

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH  
AT HYDERABAD

OA.850/97

dt.11-7-1997

Between

R. Chandra Reddy : Applicant

and

Superintendent of Post Offices  
Medak Division  
Medak 502110 : Respondent

Counsel for the applicant : M. Tirumala Rao  
Advocate

Counsel for the respondent : N.R. Devaraj  
SC for Central Govt.

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HON. MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

HON. MR. B.S. JAI PARAMESHWAR, MEMBER (AUDL.)

ORDER  
Judgement

Oral order (per Hon. Mr. B.S. Jai Parameshwar, Member(J)

Heard Sri Tirumala Rao, M., for the applicant and Sri N.R. Devaraj for the respondents.

1. The applicant herein is working as Postal Assistant, Medak. It appears in STC No.58/96, the applicant was charge sheeted for the offence<sup>the</sup> punishable under section 290; 323; and 504 of <sup>the</sup> IPC. On 20-3-1997 the Special JM of First Class(Mobile), Medak, passed judgement in the said case convicting the applicant and imposing fine, and in default of payment of fine to undergo imprisonment. It is stated that the applicant has challenged the said conviction and sentence in Criminal Appeal No.30/97 before the Sessions Judge, Medak, at Sanga Reddy. While the Appeal is pending, <sup>the</sup> Respondent-1 issued a show-cause-notice to him as to why appropriate penalty should not be imposed on him as his conduct led to conviction in the said matter.
2. The applicant on 22-5-97 submitted his explanation to the said notice stating that his Appeal against the conviction is pending and that no action be taken till the disposal of his Appeal.
3. The applicant has filed this OA challenging the show-cause-notice issued to him as arbitrary and un-constitutional.
4. The only point for our consideration is whether the Respondent-1 is justified in issuing the show-cause-notice to the applicant when the Appeal against conviction was still pending.

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5. Similar question came before Hon. Supreme Court in the case of Deputy Director of Collegiate Education, Tamil Nadu vs. Nagoor Meera <sup>a</sup> (AIR 1995 (SC) 1364). In para-9, the Hon. Supreme Court has observed as follows :

"The Tribunal seems to be of the opinion 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. We see no basis or justification for the said view. 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. If, however, the government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz. to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. It should be remembered that the action under clause(a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311(2). As held by this Court in Shankardas vs. Union of India, (1985) 2 SCR 358 :

"Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the government the power to dismiss a person from service" on the ground of conduct which has lead to his conviction a criminal charge." But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may perhaps not be entitled to be heard on the question of penalty since clause(a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly."

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6. In view of the above observations of the Hon. Supreme Court of India, we feel that the action of the Superintendent of Post Offices in issuing the Show-cause-notice is perfectly justified. Hence, we find no reasons to interfere with the said proceedings.

7. Therefore the OA is rejected at the admission stage itself. No order as to costs.

(B.S. Jai Parameshwar)  
Member (Jud1)

(H. Rajendra Prasad)  
Member (Admn)

11-7-97

Dated : July 11, 97  
Dictated in Open Court

Deputy Registrar (S)

sk

O.A.850/97.

To

1. The Superintendent of Post Offices,  
Medak Division, Medak-110.
2. One copy to Mr.M.Tirumala Rao, Advocate, CAT.Hyd.
3. One copy to Mr.N.R Devraj, Sr.CGSC.CAT.Hyd.
4. One copy to Mr. HBSJP.M.(J). CAT.Hyd.
5. One copy to D.R.(A) CAT.Hyd.
6. One spare copy.

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850/97

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE  
VICE-CHAIRMAN  
and

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)  
The Hon'ble Mr. B.S. Jai Parameenwar, M(C)

Dated: 11-7-1997

ORDER/JUDGMENT

M.A./R.A./C.A.No.

O.A.No.

in  
850/97

T.A.No.

(w.p.)

Admitted and Interim directions  
Issued.

Allowed

Disposed of with directions  
Dismissed.

Dismissed as withdrawn  
Dismissed for default.

Ordered/Rejected.

No order as to costs.

pvm

