

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 990/1995

NEW DELHI THIS THE 4th DAY OF FEBRUARY, 1997

HON'BLE MR. JUSTICE B.C. SAKSENA, ACTING CHAIRMAN
HON'BLE MR. R.K. AHOOJA, MEMBER (A)

Shri A.C. Midha
S/o Late Shri Laxman Dass Midha
R/o I-571, Jahangirpuri
Delhi-110 033.

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Applicant

(By Advocate Shri K.K. Sabharwal)

Vs.

1. Govt. of National Capital Territory
of Delhi through its Chief Secretary
5 Sham Nath Marg,
Delhi-11 0 054

2. The Secretary (Labour)
15, Rajpur Road
Delhi-110 054

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Respondents

(None for the respondents)

ORDER

JUSTICE B.C. SAKSENA :

The brief facts leading to the filing of the OA may be noted. The applicant has challenged an order dated 20.4.1995 imposing on the applicant a dismissal from service. Copy of the order is at Annexure A-1. The said order states that the applicant has been convicted on a criminal charge to writ under Section 5(2) of Prevention of Corruption Act, 1947 read with Section 161 of the IPC by the trial court vide judgement dated 30.9.1978. The disciplinary authority has, therefore, taken the view that the conduct of the applicant which has led to his conviction is such as to render his further retention in the Public Service ~~is~~ undesirable. Under

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the provision of Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 in supersession of earlier orders, the applicant was ordered to be dismissed from service.

2. We have heard the learned counsel for the applicant and have been taken through the pleadings on record.

3. The applicant on his promotion as Ahlmad was working on the said post. Criminal proceedings were held against him and he was made to stand trial for having allegedly committed offences punishable under Section 5(2) of the Prevention of Corruption Act, 1947 and under Section 161 of the Indian Penal Code. The learned trial court passed the order of conviction against the applicant on 30.9.1978.

4. Feeling aggrieved, the applicant is said to have preferred an appeal in the Hon'ble High Court of Delhi being Criminal Appeal No.183 of 1978. The said appeal still remains pending. However, on an application for bail viz. Criminal M.1301 of 1978, the applicant was granted bail in the sum of Rs.3000 with one surety in the like amount to the satisfaction of the trial Judge. This order was passed on 9.10.1978. Subsequent thereto the Secretary (Labour), Delhi Administration passed an order dated 24.8.1984 whereby the order dismissing the applicant from service passed on 20.1.1981 was set aside and directed that the applicant shall be deemed to have been continued under suspension until further orders. Pursuant thereto the applicant has been under suspension and he has been drawing 3/4th of pay in addition to dearness allowance if admissible on the basis of such leave salary. Thereafter on 20.4.1995, the impugned order has been passed.

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5. The learned counsel for the applicant submits that once the dismissal order was set aside without affording any opportunity to show cause, the present impugned order should not have been passed at least without giving the applicant the opportunity of making a representation against the penalty imposed.

6. As noted hereinabove, the impugned order has been passed in exercise of power conferred under Rule 19(1) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. Rule 19(1) provides 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 *

There is a proviso to Rule 19 which reads as under:

* Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (1) *.

In the present case, admittedly before passing the impugned order, the applicant has not been afforded any opportunity of making representation on the penalty to be imposed. The order dated 20.4.1995 deserves to be set aside and quashed on the ground of failure to comply with the requirement of the proviso.

7. In the counter-affidavit, the respondents have indicated that in the light of the Supreme Court decision in A.I.R. 1983 SC 803 (State of Maharashtra Vs. Chander Bhan), the earlier order of dismissal from service dated 21.1.1981 had been set aside. They have also indicated

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that in view of the later decision of the Hon'ble Supreme Court in the case of Deputy Director of Collegiate Education(Administration), Madras Vs. Nagoor Meera reported in JT 1995(3) SC 32, the impugned order has been passed. The respondents have taken the plea that there has been no violation of the principles of natural justice and no show cause notice was required to be given in the facts and circumstances of the case.

8. This plea of the respondents in the counter is untenable in view of the specific provision contained in the proviso to Rule 19. Needless to say that the requirement of Rule 19 has to be fulfilled irrespective of the provision of the Constitution under Article 311(2). Even in the case of Deputy Director of Collegiate Education (supra) a show cause notice had been issued and the provision of Rule 19 of the CCS(CO&A) ^{Rules} had not come up for consideration. The impugned order has been passed in exercise of power under Rule 19(i) and not under Article 311(2) of the Constitution. In view of the above, it is not necessary for us to consider some decisions cited at the Bar to support some other submissions.

9. The OA succeeds and is allowed. The impugned order dated 20.4.1995 is set aside. But we provide that it will be open to the disciplinary authority to pass a fresh order after complying with the requirement of Rule 19 and the proviso thereto. The applicant has already retired in July 1995. Consequently, the relief for reinstatement cannot be granted.

10. The OA stands disposed of with the above directions but without any order as to costs.

R. K. Ahuja
(R.K. AHUJA)
MEMBER (A)

B. C. Saksena
(B.C.SAKSENA)
ACTING CHAIRMAN