

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No. 363/2018

Date of Decision: 26th June, 2018

CORAM: HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

Shri Namdeo Shankar Margaj
Residing at -C/1602,
Dreams Complex, Station Road,
Bhandup (West),
Mumbai - 400 078. **Applicant.**

(By Advocate Ms. Karuna K. Yadav)

VERSUS

1. Union of India
Through The Ministry of Labour
Sharam Mantralaya,
New Delhi - 110 001.
2. The Central Provident Fund Commissioner
Bhavishya Nidhi Bhavan,
Bhikaji Kama Palace,
New Delhi - 110 066.
3. The Regional Provident Fund Commissioner,
Regional Office, Mumbai,
Bhavishya Nidhi Bhavan,
Plot No.222, Charkop,
Kandivali (West), Mumbai - 400 067.
4. The Regional Provident Fund Commissioner
(Enquiry Officer),
Regional Office,
Mumbai, Bhavishya Nidhi Bhavan,
Plot No.222, Charkop,
Kandivali (West), Mumbai - 400 067.
5. The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation
Regional Office, PCB Building,
Golibar Maidan,
Pune - 411 001. **Respondents**

ORDER (ORAL)**PER: SHRI ARVIND J. ROHEE, MEMBER (J)**

Today when the matter is called out for Admission, heard the applicant who is present in Court and Ms. Karuna K. Yadav, learned Advocate for him. We have carefully perused the case record.

2. The applicant approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:-

"8(A) By issue of an appropriate order or directions the respondent authorities may be directed to stay the departmental enquiry proceedings against the applicant pursuant to the charge sheet dated 18.06.2016 and subsequent chargesheet dated 31.08.2017 during the pendency of the Criminal Appeal No.391 of 2016 before the Hon'ble Bombay High Court.

(B) The respondents may further be directed to stay pending the hearing and final disposal of the application further proceedings in the departmental enquiry pursuant to the chargesheet dated 18.05.2016 and subsequent Notice dated 31.08.2017 be stayed.

(C) The chargesheet dated 18.06.2016 and subsequent chargesheet dated 31.08.2017 issued by the respondent is ultra virus and directed to be quashed and set aside considering the Rule 9(2) (b) CCS(Pension) Rules, 1972 and other legal provisions applicable to applicant.

(D) Any other or further suitable reliefs to which the applicant may be found eligible and entitled in facts and circumstances of the case may kindly be granted in the interest of justice and equity;

(E) The cost of this application be awarded to the applicant."

3. The applicant who retired as Assistant Provident Fund Commissioner from Regional Office at Kandivali, Mumbai on 31.01.2013, was trapped for demand and acceptance of bribe on 03.10.2011 by CBI. A charge sheet was then filed against him in a Special Court at Mumbai on 20.01.2012. Prior to that, since the applicant came to be arrested, he was put under deemed suspension vide order dated 04.11.2011. On trial the Special Court vide order dated 06.05.2016 found the applicant guilty of the offence punishable under Prevention of Corruption Act, 1988 and convicted him. The applicant challenged the said order of conviction in Criminal Appeal which is pending before Hon'ble High Court. In the meantime, the respondents have initiated a disciplinary proceeding against the applicant vide Memorandum dated 18.05.2016 for the same charge.

4. In this OA, the applicant contended that since Criminal Appeal No.391/2016 against the order of conviction is pending in which

sentence is suspended vide order dated 29.06.2016, the disciplinary proceedings should be kept pending so also the show cause notice issued under Rule 19(1) of CCS(CCA) Rules calling upon him as to why the punishment of withholding of pension should not be imposed upon him on the strength of his conviction by the Criminal Court.

4. After hearing learned Advocate for the applicant and on perusal of record, this Tribunal is of the considered view that since the sentence only has been suspended and not the order of conviction, the finding of guilt still exists and hence there is no need to stay either the show cause notice issued under Rule 19(1) of CCS(CCA) Rules or a disciplinary proceeding, which is independent although based on the same charge of demand and acceptance of bribe. This is so because, the two are distinct and independent proceedings, inasmuch as in a criminal prosecution, strict proof of guilty is required to be established beyond reasonable doubt before convicting the accused, whereas in a disciplinary proceeding, the finding of misconduct is based on preponderance of

probabilities only.

5. In view of above, although Criminal Appeal is pending, it is not necessary to stay any of the two above proceedings as claimed by the applicant. It is obvious that the Disciplinary Authority after receiving reply of the applicant to the show cause notice is yet to pass the final order on it.

6. So far as institution of a disciplinary proceeding for the same charge is concerned which has been filed vide Memorandum dated 18.05.2016, as stated earlier, learned Advocate for the applicant submitted that the applicant participated in the enquiry which has been initiated after a period of more than four years from the date of occurrence of alleged incident of demand and acceptance of bribe. It is also stated that evidence of few departmental witnesses has been recorded and now the Inquiry Officer has been transferred. The Disciplinary Authority is, therefore, directed to take appropriate steps within a period of eight weeks from the date of receipt of a certified copy of this order for appointment of any other appropriate Inquiry

Officer to proceed with pending enquiry to come to its logical end.

7. In view of above, at present there is no impugned order giving rise to any cause of action to the applicant to approach this Tribunal, since final order in passing discipling proceeding nor on show cause notice under Rule 19(1) of CCS(CCA) Rules is ever passed by the Disciplinary Authority.

8. From the above discussions, we are of the considered view that ends of justice will be better served in case appropriate directions are issued in the matter.

9. The respondent No.1 is therefore directed to pass a reasoned and speaking order in accordance with law on the pending Memorandum/show cause notice dated 31.08.2017 issued initiating a proceeding under Rule 19(1) of CCS(CCA) Rules, 1965 on the strength of applicant's conviction by the Criminal Court in the matter of demand and acceptance of bribe, within a period of eight weeks from the date of receipt of certified copy of this order.

10. The order so passed shall then be communicated to the applicant at the earliest,

who will be at liberty to approach the appropriate forum, in case his grievance still persists.

11. The OA stands disposed of with the aforesaid directions at the Admission stage without issuing notice to the respondents and without making any comments on merits of the claim.

12. Registry is directed to forward certified copy of this order to both the parties at the earliest.

(R. Vijaykumar)
Member (A)

(A.J. Rohee)
Member (J)

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