Central Administrative Tribunal
Principal Bench:New Delhi

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OA - 2665/96

New Delhi, this the 28th day of May, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S.P.Biswas, Member (A)

Shri P.C.Jain s/o Sh. K.P.Jain,
resident of G/35, I.N.A.Colony,
New Delhi. .....Applicant

(By Advocate: Shri G.D.Gupta)

-Versus-

1. Union of India through
Secretary to the Govt. of India,
Ministry of Civil Aviation,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi.

2. The Director General of
Civil Aviation,
Opposite Safdarjung Airport,
Technical Centre,
New Delhi.

3. Deputy Director General of Civil
Aviation, Opposite Safdarjung Airport,
Technical Centre,
New Delhi. ....Respondents

(By Advocate Ms Protima K. Gupta)

O R D E R
(Dr.Jose P. Verghese, Vice-Chairman (J)

The petitioner in this original application is challenging the order of removal passed against him by the respondents by an order dated 4.12.1995 under Rule 19(1) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. The applicant who was working as Electrical & Mechanical Technician, Delhi Airport,(Palam),Civil Aviation Department was convicted on a criminal charge under Section 5 of the Imports and Exports Control Act, 1947 and also under Section 120-B, 420 and 471 of the Indian Penal Code and has been awarded a sentence of

fine of Rs. 1,500/- (for the commission of offence punishable under section 5 of Imports and Exports Control Act, 1947), fine of Rs. 1500/- (for the alleged commission of offence punishable under Section 420 of I.P.C.), fine of Rs. 1,000/- (for commission of offence punishable under Section 120-B of I.P.C.) and fine of Rs. 1,000/- (for the commission of offence punishable under Section 471 of I.P.C.) and in default of payment of the total fine or a part thereof to undergo rigorous imprisonment for a period of 6 months by Special Judicial Magistrate, I Class, Ambala.

2. Admittedly, this order was passed after a show cause notice was issued whereby giving him reasonable opportunity of making representation on the penalty proposed. Aggrieved by the said order the petitioner filed an appeal under Rule 27(2) of CCS(CCA) Rules, 1965 which was also rejected by an order dated 27.2.1996. The petitioner is challenging both these orders and seeking a direction from this court that the removal of the petitioner without holding an inquiry under Rule 19(1) in the circumstances of the case is illegal and the respondents may be directed to hold an inquiry under the rules,and in the meantime the petitioner may be treated as under suspension and subsistance allowance may be paid during the period of suspension. The petitioner also has prayed for quashing of both these orders and re-instatement into service on various grounds.

3. One of the first contention of Shri G.D.Gupta, learned counsel appearing on behalf of the petitioner was that the petitioner had preferred a criminal revision petition before the High Court of Punjab & Haryana, Chandigarh in which the High Court

has directed "operation of the impugned judgements stayed till further orders". According to the petitioner, the said order of High Court of Punjab & Haryana dated 20.4.1993 has to be construed to mean that the conviction also has been stayed. For this contention he relied on the case of Deputy Director of Collegiate Education(Admn.) Vs. S.Nagoor Meera (reported in JT (3) SC page 377.

4. In order to appreciate and find whether the order of the High Court dated 20.4.1993 can be construed to mean that the conviction has also been stayed, we proposed to look into the order of the trial court by which the petitioner was awarded punishment. Trial court has recorded a finding on 6.5.1991 that the petitioner was prosecuted on the basis of the crimical complaint filed by the Deputy Chief Controller of Imports and Exports against the petitioner and one Shri Suresh Kumar Bhargava for the alleged commission of offence punishable under the provisions referred to hereinabove. It was also stated in the said order that the accused Suresh Kumar Bhargava confessed his guilt during the course of trial and was convicted and sentenced by the said court on 22.12.1980. However, the petitioner continued to face the trial. After the conclusion of the trial, the trial court returned the finding as proved:

> "It has also been proved to the hilt that accused Prem Chand Jain and his accomplice were hand in glove with each other for obtaining Replenishment licences and Essentiality Certificates as also import licences. They have pursued the matter in the Industries Office at Sonepat and later on in the office of the Director of Industries, Haryana, Chandigarh. They also took on rent a quarter and put some machinery there for obtaining verification report from Sh. Suraj Parkash. The writing and signatures of Sh. Prem Chand Jain accused have been proved by the statement of Expert witness Sh. S.L.Mukhi (PW38), the hostile reports of Sh. N.K.jain, Document Expert (DW4)

and Sh,. A.,S. Kapoor (DW5) notwithstanding. The application bore the signatures of accused Prem Chand Jain is indeed an established fact. Shri A.S.Malhotra (PW15) has also proved that accused Prem Chand Jain also indulged in business apart from doing active government service.

