

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.425/93

Dt. of order: 30-11-1995

G.V.Aswani : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.J.K.Kaushik : Counsel for applicant

Mr.U.D.Sharma : Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Patan Prakash, Judicial Member.

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.)

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri G.V.Aswani has prayed that order dated 5.7.93 (Annx.A1) passed by respondent No.3, the Sr.Supt. of Post Offices, Udaipur Division, Udaipur, proposing an appropriate penalty to be imposed on the applicant under Rule 19 of the CCS(CCA) Rules, may be declared as illegal, without jurisdiction and may be quashed with all consequential benefits.

2. The facts of the case as stated by the applicant are that he was initially appointed as Postman on 26.9.59 and was promoted as Postal Clerk on 12.5.66 on which post he was serving when he was convicted under Sec.161 IPC and Sec.5(2) read with Sec.5(1)(d) of the Prevention of Corruption Act, 1947 and was sentenced to 2 years rigorous imprisonment and fine of Rs.100/-, vide judgment dated 24.6.86. The applicant filed an appeal against the said judgment in the criminal case which is still pending. He submitted 3 months' notice for voluntary retirement under Rule 48-A of the CCS(Pension) Rules (for short the Rules) vide letter dated 17.12.92 addressed to respondent No.2 (Annx.A2) having completed 20 years of qualifying service. Vide letter dated 9.3.93 (Annx.A3) respondent No.3 informed the applicant that he was not competent to accept the notice for voluntary retirement since a criminal case is pending against

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the applicant and that it could not be accepted without the permission of the Head of the Circle. Vide letter dated 18.3.93 (Annex.A4) the applicant submitted a fresh notice for voluntary retirement under Rule 48-A of the Rules giving 3 months' notice, to respondent No.2, the Post Master General, Ajmer. However, respondent No.2 forwarded this notice to respondent No.3 with a direction that he is the appointing authority and necessary action is to be taken by him. Forwarding letter dated 7.5.93 is at Annex.A5. The notice of voluntary retirement expired on 18.6.93. However, the applicant was not informed about the acceptance or refusal of the said notice. As per provisions of Rule 48-A(2) of the Rules, a notice of voluntary retirement which is given on completion of 20 years' qualifying service requires acceptance by the appointing authority. However, as per the proviso to sub-rule (2) of Rule 48-A where the appointing authority does not refuse to grant permission for retirement before the expiry of the period specified in the notice, the retirement would become effective from the date of the expiry of the notice period. Therefore, the applicant would be deemed to have retired from service w.e.f. 18.3.93 i.e. on expiry of a period of 3 months from the date of communication dated 18.6.93.

3. However, according to the applicant, respondent No.3, vide his order dated 5.7.93 (Annex.A1) issued a show cause notice to the applicant proposing to impose a penalty under Rule 19(i) of the CCS(CCA) Rules taking into account the gravity of the charge proved against the applicant in the criminal Court. However, since the applicant has retired from service no action can be taken against him under the CCS(CCA) Rules and that the only action possible against him now is under Rule 9 of the Rules under which action can be taken only with the sanction of the President and such action is possible only if the event in question took place within 4 years from the date of the action proposed to be taken. Therefore, the proposed action is without

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jurisdiction. The notice issued to the applicant is without sanction from the President. Therefore, no action can be taken against the applicant under Rule 19(i) of the CCS (CCA) Rules Now.

4. The respondents in their reply have stated that the applicant has challenged the Memo dated 5.7.93 by which it was proposed to impose an appropriate penalty under Rule 19(i) of the CCS(CCA) Rules (which memo has been described by the applicant as an order).However, pursuant to the said Memo, the applicant has been dismissed from service w.e.f. 24.9.93 vide Memo of the same date (Annx.F1). Therefore, the prayer made by the applicant in the O.A. does not survive and therefore, the O.A. has become infructuous and is liable to be dismissed. They have denied that the applicant voluntarily retired from service from 18.6.93 and have added that he was in service upto 23.9.93 and he was dismissed from service w.e.f. 24.9.93. Since the notice of voluntary retirement could be accepted with the approval of the Head of the Circle only, the applicant had been informed accordingly. Also the said notice dated 18.3.93 (Annx.A4) had not been sent to the competent (appointing) authority as contemplated under Rule 48-A of the Rules. It was, therefore, forwarded by respondent No.2, the Post Master General, Ajmer to respondent No.3, Sr. Superintendent of Post Offices, Udaipur for necessary action. The deficiency of the notice not having been addressed to the competent appointing authority was not cured by the forwarding of the said notice by the addressee (the Post Master General) to the competent appointing authority. Therefore, this notice dated 18.3.93 is ab initio void. Also the applicant had been informed vide letter dated 13.5.93 (Annx.F2) that since criminal proceedings were pending against him, the office of the Sr. Supdt. was not competent to accept the notice and that the matter was under correspondence with the Circle Office. Therefore, the applicant

