

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.868/2000.

Dated this Friday the day 22nd of December, 2000

Coram : Hon'ble Shri B.N. Bahadur, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

Chhotelal Basudeo Mishra,
working as Phone Inspector Staff
No.15833 in the office of Sub-
Divisional Engineer, External
(Malad V), M.T.N.L., Mumbai,
Kachpada, Ramachandra Lane,
Malad (W), Mumbai - 400 064. . . Applicant.

(By Shri S.V. Marne, Advocate)

Vs.

1. The Union of India, through
the Secretary,
Ministry of Communication,
Sanchar Bhavan,
New Delhi.
2. The Chief General Manager,
MTNL - Mumbai
Telephone House,
Veer Savarkar Marg,
Prabhadevi,
Mumbai - 400 028.
3. The Chief General Manager,
Bharat Sanchar Nigam Ltd.,
Maharashtra Circle,
Hutatma Chowk,
Telephone Building,
Mumbai - 400 001.
4. The Dy. General Manager,
(Technical) Malad,
MTNL - Mumbai,
Malad Telephone Exchange,
2nd Floor, S.V. Road,
Malad (W), Mumbai-400064. . . Respondents.

(By Shri V.S. Masurkar, Advocate)

O R D E R
[Shri S.L. Jain, Member (J)]

This is an application under section 19 of the
Administrative Tribunals Act, 1985 seeking the declaration that
order dated 4.12.2000 "Annexure A-1" is illegal and be quashed,

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with a further declaration that during the pendency of appeal before the Hon'ble High Court the applicant be allowed to work or put under suspension. It is also claimed that absence of provision in the Rules specifically dealing with Appeal may be directed to be incorporated in CCS (CCA) Rules, so as to provide suspension (subsistence allowance) during the pendency of the appeal before the Hon'ble High Court against conviction.

2. The applicant has been ~~convicted~~ convicted in Special Case No.73 of 1990 in the Court of Special Judge Brihan Mumbai, Mumbai on 15.9.2000. He has been sentenced to suffer RI for 2 years and to pay a fine of Rs.10,000/-. The applicant has preferred an appeal before the Hon'ble High Court being Criminal Appeal No.706 of 2000 in which the applicant has been released on bail and therefore the sentence of RI is suspended.

3. The respondent No.4 has served order dated 4.12.2000 Annexure A-1 on 8.12.2000 on the applicant alleging that the applicant is not a fit person to be retained in service as convicted under section 7 read with 13(2) & 13(1)(d) of the Prevention of Corruption Act, 1988. The said order also provided an opportunity to the applicant to make representation, if any, in writing not later than 15 days from the date of receipt of the said order.

4. The applicant did not file the representation and rushed to the Tribunal for seeking the relief as stated above.

5. M.T.N.L., Mumbai who is represented by respondent No.4 Dy. General Manager, Malad is the borrowing department of the applicant. In reply to para 4.4 of the O.A. the respondents have stated that the show cause notice dated 4.12.2000 was issued to ^{to} ~~to~~

the applicant and his explanation/representation is called for. On receipt of the explanation entire proceedings will be sent to the Lending Authority which is a competent authority to take final decision in the matter. This was done with a view to expedite the proceedings in accordance with law.

6. The learned counsel for the applicant relied on Rule 20(2)(ii) of CCS (CCA) Rules, 1965 and argued that as the respondent No.4 has no jurisdiction to proceed in the matter, the order Annexure A-1 is void, as it does not comply with the legal requirements, hence at this stage the Tribunal has jurisdiction to interfere in the matter.

7. On perusal of Rule 20(2)(ii) of CCS (CCA) Rules it is clear that the borrowing authority has jurisdiction to proceed for disciplinary proceeding either in Rule 14 or Rule 16 or Rule 19 of the CCS (CCA) Rules 1965 but if it is of the opinion that any of the penalties specified in Clause (V) to (IX) of Rule 11 should be imposed on the Government servant, it shall replace his services at the disposal of the lending authority and transmit to it the proceedings of enquiry and thereupon the lending authority may, if it is the disciplinary authority, pass such orders there on as it may deem necessary, or, if it is not the disciplinary authority, ^{Submit the case to the disciplinary authority} which shall pass orders on the case as it may deem necessary. Thus the question of lack absence of jurisdiction of respondent No.4 in issuing the show cause notice does not arise.

8. The learned counsel for the applicant relied on Rule 19 of CCS (CCA) Rules 1965 and argued that as there is absence of the words in Annexure A-1 "on the ground of conduct which has led to his conviction on a criminal charge" the order is void on ~~one~~. It is suffice to state that if the applicant feels that the order at

Annexure A-1 is defective, he is having a chance to agitate the matter by way of representation for which he has been afforded an opportunity. At this stage we are not inclined to interfere in this matter and record an opinion, because the jurisdiction of the Tribunal is of "Judicial Review" and not to decide the matter, without there being a final order of an authority. The order at Annexure A-1 is a provisional order, the finality shall be attached to it, if applicant represent the matter and it is decided or if no representation is made, the order thereafter is passed.

9. The learned counsel for the applicant relied on Rule 10(1)(b) of the CCS (CCA) Rules 1965 and argued that appeal is a continuation of trial and hence no such action as proposed can be taken, at the most the applicant can be put under suspension. He relied on 1983(2) All India Service Law Journal 227 State of Maharashtra Vs. Chandrabhan particularly on para 19 which is as under:-

"Therefore, Baban's contention in the Writ Petition that the subsistence allowance is required to support the civil servant and his family not only during the trial of the criminal case started against him but also during the pendency of the appeal filed in the High Court or this Court against his conviction is correct".

