

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 653/96

Date of Decision: 21/6/9

Gulab Adhár Nimbalkar

.. Applicant

Shri S.P.Inamdar.

.. Advocate for
Applicant

-versus-

The Subdt. of Post Offices & Ors.

.. Respondent(s)

Shri S.S.Karkera

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman.

The Hon'ble Shri D.S.Baweja, Member(A).

- (i) To be referred to the Reporter or not? ✓ 4/6/9
- (2) Whether it needs to be circulated to + No
other Benches of the Tribunal ?

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 653/96

pronounced This the 27th day of January 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

Gulab Adhar Nimbalkar,
EDSPM, Patonda EDSO,
P.O. Patonda,
Jalgaon - 425 436,
Maharashtra.

... Applicant.@@

(By Advocate Shri S.P.Inamdar)

V/s.

1. The Superintendent of Post Offices,
Jalgaon Division,
Jalgaon - 425 001.
2. The Director of Postal Services,
O/O. Postmaster General,
Aurangabad Region.
3. The Chief Post Master General,
Maharashtra Circle,
Mumbai - 400 001.

... Respondents.

(By Advocate Shri S.S.Karkera for
Shri P.M.Pradhan).

1 : O R D E R :

(Per Shri R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The Respondents have filed reply. We have heard the learned counsel appearing on both sides.

2. The applicant was working as E.D.S.P.M. at Patonda, Jalgaon District. In respect of some irregularities in the said post office during 1983 a Criminal complaint was lodged against the applicant. The Police filed a charge sheet and the applicant was tried in Criminal Case No.106/83 on the file of the Judicial Magistrate First Class, Amalner. In the first instance the applicant was convicted by the Criminal Court by order dt. 8.7.1986. On



appeal, the Appellate Judge set aside the order of conviction and remanded the matter to the Trial Court for disposal according to law. After remand, the applicant was tried in the Court of the Chief Judicial Magistrate, Jalgaon who by Judgment dt. 11.1.1995 acquitted the applicant. In the meanwhile, on the basis of the first conviction order of the Magistrate, the Superintendent of Post Office passed an order dt. 31.10.1990 imposing a penalty of removal from service in view of the conviction by the Criminal Court. Then after the acquittal in the criminal case, the applicant made representations for setting aside the order of penalty and to reinstate him with full back wages, but the respondents have not taken any action on his representation. It is stated that the order of penalty does not survive when the basis for that order viz. the order of conviction has been substituted by an order of acquittal. Therefore, the applicant has approached this Tribunal for quashing the order of penalty and for reinstatement with full back wages.

3. The respondents in their reply have stated that there was serious allegation of criminal mis-appropriation by the applicant for shortage of cash of Rs.3,666.20. When the serious mis-conduct came to the notice of the administration, the applicant was placed under suspension which is called as "put off from duty" w.e.f. 2.5.1983. Then it came to light during further inquiry that the total amount of mis-appropriation was much more. A complaint was lodged with the Police who after investigation filed a charge sheet against the applicant for an offence under section 409 IPC. In the first instance, the applicant was convicted and sentenced to suffer Rigorous Imprisonment for three years by the Judgment of the Trial Court dt.8.7.1986. In view of this conviction, the Disciplinary Authority after following the procedure, imposed a penalty of removal from service under Rule 8A of the E.D. (Conduct) Rules by order dt. 31.10.1990. It is admitted that applicant had preferred an appeal and the Appellate Court remanded the case and on further trial, the applicant was acquitted by the Judicial Magistrate by

giving benefit of doubt. It is stated that though the applicant gave a representation for reinstatement, he could not be taken back since he himself had admitted mis-appropriation of government money. It is therefore, stated that the applicant is not entitled for reinstatement. The subsequent acquittal by the Criminal Court does not confer any right on the applicant for reinstatement. That the application is barred by limitation. Since the applicant was in a part-time employment on payment of some allowances, he is not entitled to benefits that are available to a regular government servant.

4. The learned counsel for the applicant by relying on the Rules and certain decisions contended that on acquittal the applicant is entitled to reinstatement with consequential benefits, since the basis of the order of removal from service no longer survives. On the other hand, the learned counsel for the respondents submitted that having regard to the gravity of the charge and the confession made by the applicant admitting his guilt, he is not entitled for reinstatement, notwithstanding acquittal by the Criminal Court. He also argued that the acquittal by the Criminal Court was by giving benefit of doubt.

5. In the light of the arguments addressed before us, the short point for consideration is whether the applicant is entitled to reinstatement with or without consequential reliefs or not.

