CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 624 of 1988 ~~XXX~~
~~XXXXXXX~~

DATE OF DECISION 7th September, 1988

Om Prakash Narang Petitioner

N.D.Batra, Counsel Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

P.P.Khurana Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K.Madhava Reddy, Chairman

The Hon'ble Mr. Kaushal Kumar, Member (Administrative)

The Hon'ble Mr. Ch.Ramakrishna Rao, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes.

MGIPRRND—12 CAT/86—3-12-86—15,000

(Ch.R.R)
M(J)

(K.K)
M(A)

(KMR,J)
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO.624 of 1988

WEDNESDAY THE SEVENTH DAY OF SEPTEMBER ONE THOUSAND NINE HUNDRED AND EIGHTY EIGHT

Shri Om Parkash Narang .... Applicant

Vs.

Union of India and others .... Respondents

CORAM:

Hon'ble Mr. Justice K.Madhava Reddy, Chairman

Hon'ble Mr. Kaushal Kumar, Member(Administrative)

Hon'ble Mr. Ch.Ramakrishna Rao, Member (Judicial)

For the applicant .. Shri N.D.Batra, Counsel:

For the respondents .. Shri P.P.Khurana, Counsel.

(JUDGMENT OF THE FULL BENCH DELIVERED BY HON'BLE MR.JUSTICE K.MADHAVA REDDY, CHAIRMAN)

Noticing the divergent opinions expressed in R.P.SHARMA V. MEDICAL SUPERINTENDENT & ANOTHER (1) decided by the Principal Bench of the Central Administrative Tribunal and AJIT KUMAR BANERJEE V. UNION OF INDIA & ORS (2) decided by the Calcutta Bench of the Tribunal and a few other judgments of the High Courts, this case has been referred to the Larger Bench.

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1. 1986 ATC 297
2. ATR 1987(1) CAT 258

The applicant herein appointed as Deputy Field Officer (Language) with effect from 31.1.1981 in the Directorate General of Security, Office of the Director, Aviation, Research Centre, under the Cabinet Secretariat of the Government of India, New Delhi was prosecuted for an offence punishable under Section 306 read with Section 34 of the I.P.C. Following the death of his wife, the applicant was arrested and kept in custody from 14.2.1983 to 17.2.1983. He was released on bail on 19.2.1983. On his being arrested and detained, by orders dated 23.2.1983 and 28.2.1983 (Annexures A-2 and A-3), he was placed under suspension with effect from 14.2.1983. On 8.8.1985, the trial Court found the applicant guilty of offences punishable under Section 306 read with 34 of IPC and convicted and sentenced him to five years R.I. ~~xxxxxxxxxxx~~ The applicant preferred an appeal against his conviction and sentence before the Delhi High Court on 9.8.1985. Pending the appeal he prayed for suspension of sentence and release on bail. The High Court by its order dated 19.8.1985 made the following order (Annexure A-5):

> "Heard. The appellant be released on bail on furnishing individual bond in the sum of Rs.5000/- with a surety in the like amount to the satisfaction of the trial court."

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The applicant was accordingly released on bail. On 21.8.1985 the applicant submitted a certified copy of the High Court's Order dated 19.8.1985 to Respondent No.3. However, on the basis of the judgment of the trial Court dated 8.8.1985, the 3rd respondent, by order dated 1.10.1985 (Annexure A-6) dismissed the applicant from service. The impugned order reads as under:

"Registered A.D.

No.A-20011/11/74 Estt-/ARC.
Directorate General of Security,
Office of the Director, ARC
(Cabinet Secretariat)
Block V (East) R.K.Puram,
New Delhi-110066

Dated the I Oct. 1985

ORDER

WHEREAS Shri Om Prakash Narang, Deputy Field Officer (L) ARC, Charbatia, has been convicted on a criminal charge under Section 306 of IPC by the Court of Additional Session Judge, Delhi on 8.8.1985.

AND WHEREAS it is considered that the conduct of the said Shri Om Prakash Narang, Deputy Field Officer (L) which has led to his conviction is such as to render his further retention in the public service undesirable.

NOW, THEREFORE, in exercise ofthe powers conferred by Rule 19(i) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, the undersigned hereby dismiss the said Shri Om Prakash Narang, Deputy Field Officer (L) with effect from the date of issue of this order.

Sd/- (C.CHAKRABARTY)
DEPUTY DIRECTOR (ADMN)

To
Shri Om Prakash Narang,
S/o Shri Gobind Ram,
A-1542, Jahangirpuri,
Delhi-11033."

