

Union Of India (Uoi) vs V.K. Bhaskar on 30 January, 1996

Equivalent citations: JT1998(9)SC301, (1997)11SCC383, AIR 2003 PUNJAB AND HARYANA 333, AIR ONLINE 1996 SC 168, 1998 SCC (L&S) 162, (2000) 84 FAC LR 879, (1998) 7 SERV LR 370, 1997 (11) SCC 383, (1998) 9 JT 301, (1987) 165 ITR 163, 1987 SCC (SUPP) 337, (1998) 9 JT 301 (SC), (2003) 2 LANDLR 480, (2003) 2 PUN LR 305, (2003) 2 RECCIVR 57

Bench: S.C. Agrawal, G.T. Nanavati

ORDER

1. The respondent was employed as Upper Division Clerk in the Delhi Administration. He was prosecuted for offences under Section 120B read with Sections 409 and 477A I.P.C. and Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947. The Special Judge, Jalandhar, by judgment dated 17.5.1985 convicted the respondent for the said offences and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs 500 and on default in the payment of fine to undergo rigorous imprisonment for a further period of six months. The respondent has filed an appeal in the High Court of Punjab and Haryana against his conviction and sentence for the said offences under the said judgment dated 17.5.1985. During the pendency of the said appeal, an order dated 20.11.1986 was passed by the Superintending Engineer, PWD Circle No. V(DA), New Delhi, whereby the respondent was dismissed from service with effect from 22.11.1986. The said order was passed under Rule 19(i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, (hereinafter referred to as "the Rules"). Feeling aggrieved by the said order, the respondent filed an application (OA No. 1184 of 1987) before the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal"). The said petition of the respondent has been allowed by the Tribunal by the impugned judgment dated 25.7.1991 on the view that an order under Rule 19(i) of the rules could not be passed if an appeal against the conviction and sentence is] pending in a court and since the appeal filed by the respondent against his conviction? and sentence was pending in the High Court, the said order of dismissal could not be passed under the said Rule. In taking this view the Tribunal has placed reliance on its earlier decisions.

2. The order of dismissal reads as under:

Public Works Department (Delhi Admn.) No. 2(1)/86-PWDCV(DA)/EII/76 15-32 dated the 20-11-1986 OFFICE ORDER Where Shri Vinod Kumar Bhaskar, UDC now attached to Dy. Director of Hort. Development Division No. II (DA), New Delhi has been convicted on a criminal charge under Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act and under Sections 409, 477A I.P.C., 120B I.P.C. and has been awarded penalty of RI for one year and fine of Rs 500 by Special Judge, Jalandhar on 17.5.1985. And whereas, it is considered that the conduct of the said Shri Vinod Kumar Bhaskar which has led to his conviction is such as to render his further

retention in the public service undesirable/ the gravity of the charge is such as to warrant the imposition of a major penalty for misappropriation of a sum of Rs 300 (approx.) along with other accused, M an Singh, Jawala Das and Kewal Chander Kumar.

The necessary advice was sought for from the Ministry of Law and Justice through Chief Engineer (Food) D.G. (W) for taking follow-up action against the accused officials under the Ministry of Law and Justice vide his No. U.D. I.D. Dy No. 2551 - AV/86 dated 17.7.1986. The Ministry of Law and Justice has given the advice that the accused persons are required to be dismissed under Rule 19(i) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, without issuing any charge-sheet or show-cause notice, who have been found guilty by court of law.

Now, therefore, in exercise of the powers conferred by Rule 19(i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, undersigned here dismisses the said Shri Vinod Kumar Bhaskar, UDC from service with effect from 22.1.1986 forenoon.

sd/(Er. N.H. Chandwani) Superintending Engineer PWD Circle No. V(DA), New Delhi.

3. Rule 19 of the Rules prescribes the special procedure in certain cases. At the relevant time, Clause (i) of Rule 19 read as under:

19 Special procedure in certain cases. Notwithstanding anything contained in Rule 14 to Rule 18-

(1) Where any penalty is imposed on a government servant on the ground of conduct which has led to his 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. 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.