6. Admittedly, this is a case where applicant was imposed the penalty of removal from service on the basis of his conviction by the Criminal Court. There is no dispute on this point. In fact, the respondents themselves have produced the said order dt.31.10.1990 where it is clearly mentioned that in view of the conviction of the applicant for an offence under section 409 IPC he is imposed a penalty of removal from service.

Now, admittedly, against the order of conviction the applicant preferred an appeal before the Sessions Judge, who set aside the order of



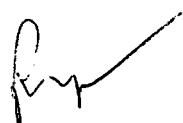
conviction and remanded the matter to the Trial Court. Then the matter was heard by the Chief Judicial Magistrate, Jalgaon, who by Judgment dt.11.1.95 acquitted the applicant of the offence with which he was charged. The copy of the Judgment by which the applicant was acquitted is produced both by the applicant and also by the Respondents. Therefore, the question is whether the order of removal from service can be sustained or not.

7. The Extra Departmental Agents are separately covered by Rules which are called as the Posts & Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964. We have before us Swamy's Compilation on the said Service Rules (1995 Edition). At page 45, we have Rule 8-A which clearly provides that in the case of a conviction of an employee there is no necessity for holding a regular departmental enquiry and the appointing authority may on the basis of the conviction pass appropriate orders. The impugned order of removal from service has been passed under Rule 8-A.

There is no provision in the rules as to what should happen if the conviction is set aside by a Higher Court. We may also notice that this Rule 8-A is in pari materia with Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, which applies to regular government employees.

In the Swamy's book mentioned above, at page 41, there is reference to a Circular dt. 16.1.1980 issued by the Director General P&T stating that in conducting enquiries under Rule 8 for imposing penalties though it is not necessary to hold a regular enquiry as per Rule 14 of the CCS (CCA) Rules, 1965, it would be desirable to follow the said provisions of CCS (CCA) Rules in spirit, so that there may be no occasion to challenge the order of punishment under Article 311(2) of the Constitution.

Therefore, the department has itself issued a Circular that the provisions of CCS (CCA) Rules must be followed in spirit.



Even under CCS (CCA) Rules, there is no specific rule as to what should happen after a conviction is set aside by an Appellate Court or Higher Court.

In Swamy's compilation of CCS (CCA) Rules (1993 Edition), at page 89 there is reference to O.M. issued by the Government of India dt. 29.11.1966 read with amendment issued on 19th September, 1975. It is provided that if an official had been removed from service on the basis of conviction and if on appeal or revision the conviction is set aside by a higher court and the government servant is acquitted, the order of imposing penalty on him on the basis of conviction becomes liable to be set aside. Then guidelines are provided as to what further action are to be taken viz. whether the order of acquittal should be challenged in a still higher Court or whether any departmental enquiry should be initiated against the government official. If it is decided that a departmental enquiry must be held then the order of penalty should be set aside and then a regular departmental enquiry should be initiated.

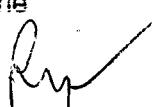
Therefore, the Government of India has itself issued an Office Memorandum indicating as to what should happen if a conviction is set aside by a Higher Court. In this case, the question of going in appeal against the order of acquittal now does not arise, since the order of acquittal was passed on 11.1.1995. Now, four years have elapsed and the Respondents have not challenged the order of acquittal by approachsing the Higher Court. Therefore, the order of acquittal has now become final.

Now, the only course open to the respondents is to reinstate the applicant and if necessary they can initiate a fresh departmental enquiry against the applicant if permissible under the Rules and in such a case, they may take a decision whether to keep the applicant under suspension or not.



8. The learned counsel for the applicant has relied on some of the decisions where also it is clearly mentioned that where an order of conviction has been set aside and the official has been acquitted by the Higher Court then the order of removal or dismissal must be set aside and the official should be reinstated (vide (1995) 30 ATC 448 (B.Gopal Vs. General Manager, Ordnance Factory and Another), 1987 (4) SLJ 597 (Jabalpur) (S.P.Verma Vs. General Manager, Ordnance Factory, Jabalpur), 1986 (1) SLJ 42 (Delhi) (C.J.C.V.Cheema Vs. The Union of India & Ors.).

