

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

May 11/2001

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O.A. No. 224/2001

199

T.A. No.

HVC

24/2

DATE OF DECISION _____

Smt. Sushma Soni

Petitioner

Mr. Dalip Singh

Advocate for the Petitioner (s)

Versus

UOT and two others

Respondent

Ms. Shalini Sheron for

Advocate for the Respondent (s)

Mr. Bhanwar Bagri.

CORAM :

The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman.

The Hon'ble Mr. H.O. Gupta, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(H.O.Gupta)
Administrative Member.

(G.L.Gupta)
Vice Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR

D.A. No. 224/2001

Date of the decision: 24.02.03

Smt. Sushma Soni
W/o late Shri Bhagwan Singh Soni
r/o Koyala Tall Ke Uper
Near Saroj Cinema
Data House,
Chandpol Sabji Mandi
Jaipur

: Applicant

rep. by Mr. Dalip Singh : Counsel for the applicant.

-versus-

1. The Union of India through the
Secretary, Central Excise Department
North Block, New Delhi 110 001

2. The Commissioner, Central Excise,
Department,
Statue Circle,
C-Scheme
Jaipur.

3. The Joint Commissioner (P&V)
Central Excise,
Statue Circle
C Scheme.
Jaipur.

: Respondents.

rep. by Ms Shalini Sheron
for Mr. Bhanwar Bagri : Counsel for the respondents.

CORAM: The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman
The Hon'ble Mr. H.O.Gupta, Administrative Member.

ORDER

Per Mr. Justice G.L.Gupta

The reliefs sought in this D.A. are

as follows:

i) the impugned order dated 28.11.2000 (Annex. A.1)
be quashed and set aside.



- ii) the respondents be directed to withdraw the order of dismissal dated 6.10.98 (Annex. A.2)
- iii) the applicant be held entitled for appointment on compassionate ground on suitable post as a dependent of a deceased Government employee and she may further be held entitled to get family pension, death cum gratuity amount and the amount of reimbursement of medical bills.
- iv) any other appropriate order or direction which the Hon'ble Tribunal thinks just and proper in the facts and circumstances of the case even the same has not been specifically prayed for but which is necessary to ensure ends of justice may kindly also be passed in favour of the applicant.
- v) cost of the O.A be awarded in favour of the humble applicant.

 The undisputed facts of the case are these.

The applicant's husband Shri Bhagwan Singh Soni was a Customs Inspector posted at Jalore. In the year 1982 a criminal case was registered against him under Sec. 302 IPC. It was alleged that he fired shot from his revolver and caused death of one Abu Khan, a truck driver. A challan was submitted against Shri Soni. The Sessions Court convicted him under Sec. 304 IPC and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.200/-, vide judgement dated 22.12.83. The appeal preferred by Shri B.S. Soni, was dismissed by the High Court of Rajasthan vide judgement dated 29.8.97. The S.L.P. filed by him was dismissed by the Hon'ble Supreme Court vide order dated 9.10.98.

 Because of the conviction of Shri Soni, the competent authority passed an order of removal under Rule 19 (i) of the CCS(CCA) Rules, 1965 vide communication dated 6.10.98. i.e. after the decision of the High Court of



Rajasthan, but before the decision of the Hon'ble Supreme Court.

Shri Soni filed mercy petition before the Governor of Rajasthan. His case was recommended by Shri S.P. Singh, the then Commissioner of Customs on 19.4.99. The mercy petition of Shri Soni was accepted by the Governor of Rajasthan vide communication dated 3.12.99 wherein it was stated that the Governor under exercise of His powers under Article 161 of the Constitution of India, granted pardon to Shri Soni. It may be pointed out that before the communication of the order dated 3.12.99 Shri Soni had expired on 3.10.99.

After a copy of the order dated 3.12.99 was received by the applicant, (wife of late Shri Soni) she made an application to the respondents to grant her pensionary benefits of her late husband and also to provide her appointment on compassionate grounds. She prayed that the removal order dated 6.10.98 be withdrawn. The competent authority rejected the prayers of the applicant. Hence this O.A.

3. In the counter, the respondents' have not disputed the facts stated in the O.A. Rather some of the relevant facts, which were not stated in the O.A. have been stated in the counter. The application has been resisted on the grounds that after the death of Shri Soni on 3.10.99 there could not be any order of the Governor giving pardon to him as he had already suffered imprisonment and his conviction had attained finality during his life time. It is stated that the service record of Shri Soni was not good in as much as he had faced disciplinary proceedings



and his ACRs did not contain excellent grading⁹ and some of them were even of poor grading. It is also stated certain disciplinary proceedings which had been initiated against Shri Soni, had to be closed after his removal from service. It is also the case for the respondents that Shri Soni had not worked under Shri S.P. Singh, the then Commissioner, who had recommended his case to the Governor for the grant of pardon.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

4. The contention of Mr. Dalip Singh, was that after his Excellency, the Governor passed an order under Art. 161 of the Constitution of India granting pardon to Shri Soni, the disqualification stood washed away and Shri Soni's order of removal from service was not sustainable. He canvassed that Shri Soni should be deemed to be in service till the date of his death. He relied on the cases of K.M. Nanavati vs. the State of Bombay (AIR 1961 SC 112) and the Deputy Inspector General of Police North Range, Waltair and another vs. D. Rajaram and others (AIR 1960 Andhra Pradesh 259), in support of his contention.