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It is this order that is assailed in this application under Section 19 of the Administrative Tribunals Act, primarily on the ground that inasmuch as an appeal was preferred against the conviction and sentence of the applicant, it had not become final, the appointing authority could not dismiss the applicant from service under Rule 19(i) of the CCS (CCA) Rules, 1965. Alternatively it is urged that the applicant having been released on bail, this power should not have been exercised until the appeal was disposed off. Lastly, it is argued that the disciplinary authority did not apply its mind judiciously and failed to take into account the fact that the appeal was pending and the sentence was suspended before ordering the dismissal from service.

The facts are not in dispute. Before we proceed to consider the legal issues which are required to be determined by the Larger Bench, we may notice that in this case the High Court has not suspended the conviction of the applicant on the charges levelled against him, he was only directed to be released on bail on furnishing individual bond with a surety. One of the questions that is relevant to be considered is whether the mere suspension of sentence would operate as suspension of the conviction also.

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Rule 19 of the CCS (CCA) Rules, 1965 vests power in the disciplinary authority to consider the circumstances of the case and to make such orders thereon as it deems fit notwithstanding anything contained in Rule 14 to Rule 18 where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. This Rule is in consonance with clause (a) of the second proviso to Article 311(2) of the Constitution. Rule 14 to Rule 18 of the CCS (CCA) Rules provide for an inquiry into the allegation of misconduct before any penalty is imposed in a disciplinary proceeding against a public servant governed by the said Rules. This inquiry is dispensed with by Rule 19(i) where any penalty is sought to be imposed on a Civil servant on the ground of conduct which has led to his conviction on a criminal charge. In other words, without making any further inquiry into the charge of misconduct, a civil servant could even be dismissed from service if a charge held proved after a trial by the criminal court disclosed a conduct unbecoming of a public servant. As is evident from the judgment of the trial court, the applicant is charged with having abetted suicide of his wife, an offence punishable under Section 306 IPC and sentenced to 5 years R.I.

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As already noticed, this conviction has not been suspended. He was only released on bail. If an accused is released on bail, the conviction itself does not stand suspended. May be, ultimately when the appeal is heard, he may be acquitted but during the pendency of the appeal, the conviction of the applicant for the offence with which he is charged very much stands. While during the trial, the applicant was merely an accused, after he was convicted and sentenced by the trial court, the accused became a convict. Only a convicted person that undergoes a sentence. In releasing the applicant on bail what the appellate court directs is to suspend the sentence not the conviction. It does not suspend the findings of the Trial Court on the charges levelled against the convicted appellant. That stage is not reached until the appeal is heard and on an appreciation of the evidence on record the appellate court finds that the offence is not proved.

The Orissa High Court in P.K.DEY Vs. STATE OF ORISSA (1971 (37) Cuttack Law Times 402) has held that:

> "a conviction in criminal case cannot be stayed by the appellate court."

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We do not think it necessary for the purpose of this case to go into the question whether the appellate court and especially whether the High Court hearing the appeal can suspend the conviction or not. Suffice to note that in this case the conviction of the applicant was not suspended. He was only directed to be released on bail which does not amount to suspension of his conviction. So long as the conviction stands and is on a charge which discloses a conduct leading to his conviction on a criminal charge, the disciplinary authority would be perfectly justified in imposing the penalty of dismissal under Rule 19(i) of the CCS (CCA) Rules, 1965. Of course, the conviction on the criminal charge itself must disclose the conduct on the part of the charged officer. A conviction which does not disclose any misconduct of the officer cannot form the basis for imposing a penalty on him under Rule 19(1). What the disciplinary authority has to see is whether the conviction discloses a conduct which renders the public servant unfit to be continued in service. The disciplinary authority cannot sit in judgment over the findings of the criminal court on the charges for which he is convicted. All that it has to see is whether the charges found proved and the conviction thereon disclose

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a conduct on the part of the public servant which makes him liable for disciplinary action and imposition of any of the penalties which the disciplinary authority may choose to impose having regard to the facts and circumstances of the particular case. If a public servant is convicted for abetting the commission of suicide by his wife it does disclose a conduct which renders him liable for punishment under CCS (CCA) Rules. So long as the finding on that charge punishable under Section 306 read with S.106 stands, Rule 19(i) of the CCS (CCA) Rules, 1965 vests power in the disciplinary authority to impose the penalty without making any further inquiry as ordained by Rule 14 to Rule 18 of the CCS (CCA) Rules, 1965. It is clear from the observations of the Supreme Court in THE DIVISIONAL PERSONNEL OFFICER, SOUTHERN RAILWAY AND ANOTHER V. T.R.CHALLAPPAN (AIR 1975 SC 2216) that operation of the sentence is not a condition precedent for imposing a penalty on a public servant so long as the conviction on a criminal charge stands. The Supreme Court dealing with Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968 held:-

