

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
PRAYAGRAJ.

Prayagraj, this Tuesday, the 22nd day of December, 2020

Original Application No. 330/01510/2016

Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)
Hon'ble Mr. Navin Tandon, Member (Administrative)

Shayam Shankar Pandey, Son of Shri Yamuna Prasad Pandey, aged about 53 years, R/o 240/03 Bhakshikala, Dharaganj, Allahabad.

... .Applicant

By Advocate: Shri Ashish Srivastava (In Court)

V E R S U S

1. Union of India through Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. Chairman, Central Board of Excise and Custom, North Block, New Delhi.
3. Chief Commissioner Central Excise and Service Tax, 7 Ashoka, Marg, Lucknow.
4. The Commissioner, Central Excise and Service Tax, 38 M.G. Marg Civil Lines, Allahabad.

... .Respondents

By Advocate: Shri D.C. Mishra brief holder for Dr. Rajeshwar Tripathi (In Court)

(Reserved on 01.12.2020)

O R D E R

By Hon'ble Shri Navin Tandon, Member (Administrative)

Through Video Conferencing.

1. The applicant is aggrieved that he has been dismissed from service under Rule 19 of CCS (CCA) Rules 1965 after being convicted by CBI Court in a criminal case.

2. The applicant has made the following submissions in his original application:-

2.1 He was appointed as vehicle driver with the respondent department on 02.01.1998 vide order of the Deputy Commissioner Custom and Central Excise Allahabad. In the year 1999 he was transferred to Lucknow where he was assigned the duties of carrying the staff of the Central Excise and Customs from the office to the airport and back.

2.2 On 23.10.2000, when he was outside Amausi Airport Lucknow and waiting for the staff to take them back to the office, a CBI raid took place.

2.3 The CBI filed a chargesheet before the CBI court at Lucknow wherein he was made as an accused and it was alleged that 2390 Indian Rupees and 15 Dirham in foreign currency was recovered from him during the raid.

2.4 The said chargesheet was filed against five employees of the department including him. However, after sometime the entire proceedings were dropped.

2.5 In the year 2011, the CBI filed another chargesheet in which the name of one accused, namely Shri Ramesh Chandra was not included.

2.6 CBI Court vide its order dated 21.07.2014 (Annexure A-5) convicted the applicant under section 120(B) of I.P.C. along with section 13(1)(D) of Prevention of Corruption Act, 1988 and sentenced him to 4 years of imprisonment and penalty of Rs.40,000/-.

2.7 Thereafter, he filed appeal no.948 of 2014 before Hon'ble High Court of Allahabad at Lucknow Bench and was granted bail on 30.07.2014.

2.8 He joined the duties on 31.07.2014 and was placed under suspension on 06.08.2014. The suspension was revoked on 01.08.2015.

2.9 He was issued a show cause notice on 30.07.2015 (Annexure A-6) proposing the penalty of "Dismissal From Service" on the ground of conviction, under rule 19(1) of CCS (CCA) Rules 1965.

2.10 He submitted his reply dated 31.08.2015 (Annexure A-7).

2.11 He was allowed personal hearing on 10.09.2015 in the office of the respondent no.4, when in compliance of the personal hearing, he also furnished his written submissions (Annexure A-9).

2.12 Respondent no.4 vide order dated 29.09.2015 (Annexure A-1) awarded the penalty of dismissal from service.

2.13 The disciplinary authority of the applicant is Deputy Commissioner of Custom and Central Excise whereas Show Cause Notice as well as penalty order has been issued by respondent no.4 (Commissioner).

2.14 He preferred his appeal before the respondent no.3 on 04.11.2015 (Annexure A-10), which has been rejected by respondent no.3 vide order dated 19.10.2016 (Annexure A-2).

2.15 Since the appeal against the order of CBI court has already been filed in Hon'ble High Court, which is pending, no action can be taken by the respondent department.