Accused P.C.Jain contravened the provisions of Imports & Exports (Control) Act, 1947 and thereby made himself liable for punishment under section 5 of the Imports and Exports (Control) Act, 1947. He conspired with accused Suresh Kumar Bhargava for cheating the state exchequer by using forged documents and obtaining Essentiality Certificates, Import licences and Replenishment licences and receiving huge quantity of gum arabic which was never brought to the premises at Rai and was in fact sold at premium thereby causing immense loss of foreign exchange and he thus committed offence punishable under Sections 120B, 420 and 471 of the Indian Penal Code and the accused is convicted of the charge framed against him".

5. After the said order of conviction, the learned trial judge proceeded to hear on the quantum of sentence. The learned trial court found that the petitioner being first offender and has never been convicted before. He also took into consideration that the petitioner has two grown up daughters awaiting marriage bells and he has none other than himself to look after them and by sending the petitioner to jail would render his daughters unprotected. It was also noticed by the learned trial court that the accused stood a very long trial of 16 years and during this period the petitioner is stated to have behaved responsibly by attending the court regularly and never absenting himself on flimsy grounds. In view of this finding the quantum of sentenceis fixed and the same is given at para 40 and 41 of the judgement which is re-produced hereinbelow:-

"40. The accused is sentenced till rising of the court and ordered to pay a fine of Rs. 1500/- for the commission of offence punishable under section 5 of the Imports and Exports (Control) Act, 1947. He is further sentenced till rising of the court and ordered to pay a fine of Rs. 1500/- for the alleged commission of the offence punishable under Section 420 IPC. The accused is sentenced

till rising of the court and fined Rs. 1,000/- for the commission of offence punishable under Section 120B IPC and he is sentenced till rising of the court and fined Rs. 1,000/- for the commission of offence punishable under Section 471 IPC.

41. In default of payment of fine or a part thereof, the accused shall undergo rigorous imprisonment for six months."(Emphasis added).

It is to be noted that by this order, the petitioner was not only sentenced with punishment of payment of fine but also from all four counts he was sentenced till rising of the court.

6. Learned counsel for the petitioner stated that the judgement of trial court dated 6.5.1991 has got two parts. The first part from para No. 1 to 38 is titled as "Judgement" and paras 37 to 41 is titled as "Order". It was pointed out that the interim orders passed by the High Court of Punjab and Haryana at Chandigarh states "Admitted.Operation of the impugned judgement stayed till further orders". It was submitted that since the stay order now passed in the revision petition of the petitioner by the High Court has stayed the operation of the impugned judgement, what is stayed is the operation of the first part of the judgement namely paras 1 to 36 which contains not the punishment but the conviction of the petitioner on a criminal charge. Hence, after the conviction itself has been stayed by the revisional court, respondents could not have proceeded against the petitioner under Rule 19(1) and removed him from service without holding any inquiry.

7. The petitioner also relied on the decision of the Hon'ble Supreme Court in the case of S.Nagroop Meera (Supra) as well as Narang's case (infra) and stated that the High Court has the power to stay the conviction under Section 389 of the Criminal Procedure Code.

8. Ms. Protima K. Gupta,counsel appearing on behalf of the respondents stated that the interim orders passed by the High Court in the revision petition does not have the effect of staying the conviction of the petitioner since the first part of punishment has already been undergone by the petitioner and the effect of the interim order now passed by the High Court, subsequently, is only to be understood to confine to non-realisation of the fine amount awarded as a punishment. Therefore, the respondents' order under rule 19(1) cannot be faulted under any circumstances.

The rule 19(1) is reproduced hereinbelow:

> "19. Special Procedure in certain cases Notwithstanding anything contained in Rule 14 to Rule 18 -
>
> (i) Where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a crimonal charge, or
>
> (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
>
> (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules.

> the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:..... ..."(Emphasis added).

It is to be seen that under clause (1) the respondents are empowered to consider the circumstances of the case and pass appropriate orders after giving the petitioner an opportunity of making a representation on the penalty to be imposed upon him especially because the said clause indicates that the competent criminal court has imposed a penalty on the petitioner and the conduct which led to his conviction on a criminal charge requires to be dealt with under the present rule and the order of punishment was passed after giving the opportunity to make representation against the proposed punishment as provided in the same rule.

9. We have considered the contention of both the parties and we are of the opinion that the interim orders passed by the High Court, as stated above, does not have the effect of staying the conviction of the petitioner and in the circumstances the order passed by the respondents under Rule 19(1) in no circumstances can be faulted.

