

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Transferred Applications Nos.14/2000 & 3/2002

Jabalpur, this the 19th day of September, 2003

Hon'ble Mr. Anand Kumar Bhatt-Administrative Member
Hon'ble Mr. G. Shanthappa-Judicial Member

(1) Transferred Application No.14 of 2000

Prem Prakash Ambedkar
S/o Late Baldeo Ram Ambedkar
Aged about 52 years,
U.D.C. (Under Suspension)
Regional Medical Research Centre,
for Tribals, (Indian Council of
Medical Research), Jabalpur-3 (M.P.)
R/o Prakash Four Mills Near
Union Bank of India Branch Ranjhi,
P.O. Khamaria, Jabalpur - 482001 (MP)

APPLICANT

(Applicant in person)

VERSUS

1. The Director, Regional Medical
Research Centre for Tribals,
RMRC Complex, Nagpur Road,
P.O. Garha, Jabalpur - 3(MP)
2. The Director General,
Indian Council of Medical Research,
Ansari Nagar Post Box No. 4508,
New Delhi - 110029

RESPONDENTS

(By Advocate - Shri A. Adhikari)

(2) Transferred Application No. 3 of 2002

Prem Prakash Ambedkar S/o Late
Baldeo Ram Ambedkar, Aged about
53 years, U.D.C.(Dismissed from
service), Regional Medical Research
Centre for Tribals (ICMR) RMRC
Complex Jabalpur - 3 M.P.
R/o Prakash Flour Mills Near
Union Bank of India Branch Ranjhi
P.O. Khamaria, Distt. Jabalpur
PIN - 482001

APPLICANT

(Applicant in person)

VERSUS

1. The Director Regional Medical
Research Centre for Tribals,
R.M.R.C. Complex Jabalpur - 3 M.P.
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Research, Ansari Nagar,
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(By Advocate - Shri A. Adhikari)



Common Order

By Shanthappa, Judicial Member -

The applicant has filed M.B.No.2253/1993 and 809/1994 in the Hon'ble High Court of Madhya Pradesh at Jabalpur which on transfer to this Tribunal have been registered as TA 14/2000 and TA 3/2002 respectively. As the issues involved in both the TAs are connected, for the sake of convenience both the TAs were heard together and are being disposed of by this common order.

2. In TA 14/2000 the relief sought in TA 14/2000 is to set aside the order of suspension dated 13.2.1992 (Document 'A'). He has also challenged the order dated 26.5.1993 (Document 'D') by which his subsistence allowance was stopped. He has also prayed for a direction to the respondents to reinstate him and grant him back wages and consequential service benefits. The relief in TA No.3/2002 (M.P.No.809/1994) is to quash the impugned order of dismissal from service dated 30.9.1993 (Document No.A-10), including the suspension order and proceeding, by writ of certiorari, and further relief to direct the respondents to reinstate the applicant with full pay and allowances and all consequential service benefits.

3. The applicant argued that he had been originally appointed in the Army as Naib Subedar. He was medically boarded out and subsequently he has been appointed as Upper Division Clerk under the respondents. While he was in service a disciplinary proceeding was under contemplation. He was suspended vide impugned order dated 13.2.1992 (Document 'A') against which he preferred an appeal to respondent no.2 on 27.3.1992 (Document 'B') which is said to be pending. Order dated 18.3.1993 (Document A-12) came to be passed by the disciplinary authority for violation of the terms of order of suspension by reducing the amount of subsistence allowance to 50% of the amount initially granted with

immediate effect. The applicant submitted an appeal dated 12.4.1993(Annexure-A-3) which is also pending before the appellate authority.

4. The respondent no.1 has passed the order dated 26.5.1993(Document A-4) stopping the subsistence allowance which was being given to the applicant. The order takes effect without prejudice to further disciplinary action for submitting false certificate and recovery of the amount already paid to him from the date of suspension. Being aggrieved by the said order, the applicant submitted an appeal. The said appeal is said to have been pending.

5. The respondents have initiated the disciplinary proceedings against the applicant for the misconduct vide their memo dated 27.5.1993 (Document-A-6). Along with the memorandum of charge, Annexures--I, Annexure-II and Annexure-III were also issued to the applicant. The charge levelled against the applicant was that "without permission he engaged himself in the business of flour mills and after his suspension, wilfully furnished false certificates that he is not engaged in any trade/business/profession, while he was, in fact, engaged in the above business of flour mills, which amount to grave violation of Rule 15(1)(a) read with Rule 3 of the CCS(Conduct)Rules, 1964.