3. The applicant has prayed for the following reliefs: -

8. Relief Sought

In view of the facts mentioned in Paragraphs No.4 and 5 the applicant prays for the following relief/s :-

I. This Hon'ble Tribunal may be pleased to quash and set aside the impugned order dated 29.09.2015 and 19.10.2016 passed by respondent no.4 & 3 (Annexure No. 1, & 2 to the compilation No.1).

II. This Hon'ble Tribunal may be pleased to direct the respondent to reinstate the applicant in service with all consequential benefits.

III. Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicant.

IV. Award the costs of the original application in favour of the applicant."

4. The respondents have filed their response in which the following submissions have been made:-

4.1 Illegal gratification was recovered from the possession of the applicant which has been specifically mentioned in para 3 of the judgment of CBI Court.

4.2 The order of the CBI court has dealt with how the previous chargesheet in CBI Court was dropped on 16.12.2003 and granting liberty to CBI to take necessary steps ab-initio.

4.3 The entire case file of the Trial Court is now the property of Hon'ble High Court of Allahabad, Lucknow Bench. It is not appropriate to wait for the decision of the Hon'ble High Court for taking appropriate action under Rule 19 of the CCS (CCA) Rules 1965.

4.4 No officer below the rank of Joint/Additional Commissioner can work as a Disciplinary Authority for the applicant. Since no Joint/Additional Commissioner was posted in the Commissionerate Office at the relevant period, the next higher authority i.e. Commissioner has issued the order which is as per rules.

4.5 The Disciplinary Authority has taken action as provided for under Rule 19 (i) of the CCS (CCA) Rules and accordingly dismissed

the applicant from service and, therefore, the applicant is not entitled for any relief.

5. The applicant has filed his rejoinder wherein the issues raised in the original application have been reiterated.

6. Heard the arguments of learned counsel of both the parties and perused the pleadings available in PDF form.

7. Learned counsel for the applicant averred that the applicant was nowhere near the Airport Terminal when the CBI raid took place. He also placed reliance on **Union of India and Another Vs. Tulsi Ram Patel (AIR 1985 SC 1416)** and judgment of Hon'ble High Court of Allahabad in **Writ-A 14570 of 2009 in Ram Kishan Versus State of UP. & others** to buttress his point that the disciplinary authority has not considered the conduct of the applicant. The disciplinary authority has only considered the fact that the applicant has been convicted in a criminal case. He has not even considered that his appeal has been admitted in the Hon'ble High Court and he has been granted bail.

8. Learned counsel for the respondents placed reliance on a catena of judgments of Hon'ble Supreme Court (details later in the order) to submit that any authority higher than the appointing authority can act as a disciplinary authority provided the right of appeal is not taken away. In this case, he was granted opportunity for filing his appeal, therefore, there is no irregularity in respondent no.4 (Commissioner) taking action as disciplinary authority.

8.1 Further he cited the case of **Deputy Director of Collegiate Education (Administration) Madras Vs S. Nagoor Meera (1995) 3 SCC 377** to say that there is no need for the appeal to be decided by Hon'ble High Court before taking disciplinary action against the applicant.

8.2 He forcefully submitted that the disciplinary authority has considered the conduct of the applicant vis-a-vis the conviction in criminal court and have taken all necessary steps as laid down by Hon'ble Supreme Court in **Tulsi Ram Patel (Supra)**.

FINDINGS

9. The first point which needs to be settled is whether the Commissioner (respondent no.4), who is higher than the appointing authority, is authorised to initiated disciplinary action against the applicant. In this regard, we have gone through the judgments of Hon'ble Supreme Court, cited by the respondents, and relevant portions are extracted below:

9.1 ***Balbir Chand Vs. Food Corporation of India Ltd. And others (1997) 3 SCC 371***

"3.It is now a well-settled legal position than an authority lower than the appointing authority cannot take any decision in the matter of disciplinary action. But there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action. On that basis, it can not be said that there will be discrimination violating Article 14 of the Constitution or causing material prejudice."