10. The learned counsel for the respondents emphasised that the punishment order contained in para 37 to 41 clearly shows that the petitioner has been awarded not only a punishment of fine under four different panel provisions but also a punishment of confinement till the rising of the court and in the circumstances the order of the learned trial court dated 6.5.1991 has been subjected to revision subsequently and stay order passed after two years,namely on 20.4.1993 does not have the effect of staying the conviction of the petitioner as well as staying the confinement

part of the punishment already undergone by the petitioner on 6.5.1991 itself. It is unthinkable to consider that the first part of the punishment, namely the sentence, can retrospectively be made non-operative when the said sentence stands complied with and what remains to be undergone by the petitioner is only the punishment of payment of fine. Moreover,what the respondents are to take into consideration is not the nature of the conviction itself rather, the matter to be considered by the respondents under Rule 19(1) is the conduct which led to the conviction of the petitioner on a criminal charge. In the present case, the conduct that has led to the convinction on a criminal charge and the first part of the same namely the sentence till rising of the court has been complied with, in the circumstances, the conduct which has led to his conviction on a criminal charge can, by all means, be subjected to consideration under Rule 19(1) and, therefore, the impugned order is full in accordance with the said rule and we do not propose to quash both the orders of punishment as well as the appellate order.

11. A similar situation had arisen in the case of S.Nagoor Meera(Supra) and the Hon'ble Supreme Court considered the case wherein the respondents therein was prosecuted by the Chief Judicial Magistrate, Madurai and convicted under Section 420 IPC and section 5 of the Prevention of Corruption Act and the respondent was sentenced to undergo rigorous imprisonment for one year in addition of fine of Rs. 1000/-. On appeal to the High Court against the conviction and sentence, the court suspended the sentence imposed upon the respondent and released him on bail. Thereafter,he was given a show cause notice as to why he should not be dismissed from service in view of the conviction by the

criminal court. The Hon'ble Supreme Court was considering the validity of the dismissal order passed by the respondent therein under Article 311(2) which reads as under:-

"Provided further that this clause shall not apply

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led his conviction on a criminal charge".(Emphasis added).

12. The Hon'ble Supreme Court did take notice of the case of Rama Narang vs. Ramesh Narang reported in 1995(2) SCC p.513 in which case the power of the High Court to stay even the conviction of an accused under Section 389 (1) of Cr.P.C. has been upheld. It was held in Narang' case:

"Section 389(1) empowers the Appellate Court to order that the execution of the sentence or order appealed against be suspended pending the appeal.What can be suspended under this provision is the execution of the sentence or the execution of the order. Does 'order' in Section 389(1) mean order of conviction or an order similar to the one under Section 357 or Section 360 of the Code? Obviously the order referred to in Section 389(1) must be an order capable of execution. An order of conviction by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which, if not suspended, would be required to be executed by the authorities.

In certain situations the order of conviction can be executable, in the sense, it may incur a disqualification as in the instant case. In such a case the powr under Section 389(1) of the Code could be invoked. In such situations the attention of the Appellate Court must be specifically invited to the consequences that is likely to call to enable it to apply its mind to the issue since under Section 389(1) it is under an obligation to support its order ' for reasons to be recorded byit in writing'. If the attention of the Court is not invited to this specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto?.. If such a precise request was made to the court Court pointing out the consequences likely to fall on the continuance of the conviction order, the Court would have applied its mind to the specific question and if it thought

> that case was made out for grant of interim stay of the conviction order, with or without conditions attached thereto, it may have granted an order to that effect."

Thus, it was held that the power of the High Court under Section 389(1) of Cr. P.C. being interpreted by the High Court cannot be construed in the said case to have the affect of staying the conviction as well, for the reason that there is nothing on the face of the interim order passed by the High Court, to show that the said court has applied its mind to this specific question with or without any conditions attached thereto.

13. Similar is the case, even in the present case. The petitioner had approached this court on a previous occation by an OA 2395/95 and this court by an order dated 19.12.1995 observed that in certain circumstances, appellate court have the powers to suspend the conviction if a precise request was made to the court about the adverse consequences that could follow, even if the conviction itself was stayed. It was also observed that in the circumstances, the Appellate court could have applied its mind to this specific question and if a case was made out, for grant of interim stay of the conviction, it could order stay of conviction with or without conditions. It was also observed by the previous court that in the circumstances it would appear that staying the order of conviction itself, if done, the order should indicate the application of mind. Looking at the interim order passed by the High Court, in the present case,the previous court was unable to presume from the order of the High Court produced by the petitioner that the revisional court intended to stay the conviction as well. Stay of conviction being a serious matter and since the order of stay does not contain any specific direction, our predecessor court thought it fit not to presume that the conviction in the present case has been stayed and in the

circumstances the court was of the opinion that the order of revisional court,on the face of it,will have to be construed to have stayed the sentence only. The petitioner was further given an opportunity to approach the revisional court for a proper clarification and on the basis of the clarification received, liberty was given to the petitioner to approach this court all over again.