> "The word 'penalty' imposed on a railway servant, in our opinion, does not refer to a sentence awarded by the Court to the accused on his conviction, but though not happily worded

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it merely indicates the nature of the penalty imposable by the disciplinary authority if the delinquent employee has been found guilty of conduct which has led to his conviction on a criminal charge. Rule 14 of the Rules of 1968 appears in Part IV which expressly contains the procedure for imposing penalties. Further more, Rule 14 itself refers to Rules 9 to 13 which contain the entire procedure for holding a departmental inquiry. Rule 6 of Part III gives the details regarding the major and minor penalties. Finally Rule 14 (i) merely seeks to incorporate the principle contained in proviso (a) to Art.311 (2) of the Constitution."

In this context the Supreme Court opined:

"The words 'where any penalty is imposed' in Rule 14(i) should actually be read as 'where any penalty is imposable', because so far as the disciplinary authority is concerned it cannot impose a sentence. It could only impose a penalty on the basis of the conviction and sentence passed against the delinquent employee by a competent court. Further more the rule empowering the disciplinary authority to consider circumstances of the case and make such orders as it deems fit clearly indicates that it is open to the disciplinary authority to impose any penalty as it likes. In this sense, therefore, the word 'penalty' used in Rule 14(i) of the Rules of 1968 is relatable to the penalties to be imposed under the Rules rather than a penalty given by a criminal court."

Then proceeding to consider the question whether the release of an employee on probation after conviction amounted to suspension of the conviction itself and whether the imposition of penalty under Rule 14(i) was valid, the Supreme Court held:

> "The view of the Kerala High Court, therefore, that as the Magistrate released the delinquent employee on probation no penalty was imposed as contemplated by Rule 14(i) of the Rules of 1968 does not appear to us to be legally correct and must be overruled."

If release of probationer finally after conviction without imposing a penalty does not absolve the delinquent officer from the conviction on the offences with which he is charged, much less can release on bail pending the appeal against the conviction absolve him from the consequences of the conviction. It cannot also rob the disciplinary authority of its power to take action under Rule 19(i) of the CCS (CCA) Rules.

A Bench of this Tribunal in R.D.SHARMA V. MEDICAL SUPERINTENDENT (1986 ATC 297) held:

> "Even if it is assumed that the Hon'ble High Court by releasing the petitioner on bail had admitted the appeal it cannot be presumed that they had suspended or set

> aside the conviction. They can at best be presumed to have suspended the execution of the conviction (presumably it is execution of sentence). The order of conviction as such still held ground for the purposes of Rule 19(1) of the CCS (CCA) Rules or for that purpose Article 311 of the Constitution."

In view of the above discussion, we musthold that this is the correct position of law.

No doubt a contrary view has been taken by the Calcutta Bench of the Tribunal in AJIT KUMAR BANERJEE V. UNION OF INDIA & ORS (ATR 1987(1) CAT 258). The officer therein was dismissed in view of the conviction and sentence by the Ld. Additional Special Judge (Ist Court) pending an appeal in the High Court after the High Court stayed the sentence in the following words:

> "Pending the hearing of the appeal, let the accused appellant be released on bail to the satisfaction of the Chief Judicial Magistrate, Howrah and let also realisation of the fine remain stayed".

From this the Bench concluded that the order of dismissal for all intents and purposes was stayed by the High Court. We find it difficult to understand how such an inference could be drawn from the order of the High Court. The High Court was merely concerned

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in the criminal appeal with the conviction and sentence against which the appeal was preferred. It did not even remotely refer to the order of dismissal made by the disciplinary authority consequent upon the conviction and sentence imposed by the criminal court. From the stay order made by the High Court on appeal, it is abundantly clear that the conviction was not suspended and the High Court was not at all concerned with the order of dismissal made by the disciplinary authority. The Bench proceeded upon the footing that:

> "when the appeal is admitted, the matter becomes res integra (that is to say to be treated as a matter not yet decided) and the entire matter has been reopened for final adjudication by the appeal court. In the eye of law, the order of conviction passed by the said Ld. Special Judge ceases to have any effect or operative till the appeal is finally decided."

