

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-538/2015

Reserved on : 12.09.2017.

Pronounced on : 15.09.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Sh. Lal Chand Ram, 50 years
S/o Sh. Shiv Nandan, UDC
R/o Qr. No. 4, Alipur Block,
BDO Complex, Alipur,
Delhi.

.... Applicant

(through Ms. Deepali Gupta, Advocate)

Versus

1. Government of NCT of Delhi
Through the Secretary,
Development Department,
Delhi Administration,
5/9, Under Hill Road,
Delhi-54.
2. The Secretary & Commissioner
(Development),
Development Department,
Delhi Administration,
Govt. of NCT of Delhi,
5/9, Under Hill Road,
Delhi-54.
3. Government of NCT of Delhi
Through the Secretary,
Office of the Divisional Commissioner,
Department of Revenue,
5, Shyam Nath Marg,
Delhi.

..... Respondents

(through Ms. Sangita Rai with Sh. Pradeep Singh Tomar, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

The applicant was appointed as a Village Level Worker in the office of Development Commissioner, Delhi Administration, Delhi on 17.09.1991. Vide order dated 12.12.2003 of the Development Commissioner, he was transferred to the office of Divisional Commissioner in the Panchayat Unit. On 26.11.2012, a charge sheet was filed by the ACB against the applicant under Sections-7 & 13(i)(d) read with Section-13(2) of the Prevention of Corruption Act, 1988. A trial was held and the applicant was convicted by the Trial Court on 19.07.2014. The sentence was passed on 24.07.2014. The applicant challenged the aforesaid order before Hon'ble High Court of Delhi and on 19.08.2014 Hon'ble High Court directed that the impugned judgment and sentence shall remain suspended during the pendency of the appeal. The bail granted to the applicant was also extended till further orders.

2. Separately, the respondents issued a Memo dated 22.09.2011 asking the applicant to show cause why penalty of dismissal from service under Rule-19 of the CCS (CCA) Rules, 1965 be imposed on him. The applicant was given an opportunity to represent against the same. When the applicant replied to the same and sent a copy of the order of Hon'ble High Court of Delhi along with his reply, the

respondents withdrew the aforesaid Memorandum but issued a fresh Memo on 17.11.2014 and again gave an opportunity to the applicant to represent against the same. The applicant submitted his representation on 01.12.2014. The respondents, however, passed the impugned order dated 26.12.2014 dismissing the applicant from service. The aforesaid order has now been challenged by the applicant by means of this O.A.

3. Learned counsel for the applicant has pressed the following two grounds before us:-

(i) That the impugned order has been passed by an incompetent authority.

(ii) Since the conviction and sentence had been stayed by Hon'ble High Court of Delhi, the aforesaid order could not have been passed and was bad in law.

4. Each of the grounds taken by the applicant is discussed as hereunder:-

(i) Regarding the first ground the applicant submitted that he was transferred to work under the office of Divisional Commissioner vide order dated 12.12.2003 (pages 21 to 23 of the paper-book). Another order dated 07.01.2004 of the Office of the Divisional Commissioner was also handed over to us. On the strength of these two orders, the applicant claimed that he had been

transferred to work under the Divisional Commissioner and, therefore, the competent authority for passing his dismissal order was Divisional Commissioner. The impugned order has, however, been passed by Secretary & Commissioner (Development), who was no longer his Appointing Authority and, therefore, not competent to pass such an order. The applicant has relied on the judgment of Hon'ble High Court of Allahabad in the case of **Madan Lal Chawla Vs. The Principal, Harcourt Butler Technological Institute, Kanpur and Ors.**, AIR 1962 ALLAHABAD 166 (V 49 C 52), in paras-19 & 21 of which the following has been held:-

"19. In cases where either an employee has been transferred from one department to the other, or one department itself has been transferred to the other or a new head of the department is created, this principle will not apply. For example, an employee who was working in the Education Department is transferred to the Judicial Department, formerly he may have been appointed by the Director of Education, but for all purposes when an employee is transferred, to the Judicial Department it would be the Chief Justice or the Judicial Secretary who would take action and not the Education Secretary or the Director of Education. Similarly if a Department was at one time under one officer but at some time later it was transferred to another head then at that stage it is the head of the department to which, the employee has been transferred alone who would be entitled to take action and the department from which he has gone away will have nothing to do with him any longer in future. In the present case the Director of Industries has now absolutely no concern with this Institute. How could then he ask the Principal, who is not subordinate to him, to take any disciplinary action or send any report to him? The only authority now to issue any directions is the State Government and no one else when the Principal has been declared to be the head of the department.

21. The only reasonable and proper interpretation is that after a sub-department is made as the head department then the head of that department would be the appointing authority. In my opinion therefore at the present moment there is no other person who can deal with the case of the petitioner except the Principal of the Harcourt Butler Technological Institute."

He has also placed reliance on paras-10 & 11 of the judgment of the Apex Court in the case of **State of U.P. and Ors. Vs. Ram Naresh Lal**, AIR 1970 SC 1263, which read as follows:-

“10. The learned Counsel for the appellant, Mr. G.N. Dixit, contends (1) that the respondent was permanently transferred to the Planning Department by virtue of the order of Government dated May 21, 1958 and the option exercised by the respondent not to go back to his parent department, and (2) that, at any rate by virtue of the order dated March 4, 1960, read with the notification dated August 3, 1932, and May 21, 1958, the Development Commissioner was the competent authority to dismiss the respondent.