9.2 ***A. Sudhakar Vs. Post Master General, Hyderabad & Another (2006) 4 SCC 348***

"18. It is now trite that an authority higher than the appointing authority would also be the designated

authority for the purpose of Article 311 of the Constitution. Even the Appellate Authority can impose a punishment subject, of course, to the condition that by reason thereof the delinquent officer should not be deprived of a right of appeal in view of the fact that the right of appeal is a statutory right. However, if such right of appeal is not embellished, an authority higher than the appointing authority may also act as a disciplinary authority."

9.3 ***Uttar Pradesh Power Corporation Limited Vs. Virendra Lal (Dead) through LRs. (2013) 10 SCC 39***

"23. From the aforesaid enunciation of law it is graphically clear that a higher authority may pass an order imposing a punishment and the same would withstand scrutiny if the right of appeal is not taken away. That apart, if the appellate authority passes an order as the primary authority and there is provision for further appeal or revision or review it cannot be said that the said order suffers from any illegality."

10. The above cited judgments of Hon'ble Supreme Court has conclusively held that an official higher than the appointing authority can take disciplinary action. The only condition prescribed is that the right to appeal should not be taken away. In the present case, an opportunity has been provided to the applicant to file his appeal which he has availed. Therefore, there is no irregularity as far as the competent authority to initiate disciplinary action is concerned.

11. It is also a case of the applicant that so long as the appeal is pending in the Hon'ble High Court, it is premature on the part of the disciplinary authority to initiate disciplinary action. However, fortified by the judgement of Hon'ble Apex Court in **S. Nagoor Meera (Supra)**, we do not find any merit in this argument that the disciplinary authority should have waited for the appeal to be decided by Hon'ble High Court. The relevant extract is given below: -

"9. 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). . . ."

12. Rule 19 of CCS (CCA) Rules 1965 (for brevity, The Rules hereinafter) is as given below: -

" 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 criminal 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:

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 (i):

Provided further that the Commission shall be consulted, where such consultation is necessary, [and the Government servant has been given an opportunity of representing against the advice of the Commission,] before any order are made in any case under this rule.]"

13. Learned counsel for the applicant vehemently argued that the conduct of the applicant was not taken in to consideration while issuing the impugned order, as directed by Hon'ble Supreme Court in **Tulsi Ram Patel (Supra)**. Before deliberating on this issue further, it is necessary to mention that Rule 19 (i) of The Rules draws its authority from clause (a) of second proviso of Article 311(2). While dealing with the said provision in **Tulsi Ram Patel (Supra)**, Hon'ble Apex Court has held as under:

"The Second Proviso - Clause (a)

127. Not much remains to be said about clause (a) of the second proviso to Article 311(2). To recapitulate briefly, where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case and the various factors set out in Challappan's case. This, however, has to be done by it ex parte and by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be

imposed on him. This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the

court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service the court will also strike down the impugned order. Thus, in *Shankar Dass v. Union of India and another*, [1985] 2 S.C.C. 358, this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the Court should always order reinstatement. The Court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case."

14. Learned counsel for the applicant also placed reliance on **Ram Kishan (Supra)**. The operative part of the said judgment is as under:-

"14. Thus, in view of the law laid down by Hon'ble Supreme Court in the cases of *Tulsiram Patel* (supra), *T.R. Chellapan* (supra) and *Shankar Das* (supra), and two Division Bench judgments of this court in *Shyam Narain Shukla* (supra) and *Sadanand Mishra* (supra), it can safely be concluded that while removing the petitioner from service, the respondents were bound to consider the conduct of the petitioner, which has led to his conviction in the session trial. This was the condition precedent for the competent authority to acquire jurisdiction to impose punishment of removal from service. However, the impugned order is unfortunately silent and does not show consideration of conduct of the petitioner which has led to his conviction in the S.T. No.178 of 2005. It was necessary for the respondents, while passing the impugned order, to consider the conduct of the petitioner leading to his conviction and then to decide what punishment is to be inflicted upon him. This has not been done by the respondent No.2 while removing the petitioner from service. Therefore, the impugned order cannot be sustained and is hereby quashed.

