

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

OA No.213/2001

New Delhi, this 12th day of September, 2001

Hon'ble Shri Justice Birendra Dikshit, VC(J)
Hon'ble Shri M.P. Singh, Member(A)

N.S. Nikhare, IRSE
Dy. Chief Engineer (Safety)
Western Railway, Churchgate
Mumbai .. Applicant

(By Shri M.S. Ramamurthy, Advocate)

versus

Union of India, through

1. General Manager
Western Railway
Churchgate, Mumbai
2. Secretary
Ministry of Railways
Railway Board
Rail Bhavan, New Delhi .. Respondents

(By Shri V.S. Masurkar, Advocate)

ORDER(oral)

By Shri M.P. Singh

Heard the learned counsel for the applicant at length as also the counsel for the respondents. Applicant's, working as Deputy Chief Engineer, Western Railway, challenge in this OA is to the Memorandum dated 4.1.2001 proposing to take action against him for dismissal from service under Rule 14(1) of Railway Servants (D&A) Rules, 1968. This Memorandum is consequent to applicant's prosecution by the Court of Special Judge, CBI/Mumbai on the charge of demand of a bribe of Rs.1,00,000 from Shri Ashok Shah for processing the file for granting No Objection Certificate from Railway for the proposed

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residential development on Plot No.228-233 at Virar. The Court convicted the applicant on 9.10.2000 under Section 7 and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced him on 9.10.2000 for three years rigorous imprisonment and fine of Rs.1,00,000 under Section 13(2) read with Section 13(1)(d) of the PC Act, 1988 and in default to undergo further rigorous imprisonment for another six months and both the sentences would run concurrently. The plea taken by the applicant is that he has made an appeal being Criminal Appeal No.719/2000 before the Mumbai High Court, which is stated to have been admitted by the High Court and that he has been granted bail by the court. Applicant states that he has also submitted his representation on 20.2.2001 against the memo dated 4.1.2001 which has not been disposed of so far.

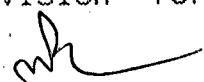
2. The main ground taken by the applicant is that mere conviction of a public servant by a competent court of law does not ipso facto result in or can give rise to automatic dismissal from service. He has also taken the plea that the impugned memo should have been issued only after consultation with UPSC. It is how he is before us seeking to quash the impugned memo dated 4.1.2001 and to restrain the respondents from taking any further steps against him,



until disposal of the criminal appeal filed by him before the Mumbai High Court. However, without waiting for reply from the respondents to his representation dated 20.2.2001 he has filed this OA on 20.3.2001. On this ground alone, we feel, the present OA is liable to be dismissed.

3. The preliminary objection taken by the respondents in their reply is that this is a case of non-joinder of necessary parties as the applicant has not made CBI/ACB as necessary party as he has been convicted by the CBI in Special Case No.65/98 vide order dated 9.10.2000. It is the case of the respondents that the applicant was to submit his defence to the memo dated 4.1.2001 within 15 days. His request for extension of time was accepted and he was given full opportunity to present his case effectively. His representation dated 20.2.2001 is under consideration by the competent authority under Rule 14 of the Railway Servants (D&A) Rules, 1968. The applicant was placed under suspension w.e.f. 23.10.97 because of his arrest by CBI while accepting illegal gratification on 20.10.97. The suspension was revoked on 16.7.1999. Since the representation of the applicant is still under consideration, the application is premature.

4. According to the respondents, Rule 14(1) does not contain provision for grant of personal hearing. As



regards applicant's allegation that UPSC has not been consulted before issue of notice, respondents would submit that consultation with UPSC is necessary only for passing final orders and not for issuing show cause notice. UPSC is consulted after getting representation of the delinquent employee against the show cause notice and with President's views thereupon. Final decision is taken by the President after considering the advice tendered by UPSC and a copy of UPSC's advice is also supplied to the delinquent employee along with the final Presidential order. In view of these submissions, the OA may be dismissed.

5. During the course of the arguments, learned counsel for the applicant has drawn our attention to a large number of decisions of the apex court as well as this Tribunal to contend that any action at this stage for dismissal of the applicant based on conviction of the Special Judge is not in accordance with law established when the applicant's appeal is not decided by the High Court. We have gone through the judgements cited by him but we find that the challenge by the appellants in all these cases were either against their dismissal or removal from service while the criminal cases were pending against them. In the instant case the applicant has only been asked to show cause before imposition of penalty, to which he has made a



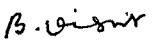
representation and the same is under consideration by the respondents. Therefore the judgements relied upon by the applicant would not render any assistance to him.

6. The question of interference by the Tribunal/Court in disciplinary proceedings for imposing major penalty at the interlocutory stage is no more *res integra*. We are supported in this proposition by the verdict of the Hon'ble Supreme Court in the case of UOI Vs. Upendra Singh, JT 1994(1) SC 68, wherein it has been categorically held that "Tribunal ought not to interfere at an interlocutory stage and that Tribunal has no jurisdiction to go into the correctness or truth of the charges".

7. In the circumstances, we are of the considered view that the present application is premature. The impugned memo is only a show cause notice to which the applicant has made his representation and the same is under consideration by the respondents. Thus the action taken by the respondents cannot be faulted. In view of this position and also having regard to the decision of the apex court in the case of Upendra Singh (supra), we do not find any merit in this OA and the same is dismissed accordingly. No costs.


(M.P. Singh)

Member(A)


B. Dikshit

(Birendra Dikshit)
Vice-Chairman(J)

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