

Union of India & Ors.

Vs

Shri Ramesh Kumar

(K. Venkataswami, V.N.Khare JJ)

02.09.1997

JUDGMENT

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V.N.KHARE, J.

1. This appeal is directed against the order dated March 2, 1990 passed by the Central Administrative Tribunal, New Delhi whereby it has set aside the order of dismissal dated August 20, 1983 and further directed the appellants to treat the period beginning from the date of dismissal of the respondent till the disposal of criminal appeal filed by the respondent in the Delhi High Court, as period of suspension, for which the respondent would be entitled to get normal subsistence allowance in accordance with the relevant rules.

2. The respondent while serving as Inspector in Food & Civil Supplies Department of the Delhi Administration was arrested by Anti-Corruption Branch for accepting illegal gratification. Consequently the respondent was placed under suspension later on, the Special Sub Judge, Delhi on 30.7.83 convicted the respondent under Section 5 (2) of the Prevention of Corruption Act, 1947 and sentenced him to undergo imprisonment for three years and to pay a fine of Rs. 500/- and in default to further undergo six months' imprisonment. After the respondent was convicted by Special Sub Judge, Delhi, the Disciplinary Authority dismissed the respondent from service under Rule 19 of CCS (CCA) Rules, 1965 read with the provisions of vigilance Manual. Simultaneously, the respondent filed a criminal appeal, along with a prayer for bail against conviction and sentence recorded by Special Sub Judge, Delhi before the High Court of Delhi. After the appeal was admitted, the High Court passed the following order:-

"Pending hearing of the appeal, the execution of the sentence shall remain suspended and he shall be released on furnished a personal bond in the sum of Rs. 5,000/- with one surety in the like amount to the satisfaction of the trial Court."

3. After a lapse of four years of passing of the order of dismissal, the respondent filed an application before the Central Administrative Tribunal, New Delhi, under Section 19 of the Central Administrative Tribunal Act, 1985 (hereinafter referred to as the Act) for quashing the order of dismissible and issuing a direction to the appellants to grant sub- sistence allowance for the period beginning from the date of dismissal till filing of the criminal appeal in the High Court. The Tribunal, by the impugned order allowed the application of the respondent and granted reliefs as prayed for, in the application.

4. It appears that the Tribunal while allowing the application, was of the view that by suspension of the execution of sentence by the High Court the conviction recorded by the Special Sub Judge

against the respondent and the order of dismissal passed by the Disciplinary Authority have lost their efficacy and the respondent is to be treated under suspension till the final judgment to be delivered by the High Court in appeal preferred by the respondent. This view of the Tribunal is neither borne out from the rules applicable to the respondent nor by any judicial decisions cited before the Tribunal. Undisputedly, the respondent is governed by the CCS (CCA) Rules, 1965 read with the provisions of Vigilance Manual. Rule 19 of CCS (CCA) Rules, 1965 which is applicable in the present case reads thus:-

"Rule 19 of CCS (CCA) Rules, 1965:

Notwithstanding anything contained in Rule 14 to Rule 18:-

(i) Where any penalty is imposed on a Govt. servant on the ground of conduct which has led to his conviction on a Criminal charge, or (ii) & (iii)..... provided in these rules. The Disciplinary Authority may consider the circumstance of the case and make such orders thereon as it deems fit.

5. Rules 15.2 and 15.3 as occurring in Chapter-VII of the vigilance Manual are extracted below:-

Chapter-VII of Vigilance Manual (Para 15.2 & 15.3) 15.2.....accused public servant. 15.3 If the Disciplinary Authority comes to the conclusion that the offence, for which the public servant has been convicted was such as to retention in the public service prima facie undesirable, it can impose upon him under Rule 19(1) of CCS (CCA) Rule, 1965, the penalty of dismissal or removal or compulsory retirement from service as may be considered appropriate, with reference to the gravity of offence, without holding any enquiry or giving him show cause notice as provided in proviso to Article 311 (2) of the Constitution. F.R.54 (1).....make a specific order:-

(a) Regarding the pay and allowance to be paid to the Govt Servant for the period of his absence from the duty including the period of suspension preceding his dismissal, removal or compulsory retirement; as the case may be;

(b) Whether or not the said period shall be treated as period spent or duty."

6. A bare reading of Rule 19 shows that the Disciplinary Authority is empowered to take action against a Govt. Servant on the ground of misconduct which has led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of the execution of sentence by the Appellate Court the order of dismissal based on conviction stands obliterated and of dismissed Govt. servant has to be treated under suspension till disposal of appeal by the appellate Court. The rules also do not provide the Disciplinary Authority to await disposal of the appeal by the Appellate Court filed by the Govt. Servant for taking action against him on the ground of misconduct which has led to his conviction by a competent Court of law. Having regard to the provisions of the rules, the order dismissing the respondent from service on the ground of misconduct leading to his conviction by a component Court of law has not lost its string merely because a Criminal appeal was filed by the respondent against his election of sentence and enlarged the respondent on bail. This matter may be examined from another angle. Under Section 389 of the Code of Criminal Procedure, the appellate Court has power to suspend the execution of sentence and to release an accused on bail. When the appellate Court suspends the execution of sentence, and grants bail to an

accused the effect of the order is that sentence based on conviction is for the time being postponed, on kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence under Section 389 Cr. P.C. an accused avoids undergoing sentence pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a Govt. Servant on a misconduct which led to his condition by the Court of law does not lose its efficacy merely because Appellate Court has suspended the execution of sentence. Such being the position of law, the Administrative Tribunal fell in error in holding that by suspension of execution of sentence by the appellate Court, the order of dismissal passed against the respondent was liable to be quashed and the respondent is to be treated under suspension till the disposal of Criminal Appeal by the High Court.

7. Before we part with this case, we would like to refer the decision of this Court in the case of State of Maharashtra Vs. Chandrahan (AIR 1983 SC 803), and two administrative order heavily relied upon by the Administrative Tribunal in allowing the application of the respondent. In the case of Chandrabhan (supra) the validity of second proviso to Rule 151 of the Bombay Civil Service Rules which provided for payment of subsistence allowance at the rate of Rs. 1 per month to a Govt. servant who is convicted by a competent Court of law and sentenced to imprisonment and whose appeal against the conviction and sentence is pending, was challenged and struck down by this Court. The question involved in the said case was entirely different than the question which was to be resolved by the Tribunal. We are, therefore, of the opinion that reliance of this decision of the Supreme Court was totally misplaced. The Tribunal further relied upon two administrative orders passed by the Delhi Administration whereby two employees of the Delhi Administration were reinstated after the High Court suspended the execution of their sentences in appeals filed by them. Assuming that the facts of those cases and present case are alike, reliance of such orders was totally misplaced for the reasons being that those orders passed were not conformity with law.

8. For the foregoing reasons, the order dated 2.3.1990 passed by the Central Administrative Tribunal, New Delhi is set aside. The appeal is allowed. There shall be no order as to costs.