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could not be deemed to have retired w.e.f. 18.6.93. The applicant had also furnished a fresh notice for voluntary retirement dated 24.6.93 seeking voluntary retirement w.e.f. 1.7.93. Also the applicant had himself submitted a Sick Certificate for the period 1.6.93 to 30.6.93 without any application for leave. This also shows the applicant's conduct that he had waived the said notice of retirement. Since the applicant was in service on 5.7.93, show cause notice under Rule 19 of the CCS(CCA) Rules had correctly been issued to him, giving him an opportunity of making a representation against the proposed penalty. The applicant instead of making a representation against the proposed action has approached the Tribunal without exhausting the remedy available to him. The application is, therefore, premature and deserves to be dismissed on this ground also.

5. During the arguments, the learned counsel for the applicant stressed the point that the applicant had already retired w.e.f. 18.6.93, on expiry of 3 months from the date of his second notice for voluntary retirement in view of the fact that there had been no rejection of his notice for voluntary retirement. He added that this O.A. was admitted on 21.7.93 and notices were directed to be issued on this date. The respondents passed order Anxx.R1, dismissing the applicant from service on 24.9.93. Sec.19(4) of the Administrative Tribunals Act, 1985, provides as under:

"19(4) Where an application has been admitted by a Tribunal under sub-section 3, every proceeding under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules."

Thus the respondents were precluded from passing any order in

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pursuance of the show cause notice dated 5.7.93 (Annex.A1) issued by respondent No.3, after the O.A. had been filed on 19.7.93 and admitted on 21.7.93. Therefore, the order dated 24.9.93 (Annex.A1) dismissing the applicant from service was non est in the eye of law. According to him the matter stood at the stage where show cause notice Annex.A1 dated 5.7.93 had been issued to the applicant. Since this notice had been issued after the applicant had voluntarily retired from service w.e.f. 18.6.93, this notice, contemplating action under Rule 19 of the CCS(CCA) Rules, had also no meaning. Therefore, the notice dated 5.7.93 (Annex.A1) deserves to be quashed. In support of the plea that any order passed subsequent to the admission of the O.A. was a nullity, the applicant cited an order of the Madras Bench of the Tribunal in A.Abdul Razack Vs. Director of Postal Services, Trichinapalli & Anr (1991) 17 ATC 829.

6. The learned counsel for the respondents reiterated the arguments and averments contained in the reply and added that the applicant could not be deemed to have retired from service voluntarily under Rule 48-A of the Rules on 18.6.93. The show cause notice dated 5.7.93 (Annex.A1) had therefore been rightly issued to him. He further stated that the interpretation placed by the learned counsel for the applicant on Sec.19(4) of the Administrative Tribunals Act, 1985 was not correct. Sub-section (4) of Section 19 of the Administrative Tribunals Act bars only passing of an order subsequent to admission of an application "as to redressal of grievance in relation to the subject matter of such application". According to him this meant that the respondents could not pass an order to redress any grievance of the applicant i.e. to grant any benefit etc. asked for by him on an application, representation, appeal, etc. which had been filed before the admission of the application. There was however no bar, according to him, in passing of an order in pursuance of a show cause notice issued to the applicant. He added that the

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order of the Tribunal cited by the learned counsel for the applicant was distinguishable on facts. The Tribunal had given the said decision in the context of passing of an appellate order after admission of the application in that case. In sub-section (4) of Sec.19 of the Administrative Tribunals Act, it had been categorically stated that no appeal or representation in relation to such matter would be entertained after the application had been admitted. He, therefore, submitted that since the respondents had already passed the order dismissing the applicant from service, this application which only challenged Annex. Al dated 5.7.93, which was a show cause notice, was liable to be dismissed as having become infructuous.

