicant prays for quashing the notice under Annexures-2, 4 and 5 on the ground that this inquiry under Section 19 of the Rules is illegal, arbitrary and void because of the pendency of the Criminal Appeal before the High Court of Orissa suspending the sentence of punishment by ordering the applicant to be released on bail and staying the realisation of fine. As an interim measure the applicant prayed for issue of direction to Respondent No.4 not to take any coercive measure, viz., dismissal from service or stopping payment of subsistence allowance till the disposal of the

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Original Application.

3. On 17.11.1999, the Application was listed for the first time and on that day notices were directed to be issued on the Respondents requiring them to file counter. After hearing Shri U.K.Mohanty, the learned counsel for the applicant and Shri J.K.Nayak, the learned Addl. Standing Counsel, on whom a copy of this Application was served, the prayer for interim relief was disallowed with an observation that in case the applicant succeeds before the High Court, then the departmental authorities would be obliged to restore the status quo ante.

On 23.12.1999 the applicant preferred Misc.Application 882/99 for issue of direction to the Respondents to pay subsistence allowance at the existing rate. Through an elaborate order dated 13.1.2000, this Misc.Application was rejected.

4. Respondents in their counter filed on 5.4.2000, justifying the action under Rule-19 of the Rules averred that by order dated 7.12.1999 (Annexure-R/3) the applicant was dismissed from service with immediate effect.

5. Applicant has not filed any rejoinder.

6. We have heard the learned counsels on record and perused the records.

7. The fact that the applicant was dismissed from service vide order dated 17.12.1999 (Annexure-R/3) has not been denied or disputed. Still suppressing this fact the applicant filed Misc.Application 882/99 on 23.12.1999 for payment of subsistence allowance which would go to show that he had not approached the Tribunal with clean hands. Be that as it may, the applicant has not amended the Original Application to incorporate a prayer for quashing this order of dismissal. Since the applicant was

already dismissed from service the prayer for quashing Annexures-2, 4 and 5 in a way has become infructuous, because, even if these Annexures are quashed, the order of dismissal being not under challenge, still stands. Still then we may as well discuss the point raised in this Original Application in regard to initiation of proceedings under Rule-19 of the Rules, in spite of the order of the High Court suspending the sentence of punishment and fine. Rule 19 of the Rules reads as under :

"19. Special Procedure in certain cases

Notwithstanding anything contained in Rule-14 to Rule 18

- i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or
- ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
- iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules,

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit :

(Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i) :

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.)

It is thus clear that the 1st criterion for initiating a proceeding under this Rule is because of the conduct of the Government servant which has led to his conviction on a criminal charge and secondly the disciplinary authority must be satisfied that it is not reasonably practicable to hold an inquiry in the manner provided in these Rules. This Rule nowhere lays down that in case of stay of sentence of punishment, this proceedings cannot

be initiated. State of sentence of punishment does not mean the stay of order of conviction. This has been held by the Hon'ble Supreme Court in the case of Nagoor Meera reported in AIR 1995 SC 1364. At Para-8, the Apex Court held as under :

"We need not, however, concern ourselves anymore that the power of the Appellate Court under the Code of Criminal Procedure for the reason that what is relevant for Clause (A) of the 2nd Proviso to Article 311 (2) is the 'conduct which has led to his conviction on a criminal charge' and there can be no question of suspending the conduct. We are, therefore, of the opinion that taking proceedings for and passing orders of dismissal/removal or reduction in rank of a Govt. servant, who has been convicted by a Criminal Court is not barred, merely because the sentence or order of conviction is suspended by the Appellate Court or on the ground that the said Govt. servant - accused has been released on bail pending the appeal".

The expression used in Rule 19(1) of the Rules is also "conduct which has led to his conviction on a criminal charge". Hence as per the decision of the Apex Court in Nagoor Meera's case (Supra) the Disciplinary Authority, in spite of an employee convicted by a Criminal Court is more concerned with the conduct which has led to his conviction on a criminal charge. Once he feels the conduct is such that the concerned employee is not fit to be retained in service any more, the Disciplinary Authority has the discretion either to dismiss or remove him from service. Such power of the Disciplinary Authority is not barred merely because the sentence or order of conviction has been suspended by the Appellate Court or on the ground that the said employee has been released on bail pending appeal.

The conduct leading to conviction of the applicant is that while serving as Assistant Treasurer-cum-Correspondence Clerk at Jagatsinghpur Head Post Office, the applicant was

caught by the C.B.I., Bhubaneswar on 20.5.1999 while accepting bribe of Rs.5000/- from one Muralidhar Dash for sanctioning N.S.C. claim case. This conduct in accepting bribe of Rs.5000/- is undoubtedly a grave misconduct, which under normal circumstance, cannot but attract the penalty of dismissal from service.

4. For the reasons discussed above, we do not see any merit in this Original Application which is accordingly dismissed, but without any order as to costs.

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN

20.6.2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//