We are unable to agree with this. While the right of an appeal is a vested right and the order of conviction and sentence made by the trial court may be set aside by the appellate court, after a review of the entire evidence, but until the appeal is heard and allowed, the conviction and sentence very much operate. In fact, unless the accused appellant, who now stands convicted of the offences is released on bail, he would

also undergo the sentence and the period of suspension which he undergoes under the amended code of criminal procedure is set off against the sentence, if any, ultimately imposed by the appellate or revisional court. Unless the conviction operates, the sentence could not have been undergone. Only because the convicted accused is undergoing the sentence, the appellate court may release him on bail. Merely because the appellate court is seized of the matter, the conviction and sentence does not stand suspended. Even the sentence stands suspended only if the appellate court chooses to suspend it and release the appellant on bail. The basic assumption that on a mere filing of the appeal or upon the appeal being admitted the conviction and sentence itself does not stand cannot be accepted as correct position of law. Neither Rule 19(i) of the CCS (CCA) Rules nor Clause (a) to the second proviso to Article 311(2) of the Constitution speaks of a final order of conviction, they only speak of conduct disclosed which has led to his conviction on a criminal charge. We are, therefore, unable to agree with the view taken by the Calcutta Bench in the aforesaid case.

Strong reliance is placed on the judgment of the Madras Bench of the Tribunal in P.K.PRABHAKARAN V. UNION OF INDIA AND ORS. (1986(3) CAT 173) to contend that pending an appeal against the conviction and sentence, no penalty of dismissal or removal from service by the disciplinary authority can be imposed. But a close reading of that order shows that what all the Bench held therein was the fact that an appeal which was pending should also be taken into account in making an order of dismissal. It did not hold that merely because an appeal against conviction is pending, the disciplinary authority has no power and authority to dismiss. The Bench held:

> "There is nothing in the order to indicate that the disciplinary authority considered this to be a case where irrespective of the pendency of the appeal and the suspension of the sentence, immediate action was required to terminate the services of the applicant."

A similar view was taken by the Chandigarh Bench in JAWALA DASS V. UNION OF INDIA (OA 66 of 1987) by judgment dated 25.5.1987. It did not express any view of its own.

The Chandigarh Bench of the Tribunal following the view expressed in P.K.PRABHAKARAN's case in KEWAL

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CHANDER KUMAR V. UNION OF INDIA ETC. (OA 569/Pb/87)

by judgment dated 6.1.1988 felt bound by the view expressed by the Madras Bench and did not discuss the matter at length.

On a close reading of the judgement of the Madras Bench of the Tribunal we must observe that it had not opined that the disciplinary authority has no power to impose a penalty based on the conviction merely because an appeal is pending. The fact that the appeal is pending and the sentence has been suspended may be a consideration which may weigh with the disciplinary authority in exercising its undoubted power to impose a penalty based on conviction which discloses a conduct that the public servant is not fit to be continued in service. While the power is recognised, the order of dismissal may be bad for other reasons viz., that the disciplinary authority has not taken into consideration all relevant facts but that does not militate against the power vested under Rule 19(i) of the CCS (CCA) Rules to impose the penalty based on conviction, merely because an appeal is pending.

The Allahabad Bench of this Tribunal in UNION OF INDIA V. VIJAY BAHADUR SINGH (ATR 1988(1) CAT 535)

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in our opinion rightly held:

> "It is always open to Govt. to pass an order of dismissal or removal from service immediately after a criminal court records conviction. In that case the administrator runs the risk of the conviction being later set aside in appeal or revision. It is for the administration to decide whether in a particular case it should pass an order of dismissal or removal immediately after conviction by the trial court, or wait for the result of a possible appeal or revision. Such considerations of expediency can have little bearing on the interpretation of Article 311 of the Constitution (or Rule 14 of the Railway Servants(Discipline and Appeal) Rules, 1968)."

This view follows the view expressed by a Full Bench of the Allahabad High Court (1969 Alld. 414 at page 417). The same applies with equal force to a case covered by Rule 19(i) of the CCS (CCA) Rules, 1965.