14. After the receipt of the above referred order dated 19.12.1995 the petitioner made a criminal Misc. application No. 1605/96 in Criminal Revision No. 231/93 and the revisional court passed an order on 19.1.1996 stating that their previous order does not require anyclarification / modification. The order is reproduced herebelow:-

"ORDER

Petitioner has filed this application under Section 482 of Criminal Procedure Code for clarification/modification of the order dated 20.4.1993, which reads as under:-

"Admitted. Operation of the impugned judgement stayed till further orders."

The order passed by this court does not require any clarification/modification. Thre is no merit in the application and the same is dismissed."

On the basis of the order of the revisional court dated 19.1.1996,learned counsel for the petitioner argued that the original interim order passed should be construed to stay the conviction as well. We are not in agreement with the submission made by the learned counsel for the petitioner rather we are in respectful agreement with the previous court's order that the interim orders cannot be construed to mean to be an order staying the conviction of the petitioner.

16. Even otherwise the terms "Stay" "suspension" etc. in service jurisprudence does not have the same meaning when the matter is dealt with under criminal jurisprudence. It goes without saying that a conviction once rendered by a trial court, the guilt remains until the conviction is set aside by an appeallate court or any superior court. As far as the criminal case is concerned, it is either guilty or not guilty; that is to say a person is either 'black' or 'white', there is no 'grey' area. Therefore, properly understood, a stay order in criminal matters will have to be construed ordinarily, that it does not stay or does not wipe out a conviction. It only makes a defference to its finality; that is to say any interim order passed under Section 389(1) will have a deffering effect only, with reference to the final order to be passed by the appellate court, the interim order that would be passed will have an effect of not wiping out the guilt ab-initio rather it will have only an effect of deferring the guilt till the final order confirming the guilt is passed by an appellate court. Therefore,ordinarly except in very exceptional circumstances, interim order passed under Section 389(1) with reference to conviction, will have a reference only to sentence which is passed by the trial court. Moreover, in the present case, since the first part of the sentence till the rising of the court has already been complied with, an interim order under section 389(1) cannot be construed to have a retrospective effect of wiping out that guilt wherein the part of the penalty has already undergone.

17. Therefore, we are of the firm opinion that the orders passed by the respondents under rule 19(1) cannot be set aside under any circumstances as submitted by the petitioner.

18. The learned counsel for the petitioner submitted that the respondents could not have hurried up the matter and invoked rule 19 (1) and removed the petitioner from service rather in the circumstances either they should have awaited disposal of the revision petition wherein the interim order was passed or proceeded against the petitioner in accordance with rules and pass appropriate orders only after holding disciplinary proceedings. Even as a rule of convenience the submission of the petitioner cannot be accepted for the reason,if the Govt. servant i.e. the accused is found guilty on appeal or in other proceedings, the order of the disciplinary proceedings could always be revised and if the Govt. servant is reinstated he will be entitled to all the benefits to which he would have been entitled to, had he continued in service. On the other hand, if the respondents are to await till final disposal of the the appeal, that may mean that the petitioner would continue in service as a person who have been convicted of a serious offence by a criminal court. Since rule 19(1) envisages only an action by the disciplinary authorities where the conduct which has led to his conviction is such that he deserves any of the punishments, the action taken in furtherance thereof cannot be stated on any account to be illegal. Respondents have found the petitioner guilty on the basis of the conviction by a criminal court and until the said conviction is set aside by an appellate order or by any other higher court, it could not be advisable to retain the person in service nor to keep him under suspension and continue to pay subsistance allowance.

19. The learned counsel for the respondents brought to our notice an OM dated 4.3.1994 which in all terms suggests that the respondents can proceed with the accused under Rule 19(1),

even if a stay of the conviction of the public servant has been obtained by him from a competent appellate court. The operative part of the said OM is re-produced herebelow:-

(21)

"Consideration of appeal

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly".

It is noticed that the respondents have not challenged the vires of this OM and in the circumstances the action of the respondents is fully in accordance with these guidelines which supplements the rule 19(1) of the CCS)CCA) Rules, 1965 and in the absence of a challenge to the said rule nor the present OM dated 4.3.1994, it seems, no relief can be given to the petitioner.

20. In the circumstances, this OA is dismissed with no order as to costs.

(S.P.BISWAS)
MEMBER (A)

(DR.JOSE P. VERGHESE)
VICE-CHAIRMAN (J)

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