

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

TRANSFERRED APPLICATION NO. 220/1986

Shri Umesh Chandra Vidyarthi
D-3 Ellora Anushakti Nagar,
Bombay-400094.

... Applicant.

v/s.

1. The Union of India, through
the Secretary, Department of
Atomic Energy, C.S.M. Marg,
BOMBAY 400 039.

2. The Director,
Department of Atomic Energy,
C.S.M. Marg,
BOMBAY 400 039.

... Respondents.

Coram: Hon'ble Member(A) Ajay Johri.

Hon'ble Member(J) M.B. Mujumdar.

APPEARANCE :

Applicant in
person.

Shri J.D. Desai
(for Shri M.I. Sethna)
Advocate
for the respondents.

ORAL JUDGMENT

Dated : 18.02.1988

(PER : M.B. Mujumdar, Member (J)

The applicant Shri Umesh Chandra Vidyarthi had filed Writ Petition No. 2225 of 1984 in the High Court of Judicature at Bombay and it is transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985.

2. The facts relevant for the purpose of this judgment are these: In 1961 the applicant was appointed as Scientific Assistant. In 1965-66 he underwent a training course in the Training School of the respondents. Thereafter he was promoted as Scientific Officer SC.2, which is a Class-I post. He took charge of that post on 1.8.1966. In February 1975 one Smt. N.V. Arora sent a notice to the applicant through her advocate stating that the applicant was to pay to her the balance

amount of Rs.1,200 with interest out of the amount of Rs.2,000 which he had borrowed from her in connection with his transactions. A copy of that notice was sent to the respondents. Hence the matter was referred to Central Bureau of Investigation (CBI) which lodged a FIR against the applicant in February 1977 and after investigation filed a complaint in the Court of the third Metropolitan Magistrate at Bombay in October 1977. It was numbered as Criminal Case No. 436-P of 1977. In November 1977 the applicant was arrested and released on bail immediately. By an order dated 29.8.1978 the President in exercise of the powers conferred by Rule 10(1) of the Central Civil Services (CCS) Rules, 1965 placed the applicant under suspension with immediate effect. In April 1979 the applicant filed an application in the criminal court for quashing the criminal case as it was barred by ^{limitation} time, under section 468 of the Criminal Procedure Code. The learned Magistrate by his order dated 6.2.1980 rejected that application. Against that decision the applicant filed Criminal Revision Application No. 170 of 1980 in the Sessions Court at Bombay. By judgment dated 7.10.1980 the learned Additional Sessions Judge allowed the application and set aside the order of the Magistrate and quashed the criminal case. In view of that decision the applicant made a number of representations to the respondents for revoking the suspension order. By order dated 15.9.1983 the suspension order was revoked and the applicant was directed to be reinstated in service with effect from 7.10.1980. It was further directed that the pay and allowance of the applicant for the period of suspension would be regulated by a separate order. By an order passed on the same day the applicant was asked to show cause as to why the salary and emoluments for the period of suspension should not be determined at a lesser rate as the said suspension was not unjustified, within 10 days of the receipt of the notice. The applicant by his letter dated 29.9.1983 asked for certain clarifications as to why the suspension was found justified. The respondents did not reply to that

letter and the applicant also did not file his ~~detained~~ reply to the show cause notice at any time thereafter.

3. On 18.10.1984 the applicant filed the Writ Petition in the High Court, praying that the order of suspension dated 29.9.1978 as well as the show cause notice dated 15.9.1983 should be quashed as both are null and void ab initio. He has also prayed that he should be given all arrears of salary and allowances together with compound interest at the rate of 12 per cent per annum from 2.9.1978 i.e., the date on which the suspension order had become effective.

4. After the Writ Petition was transferred to this Tribunal the respondents have filed the affidavit of Shri A.S. Dixit, Head of the Personnel Division of the respondents in reply to the petition.

5. For deciding this case we may further point out that by an order dated 1.12.1984 i.e. after the Writ Petition was filed, the President in exercise of powers conferred upon him under F.R.54-B has ordered that, (a) for the period of suspension from 2.9.1978 to 6.10.1980 the pay and allowance of Shri Umesh Chandra shall be restricted to the amount of subsistence allowance and other allowances already paid to him; and (b) the said period of suspension from 2.9.1978 to 6.10.1980 shall not be treated as duty for any purpose. We may point out that though applicant has attached a copy of that order along with the written arguments submitted by him in the High Court, he has not challenged that order by amending the application. During the course of arguments, to a specific question from us he stated that he does not and need not challenge that order because in his view the original suspension order was null and void ab initio. In our view that arguments is not acceptable but at the same time we feel that the interest of justice ^{should} require that we ~~change~~ examine the legality and validity of this order.

6. We have heard the arguments of the applicant. He has also submitted his arguments in writing. We may point out that though he was

B.Sc. when he joined the respondent's organisation he has completed his LL.B. during the period of suspension. We have also heard the learned arguments of Mr. J.D. Desai (for Mr. M.I. Sethna), Advocate for the respondents.

