

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

T.A. No. 1231/86

Date of Decision: 25.11.92

SURENDRA SINGH

: Applicant.

Mr. K.L. Thawani

: Counsel for the Applicant.

VERSUS

UNION OF INDIA & ORS

: Respondents.

Mr. U.D. Sharma

: Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. B.B. Mahajan, Administrative Member

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

T.A. No. 1231/86 relates to the Civil Suit No. 839/83 filed by the plaintiff/applicant, Surendra Singh, against the Union of India & Others.

2. The applicant, Surender Singh, was in employment and during the employment it was found that he has committed criminal breach of trust by misappropriating some amount. He was charge-sheeted and the learned Additional Chief Judicial Magistrate & Civil Judge (CBI cases) convicted him vide Judgment dated 4.8.83 and sentenced him to undergo the sentence awarded. Being aggrieved with the Judgment of conviction and sentence, appeal was preferred by Surendra Singh before the learned District & Session Judge. The appeal was entertained for hearing and the learned Session Judge suspended the sentence. The plaintiff has come with a case that without following the procedure of law, the respondents are threatening him to dismiss, as such, a permanent injunction be issued.

2. The application under Order 39 Rule 1 & 2 was also submitted and the learned Civil Judge passed the stay order that the status quo be maintained as the defendants ^{have} ~~were~~ failed to file any reply. Being aggrieved with the order granting temporary injunction, Union of India has preferred an appeal before the learned District Judge, Ajmer which was registered as Civil Misc. Appeal No. 83/84. The appeal relating to the grant of temporary injunction has also been transferred to the Tribunal and registered as T.A. 1127/86 - Union of India Vs. Surendra Singh. Common question of fact and law is involved, as such, both these Transferred Applications are disposed of under this common judgment.

3. It is a settled law that when an appeal is preferred the conviction is not suspended but the sentence is suspended. Conviction remains intact till it is set aside. Applicant is still a convict. This stigma of conviction can only be washed

away after the decision of the appeal if the appeal is accepted, otherwise the conviction will be final. As far as the suit is concerned, defendants submitted the reply and in para 8 of the reply it was submitted by them that all arrears of suspension allowance have been disbursed. It was further stated that the plaintiff was advised to take T.A. advance for the journey to attend the inquiry and to defend himself before Defendant No. 2. Plaintiff has filed the rejoinder and in para 8 of the rejoinder it has been mentioned that on what date the arrears of suspension was paid should be disclosed by the defendants and for how many months it accumulated. There is a further reference that there is no payment of suspension allowance since 1.2.84. 1.2.84 is a very crucial date and on that date the applicant was dismissed from service. So the question of payment of suspension allowance after 1.2.84 does not arise at all. As far as the question of arrears of suspension allowance is concerned, applicant came with a case in the plaint that the subsistence allowance has not been paid from 4.8.83 to November, 83. Para 8 of the plaint is reproduced as under:-

"8. That the plaintiff illegally and wrongfull was not paid subsistence allowance during August, 1983 to Nov. 1983 except on 9.12.1983 and thereby the opportunity to defend was turned illusory."

4. It will not be out of place to mention that in the rejoinder the plaintiff has not said a word about the intimation given to him about the proposed payment of advance T.A. and no grievance has also been made in any way about the advance T.A.

5. The learned counsel for the applicant/plaintiff has produced a photostat copy of one page of the Judgment delivered by the Hon'ble Supreme Court in the case of Ghanshyam Das Shrivastava Vs. State of Madhya Pradesh, reported in AIR 1973 SC 1183. The Head Note is not sufficient for the purpose of appreciation of the Judgment and it is not proper for a counsel to produce the photostat ~~copy~~ of the Head Note for perusal of the Court without the book or in any case, the photostat copy of the full Judgment. From the perusal of the photostat copy of the Head Note it seems that their Lordships have stated that where the delinquent has specifically communicated his inability to attend the enquiry due to paucity of funds resulting from non-payment of subsistence allowance, the enquiry was vitiated for his non-participation.

6. It will not be out of place to mention here that even if it is accepted that the applicant during the ~~enquiry~~ was not paid subsistence allowance from August to November, 83 or December, 83, there was no ground for not attending the enquiry

particularly when the defendants were ready to make him the payment of advance T.A. as stated by them in their reply and the plaintiff has failed to answer it in the rejoinder. Ordinarily, the enquiry is not needed after the conviction U/S 409 IPC and straightaway the order of dismissal can be passed under Rule 19 of the CCS (Conduct) Rules. However, the defendants were very much cautious and they intimated the applicant vide letter dated 10.10.83 and subsequent letters that the enquiry is being proposed and he may participate in the enquiry. Applicant vide Annexures A-9 and A-10 intimated the defendants that the subsistence allowance has not ^{been} paid, as such, he is not in a position to attend the enquiry. Even in these letters he has not referred about the advance T.A. which was proposed to be paid. Naturally the inquiry report was prepared on 2.1.84 and the dismissal orders were passed on 1.2.84. It will not be out of place to mention at the cost of repetition that from the perusal of para 8 of the plaint though it was not happily worded the inference can be drawn that he might have received the subsistence allowance on 9.12.83 as the words "except on 9.12.83" have been used. These words are indicative that he got some amount in December, 83. Departmental Enquiry was also not necessary after the conviction U/S 409 IPC for the criminal breach of trust and misappropriation of the amount..

7. In such circumstances, we do not find any force in the suit/T.A. submitted by the plaintiff/applicant.

8. As far as the appeal of the UOI is concerned, the plaintiff has come with a case by way of reply that the temporary injunction was passed against the defendants and the order of dismissal was not in existence on 1.2.84. We have perused the file and the documents submitted by the plaintiff himself. There is a copy of postal Registry No. 2893 was issued on 1.2.84 to Surendra Singh, the plaintiff. The plaintiff's case is that the subsequent seals reveal and are indicative of the fact that they were delivered in the month of March. One must draw the difference between the two. The Registry No. is more important than the date of delivery. Apart from that, if the temporary injunction was passed on 17.2.84 that the status quo be maintained. It was because of the usual ineffective representation of the Government case and there is nothing abnormal in it. The Government advocate and the Government were sleeping over and they had not filed the reply. As such, the learned Munsif was bound to pass the order that the status quo be maintained. Naturally, the status quo means the order th

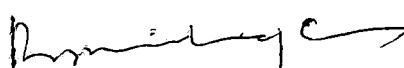
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has been passed on 1.2.84 as it had come into effect and it cannot be said that this order has been manipulated or forged at subsequent dates. We are of the view that the dismissal order was passed on 1.2.84 after proper enquiry though the enquiry was not necessary.

9. In such circumstances, the ~~suit~~ fails. As far as the appeal is concerned, there is no merit as it has become infructuous. As the suit fails and there is no real order which is going to adversely affect the Union as the status quo means the status quo as it exists on 17.2.84 and we have already held that the dismissal order was passed on 1.2.84 and the plaintiff cannot get any relief.

10. Both the T.A. and Appeal have been disposed of accordingly.

NO orders as to costs.


(B.B. MAHAJAN)
Administrative Member


(D.L. MEHTA)
Vice-Chairman