

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 787/2000

DATE OF DECISION: 22/11/2000

Shri V.K. Doorwar Applicant.

Nov, 2000

Shri G.S. Walia Advocate for  
Applicant.

Versus

The Union of India and others Respondents.

Advocate for

Respondents

CORAM

Hon'ble Shri S.L.Jain, Member(J)

Hon'ble Smt. Shanta Shastry, Member(A)

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

(2) Whether it needs to be circulated to other Benches of the Tribunal? *yes*

(3) Library.

*yes*  
*S.L.Jain*  
(S.L.JAIN)  
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 787/2000

the 22<sup>nd</sup> day of NOVEMBER 2000

CORAM: Hon'ble Shri S.L. Jain, Member (J)

Hon'ble Smt. Shanta Shastry, Member(A)

V.K. Doorwar  
Residing at  
E/26, Birkley Place  
Byculla, Mumbai.

...Applicant.

By Advocate Shri G.S. Walia.

V/s

Union of India through  
General Manager  
Headquarters Office,  
Central Railway  
Mumbai CST, Mumbai.

...Respondent.

ORDER

{Per Shri S.L. Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking the following reliefs:

(a) This Hon'ble Tribunal be pleased to call for records of the case which led to the passing of the impugned Notice dated 16.10.2000, and after going through its propriety, legality and constitutional validity, quash and set aside the same.

(b) This Hon'ble Tribunal be pleased to order and direct the Respondents not to issue any notice in future to the applicant, till the outcome of the Criminal Appeal No.2169 of 1998, filed before the Hon'ble High Court, Jabalpur.

(c) Any further and other order as this Hon'ble Tribunal may deem fit, proper and necessary in the circumstances of the case.

(d) Cost of the Original application be provided for.

J.L.S. /

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2. The applicant was prosecuted under Section 7, 13(2) read with 13(1) (d) (2) of Prevention of Corruption Act 1988 and was convicted by judgement dated 16.9.1998 by the Special Judge, Bhopal (M.P.) and sentenced him to under go 2 years imprisonment and a fine of Rs. 500/- or in default of fine a further imprisonment of 3 months. The applicant filed an appeal against the same before the High Court of M.P. which was registered as Criminal Appeal No. 2169/98. On 25.9.1998 the Hon'ble High Court of M.P. has passed the order as under:

Shri S.C. Datt, Sr.Adv. with Shri Manish Datt, Adv. for the accused/appellant.

Shri P.S. Gaharwar, P.L. for the respondent/State.

Heard on admission.

The appeal is admitted for final hearing.

Fresh notice is not necessary as Shri P.S. Gaharwar, P.L. has already appeared for the State on advance notice.

Call for the record of the trial Court.

Heard on I.A. No. 7240/98, for grant of bail and suspension of sentence.

Petition (I.A. No. 7240/98) is allowed, and it is directed that the substantive sentence of imprisonment of accused/appellant shall remain suspended, on his furnishing personal bond in the sum of Rs. 10,000/- (Rupees ten thousand), with one solvent surety in the like amount to the satisfaction of trial Court, for his appearance in this scourt on 8.1.99, and thereafter, as may be directed by this court, from time to time in this regard.

C.c. as per rules.

3. The respondents have issued Memorandum Exhibit A 1 dated 16.10.2000 which the applicant claims to have received on 31.10.2000.

4. The case of the applicant is that a false case under Section 7 and 13(2) read with 13 (1) (d) (2) of Prevention of Corruption Act 1988 was filed against him. Inspite of the appeal being pending, the respondents have issued the Memorandum

P. L. Gaharwar

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Exhibit A 1 dated 16.10.2000. The respondents should not have issued the Memorandum till the pendency and the decision of the appeal by the Hon'ble High Court of M.P. at Jabalpur as the implementation of the judgement has been stayed. The Railway authorities are bound by the Rules framed by themselves. The OA was filed on 16.11.2000.

5. On 13.11.2000 the applicant has filed M.P. No. 873/2000 stating the fact that order of Hon'ble High Court of M.P. has been communicated to the respondents. Suffice to say that the interim relief asked for by the applicant was not granted by the Tribunal on 8.11.2000 and the Tribunal observed that there is no allegation that the applicant informed the respondents about the filing of the Appeal before the High Court of M.P. or the pendency of the Appeal before the said High Court. It is also worth mentioning that even in the amendment sought the date of communication of the order of the High Court of M.P. to the respondents has not <sup>been</sup> mentioned.

6. The amendment is also sought regarding the circular which is referred in 1993 (24) ATC 243 Umesh Chandra Mishra V/s Union of India and others. The said amendment also appears to be in view of para 5 of the interim order passed on 8.11.2000. Whatsoever may be the reason for incorporating the amendment, we have to decide the matter on merits, taking the said allegation into consideration as part of pleading.

7. The respondents have not filed any reply and stated that as the matter involves only question of law, it can be argued. The learned counsel for the applicant <sup>agreed</sup> argued to the same. We heard the matter on merits.

*J. M. ...*  
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8. The learned counsel for the applicant relied on 1993 (24) ATC 243 Umesh Chandra Misra vs. Union of India & Ors. decided on 14.10.1992 and argued on the basis of Para 6 of the said judgement that Railway Board's order/Circular dated 21.1.1966 provides that before the period for filing the appeal has elapsed or if any appeal has been filed, till it has been decided by the first court of appeal, no action against a Railway servant who is convicted in a Court of law is to be taken. He further argued that even in the said case, learned counsel Dr. Prakash who appeared for the Railways has not disputed the provisions of Railway Board's letter/Circular dated 21.1.1966 and also Rule 2043 referred to above based on Para 7 of the order.