We are also fortified, in our view, by the observations of the Supreme Court in a case reported in 1995(3) SCC 377 (Deputy Director of Collegiate Education (Administration), Madras Vs. S.Nagoor Meera). In that case, a government official was convicted and sentenced by the Trial Court under the Prevention of Corruption Act. Immediately, the Competent Authority issued a show cause notice to the official as to why he should not be dismissed from service in view of the conviction. Immediately, the official filed an O.A. in the Tamil Nadu Administrative Tribunal and challenged the validity of the show cause notice on the ground that he had already filed an appeal against the conviction in the High Court and the High Court had suspended the sentence of the official till the disposal of the appeal. In view of this, the Tribunal allowed the O.A. and quashed the show cause notice. The Supreme Court observed that the order of the Tribunal is not sustainable. It is pointed out that as long as the conviction stands there is no bar for the Competent Authority to take action for dismissing a government official. But in the course of the Judgment, the Supreme Court has observed that in case, the official succeeds in the appeal, then he can be reinstated and granted consequential benefits. Therefore, these observations of the Supreme Court that in case the government official succeeds in the



appeal and conviction is set aside then the order of removal from service is liable to be set aside and the government official will have to be reinstated in service apply wherein conviction is set aside by High Court.

9. In view of the above discussion, we hold that since the applicant has been acquitted by the Criminal Court, the order of removal from service dt. 30.10.1990 is not sustainable and is liable to be set aside. As a consequence, the applicant is entitled to be reinstated in service.

10. Though the applicant has claimed backwages, our view is that it cannot be granted as of right. It is not a case where the order of punishment dt. 31.10.1990 is illegal or irregular or without jurisdiction. The order is perfectly justified and valid since it was based on the conviction of the applicant by the Criminal Court. It may be, because of the subsequent order in 1995, the order of removal from service will not hold good. Therefore, initially the order was perfectly valid, but in view of the subsequent acquittal, the order has to be set aside.

The applicant was an Extra Departmental employee in the Postal Department. It is not a regular government job. He gets only some fixed allowances and it is a part-time job. Further, we find that there are serious allegations of mis-appropriation against the applicant and according to the respondents, the applicant has confessed the mis-conduct. It is also the respondents contention that the acquittal was due to benefit of doubt for want of sufficient evidence and not on the ground that the applicant was innocent and falsely implicated. Hence, taking all the facts and circumstances into consideration we feel that the applicant is not entitled to backwages till to day. Since we are setting aside the order of removal to day by this order, we feel that the applicant is entitled to wages from to day and onwards as per rules till the date of reinstatement and of course, there

cannot be any dispute that applicant will be entitled to allowances after reinstatement.

As already pointed out it is now open to the Competent Authority to apply his mind to the facts of the case and the Judgement of the Criminal Court and then decide whether it is permissible under the rules to hold a departmental enquiry against the applicant. If the authority decides to hold a departmental enquiry, it can issue a charge sheet and it is also open to the authority either to suspend the applicant or retain him in office and continue the departmental enquiry.

As already seen, the applicant is not a regular government employee. In Postal Department, there is a special category of employees called Extra Departmental Employees who are engaged on part-time basis on fixed allowances. It may be that as on to day there may be no vacancy of EDSPM at Patonda where the applicant was previously working. If somebody has already been appointed in his place, we cannot at this distance of time disturb the official who is already working at Patonda. Hence, if there is no vacancy at Patonda then the Department should accommodate the applicant in any nearby place where there is vacancy of EDSPM.

Though we have stated that the applicant is not entitled to any back wages till to day, we feel that the applicant should be given the benefit of the continuity in service from the date he was put off on duty and then removal from service till to day for the purpose of retirement benefits, leave and other service benefits to which the applicant may be entitled as per rules.

11. In the result, the application is allowed partly as below :

- (1) It is hereby declared that the order of removal from service dt. 31.10.1990 is not sustainable in law in view of the subsequent acquittal of the applicant by a Competent Criminal Court.



- (2) The respondents, are therefore, directed to reinstate the applicant forthwith as EDSPM in the Post Office at Patonda and if there is no vacancy in that place, then the respondents shall accommodate the applicant in any nearby place where vacancy is available.
- (3) The applicant is not entitled to any back wages till to day. However, the applicant is entitled to allowances as per rules from to day and onwards till the date of actual reinstatement and of course, to get allowance from the date of reinstatement and onwards.
- (4) The applicant is entitled to continuity in service from the date he was put off from duty and subsequently removed from service till the date of reinstatement only for the purpose of retirement benefits and for other service benefits except back wages.
- (5) This order is without prejudice to the right of the respondents to initiate fresh departmental enquiry against the applicant which may be permissible as per rules as observed in para 10 above.
- (6) The respondents are directed to comply with this order within two months from the date of receipt of this order.
- (7) In the circumstances of the case, there will be no order as to costs.

D.S.Baweja
(D.S.BAWEJA)

MEMBER (A)

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE - CHAIRMAN

B.