6. Along with the application, the applicant has submitted the document Annexure-A-7 dated 1.4.1988 in which the applicant had requested the first respondent for permission to retain 'Chakki' business to maintain the expenses of the joint family. It is further submitted that on 4.4.1988 the authorities have permitted the applicant.

7. The applicant has submitted his objection to the memorandum of charge denying the allegations levelled against him. He has admitted that he is running the 'Chakki' business (flour mill business) under the permission letter dated 1.4.1988 (Document-E in TA 14/2000). The allegation in respect of running the 'chakki' business without permission is denied.

8. An enquiry officer had been appointed to conduct the enquiry and to know the truth of the allegations levelled against the applicant vide memo dated 27.5.1993. The applicant himself defended his case and attended in the enquiry proceedings. The enquiry commenced from 19.6.1993 and concluded on 3.8.1993. A copy of the enquiry report was received by the applicant. After considering all the documents available on record and the representation of the charged official against the enquiry report, the disciplinary authority has passed the order dated 30.9.1993 imposing the penalty of dismissal of the applicant from service by exercising the powers under Rule 11(ix) of the CCS(CCA) Rules, 1965 with immediate effect without prejudice to the right of the Centre to prosecute him for fraud and to recover the loss to the public exchequer. The said order dated 30.9.1993 passed by the disciplinary authority was served to the applicant. The applicant preferred an appeal (Annexure-A-11) before the appellate authority. After considering the grounds raised in the appeal, the appellate authority has passed the order dated 31.3.1994 by modifying the order of disciplinary authority by reducing the ~~penalty of~~ penalty of



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dismissal from service imposed on the applicant by the disciplinary authority to removal from service. Against the said orders the applicant has filed the above application(TA 3/2002), alleging that the impugned orders are passed by the disciplinary & appellate authorities are illegal against law and entire proceedings are vitiated since the authorities have not followed the principles of natural justice.

9. The applicant has raised the grounds which are as follows :- (i) the authorities are not supposed to initiate more than one proceedings against him; (ii) the complainant Mohanlal Kori was an accused in the criminal case and he was not examined; (iii) the document No.A-7 though it was placed on record that was not considered by the authorities. The said document relates to the permission alleged to have been granted by the authority -respondent no.1 for running the 'Chakki' business; (iv) no opportunity was given to him to cross-examine the prosecution witness; and (v) he was not given an opportunity to engage a defence assistant.

10. We have considered all the grounds raised by the applicant. Regarding ground no.(i) we are of the firm opinion that there is no bar in initiating number of departmental proceedings against the delinquent official since he has committed misconduct on different occasions. The applicant has filed a copy of the charge sheet issued on 28.7.1993(Document A-21). The charge in the said memorandum relates to acquiring immovable property without the prior sanction of the prescribed authority and when ordered the applicant failed to furnish details of the immovable property and the source of finance from which said property was acquired. The said charge is totally different from the present proceeding initiated against the applicant under which he was punished. The applicant has no produced any documents to show whether the proceeding against the said



charge-sheet was completed or still pending. Accordingly, the ground no.(i) regarding initiation of number of proceedings against him is not sustainable.

10(1) Regarding ground no.(ii), per contra the respondents in their reply, denying the contents of the application, have submitted the copies of entire proceedings for our perusal. According to the reply and additional reply of the respondents, they have denied that a complaint was made by Mohanlal Kori for stopping the subsistence allowance. The said allegation is not in the imputation of charge in the enquiry proceedings. Hence the contention of the applicant regarding non-examination of the complainant Mohanlal Kori has no relevance in the instant case.

10(2). Regarding ground no.(iii) relating to Document No.7 in the additional submission the respondents have specifically contended that the said document is a forged and fabricated one. It is further contended that the applicant did not file any document or produce any witness in his defence in this respect. Hence the submission of the applicant that a permission was granted to him by respondent no.1 for running the 'chakki' business is rejected.

10(3). Regarding ground no.(iv), we have perused the enquiry proceedings. On 22.7.1993 one Anil Sharma was examined by the enquiry officer. On that day the applicant was present and he signed the proceedings but he did not cross-examine the witness nor he made any request in that regard. Now, at this stage he cannot say that no opportunity was given to him to cross-examine the witness.

10(4) Regarding ground no.(v), the proceedings dated 6.7.1993 clearly shows that the applicant was asked whether he wants to engage the defence assistant. He replied in negative and he had signed the proceedings of that day. Hence, now, the applicant cannot say that no opportunity was given to him to engage a defence assistant.