He further argued that period involved in the said case was from May 20, 1976 to 17th February, 1977. We are dealing <sup>with</sup> the said contention of the learned counsel for the applicant in later paragraphs of this order.

9. The learned counsel for the respondents relied on AIR 1985 SC 1419 Union of India vs. Tulsiram Patel, AIR 1985 SC 1364 Dy. Director of Collegiate Education (Admn.) vs. S. Nagoor Meera and argued that provisions contained under Article 311(2) proviso (a) of the Constitution of India, Rule 19 of CCS (CCA) Rules and Rule 14 of the railway Servants (Discipline & Appeal) Rules, 1968 are para materia one. Hence, the precedents under the said provisions deserves to be followed. We are in full agreement

*J. W. P.*

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with the learned counsel for the respondents in view of the said provisions contained in Article 311 (2) Proviso (a) of the Constitution of India, Rule 19 of CCS (CCA) Rules and Rule 14 of the Railway Servants (Discipline & Appeal) Rules, 1968.

10. On perusal of the judgement 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 judgement 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 :-

*P. S. J.*

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" 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."

11. 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 judgement, suffice to say that the similar view has been taken by the Full Bench in 1990 (12) ATC 365 in case of Om Parkash Narang vs. Union of India & Ors. with CCS (CCA) Rules, 1965.

12. 1987 (4) ATC 208, Trikha Ram vs. V.K.Seth & Anr. relied on by the learned counsel for the respondents in which the case earlier referred <sup>to</sup> Union of India vs. Tulsiram has been followed and the point decided in the said case is whether a person released on probation is disqualified from future service in view of Section 12 of the Act which is not relevant in the present case.

13. The learned counsel for the respondents relied on Circular issued by the respondents dated 4.3.1976 clarified in subsequent Circular dated 6.6.1994. The learned counsel for the applicant argued that these are the confidential letters hence

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they cannot be taken into consideration. It is suffice to state that when the respondents who have issued these letters placed on record, published in books, the nature being confidential ceases. The said letters are being issued by Govt. of India, Ministry of Railway, Railway Board. They are not meant only to inform the concerned officers but they are being circulated to act upon. Hence, we are not inclined to agree with the submission of the learned counsel for the applicant.

14. Leaving apart, even if the argument of the learned counsel is accepted, the applicant is not entitled to any relief for the reason that the Circular which was relied on by the Apex Court in the case of Umesh Chandra Mishra vs. Union of India & Ors. which is inconsistent with Rule 14 of the Railway Servants (Discipline & Appeal) Rules, 1968 cannot be acted upon in view of Rule 29 (1) of the Railway Servant (Discipline & Appeal) Rules, 1968 which is as under :-

"29. Repeal and saving

(1) The Discipline and Appeal Rules for Railway Servants, other than those employed in the Railway Protection Force, in force with effect from 1st August, 1961 and any orders issued thereunder in so far as they are inconsistent with these rules, are hereby repealed."

15. The decision is always based on material available on record and the contentions raised by the parties. We have carefully perused the judgement of Umesh Chandra Misra and we are of the considered opinion that niether the Railway Servants

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(Discipline & Appeal) Rules, 1968, Rule 14, nor Rule 29 (1) were pressed in service. Hence, in absence of their consideration in the said judgement, we are unable to over-look the said existing provisions which are in force.

16. The learned counsel for the respondents also relied on 1999 SCC (L&S) 330 General Manager, Western Railway & Ors. vs. Y.P.Sharma & Ors. and argued that Rules under Article 309 of the Constitution of India prevail if contrary to the Indian Railway Establishment Manual. We are in complete agreement with the learned counsel for the said proposition of law.

17. In the present case, the applicant by way of an amendment contended that he is challenging the issue of the memorandum dated 16.10.2000 itself. We do not agree with the learned counsel for the reason of the aforesaid precedents referred above, which entitles the respondents to proceed, as is done, in the matter.

18. In JT 1990 (2) SC 489 in case of Punjab Land Dev. Corporation Ltd. vs. The Presiding Officer Labour Court, it has been held 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.

Similarly in A.I.R. 1986 S.C. 468 Prakash Amishad Shah vs. State of Gujrat & Ors., it has been held that the scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation.


*Prakash*

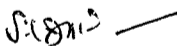
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In view of the principle laid down with regard to Rule of Precedents, which is stated above, the judgement of the Apex Court in Umesh Chandra Misra's case was only to the facts brought on record and legal position conceded. Hence, it does not help the applicant in the present case for the reasons mentioned above

19. After issue of the said Memorandum dated 16.10.2000, the applicant was afforded by the respondents an opportunity to submit the representation but without submitting the representation, the applicant has rushed to the Tribunal. As there is no adverse order so far against the applicant, question of any judicial review only on the basis of the issue of the Memorandum dated 16.10.2000 which is within the competence of the respondents does not arise. In the result, we hold that the OA. is pre-mature one.

20. In the result, we do not find any merit in the OA. It is liable to be dismissed and is dismissed accordingly with costs amounting to Rs.650/- (Rs.500/- as counsel fee + Rs.150/- as other expenses) payable by the applicant to the respondents within a period of three months from the date of receipt of a copy of this order.

  
(SMT.SHANTA SHASTRY)  
MEMBER (A)

  
(S.L.JAIN)  
MEMBER (J)

mrj.