** ***** ** * * * We are, therefore, of the opinion that taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal.

The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under Clause (a) of the second proviso to Article 311(2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under Clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. It should be remembered that the action under Clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is; such that it deserves any of the three major punishments mentioned in Article 311(2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311(2).

***** ** * * * What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated, above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice.

5. The Tribunal was, therefore, not right in holding that the respondent could not be dismissed by invoking the provision of Rule 19(i) of the Rules because the appeal filed by him against the conviction and sentence is pending in the High Court.

6. Shri Uma Dutta, the learned Counsel appearing for the respondent has, however, submitted that the order of dismissal dated 20.11.1986 cannot be said to have been passed validly under the provisions of Rule 19(i). The submission is that Rule 19(i) requires the disciplinary authority to consider the circumstances of the case and it cannot pass an order of dismissal or removal only for the reason that the employee had been convicted on a criminal charge. The contention of Shri Uma Dutta is that in the present case the disciplinary authority did not consider the matter in the light of the conduct of the respondent and the respondent has been dismissed only on the basis that he has been convicted on a criminal charge by the Special Judge, Jalandhar. Shri Uma Dutta has laid stress on the third paragraph in the order of dismissal wherein a reference has been made to the advice

that has been obtained from the Ministry of Law and Justice that the accused persons who have been found guilty by a court of law are required to be dismissed under Rule 19(i) without issuing any charge-sheet or show-cause notice.

7. We do not find any merit in this submission. The order of dismissal has to be read as a whole. If it is thus read, it would be found that in the first paragraph of the order the authority has referred to the fact of the respondent having been convicted on a criminal charge under Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947 and Section 409, 477A and 120B I.P.C. and his having been awarded the penalty of rigorous imprisonment for one year and a fine of Rs 500 by the Special Judge, Jalandhar, on 17.5.1985. In the second paragraph of the said order the disciplinary authority has stated :

It is considered that the conduct of Shri Vinod Kumar Bhaskar which has led to his conviction is such as to render his further retention in the public service undesirable/ the gravity of the charge is such as to warrant the imposition of a major penalty of misappropriation of a sum of Rs 300 (approx.) along with other accused Man Singh, Jawala Das and Kewal Chander Kumar.

8. The said statement in the order of dismissal indicates that the disciplinary authority has applied its mind and after considering the conduct of the respondent which has led to his conviction on a criminal charge, has arrived at the conclusion that the said conduct was such as to render the further retention of the respondent in the public service undesirable. It cannot, therefore, be said that the order of dismissal was passed without the disciplinary authority applying its mind to the nature of the conduct of the respondent which led to his conviction on a criminal charge and which has rendered him undesirable to be retained in service.

9. The third paragraph of the order of dismissal refers to the advice that has been received from the Ministry of Law and Justice only for the purpose of arriving at the conclusion that in such a case it is not necessary to issue a charge-sheet or show-cause notice to a person who has been found guilty by court of law. The reference to the said advice from the Ministry of Law and Justice does not mean that the disciplinary authority had not considered the matter in the light of the requirements of Rule 19(i) especially when a specific mention has been made about it in the second paragraph of the order. We are, therefore, unable to hold that the order dated 20.11.1986 dismissing the respondent from service has not been passed in accordance with the requirements of Rule 19(i) of the rules, as construed by this Court in Union of India v. Tulsiram Patel .

10. For the reasons aforementioned, the impugned judgment of the Tribunal cannot be sustained and has to be set aside. It is, however, made clear that in case the respondent is acquitted in the appeal filed by him, which is said to be still pending in the High Court, he can move the authorities for review of the said order of dismissal as per the law laid down by this Court.

11. The appeal is, therefore, allowed, the impugned judgment of the Tribunal dated 25.7.1991 is set aside and OA No. 1184 of 1987 filed by the respondent before the Tribunal is dismissed. No order as to costs.