10. He also relied in this respect on the judgment reported in (1993) 24 DTC.243 Umesh Chandra Mishra Vs. Union of India & others.

11. It is suffice to state that the Apex Court was dealing with the provision for payment of subsistence allowance and not dealing with the interpretation of the word trial or Appeal.

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12. In 1990 (2) SC 489 Punjab Land Dev. Corpn. Ltd. v. The

Presiding Officer, Labour Court states about precedent as under:-

"To consider the ratio decidendi of a case we have, therefore, to ascertain the principle on which the case was decided. Sir George Jessel in Osborne v. Rowlett (1880) 13 Ch.D 774, remarked that the only thing in a judge's decision binding as an authority upon a subsequent judge is the principle upon which the case was decided".

13. In A.I.R. 1986 SC 468 Prakash Amichand Shah vs. State of Gujrat & Ors. states about the scope and authority of the precedent as under:-

"A decision ordinarily is a decision on the case before the Court. While the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Hence while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision, a decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation".

14. The "trial" comes to an end after the pronouncement of the judgment in a case, while the word "appeal" denotes when the judgment pronounced in a trial is being challenged. Hence we are of the considered opinion that the word trial can not include appeal or the trial does not continue till the judgment pronounced attaches finality by the Apex Court.

15. The learned Counsel for the applied relief on (1994) 26 A.T.C. 182 Nagan Chandra Mahato vs. Union of India and others, a case of a railway employee, which is based on Umesh Chandra Mishra vs. Union of India and others referred above. The circular relied was 21.1.1966, while the later circular dated 4.3.1976 and classification dated 6.6.1994 was not brought to the notice of

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the Apex Court. We are not dealing with the case of a railway employee, hence the said authority holds no water.

16. The learned Counsel for the applicant relied on 2000 SCC (L&S) 906 Deepak Puri vs. State of Haryana & Others and argued that even in departmental enquiries, when conduct of departmental authorities is unfair, Court can interfere. The Apex Court has interfered in the said case on a representation, while even the representation to the authority issuing the notice has not been filed by the applicant. Hence, at this stage no interference is called for.

17. We agree with the submission of the learned Counsel for the respondents that the procedure prescribed in Rule 14, Rule 16 & Rule 19 of CCS (CCA) Rules 1965 are different one and they cannot be mixed together. He further argued on the basis of (1995)1SCC322 Transport Commissioner Madras-5 vs. A.Radhakrishna Moorthy that the jurisdiction of the Tribunal is a kin to that of High Court under Article 226 of the Constitution of India. He also relied on (1996)2SCC145 Inspector General of Police and another Vs. Thavasiappan (1996)4SCC708 Director General, ESI and another vs. T. Abdul Razak for the proposition that charge sheet can be initiated even being an authority not empowered to impose the penalty. We have stated earlier in para of this order regarding competence of the respondent No.4 regarding issuance of the order in dispute.

18. As the applicant has not replied so far to the order Annexure A-1, Application under section 19 of the Administrative Tribunals Act, 1985 is premature in view of 1995 Supp (1) SCC 180 Union of India and another vs. Ashok Kacker.

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19. The learned Counsel for the respondents relied on (1996) 2 SCC 145 The Deputy Inspector General of Police vs. K.S. Swaminathan for the proposition that even the charge memo is vogue, does not disclose the misconduct, it can not be quashed. In the present case, it is said to be defective, we are not expressing any opinion about it but assuming it to be so, it does not deserve to be quashed at this stage.

20. On perusal of the judgment of Union of India vs. Tulsiram Patel referred above, the Apex Court has held as under:-

"The conclusion which flows from the express language of the second proviso to Art.311(2) is inevitable and there is no escape from it. It may appear harsh but the second proviso has been inserted in the Constitution as a matter of public policy and in public interest and for public good. It is in public interest and for public good that a government servant who has been convicted of a grave and serious offence or one rendering him unfit to continue in office should be summarily dismissed or removed from service instead of being allowed to continue in it at public expense and to public detriment. Sympathy and commiseration cannot be allowed to outweigh considerations of public policy, concern for public interest, regard for public good and the peremptory dictate of a Constitutional prohibition".

It is suffice to state that this was the judgment pronounced by the Constitution Bench of the Apex Court consisting of five judges. In case of Dy. Director of Collegiate Education (Admn.) vs. S.Nagoor Meera, it has been specifically held that if a sentence is suspended by the appellate court or accused is released on bail pending the appeal, it does not bar the administration from taking action under Article 311 (2). The finding has been recorded as under:-

"Taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the

sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal. It cannot be said that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311(2) is not permissible. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311 (2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be".

21. Though it is not necessary to refer further the decision relied on by the learned counsel for the respondents in view of the Apex Court's judgment, suffice to say that the similar view has been taken by the Full Bench in 1990 (12) ATC 365 in case of Om Prakash Narang vs. Union of India & Ors. with CCS (CCA) Rules, 1965.

22. Regarding hostile treatment/discriminatory treatment it is suffice to state that it is not at the hands of respondent No.4 and an irregularity/illegality committed by one, cannot be a ground for others to avail the said benefit.

23. The learned Counsel for the applicant relied on Rule 10(2)(b) CCS (CCA) Rules 1965 and argued that as soon as the applicant is convicted, he shall be deemed suspended ^{to} which we are not inclined to agree in view of explanation attached to it. There is nothing on record that the applicant suffered the imprisonment.

24. In the result, we do not find any merit in the O.A. at this stage, it is liable to be dismissed and is dismissed accordingly with costs amounting to Rs.650/- (Rs.500/- as legal practitioner's fee and Rs.150/- as other expenses).

SL Jain
(S.L. Jain)
Member (J)

B.N. Bahadur
(B.N. Bahadur)
Member (A).