7. The applicant's main argument was that the prosecution by the CBI against him in the court of third Metropolitan Magistrate in Bombay was null and void from the beginning, because it was initiated after the period of limitation was over. The prosecution was for unlawfully engaging in trade, which is punishable under section 168 of the Indian Penal Code. According to the First Information Report, the offence was committed by the applicant from 1969-1975 while the complaint was lodged in the Criminal Court in October 1977. The learned Magistrate had taken cognisance of the offence and a bailable warrant was issued. The applicant was arrested in November 1977 but was released on bail immediately. In April 1979 the applicant filed the application for quashing the criminal case filed against him as it was barred by limitation. We may point out that the offence under section 168 of Indian Penal Code is punishable with imprisonment for a term which may extend to one year, or with fine, or with both. Under section 468 of the Criminal Procedure Code, period of limitation for such an offence is one year. The Magistrate dismissed the application of the applicant, but the learned Additional Sessions Judge disagreed with his view and quashed the prosecution holding that it was barred by limitation. In our view though the prosecution was barred by limitation it cannot be said to be null and void from the beginning. We may point out that Section 473 of the Criminal Procedure Code specifically lays down that notwithstanding anything contained in the previous provisions including Section 468, any court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice. A copy of the judgment of the learned Magistrate by which he rejected the application for

quashing prosecution is not on record. But in our opinion the Magistrate had full powers under section 473 of Criminal Procedure Code to take cognizance of the offence even after the expiry of the period of limitation in the interest of justice. Hence simply because the view of the Magistrate was not upheld by the Additional Sessions Judge, we are not inclined to hold that the prosecution itself was ab initio null and void.

8. The applicant has cited some judgments of the Supreme Court, under Section 6(1) of the Prevention of Corruption Act and Section 197 of the Criminal Procedure Code. According to these judgments, when the prosecution is filed without obtaining sanction from the competent authority the same will be vitiated from the beginning. But this analogy will not apply to a case which is filed after the period of limitation was over. There is no provision either in the Prevention of Corruption Act or under Section 197 of the Criminal Procedure Code which authorises the court to take cognisance of an offence without sanction from the competent authority. As already discussed earlier, ~~in 473 the Criminal Procedure Code~~ Section 168 of IPC expressly provides for taking cognizance of an offence which may be barred by limitation under section 468 of Cr.P.C. Hence in our opinion the cases cited by the applicant do not apply to the facts of this case.

9. In view of this, neither the suspension order which was mainly based on the prosecution and arrest of the applicant nor the order by which that suspension order was revoked can be said to be null and void ab-initio.

10. However, we find that the order passed on 1.12.1984 is not justified in the facts and circumstances of this case. As already pointed out the applicant was suspended because of the prosecution launched against him by the CBI in the Magistrate's Court. That prosecution was quashed by the Additional Sessions Judge by his order dated 7.10.1980. We find from the record that in November 1982 a charge sheet was served upon the applicant by the Disciplinary Authority. The charge sheet contains four charges including the charge,

of unlawfully engaging in trade. We are told that the enquiry was completed in April 1984. But subsequently by an order passed on 7.5.1984 the Disciplinary Authority has ordered de-novo enquiry and remitted the case back to the Inquiry Officer. That enquiry is still going on.

11. In view of the above facts, we feel that when the suspension order was passed merely on the ground of the prosecution of the applicant and when the prosecution was quashed by the learned Additional Sessions Judge, the applicant deserves to be paid all his pay and allowances for the period of suspension by treating all that period to be on duty. We may point out that the respondents have not thought it proper to place the applicant under suspension again and that must be because the alleged charges are not so serious.

12. The respondents have already started a departmental enquiry against the applicant in November 1982, But for one reason or the other that enquiry is as yet not completed. If the charges are held established the applicant will be awarded some penalty according to rules. But by depriving the applicant of his salary for the period of suspension, and by treating that period as not on duty, he is asked to suffer punishment which is not warranted from the facts and circumstances of this case and that too before the offence is proved.

13. The applicant has challenged the suspension order on the grounds of mala fides also. But we are not impressed by these grounds because we find that in view of his prosecution and arrest he deserved to be suspended.

14. In result we hold that the order dated 1.12.1984 deserved to be quashed and set aside and passed the following order :

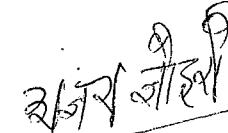
ORDER

(i) Order passed in the name of President of India on 1.12.1984 is hereby quashed and set aside.

(ii) We direct that for the period of suspension from 2.9.1978 to 6.10.1980 the applicant shall be paid his full pay and allowances, minus whatever was paid to him by way of subsistence and other allowances and direct that the said period shall be treated as duty for all purposes.

(iii) We further direct that if during the period of suspension the applicant was due for confirmation as Scientific Officer (SC) and if the respondents have followed sealed cover procedure, they may open the sealed covers and confirm the applicant if he is found fit for confirmation.

(iv) Parties to bear their own costs.


(AJAY JOHRI)
MEMBER(A)


(M.B. MUDUMDAR)
MEMBER(J)