11. Regarding the first point, it seems to us that it was not necessary that the Development Commissioner should have issued a fresh order for appointment of the respondent. The respondent was a member of the Subordinate Service and by having been transferred to the Planning Department he had not ceased to be a member of the service. If a person is a member of the service and he is transferred from one department to another it is not necessary that he should be reappointed to the service or he should be appointed to the department to which he is transferred. As soon as he is transferred permanently he begins to hold the permanent post which he starts holding in the transferee department. It is true that the letter dated May 21, 1958, contemplated that a fresh appointment of staff who elected to remain in the Planning Department would be made but apparently later on the Government realised that it was not necessary to pass such an order of reappointment. It seems to us that the respondent, having elected not to go back to his parent department, became an employee in the Planning Department and, therefore, the Development Commissioner was entitled to dismiss the respondent.”

4.1 The respondents, however, disputed this contention. Arguing for them Ms. Sangita Rai submitted that it was the Secretary-cum-Commissioner (Development), who was the Appointing Authority as well as Cadre Controlling Authority of the applicant. Even after the

transfer to the Panchayat Unit under the Divisional Commissioner, this position remained as it is.

4.2 We have considered the submissions of both sides and have perused the transfer order dated 12.12.2003 relied upon by the applicant as well as the order dated 07.01.2004 also relied by him. On perusal of the transfer order dated 12.12.2003, we find that a large number of employees were transferred to the Panchayat Unit of the Divisional Commissioner. The aforesaid order does not state that the transfer order was permanent and involved change of the cadre. Even perusal of order dated 07.01.2004 reveals that it was only as an administrative arrangement that allocation of Panchayat Unit to the Revenue Department was made. These orders do not anywhere stipulate that the transfer was permanent. Nor was it accompanied by corresponding change in the Recruitment Rules of employees so transferred. We are, therefore, of the opinion that such a transfer did not involve change of appointing authority and that there is merit in the contention of the respondents that despite the aforesaid transfer, Secretary & Commissioner (Development) continue to remain the Appointing Authority of the applicant. The judgments relied upon by the applicant would also not be of help to him because they deal with cases of permanent transfer and not an administrative arrangement as was made in the instant case.

4.3 The next ground taken by the applicant was that the impugned order was bad in law because the applicant's conviction and sentence had been stayed by Hon'ble High Court of Delhi. In this regard, reliance was placed by the applicant on the judgment of Hon'ble High Court of Delhi in the case of **BSES Rajdhani Power Limited Vs. Madan Mohan Ratawal and Anr.**, (LPA No. 1367/2007) dated 30.03.2009, in paras-27 & 29 of which the following has been laid down:-

"27.....The said words do not stipulate that an order passed by the Appellate Criminal Court staying the conviction cannot be taken into account. Neither the words bar or prohibit the Appellate Authority from taking into consideration the order passed by the Appellate Criminal Court. We may note here that the Disciplinary Authority while passing an order under Rule 19(2)(i) does not go into the merits and demerits of the conviction order. Its role and scope is confined to other aspects relating to retention/punishment of the Government servant in service i.e. whether it is undesirable to retain the Government servant in service in view of his conduct resulting in the conviction. It is the appellate criminal court which examines the question of suspension of sentence or stay of conviction. Order of stay of conviction once passed has to be given due notice and cannot be ignored.

29. In the present case, we have held that the order passed under Rule 19(2) of the CCS(CCA) Rules both by the Disciplinary Authority and the Appellate Authority are liable to be set aside. Even if we remand the matter back to the Disciplinary Authority, no order for dismissal/removal can be passed in view of the stay order granted by the High Court of Allahabad dated 7th March, 2006."

4.4 The respondents, however, relied on the judgment of the Apex Court in the case of **K.C. Sareen Vs. C.B.I., Chandigarh**, JT 2001 (6) SC 59 wherein the following has been held:-

"When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings

made against such public servants once again should not even temporarily absolve him from such finding. If such a public servant become entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal of revision."

Reliance was also placed by the respondents on the judgment of Apex Court in the case of **Union of India Vs. V.K. Bhaskar**, JT 1998 (9) SC 301, in para-4 of which the following has been held:-

"4. Rule 19(i) of the Rules is based on Clause (a) of the proviso to Sub-article (2) of Article 311 of the Constitution construing the said proviso to Article 311(2), this Court, in Dy. Director of Collegiate Education (Admn.) v. S. Nagoor Meera has held : (JT pp. 34-36, paras 7-10).

"This clause, it is relevant to notice, speaks of conduct which has led his conviction on a criminal charge. It does not speak of sentence or punishment awarded. Merely because the sentence is suspended and/or the accused is released on bail, the conviction does not cease to be operative. Section 389 of the CrPC, 1973 empowers the appellate court to order that pending the appeal 'the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond. Section 389(1), it may be noted, speaks of suspending the execution of the sentence or order, it does not expressly speak of suspension of conviction....."

Based on these judgments, Ms. Sangita Rai argued for the respondents that Apex Court has clearly held that in cases of conviction of corruption charge, it is in the interest of honest administration that the employee, who had been convicted in a criminal trial be kept away from the job till he is finally exonerated by a higher Judicial Forum.

5. We have considered the arguments of both sides. While the applicant has relied on the judgment of Hon'ble High Court of Delhi in the case of **Madan Mohan Ratawal & Anr.** (supra), the respondents have relied on the judgment in the case of **K.C. Sareen** (supra) in which Apex Court has ruled that in corruption cases the Government employee, who has been convicted of charges of corruption, be kept away from public office till he is absolved of charges by a judicial forum. In this view of the matter, we do not find any infirmity in the action of the respondents.

6. We are, therefore, of the opinion that none of the grounds pressed by the applicant is tenable. Accordingly, we find that this O.A. is devoid of merit and dismiss the same. No costs.

(Raj Vir Sahrma)
Member (J)

(Shekhar Agarwal)
Member (A)

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