

Central Administrative Tribunal, Lucknow Bench, Lucknow.

O.A. No. 257/2008

This the 2nd day of July, 2008

Hon'ble Shri A.K.Gaur, Member (J)
Hon'ble Dr. A.K.Mishra, Member (A)

Mohd. Yar Khan aged about 62 years son of Mohd. Sher Khan resident of Village and Post Sunderwal, District- Kheri posted as Branch Post Master, Sunderwal, Kheri, Account Office, Mahewaganj, District- Kheri.

Applicant

By Advocate: Sri B.B.Singh

Versus

1. Union of India through the Chief Post Master General, U.P.Circle, Lucnow.
2. Superintendent of Post Offices, Kheri Division, Kheri.
3. Inspector of Post Offices (North), Kheri..

Respondents

By Advocate: Sri S.P.Singh

ORDER

By Hon'ble A.K. Gaur, Member (J)

By means of this O.A., the applicant has prayed for setting aside the order dated 17.4.2008 (Annexure A-1) whereby the applicant has been put off duty on the ground of a Criminal charge Under Section 302 of the IPC.

2. The applicant has been convicted by Additional Session Judge/Fast Track Court No.4, Kheri. Against the order of Conviction and Sentence, the applicant has filed Appeal No. 495/2008 before the Hon'ble high Court of Allahabad Bench, wherein vide order dated 29.5.2008, the Hon'ble High Court has enlarged the applicant on bail during the pendency of appeal on his furnishing a personal bond and two sureties each in the like amount to the satisfaction of court concerned subject to his depositing Rs. 2000/- as fine. Balance amount of fine shall remain stayed.

3. The grievance of the applicant is that vide order dated 17.4.2008, the Superintendent of Post Offices, Kheri Division Kheri dismissed the services of the applicant clearly in violation of law laid down by the Hon'ble Supreme Court.

4. The learned counsel for the applicant Sri B.B. Singh vehemently argued that no show cause notice has been issued to the applicant and the dismissal order has

arbitrarily been passed by the respondents. The order dated 17.4.2008 is illegal, arbitrary and without jurisdiction.


5. We have carefully considered the arguments advanced by the learned counsel for the applicant. In our considered view, mere grant of bail will not obliterate the gravity of conviction awarded to the applicant. The Hon'ble Supreme Court in its decision rendered in *1995 SCC (L&S) 686, Dy. Director of Collegiate Education Vs. Nagoor Meera* has held that Appellate Court does not render clause (a) of the second provision of Article 311(2) of the Constitution of India inoperative. In subsequent decisions rendered by the Hon'ble Apex Court in *2007 (11) Scale page 289 State of Punjab Vs. Deepak Mattu and JT 2001 (6) 591 K.C. Sareen Vs. CBI*, the consistent view has been taken by Hon'ble Supreme Court that the order of suspension of conviction may be passed in exceptional cases. In the present case, no such order has been passed by the Hon'ble High Court. Hon'ble High Court has merely enlarged the applicant on bail. It is settled principle of law that enlargement on bail does not amount suspension of conviction and sentence.

6. The arguments of the learned counsel for the applicant is that on filing of appeal, the conviction and sentence passed by the Trial court would remain in limbo automatically is devoid of force. Three judges bench of Hon'ble Supreme Court has elaborately considered the scope and powers of the Appellate court envisaged under Section 389 of the Code in its landmark decision reported in *1995 (2) SCC page 513 Rama Narang Vs. Ramesh Narang and others*. The legal position summarized by the Hon'ble Supreme Court is this:-

“11. Though the power to suspend and order of conviction, apart from the order of sentence, is not alien to Section 389 (1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that we have to examine the question as to what should be the position when a public servant is convicted of an offence under the PC Act. No doubt when the Appellate Court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, de hors the sentence of imprisonment as a sequel thereto, is a different matter.”

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7. In view of our aforesaid observations, we find no merit in the O.A. It is accordingly dismissed ^{in limine} ~~in limine~~ at the admission stage itself. No costs.


Member (A)


Member (J)

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