

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 171/2001

B. B. - Mishra

Adv. Shri C. B. Kale

VERSUS

Union of India & ors.
Advocate Smt. H. P. Shah.

CORAM : Hon'ble Shri Justice R.R.K. Trivedi- Vice Chairman
Hon'ble Shri Shankar Prasad - Member (A)

- ✓ (i) To be referred to the Reporter or not ?
(ii) Whether it needs to be circulated to other Benches of the Tribunal ?
(iii) Library ?
- } Yes

Shankar Prasad
(Shankar Prasad)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 171/2001

Dated this Wednesday the ^{17th} ~~16th~~ day of July, 2003

CORAM: Hon'ble Shri Justice R.R.K. Trivedi - Vice Chairman

Hon'ble Shri Shankar Prasad - Member (A)

B.B. Mishra P.A.
Khar P.O. Mumbai.

...Applicant

By Advocate Shri C.B. Kale

V/s

1. Union of India through
the D.G. Department of Posts
Parliament Street, New Delhi.
2. The Chief Post Master General
Maharashtra Circle, Mumbai GPO
Mumbai.
3. The Sr. Supdt. of P.O's
Mumbai City North Dn.
Azadnagar, Mumbai.

...Respondents

By Advocate Smt. H.P. Shah.

O R D E R

{Per Shankar Prasad, Member (A)}

This is a second round of litigation. The applicant had earlier filed OA 392/98 which was allowed vide order dated 17.12.1998.

"8. In the result the OA is disposed of at the admission stage by giving a liberty to the applicant to make a fresh representation in continuation of the old representation by giving details and a direction to the respondents to consider the same as per the O.M. mentioned above and pass appropriate order according to law in the light of the above observations. All contentions on merits on both sides are left open. The applicant is directed to make the representation within a period of two months from the date of receipt of copy of this order. The Competent Authority to pass appropriate order within six months from the date of receipt of the fresh representation." &

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2. The respondents vide their impugned order dated 23.12.1999 (Exhibit A) rejected the claim of the applicant for reimbursement of legal expenses incurred by him in respect of Court case No. 606/P/91. The applicant thereafter moved a Contempt Petition in the earlier OA which was decided on 27.12.2000 indicating therein that disposal of the representation in accordance with rules cannot be considered to be contempt and the applicant was given liberty to file fresh OA. The present OA has accordingly been filed with a request to quash the impugned order dated 23.12.1999 which has been passed without consulting the UPSC and which is even otherwise incorrect.

3. The case of the applicant in brief is that a false criminal case was lodged against the applicant under Section 262, 263, 467, 409 etc. of the I.P.C. to save the real culprits. The Metropolitan Magistrate's Court acquitted the applicant along with the observations that the prosecution witness have deposed falsely just to save the skin of the real culprits. No appeal was preferred. The applicant thereafter submitted an application for payment of advocate fees and TA & DA which were incurred in defending his case. When no decision was taken on his representation he filed the earlier OA.

4. The respondents have stated that the applicant has not been acquitted on merits of the case. There was prima facie documentary evidence against the applicant. Unfortunately the *L*

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documentary evidence was seized by the Police and the same have been spoiled by white-ants in the police custody and as such the documentary evidence could not be produced in the Court during the trial of the case. It was for the applicant to decide whether or not to engage an Advocate to defend his case and the respondents have no concern with this. In exercise of powers conferred under Article 320 (3) of Constitution of India, the UPSC (Exemption from Consultation Regulations), 1958 was amended to provide that it shall not be necessary to consult the Commission in regard to matters mentioned in Article 320 (3) (d) in case of persons belonging to Group 'C' or Group 'D'. Accordingly there was no need to consult the UPSC. The said matter has accordingly been correctly decided. No interference with the impugned order is called for.

5. Article 320 (3) (d) of the Constitution is as follows:

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted.

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or as the case may be, out of the Consolidated Fund of the State:

It was held in para 7 of the earlier judgement, "if necessary the Government may consult the UPSC under Article 320 of

the Constitution of India as provided in the O.M. itself. It may also consult the Ministry of Law and Finance, if necessary, as provided in the O.M. After consultation the Competent Authority shall apply his mind to the facts and circumstances of the case and then pass a speaking order. It is clear that in view of the above mentioned amendment to the UPSC (Exemption from Consultation Regulations) 1958, consultation with UPSC is not called for in respect of Group 'C' staff which the applicant admittedly is.

It is true that the earlier O.M. of 1959 mentioned in para 3 and 4, provided for consultation with UPSC. However as the Regulation requiring consultation with the UPSC, has been amended, this circular is deemed to be modified to that extent. The applicant is admittedly a Group 'C' employee. Therefore non-consultation cannot be a ground for challenging the impugned order.

6. Para 2 (a) of the said O.M. is as follows:

2(a) Proceedings initiated by Government in respect of matters connected with the official duties or position of the Government Servant. - Government will not give any assistance to a Government servant for his defence in any proceedings, civil or criminal, instituted against him, by the State in respect of matters arising out of or connected with his official duties or his official position. Should, however, the proceedings conclude in favour of the Government servant, Government may, if they are satisfied from the facts and circumstances of the case that the Government servant was subjected to the strain of the proceedings without proper justification, reimburse the whole or any reasonable proportion of the expenses incurred by the Government servant of his defence. *A*

7. The applicant has relied upon the decision of the Calcutta High Court in K.C. Agarwal V/s Union of India and Ors. ATR 1987 (1) CAT 591. The applicant in that case had been proceeded against under Section 161 IPC read with 5(1) (d) of the Prevention of Corruption Act, 1947. The Trial Court has acquitted him vide its judgment dated 15.1.1982 and the relevant portion of the said judgement has reproduced by the Calcutta Bench of the C.A.T. in the aforesaid decision and the same is reads as follows:

