

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 26/99

8-16-99

DATE OF DECISION:

Janardan Gharu Yadav

Applicant.

Mr. G.K. Masand

Advocate for

Applicant.

Versus

Union of India & Ors.

Respondents.

Shri M.L. Sethna alongwith

Shri V.D. Vadhwakar

Advocate for

Respondent(s)

CORAM

Hon'ble Shri D.S. BAWEJA, MEMBER (A)

Hon'ble Shri S.L. JAIN, MEMBER (J)

(1) To be referred to the Reporter or not? *Yes*

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *No*

S.L. JAIN
(S.L. JAIN)
MEMBER (J).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.26/99

8th the day of October, 1999.

Coram : Hon'ble Shri D.S. Baweja, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

Janardan Gharu Yadav,
Residing at
Mint Staff Quarters,
G/18, Senapati Bapat Marg,
Mahim, Mumbai.

.. Applicant.

By Advocate Shri G.K. Masand.

vs.

1. Union of India, through
Secretary in the Ministry
of Finance, Department of
Currency & Coinage,
North Block, New Delhi.

2. General Manager,
India Government Mint,
Shaheed Bhagat Singh Road,
Mumbai.

3. Financial Advisor &
Chief Accounts Officer,
India Government Mint,
Shaheed Bhagat Singh Road,
Mumbai.

.. Respondents.

By Advocate Shri M.I. Sethna alongwith Shri Vadhwkar.

ORDER

[(Per Shri S.L. Jain, Member (J))]

This is an application filed under section 19
of the Administrative Tribunals Act 1985 to quash and

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set aside suspension order dated 25.6.1998, stay the further operation of the said order with a direction to the respondents to permit the applicant to resume his duties as Sub-Inspector in the Security Department of India Government Mint along with costs.

2. There is no dispute between the parties in respect of the facts that after discharge from the Indian Air Force, applicant was appointed as Sub-Inspector at India Government Mint at Mumbai with effect from 1.7.1993. He was arrested in respect of a Criminal Case, placed under suspension from 2.8.1994 till 24.4.1995, is convicted by the Additional Sessions Judge, Alibag. An appeal against the same is filed before the High Court of Bombay. The respondent No.3 purporting to act on behalf of respondent No2 passed the order of suspension of the applicant on 25.6.1998, his representation dated 23.7.1998 was rejected and an appeal against the same was filed on 17.11.1998 which is pending for the disposal.

3. The grievance of the applicant is that an appeal against the conviction by Additional Sessions Judge, Alibag is filed before the Bombay High Court which is admitted on 27.4.1998 and on 8.7.1998 the High Court was pleased to order Suspension of the conviction of the applicant. As the order of conviction has become

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null and void, steps to revoke the order of Suspension is to be taken but no action has been taken on the said letter inspite of the representation dated 23.7.1998 and appeal against the same is pending for disposal. Hence this O.A. for the above said relief.

4. The respondents have resisted the claim of the applicant and alleged that the applicant was convicted by Sessions Judge, Raigad for the offence punishable under section 147, 148, 149, 324 read with Section 452 of I.P.C., in Sessions Case No.153/96 and in appeal against the same, conviction is suspended. The applicant has suppressed material information from the Disciplinary Authority that he was in police custody during his leave period from 20.7.1994 to 3.8.1994 at his village and post Vinhere Raigad District and was confirmed after issuing departmental memo No.Admn/130/94 dated 23.8.1994 and his explanation dated 23.8.1994 to the said memo. Consequently the applicant was placed under deemed suspension with effect from 2.8.1994 under Rule 10(2) of CCS(CCA) Rules vide Order No.I-24/1200/Admn/94 dated 24.8.1994 which was revoked with immediate effect without prejudice to the action, warranted, if any, on the conclusion of the Court proceedings pending against him vide Order No.I-24/508/Admn/95 dated 24.4.1995. After conviction he is

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placed under deem suspension with immediate effect vide order No.I-24/464/Admn/98 dated 25.6.1998.

5. The applicant has filed the rejoinder affidavit stating that on the advise of the Security Officer, he narrated the whole episode vide his letter dated 23.8.1994 and on the said information, suspension order dated 24.8.1994 giving deemed date of suspension as 2.8.1994 was issued which was revoked on 24.4.1995. About conviction, he has informed in writing on 11.6.1998 and 15.6.1998.

6. On perusal of the order, we find that the suspension order is passed on account of the conviction of the applicant under Rule 19(2)(i)(ii) of CCS(CCA) Rules for ready reference, the said provision is as under:-

"(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 reasonable practicable to hold an inquiry in the manner provided in these rules, or".

7. On perusal of the order, we find that Rule (i) is not applicable for the reason that after conviction, no penalty is imposed on the applicant.

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8. On perusal of the order, we find that Rule 19(iii) does not apply for the reason that ~~no~~ reasons are recorded in writing by the disciplinary authority that it is not practicable to hold an enquiry in the manner required by law.

9. For application of the above said Rule 19(i)(iii) it is necessary that an opportunity of making representation on the penalty proposed to be imposed is to be given to the applicant. On perusal of the pleadings of the parties, we do not find that such a procedure was ever adopted for by the respondents. Hence said provision does not apply at all.

10. Wrong mention of the rule or provision is of no significance and matter can be dealt with under correct provisions of law.

11. Rule 10(2) if CCS(CCA) Rules is worth mentioning which is as under:-

"10(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority -

(a) with effect from the date of his detention if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty eight hours;

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction".

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11. It is true that conviction of the applicant is suspended by the Hon'ble High Court of Bombay vide order dated 8.7.1998, the applicant was sentenced to suffer rigorous imprisonment for one year concurrently for all three offences. The suspension of conviction does not mean that the applicant is acquitted. As the appeal is pending, the conviction is not operative till the decision of the appeal.

12. There appears no error in passing the order of suspension and rejection of the representation, other reliefs are consequential in nature.

13. In the result, O.A. is liable to be dismissed and is dismissed accordingly with no orders as to costs.

(S.L. JAIN)

MEMBER (J)

(D.S. BAWEDA)

MEMBER (A).