

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1690/1999

(9)

New Delhi , this the 22nd November 2000

Hon'ble Justice Shri V. Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S Tampi, Member(A)

Shri Subhash Chand Pandey S/O Late Shri
Krishan, R/o 20/26, L N J P Hospital,
New Delhi -110002
.....Applicant
(By Mrs. Avnish Ahlawat, Advocate)

Vs

Government of National Capital,
Territory of Delhi
through The Medical Superintendent,
Lok Nayak Jai Prakash Narayan Hospital,
New Delhi -11002

(By Vijay Pandita, Advocat)

O R D E R (ORAL)

Shri Justice V. Rajagopala Reddy, VC(J)

The applicant filed the present O.A. aggrieved by the order dated 3.8.92 by which he was removed from the Service and the appellate order dated 23.2.99 which confirmed the order . The brief facts of the case are as follows:

2. The applicant was appointed as Operation Theatre Assistant in the Lok Nayak Jai Prakash Hospital. Lot of commotion in the hospital arose in view of the slapping of a Doctor Satish Goel as well as of the applicant's father who was admitted in the hospital leading to man-handling of the Doctors by the employees of the Hospital and patients took place. The Doctor lodged FIR against the applicant and his brother. In order to put a quietus to the pending cases and to the episode, a compromise was effected in which the applicant and

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his brother argued to express regret over the incident and it was also agreed that Dr. Satish Goel would withdraw his complaint. It is submitted that though regret was expressed by him, the Doctor did not withdraw the complaint. The FIR was taken cognizance by the learned Metropolitan Magistrate and the applicant and his brother were convicted of the charges under Section 186,332 read with 34 IPC and were awarded the punishment of rigorous imprisonment for 3 years and fine of Rs.5,000/-u/s 332 IPC and for 3 months RI under section 186 IPC..

3. The applicant filed an appeal against the said judgement . Meanwhile the applicant was placed under suspension on 25.4.91 and after that a Show Cause Notice ,the respondents, in exercise of the powers conferred by sub rule (i) of Rule 10 of the CCS (CCA) Rules, 1965) removed him from service vide impugned order dated 3.8.92. Thereafter, criminal appeal filed by the applicant against his conviction and sentences were upheld but he was released on probation, giving the benefit of Section 4 of the Probation Offenders Act. Thereupon the applicant filed an appeal on 15.4.97 to the Appellate Authority , seeking reinstatement on the ground of release on probation, but it was rejected on 23.2.99. Hence the OA..

4. It is contended by the learned counsel for the applicant Mrs. Avnish Ahlawat that as the compromise was effected and Dr. Goel was agreed to withdraw the complaint Dr. Goel shall not be allowed to have prosecuted his case against the applicant.

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It is also contended that as the applicant has been released under the Probation of Offenders Act, the his conviction has been washed away and hence no action could be taken under R.19. It is however, argued by the learned counsel for the respondents that the applicant's conviction held has been convicted by the criminal court, the respondents are entitled to take action under rule 19. The mere release of the applicant under section 4 of Probation Offenders Act would not erase the conviction and the respondents rightly exercised the powers conferred under Rule 19 of CCS(CCA).

5. We have given careful consideration to the arguments of either side. The only question that arises for consideration in this case is whether the impugned order invoking the powers under Rule 19 of CCS(CCA) was valid in law. The question of entering into the alleged compromise between the applicant and Dr. Goel and alleged violation of agreement by Doctor Goel are not germane for the purpose deciding as to the validity of the impugned orders. If the applicant is aggrieved by breach of compromise then he has remedy under civil law, the violation of the agreement being a civil liability. It is wholly irrelevant for our purpose.

6. It is not in controversy that applicant has been convicted by the Criminal Court under Sections 186 and , 332 read with 34 along with his brother and was awarded punishment of rigorous imprisonment for three years and fine of Rs.5,000/- each for offence punishable under Section 332 IPC.