5. On the other hand, Ms. Shalini Sheron, appearing for the respondents, contended that the mercy petition of Shri Soni did not survive after his death and it could not be accepted. According to her the order dated 3.12.99 was passed under mistaken of fact that Shri Soni was still alive and hence the order cannot have the effect of setting aside the order of removal of Shri Soni.



Shri further contended that the appointment on compassionate ground is not a right and it cannot be claimed in the circumstances of this case. It was urged that the order of removal had attained finality and therefore the applicant cannot claim pensionary benefits.

6. We have given the matter our thoughtful consideration. The decisions rendered in the cases of K.M.Nanavati and the DIG of Police (supra) lay down that when an order of pardon is passed by the Supreme Executive Authority, the convicted person is free both from the guilt and the punishment imposed on him and, also the disqualification, which disentitled him to hold some post, is removed. It is profitable to read the observations appearing at para 11 of the report in the case of DIG Police hereunder:

" It is well settled that when a convicted person is pardoned, he is free both from the punishment imposed on him as also from all penal consequences and such disqualification as disentitle him from following his occupation and which are concomitant of the conviction are removed.

X X X

X X X

X X X

X X X "

It may be pointed out that their Lordships were deciding the appeal preferred against an order of the learned Single Judge. The learned Single Judge, had allowed the W.P. on two grounds. Their Lordships while deciding the appeal agreed with this proposition only that the pardon blots out both guilty and punishment and all his civil rights are restored.

In the case of Nanavati also their Lordships observed at para 21 of the report as follows:

" X X X Such a pardon after the accused person has been convicted by the Court has the effect of completely absolving him from all punishment or disqualification attaching to a conviction for a criminal offence

X X X

X X X "

Q. B. Singh

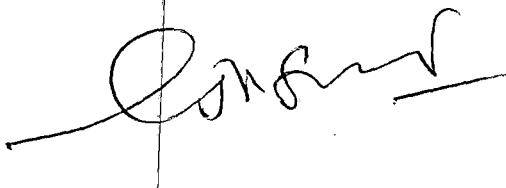
No authority taking a contrary view has been brought to our notice.

7. In the instant case, as already stated His Excellency, the Governor of Rajasthan in exercise of the powers under Art. 161 of the Constitution of India, allowed the mercy petition filed by Shri Soni vide communication dated 3.12.99 and granted pardon to him. The effect of such pardon was that not only the conviction and sentence passed by the criminal court stood washed away, the disability of holding a civil post which had occurred due to his conviction and sentence, also stood removed.

8. It may be pointed out that the basis of the order of removal Annex. A.2 dated 6.10.98, was only the conviction of Shri Soni by the Criminal Court and affirmed by the High Court. It has to be accepted that the order of removal was concomitant of the conviction by the Criminal Court. When, by the order of the Governor, the conviction and punishment stood washed away the order of removal dated 6.10.98 automatically goes.

9. Shri Soni was not alive on the date the order granting pardon was conveyed, as he had expired on 3.10.99, two months before the date of the order. The question for consideration is whether the order of the Governor, which was conveyed, after the death of Shri Soni, does not have the force of law as was contended on behalf of the respondents.

10. It has not been brought to our notice that there is a provision in the rules or by way of instructions that a mercy petition abates on the death of a convict. If the mercy petition did not abate on



the death of Shri Soni, how it can be said that the order granting pardon does not have the force of law.

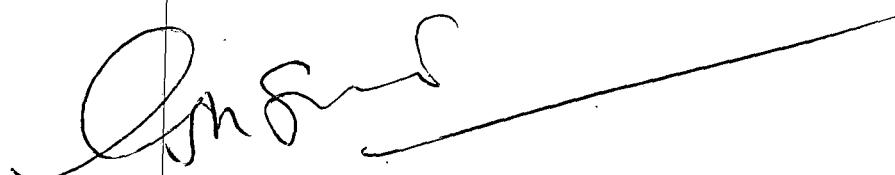
11. As a matter of fact under Art. 161 of the Constitution of India, it is not required that mercy petition is filed by the convict himself. Art. 161 of the Constitution of India reads as follows:

" 161. Power of Governor to grant pardons etc and to suspend, remit or commute sentences in certain cases.

The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

A reading of the Article shows that when a petition is moved, the Governor is empowered to grant pardon to a person convicted of any offence. The Article does not say that the application must be moved by the convict himself.