7. We have heard the learned counsel for the parties and have gone through the records and also the order of the Tribunal cited before us. In O.A.No.496/93 filed by this very applicant, we have, by a separate order passed today, held that the applicant could not be said to have retired from service w.e.f. 18.6.93 and that he was in service on the date on which the show cause notice dated 5.7.93 was issued and the order dated 24.9.93, dismissing him from service was passed. Therefore, we need not go into the controversy now whether the applicant's notice of voluntary retirement given under Rule 48-A of the Rules had become effective on 18.6.93. We hold, in view of the findings given in the above mentioned O.A. filed by the applicant, that the applicant was in service on the date of issue of the show cause notice dated 5.7.93.

8. Question now is whether the application has become infructuous on the ground that the respondents subsequently passed order dated 24.9.93 (Annex. El) dismissing the applicant from service. The challenge to this order during the arguments by the learned counsel for the applicant was on the ground that once the O.A. had been admitted, the respondents were precluded from passing any order as to the redressal of the applicant's

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grievance. The provisions of Sub-section (4) of Sec.19 of the Administrative Act, 1985 have been reproduced above. Before we go into the question whether any order subsequent to the admission of the O.A. could be passed, we may state that the order of the Tribunal cited on behalf of the applicant is not applicable to the facts of the present case. This is for the reason that there is a categorical provision in sub-section (4) that no appeal or representation of an applicant could be entertained after the O.A. has been admitted. The order of the Tribunal was essentially in the context of the appeal filed by the applicant which had been decided by the respondents after the admission of the O.A. by the Tribunal. As already stated above, there is a bar to taking any further proceedings by the departmental authorities with regard to an appeal or representation made by the applicant. Question however is whether the provisions of Sub-section (4) of Sec.19 bar passing of any order whatsoever by the respondents in relation to the matter agitated by an applicant before the Tribunal, after the O.A. has been admitted. The expression used in sub-section (4) is as to redressal of the grievance of the applicant and apparently by way of illustration reference has been made to appeal or representation made by the applicant on which a decision cannot be taken by the departmental authorities after the application has been admitted. In our view, however, sub-section (4) does not bar passing of any order after the admission of the O.A. The order which cannot be passed after the admission of the O.A. would be in relation to the redressal of the grievance of the applicant. In other words, the respondents cannot pass an order after admission of the O.A by which the grievance of the applicant would be partly or wholly redressed by disposing of his appeal or representation or independently by passing any order. If the interpretation placed on sub-section (4) by the learned counsel for the applicant is accepted, it

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would mean that once the O.A. has been admitted, all further proceedings with regard to the order which has been impugned stand automatically stayed. In that case, there would be no need for an applicant to seek any interim direction from the Tribunal. For example, if the respondents have issued a notification proposing to make promotions and the applicant is aggrieved that his name has been wrongly excluded from the zone of consideration, the respondents are restrained from proceeding further with the promotions regardless of whether the Tribunal has granted any stay against the order or notification holding promotions. To cite another example, the respondents may pass an order of transfer of an applicant and the applicant may challenge the transfer order as soon as it is issued. Would it mean that the respondents are restrained from passing a subsequent order relieving the applicant if he has not already relieved in consequence of the transfer order after the admission of the O.A.? If the interpretation placed by the learned counsel for the applicant is accepted, there would be no need for an applicant to seek any interim direction against the operation of the transfer order if he has not already been relieved. In our view, therefore, the interpretation of sub-section (4) placed by the learned counsel for the applicant is not correct. In our view, the respondents are restrained only from passing of an order redressing partly or wholly the grievance of the applicant in respect of which the O.A. has been filed and particularly from taking a decision on any appeal or representation made by the applicant, after the O.A. has been admitted.

9. Annexure A-1 dated 5.7.93 is a show cause notice issued to the applicant asking him to explain why an appropriate penalty under Rule 19 of the CCS(CCA) Rules should not be imposed on him. The order of dismissal passed in consequence of this show cause notice is not towards redressal of the grievance of the

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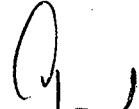
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applicant. Hence, in our view, there was no bar to passing of this order after admission of the O.A.

10. This order of dismissal has not been challenged by the applicant. We do not see anything irregular or improper in the show cause notice issued to the applicant vide Annex. Al dated 5.7.93. Therefore, there is no merit in this O.A. It is, therefore, dismissed with no order as to costs.


(Ratan Prakash)

Member (Judl.).


(O.P. Sharma)

Member (Adm.).