He was also sentenced to undergo rigorous imprisonment for three months for offence under Section 185 IPC. in the criminal appeal his convictions and sentences were upheld. by the lower court was upheld. But by the order dated 13.1.97 giving the benefit of Section 4 of Probation of Offenders Act he was released on probation on his furnishing the personal bond on for a period of 2 years with direction to appear and receive the sentence whenever called upon to do so. The impugned order dated 13.1.1997 was passed on the ground that the applicant has no bad antecedent and on the report of the probation officer. The operative part of the impugned order dated 3.8.99 reads as under:

Whereas Shri Subhash Chand Pandey, OT Assistant, has been convicted on a criminal charge under Sections 332, 186 and 34 I.P.C.

AND WHEREAS it is considered that the conduct of the said Shri Subhash Chand Pandey, OT Assistant, which has led to his conviction is such as to render his further retention in the public service undesirable and the gravity of the charge is such as to warrant the imposition of a major penalty.

NOW, THEREFORE, in exercise of the powers conferred by Rule 19(i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the undersigned hereby remove the said Shri Subhash Chand Pandey, OT Assistant."

Rule (2) (i) of CCS(CCA) Rules is reproduced as under:

"In a case where a Government servant has been convicted in a Court of Law of an offence which is such as to render further retention in public service of a Government servant prima facie undesirable, the disciplinary authority may, if it comes to the conclusion that with a view to imposing a penalty on the Government servant on the ground of

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conduct which had led to his conviction on a criminal charge ~~should be issued, issue such an order without waiting for the period of filing an appeal , or, if an appeal has been filed, without waiting for the decision in the first Court of appeal. Before such an order is passed, the Union Public Service Commission should be consulted where such consultation is necessary.(emphasis supplied)

7. Under this rule the applicant was removed from service . The question that falls for our determination whether the applicants' release giving benefit of section 4 of Offender Act would take away the effect of conviction by the criminal court. We do not think so. The appellate order , shows that the conviction and sentences have been upheld. But in view of the application made by the counsel for the applicant, to release the applicant on probation under section 4 of Probation Offender Act, the court was pleased to release him on probation on condition that he should receive the sentence whenever called for.. The applicant was alleged to have assaulted the Doctor on duty. The respondent had rightly taken the view considering the conduct of the applicant which led to his conviction, to remove him from service. Thus in our view the respondent had rightly invoked the Rule 19 of CCS(CCA) Rules in removing the applicant from service.

8. Learned counsel for the applicant places reliances on section 12 of Probation of Offenders Act, to contend that the release of an offender under the Act does not entail any disqualification. But in our view, the

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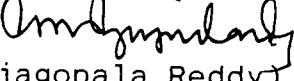
disqualification contemplated u/s 12 was for the purpose of certain other purpose. Under section 12 a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification. If any, attaching to a conviction of an offence under such law. Under chapter III of Representation of People Act 1951, conviction under certain offences in IPC entail disqualification for contesting membership of Parliament or State Legislature and Chapter IV entails disqualification or voting to legislatures. Hence if a person was released under the Act no disqualification will be attached under the provision of Rep. of Peoples Act. But under Rule 19 CCS(CCA) Rules, the vice lies in his conduct which led to his conviction. Hence unless the conviction was set aside, it is always open to invoke the power under rule 19. In AIR the Supreme Court allowed the appeal on the ground that the penalty of dismissal from service was whimsical. The court held that the lower court did not carry out the sentencing process properly as, it was found that the conduct which led to conviction was not that blameworthy. But in the present case the above decision has no application. The perusal of the judgement of the trial court as well as appellate court show that the applicant was responsible for causing injuries to Dr. Satish Goel who was on duty. The trial court while convicting the accused has pointed out in its judgement that "if a lawlessness is allowed to be perpetrated in the hospital by causing obstruction in discharging of a duty of the doctor and voluntarily causing hurt upon the person of the doctor and the person who creates

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such lawlessness and commits such crime against the doctor in the hospital by hooliganism or left injured no doctor will dare to serve in the hospital peacefully."

9. We have also perused the appellate order where the judgement of the Supreme Court in Shankar Dass (Supra) was also considered. Hence, we do not find warrant to interfere with the impugned orders. OA fails and is accordingly dismissed. No costs.


(Govindan S. Tambe)
Member (A)


(V. Rajagopala Reddy)
VC(J)

Patwal/