" It is highly probable that those at the receiving end of his toughness planned a revenge. False prosecution is a very effective measure of retaliation. It is not to suggest that efficiency and corruption cannot go together. Rather it more often does, where efficiency means merely a knowledge of one's work. But administrative efficiency to enforce discipline requires a strong moral fibre that provides the requisite courage. It cannot go together with corruption. The accused displayed this courage in abundance. The suggestion that it is frame-up by his victims appears to be quite valid. The incident is of June 1975. The F.I.R. came about a year later. It is not known who set the ball rolling and activated the C.B.I. P.W. 2 was not the informant. It is a pity that a Govt. agency has permitted itself to be used as a tool for oppressing an administrator who belongs to a different genre, different from the ordinary run with a 'play safe' philosophy."

8. PW1 was the investigating officer who stated that none of the seized documents were produced as the documents were destroyed by white-ants. PW2 was Supdt. of Postal Department and on his evidence 42 such licences were taken on record as exhibits. The Court has observed - *Sh*

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"..... all the licences now on record had been produced at a belated stage i.e. in the year 1996 when the case pertains to the period 1976 to 1978, a delay of almost 18 long years. I am just unable to apprehend how the prosecution is able to explain this much delay and I am, therefore, of the opinion that it should not be proper on my part to rely upon this licence which have come on the scene after such a long delay and in the background of the evidence of PW1 who state that all the documents which were submitted to him have been eaten away by the white-ants."

9. PW3, who had conducted the departmental investigation, who was the main witness his evidence admitted that the Post Master had failed to maintain the check list and as such has not done his duty. While conducting the enquiry he had not sought the explanation of the accused on finding the discrepancy. It was in this context the Trial Court passed the following order-

"..... According to me, the prosecution witnesses have deposed falsely just to save the skin of the real culprits. When the evidence of all the witnesses is placed juxtaposition it goes to show that the accused could not have been responsible for the alleged offence single handedly without there being some actual connivance of the superior authorities, if any. Moreover, entire documents have been totally destroyed as per the investigating officer himself. I am, therefore, of the opinion that the evidence is grossly inadequate to prove the case of the prosecution against the accused and he, therefore, deserves an acquittal."

10. It has been asserted by the applicant that no appeal was preferred against this order, a fact which is not controverted.

11. There is an indication in the Law Ministry's advice Exhibit-MPR-3 that the department has taken a decision to frame charges against an officer based on the earlier facts. However at the time of hearing the learned counsel for the respondents informed that no such decision to conduct a departmental enquiry has been taken. The applicant was also not proceeded against for these charges earlier. *Su*

12. The Apex Court in the case of Brahma Chandra Gupta V/s UOI (1994) 2 SCC 433 has considered the matter relating to payment of salary for certain period after the acquittal in a criminal case. The Apex Court also considered the question of payment of full pay and allowances to an employee who had been placed under suspension during the course of criminal proceedings and who had been acquitted by the Court and held as follows:-


" The appellant was a permanent UDC who has already retired on superannuation and must receive a measure of a socio-economic justice. Keeping in view the facts of the case that the appellant was never hauled up for departmental enquiry, that he was prosecuted and had been ultimately acquitted, and on being acquitted he was reinstated and was paid full salary for the period commencing from his acquittal, and further that even for the period in question the concerned authority had not held that the suspension was wholly justified because three-fourth of the salary was ordered to be paid, it must be held that in this case full amount of salary should have been paid to the appellant on his reinstatement for the entire period."

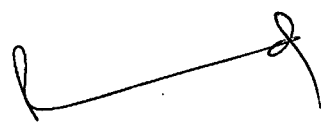
13. We also note that, in similar case, the Full Bench of GAT Madras Bench viz. S. Samson Martin V/s Union of India and Ors., 1990 12 ATC 643 held as follows:

"Where the suspension was effected only on account of pendency of a criminal proceeding, the competent authority has necessarily to follow the basic principles of criminal law. Since, the Criminal Court can now pass only an order of acquittal or conviction, the competent authority cannot scan that order to find out whether the delinquent official was honourably acquitted or not."

14. The said O.M. further indicates that expenses can be allowed wholly or in part. There is no discussion in the impugned order on this aspect. *h*

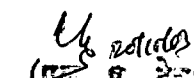
15. We find that the incident is of 1970s and the criminal case has gone on for a very long time. The judgment of the Trial Court which has not been appealed against shows that the seized documents were not produced as the same had been destroyed by white-ants. 42 such licences were also not taken on record for the reasons assigned in the order. The Trial Court has also held that prosecution witnesses have deposed falsely just to save the skin of the real culprits. The applicant has also not been proceeded against departmentally. We are accordingly of the view that the applicant cannot be held responsible for the delay in conclusion of the criminal case. Under the circumstances, the order dated ²³⁻¹²⁻¹⁹⁹⁹ ~~23.3.1997~~ is quashed and set aside. We are of the view that the applicant is entitled to reimbursement. However, as there is no material on record, we are expressing no opinion on the quantum of reimbursement to be made. The respondents are directed to pass a speaking order on the quantum within a period of two months from the date of receipt of a copy of the order. No order as to costs.


(Shankar Prasad)
Member(A)


(R.R.K. Trivedi)
Vice Chairman

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Corrected by order dtd- 15-10-03, passed
in M.P. No 69863


(U. S. Desai)
DA उप निदेशक,
केंद्र प्रशासनिक अधिकरण,
मुंबई न्यायपीठ, मुंबई.
'मुलेस्तान' बिल्डिंग, लिफ्ट रोड,
वांडे, मुंबई-400 001.