

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No. 716/04

Jabalpur, this the ^{9th} day of ~~February~~, 2005

CO R A M

Hon'ble Mr.M.P.Singh, Vice Chairman

Hon'ble Mr.Madan Mohan, Judicial Member

D.P.Gautam

S/o Late Shri Sudama Prasad Gautam

Terminated Sub Postmaster

Sub Post Office, Niwas

District Mandla (M.P.)

Applicant

(By advocate Shri S.K.Pandey)

Versus

1. Union of India through
Ministry of Postal Services
New Delhi.

2. The Post Master General
Bhopal.

3. The Sr. Supdt. of Post Offices
Balaghat (M.P.)

Respondents.

(By advocate Shri S.K.Mishra)

ORDER (Oral)

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following main reliefs:

- (i) Quash the impugned order (P-7) and direct the respondents to pay the subsistence allowance to the applicant as usual.
2. The brief facts of the case are that the applicant who was posted as Sub Post Master in Post Office Niwas, District, Mandla, was prosecuted for the offences punishable Sections 7 and 13 (1) (d) R/W. Section 13 (2)

of the Prevention of Corruption Act, 1988, in criminal case No.7/2002 and was convicted as per judgment dated 29.11.2003 (Annexure A1). Against the conviction, the applicant filed a criminal appeal No.2157/03 before the Hon'ble High Court at Jabalpur (Annexure A2). The High Court granted bail to the applicant vide order dated 22.12.03 (Annexure A3). Vide order dated 27.4.04, the applicant was suspended by the respondents under the provisions of CCS (CCA) Rules, 1965 (Annexure A4). His service was terminated vide impugned order dated 10.6.04 exercising the powers conferred by Rules 19 (i) of the CCS (CCA) Rules, 1965 (Annexure A7). The impugned order is illegal, arbitrary and malafide and issued against the provisions of law. Aggrieved by the impugned order, the applicant has filed this OA.

3. Heard the learned counsel for both parties. It is argued on behalf of the applicant that though the applicant was convicted by the trial court of Vth Additional Sessions Judge/Special Judge, CBI, the High Court had granted him bail and also suspended the sentence vide order dated 22.12.2003 (Annexure A3). As the execution of the sentence awarded against the applicant by the Trial Court has been suspended by the High Court, the impugned order of termination of the services of the applicant should not have been passed by the respondents till the decision of the High Court because the criminal appeal of the applicant is still pending before the High Court. Hence the OA deserves to be allowed.

4. In reply, the learned counsel for the respondents argued that the impugned order of dismissal of the applicant has been issued in consonance with the provisions of law. The same has been issued after careful perusal of the relevant records and after reconsideration of the reply submitted by the applicant. There is no illegality in the impugned order. While functioning as Sub Post Master, Niwas, District Mandla, the applicant had demand and accepted a bribe of Rs.1000/- from one Rajendra Prasad Rai as illegal gratification on 20.11.2002 and he was caught red handed by the CBI, Jabalpur and the bribe amount was

recovered from the applicant. As the applicant has been convicted in a criminal charge under Sections 7 and 13(1) read with section 13 (2) of Prevention of Corruption Act, his further retention in public service has become undesirable and the gravity of the charge warranted the imposition of major penalty. Therefore the applicant has been dismissed from service. Hence the action of the respondents is legal and justified.

5. After hearing the learned counsel for the parties and carefully perusing the records, we find that the applicant was convicted by the Vth Additional Sessions Judge/Special Judge, CBI, Jabalpur in a criminal case under Sections 7 and 13 (1) read with section 13 (2) of Prevention of Corruption Act and he was sentenced to undergo rigorous imprisonment for one year and a fine of Rs.2000/- and in default thereof, a further RI for 3 months. He was also sentenced to undergo 2 years RI with a fine of Rs.2000, and in default thereof, a further RI for 3 months under Section 13 (1) (d) read with Section 13 sub clause (2) of the Prevention of Corruption Act. On his appeal, the applicant was granted bail and the jail sentence was suspended on his furnishing a bond of Rs.10,000 and the criminal appeal filed by the applicant is still pending before the High Court. The Hon'ble Supreme Court in 1997 SCC L&S 1774 UOI Vs. Ramesh Kumar, decided on 7th September 1997, held that "Criminal Procedure Code 1973 Section 389 – Suspension of sentence by the appellate court – implication of – sentence based on conviction can be postponed or kept in abeyance during the pendency of appeal – Conviction, however, continues till it is set aside – disciplinary action such as dismissal or removal against the Government servant on the basis of such conviction – Held – will stand unimpaired during the pendency of the appeal". Hence the argument advanced on behalf of the applicant that the applicant's criminal appeal is pending before the High Court against the conviction passed by the trial court, does not help him.

6. After considering all the facts and circumstances of the case and the principles laid down in the aforesaid ruling of the Supreme Court, we are

of the considered opinion that the OA has no merit. Accordingly the OA is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

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पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

पदलिपि अन्ये दिनाः—

(1) सद्विज, उच्च न्यायालय काठमाडौं, नेपाल, जयपुर

(2) आवेदक श्री/श्रीमती, क. राठे तहसिल

(3) पत्न्याची शी/अभिनी/कु.....चे का.अ.अ.

(d) वायुपान, लो.प्र.अ., जल-प्रदायी

सचिना एवं आवश्यक कार्यवाही हेतु

उपनिषद्

Issued
On 15.3.05
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