

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT BENCH AT INDORE

Original Application No. 176 of 2002

Indore, this the 1st day of October, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri A.S. Sanghvi, Judicial Member

Yashwant, S/o. Babulal Rai,
Age 40 years, R/o. House No. 26,
Keshar Bhawan, Bhamnawada, T.B.
Hospital's Back side, Ujjain. ... Applicant

(By Advocate - Shri G.S. Solanki)

V e r s u s

1. Commissioner, Income Tax, Bhopal
(CCA), Aaykar Bhawan, Hoshangabad
Road, Bhopal (MP).
2. Commissioner of Income Tax,
Aaykar Bhawan, Bharatpuria,
Ujjain.
3. Central Government, through
Department of Income Tax, Central
Board of Director Taxes, North
Block, New Delhi. ... Respondents

(By Advocate- Shri S. Akthar on behalf of Shri B.da.Silva)

ORDER

By A.S. Sanghvi, Judicial Member -

The applicant has moved this Original Application seeking reinstatement in service on the ground that he has been released on ^{60:1} appeal by the appellate court and hence, he is required to be reinstated in service. It appears from the record that he is a Daily Wage employee and he was convicted for an offence under Section 304(1) of IPC on 15.7.1991 and sentenced to undergo imprisonment of seven years. In appeal to the Hon'ble High Court the order of the Sessions Court was suspended and in view of the suspension of the order passed by the Sessions Court, the applicant had moved OA No. 372/1992 for direction to the respondents to reinstate him in the service as his services had been terminated by the competent authority vide order

dated 19.8.1991 on account of his conviction by the Sessions Court. The Tribunal vide order dated 15th July, 1993 had allowed the OA and directed the respondents to reinstate the applicant on the post he was holding prior to 19.8.1991, till such as the judgment of appeal is pronounced by the Hon'ble High Court. The Hon'ble High Court in Criminal Appeal No. 324/1991, vide order dated 27.11.2000 upheld the conviction of the applicant but reduced the sentence from 7 years to 5 years R.I. Pursuant to the Hon'ble High Court's order the services of the applicant are discontinued. Hence, the applicant has again approached this Tribunal by filing this Original Application.

a 2. The learned counsel for the applicant has submitted that the order of the Hon'ble High Court is challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 26.11.2001 released the applicant on bail. According to the learned counsel for the applicant since the applicant is released on bail the same situation prevails as was when the orders in OA No. 372/1992 were passed. He has prayed that in view of the earlier direction of the Tribunal on the same reasoning the respondents be directed to reinstate the applicant in service as the applicant is on bail now and his appeal before the Hon'ble Supreme Court is pending.

3. It is quite obvious from the above narrated facts that the applicant has not been acquitted even by the Hon'ble Supreme Court. The Hon'ble Supreme Court has only released him on bail and has not set aside his conviction or sentence. So far his discontinuance from the service is concerned the respondents were justified in discontinuing him from service in view of the observations of the Tribunal in OA 372/1992 which clearly stipulated that he is to be

reinstated on the post he was holding prior to 19.8.1991, till such as the judgment of appeal is pronounced by the Hon'ble High Court. Now when the Hon'ble High Court has pronounced the judgment and has not acquitted him, the respondents are quite justified in discontinuing the services of the applicant. Further more, ^{the} discontinuance from service or dismissal from the service is pursuant to the consideration of the conduct of the applicant and not pursuant to the conviction in the criminal case. It is now a settled position of law ~~and~~ in view of the ^{decision} ~~case~~ of the Hon'ble Supreme Court, reported in 1996 SCC 449, whenever the appellate court suspends the sentence or conviction, what is suspended is sentence or conviction but not the conduct. The conduct of the Government servant is relevant so far Rule 19(1) of the CCS(CCA) Rules, are concerned, and therefore, even when the Government employee is released on bail by the Hon'ble Supreme Court and the appeal is pending, he can be dismissed from the service in view of the provisions of Rule 19(1) of CCS(CCA) Rules. Rule 19(1) of the CCS(CCA) Rules ^{is} laid down as under :

"Notwithstanding to anything contained in Rule 14 to Rule 18 -

i) where any penalty is imposed on the Government servant on the ground of conduct which has laid to conviction on a criminal charge or.....

ii).....

iii).....

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit."

4. In the instant case even the Tribunal had directed that his reinstatement was subject to the out come of his appeal in the Hon'ble High Court. When Hon'ble High Court did not acquitt him it was open to the disciplinary authority to discontinue the applicant from service. The applicant, therefore, cannot challenge his discontinuance merely on the

reinstated on the post he was holding prior to 19.8.1991, till such as the judgment of appeal is pronounced by the Hon'ble High Court. Now when the Hon'ble High Court has pronounced the judgment and has not acquitted him, the respondents are quite justified in discontinuing the services of the applicant. Further more, ^{the} discontinuance from service or dismissal from the service is pursuant to the consideration of the conduct of the applicant and not pursuant to the conviction in the criminal case. It is now a settled position of law ~~and~~ in view of the ^{decision} ~~case~~ of the Hon'ble Supreme Court, reported in 1996 SCC 449, whenever the appellate court suspends the sentence or conviction, what is suspended is sentence or conviction but not the conduct. The conduct of the Government servant is relevant so far Rule 19(1) of the CCS(CCA) Rules, are concerned, and therefore, even when the Government employee is released on bail by the Hon'ble Supreme Court and the appeal is pending, he can be dismissed from the service in view of the provisions of Rule 19(1) of CCS(CCA) Rules. Rule 19(1) of the CCS(CCA) ^{is} Rules/laid down as under :

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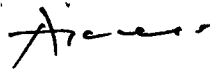
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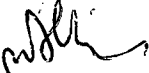
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4. In the instant case even the Tribunal had directed that his reinstatement was subject to the out come of his appeal in the Hon'ble High Court. When Hon'ble High Court did not acquitt him it was open to the disciplinary authority to discontinue the applicant from service. The applicant, therefore, cannot challenge his discontinuance merely on the

ground that his appeal is pending before the Hon'ble Supreme Court and he has been released on bail. We may also observe that earlier the Tribunal had directed reinstatement of the applicant without considering the ~~fact of the~~ Rule 19(1) of the CCS(CCA) Rules and also the decision of the Hon'ble Supreme Court. The order of the Tribunal was, therefore, per incuriam and cannot be relied upon for similar direction again.

5. We do not see any merit in this Original Application and are of the opinion that the OA deserves to be rejected. Accordingly, the same is rejected with no order as to costs.


(A.S. Sanghvi)
Judicial Member

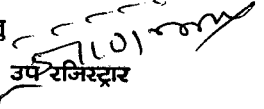

(M.P. Singh)
Vice Chairman

"SA" पृष्ठकल सं ओ/न्या. जवलपुर, दि.

पत्रिकायि वाचं धितः—

- (1) सचिव, उच्च न्यायालय वर एसोसिएशन, जवलपुर
- (2) गणेशदास श्री/श्रीमती/कु. के काउंसल *eg Solanki*
- (3) प्रत्यक्षी श्री/श्रीमती/कु. के काउंसल *M. L. Anilva*
- (4) वरिष्ठा, के.प्र.अ., जवलपुर न्यायपीठ

सूचना एवं आवश्यक कार्यवाही हेतु


उप-रजिस्ट्रार

*Issued
on 5/10/04
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