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11. The applicant has cited some judgments in support of his case - (i) Ram Sarup Vs. Tikaram Vakil, AIR 1919 Allahabad 13(2). The said judgment is applicable to the person who was Vakil entering into commercial transaction. The applicant cannot compare with the services of a Vakil with the civil servant. Hence, facts of the said judgment and the facts of this case are not similar. Therefore, the said judgment cannot help the applicant.

(ii) P.C. Joshi Vs. State of U.P., AIR 2001 SC 2788. The said judgment is regarding misconduct committed by the Incharge District Judge in granting stay to order of disconnection of telephone passed in consumer dispute, which amounts to erroneous exercise of power. The facts of the said case and the facts of the present case are not similar. Hence this judgment is also not applicable in the instant case.

(iii) Pawan Kumar Sharma Vs. Gurdial Singh, AIR 1999 SC 98 - the said decision is regarding professional misconduct of an advocate. The applicant cannot compare his services at par with the services of an advocate. Hence the said judgment is not applicable to the present case.


(iv) Sarvesh Singh Vs. Union of India and others, 1996(1) SLJ (CAT) 296. The said case relates to validity of suspension consequent to issue of fresh charge-sheet, hence not applicable

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in this case. All the judgments referred to by the applicant in the list of citations are not applicable to the facts of the present case. The applicant has not cited correct judgments to the facts of his case.

12. The counsel for the respondents argued that there is no violation of principles of natural justice while conducting the enquiry and imposing the punishment. The enquiry officer has assigned all the reasons and he has given full opportunity to the applicant to defend himself. Only one witness was examined. During all the dates of hearing the applicant has attended the enquiry and signed the proceedings. The enquiry officer has submitted his enquiry report dated 10.8.1993 stating that the charges levelled against the applicant are proved. The operative portion of the enquiry report is as follows- It is, therefore, proved that the charged officer was engaged in a profitable business from February 1992 to April 1993, the period of suspension under question and that the certificates P-2 to P-16 are false leading to fraudulent withdrawal of the amount of Rs.26,880/- from the public exchequer. He submitted his report to the disciplinary authority. The disciplinary authority after taking all the aspects, documents and the evidence in the enquiry report, into consideration, he has assigned the reasons and passed the order and



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imposed the penalty of dismissal of the applicant from service, without prejudice to the right of the Centre to prosecute the applicant for fraud and to recover loss of public exchequer. The impugned order of the disciplinary authority is passed covering all the points raised by the applicant. Hence the impugned order of disciplinary authority has covered the reasons under the principles of natural justice. The applicant has preferred an appeal before the appellate authority. The appellate authority after considering the grounds of appeal and the reasons assigned by the disciplinary authority, has exercised his power and reduced the penalty of dismissal from service imposed by the disciplinary authority, to removal from service. The appellate authority has properly considered and passed the impugned modified order against which the applicant approached this Tribunal challenging this order.

13. After perusal of the documents on record and the contentions urged by the applicant; reply and additional reply of the respondents; and also the entire ^{enquiry} proceedings, the impugned orders passed by the disciplinary authority and the appellate authority are sustainable in the eye of law. All the judgments referred to by the applicant are not applicable to the facts of this case. Hence, we are of the opinion that the respondents have not violated the principles of natural justice by passing the impugned orders. Accordingly TA 3/2002 is liable to be rejected.

14. As regards TA 14/2000, in the said TA the relief of the applicant is to quash the order of suspension dated 13.2.1992 (Document 'A') and the order dated 26.5.1993 (Document-D). The said impugned orders are interim orders in nature. When the final disciplinary proceeding is concluded and the applicant has been removed from service, the question of considering the impugned order of suspension and the interim order of stopping the subsistence allowance does not arise. Accordingly, the relief prayed for in TA 14/2000 cannot be granted.

15. In the result, both the TAs 14/2000 & 3/2002 are rejected, however, with no order as to costs.

G. Shanthappa
(G. Shanthappa)
Judicial Member

Anand Kumar Bhatt
(Anand Kumar Bhatt)
Administrative Member.

rkv.

पूरांकन से ओ/न्या..... जलपुर, दि.....
पतिलिपि अर्जित :-
(1) सचिव, उच्च न्यायालय का एडोक्वेट, जलपुर
(2) उपाध्यक्ष श्री/श्रीमती/शु..... के कार्यालय
(3) अध्यक्ष श्री/श्रीमती/शु..... के कार्यालय
(4) प्रोसेस, उपाध्यक्ष, जलपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

P.P. Ambekar, Adv (2G)
A. Adhikari Adv (2G).

Shastri
26/9/03

Success
26/9/03