The Principal Bench of the Tribunal in P.K.GUPTA V. UNION OF INDIA (T-719/85 (CW-1460/81) judgment dated 9.5.1988 also took the same view. In para 15 of the judgment the Bench observed:

> "The fact that the applicant had filed an appeal against his conviction and sentence and that appeal was pending disposal with

> interim orders of enlarging him on bail and suspending the sentence, does not necessarily mean that the conviction and sentence entered by the criminal court does not exist. As long as the conviction of the applicant stands, it is undoubtedly open to Government to exercise the powers conferred on it by sub-article (2) of Article 311 of the Constitution and Rule 19 of the Rules."

The Bench rightly observed thus:

> "If the criminal appeal is decided by the High Court in his favour, it is undoubtedly open to the applicant to move the authority to reinstate him in service..."

In view of the above discussion, we hold that an order convicting and sentencing an accused public servant which is the subject matter of an appeal and in which the court has merely released the accused appellant on bail, does not operate as a suspension of the conviction, much less does it take away the power of the disciplinary authority to take action under Rule 19(i) of the CCS (CCA) Rules.

Lastly, it was argued that if dismissal is ordered pending an appeal against the conviction it would stultify the right vested in the public servant to prosecute his appeal in the criminal court and vesting any such power in the disciplinary authority would be violative of the Fundamental Rights vested in a citizen under Articles 19 and 21

of the Constitution. We are unable to accept this contention. Not only persons in service but also those not in service may be charged with an offence punishable under IPC. If persons out of service could prosecute a criminal appeal, whether enlarged on bail or not, there is no ground to hold that a public servant cannot prosecute his appeal if he is dismissed from service pending the appeal. So far as the criminal court is concerned, he cannot be placed in more advantageous position than any other citizen who is convicted for a similar offence and has preferred an appeal. Dismissal from service pending the appeal does not confer upon him any right to be placed in a more advantageous position than any other citizen for prosecuting an appeal. Only the advantage of being in service would not be available to him. In the matter of continuing a public servant in office when he is held guilty of an offence and convicted and sentenced by a criminal court the dictates of public interest must yield to any inconvenience caused to the public servant. This contention of the applicant, therefore, fails.

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In the result, we hold that the view taken by the Calcutta Bench in AJIT KUMAR BANERJEE V. UNION OF INDIA & ORS (ATR 1987(1) CAT 258) does not express the correct position of law and we accordingly overrule the same and hold that the disciplinary authority has power to impose any penalty under Rule 19(i) of the CCS (CCA) Rules on the ground of conduct which has led to his conviction on a criminal charge even if an appeal against the conviction and sentence is pending and even if the sentence is suspended and the delinquent officer is enlarged on bail.

In the instant case, as already noted, the applicant was convicted for abetment of the commission of offence of suicide by his wife and sentenced to 5 years RI. He was arrested and placed under suspension. After his conviction the disciplinary authority has found that his conviction renders his retention in the public service undesirable. The mere fact that the order does not specifically refer to the fact that the appeal is pending and the sentence is suspended does not in the circumstances of this case affect the validity of the order.

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This order was made on 1.10.1985. The applicant made a representation in which he had specifically brought out that he had preferred an appeal and the sentence was suspended. His representation was considered and rejected by the Appellate Authority. The Appellate Authority addressed itself to the question whether in view of the pendency of the appeal against his conviction and sentence, any penalty should be imposed or not and held that the conduct of the applicant is such that in the absence of the order of the criminal court to reinstate him in service, it is not desirable to continue him in service. It also held that the conduct which has led to his conviction necessitates the imposition of the penalty of dismissal and in this context referred to the decision of the Supreme Court in UNION OF INDIA V. TULSI RAM PATEL (1985) 3 SCC 398 : 1985 SCC (L&S) 672). The Appellate Authority has come to a categorical conclusion that "no rule or constitutional provision has been violated and that the conduct of the delinquent official in abetting the commission of suicide by his wife was such that the penalty of dismissal from service consequent on his conviction by the Court, is appropriate..." and accordingly rejected the appeal.

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We, therefore, find that no illegality or irregularity has been committed in passing the order of dismissal made against the applicant based on the conduct which has led to his conviction. Any failure on the part of the disciplinary authority to refer expressly to the pendency of the appeal against the conviction has not prejudiced the applicant inasmuch as the Appellate Authority has specifically taken note of it while disposing of the appeal.

In the result, this application fails and is accordingly dismissed but in the circumstances with no order as to costs.

(Ch.Ramakrishna Rao)
Member (J)
7.9.1988

(Kaushal Kumar)
Member(A)
7.9.1988

(K.Madhava Reddy)
Chairman
7.9.1988