Be that as it may, in the instant case, the convict himself had moved the application. The recommendatory letter Annex. A.3 dated 19.4.99 shows that the mercy petition of Shri B.S. Soni was pending with the Governor, and there was a correspondence between the Government and the Commissioner of Customs in March 1999. The letter was written in reply to the letter of Special Secretary (Home), Government of Rajasthan, wherein there is a reference of the application for pardon made by Shri Soni.



12. If the Governor took some time to decide the application of Shri Soni and kept it pending till his death, how can it be said that the order, passed after death is of no legal effect and the family of late Shri Soni cannot take advantage of the order. Had the Governor decided the application/petition of Shri Soni, immediately after it was filed or soon after the Commissioner of Customs made recommendations, the order would have been passed during the life time of Shri Soni.

If the order had been passed during the life time of Shri Soni, he would have certainly claimed re-instatement in service, in view of the legal position stated above.

13. It has, therefore, to be held that necessary consequence will follow even if the order, making pardon, was conveyed after the death of Shri Soni

14. The contention, that the mercy petition had become infructuous on the death of Shri Soni, is not tenable. There is no question of a mercy petition becoming infructuous. A petition can be said to have become infructuous if relief is granted during the pendency of the petition which was not done in this case.

15. The contention that Shri S.P.Singh, Commissioner made a mistake in recommending the case of Shri Soni, cannot be accepted. The respondents cannot be permitted to take different stands at different stages. Shri S.P. Singh was none else than the Commissioner of the department. Shri Singh had made clear cut recommendations in favour of Shri Soni, that he was a very good disciplined and obedient Customs Officer, he was dynamic

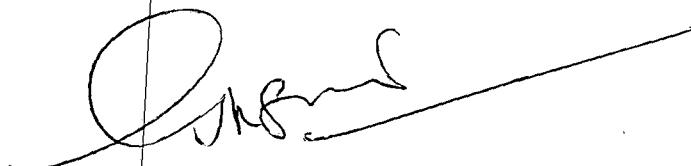


officer having meritorious record and his service record was unblemished, his ACRs were excellent and that no departmental inquiry was ever instituted against him. The respondents are estopped from saying that Shri Soni was not a disciplined or good officer or that his service record was not good. In any case, this Court cannot go into the merits of the recommendations made in the letter of 19.4.99, after the Governor has passed the order dated 3.12.99 accepting the recommendations of the Commissioner (Customs).

16. This contention of the respondents also that the act of Shri Soni, in firing shot at Abu Khan was intentional, cannot be accepted in view of the pardon granted to him by the Governor in exercise of power under Art. 161 of the Constitution of India whereby the guilt and punishment stood washed away.

17. So also, the contention that pardon order has been obtained by fraudulent means is not sustainable. As a matter of fact, no facts have been stated which constitute fraud. The burden lay heavily on the respondents to prove the alleged fraud.

18. The fact remains that had Shri B.S. Soni not expired he could have claimed re-instatement on the basis of the order of pardon dated 3.12.99, as the order of removal was passed only on the basis of his conviction by the Criminal Court and the said conviction and sentence stood blotted out.



19. If Shri Soni was entitled to reinstatement in service, the necessary consequence follows is that on his death while in service, his wife, the applicant, has a right of pensionary benefits as per rules.

It may be pointed out that Shri Soni ^{had} not died in 1999, he would have served the department upto 2003, which fact is not disputed by the respondents in their reply.

20. Consequently, we allow this application

and direct the respondents to take fresh decision on the applications submitted by the applicant, referred to in the intimation dated 28.11.2000 and pass an appropriate order, treating Shri Soni to be in service till the date of his death, in respect of his salary, gratuity, family pension and other benefits, within a period of three months from the date of communication of this order. The respondents are directed to take fresh decision in the matter of compassionate appointment also within the aforesaid period.

21. No order as to costs.

(H.O.Gupta)
Administrative Member

(G.L.Gupta)
Vice Chairman.

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**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO.: MA 399/2003 ~~XXXXXX~~ (OA 224/2001)

Applicant (s) Smt. Sushma Soni

Respondent (s) UOI & Others

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDER OF THE TRIBUNAL

26.9.2003

None present for the applicant.

Ms. Shalini Sheoran, Proxy counsel for
Mr. Bhanwar Bagri, Counsel for the respondents.

This application has been moved by the respondents for extension of time to comply the order dated 24.2.2003 passed in OA No. 224/2001 on the ground that the respondents have filed Writ Petition in the Hon'ble High Court alongwith Stay Application, which has not been listed so far.

During the course of the ~~day~~, the learned counsel for the respondents submits that Hon'ble High Court has stayed the operation of the impugned order vide its order dated 16.9.2003.

In view of this development, this MA does not survive and it is accordingly disposed of.


(A.K. BHANDARI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)