15. For all the reasons afore-stated, the writ petition is allowed. Matter is remitted back to the Senior Superintendent of Police, Jhansi to pass an order afresh, in accordance with law, within one month from the date of presentation of a certified copy of this order. In the event, the petitioner is reinstated in service, he shall be entitled to all consequential benefits and shall also be entitled to arrears of salary only for the period he actually worked."

15. Now let us examine whether the conduct of the applicant has been considered by the disciplinary authority regarding his fitness to be in service after being convicted in a criminal case.

16. The extract of the show cause notice dated 30.07.2015 (Annexure A-6) is as under:-

"WHEREAS Shri Shyam Shankar Pandey, Driver of Central Excise, Allahabad (the then Driver, Customs, Amausi Airport, Lucknow) has been convicted on a criminal charge and awarded by the Hon'ble Special Judge (West), Anti Corruption, CBI Court, Lucknow vide judgment dated 21.7.2014 is as under:-

Sentence of four years rigorous imprisonment along with penalty of Rs.40,000/- under section 13(1)(d) read with section 13(2) of the Prevention of Corruption Act 1988. Sentence of additional one year rigorous imprisonment will be extended, if penalty has not been paid.

AND WHEREAS the undersigned proposes to award an appropriate penalty under Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, taking into account the gravity of the criminal charges; AND WHEREAS before coming to a decision about the quantum of penalty Shri Shyam Shankar Pandey, Driver of Central Excise, Allahabad is given an opportunity of personal hearing to explain the circumstances why penal action should not be taken against him in pursuance of the provisions of Rule 19 Ibid;

AND WHEREAS on a careful consideration of the judgment dated 21.7.2014 (copy enclosed), the undersigned has provisionally come to the conclusion that Shri Shyam Shankar Pandey, Driver of Central Excise, Allahabad is not a fit person to be retained in service/the gravity of the charge is such as to warrant the imposition of major penalty and accordingly proposes to impose on him the penalty of dismissal from service.

NOW THEREFORE, Shri Shyam Shankar Pandey, Driver of Central Excise, Allahabad is hereby given an opportunity of making representation on the penalty proposed above. Any representation which he may wish to make against the penalty proposed will be considered by the undersigned. Such a representation, if any, should be made in writing and submitted so as to reach the undersigned not later than fifteen days from the date of receipt of this memorandum by Shri Shyam Shankar Pandey, Driver of Central Excise, Allahabad.

The receipt of this Memorandum should be acknowledged."

17. The applicant was given an opportunity by the disciplinary authority for a personal hearing, which was availed of by the applicant. The order dated 29.09.2015 (Annexure A-1) of the disciplinary authority is a very detailed 27 page order in which each and every point of the written statement has been dealt with by quoting from the

judgment of the CBI Court. The concluding portion of the order is as under:-

"5.28 Now, I come to the point whether the conduct of Shri Shyam Shankar Pandey, Driver has led to his conviction by the Hon'ble Court. I have perused the judgment dated 21.07.2014 passed by the Special Judge, Anti Corruption (West), Lucknow & find that Hon'ble court has proved beyond doubt that the accused was involved in extracting illegal money from the passengers boarded out at Amausi Airport, Lucknow. Therefore, I am of the considered opinion that conduct of the C.O. comes under the category of moral turpitude & grave enough to justify that his retention in Government service is not desirable. Keeping in view aforementioned discussion & observations, I hereby pass following order.

ORDER

In exercise of power conferred upon me by Rule 19(i) of CCS(CCA) Rules, 1965, I hereby dismisses the said Shri Shyam Shankar Pandey, Driver of Central Excise, Allahabad from services with effect from 29.09.2015."

18. Perusal of the impugned order of the disciplinary authority specifically brings out that the disciplinary authority has considered the conduct of the applicant vis-a vis the conviction order passed by CBI Court. He has come to the conclusion that the conduct of the applicant comes under the category of moral turpitude and is serious enough to warrant his dismissal from service. Therefore, the condition laid down by the Hon'ble Supreme Court in **Tulsi Ram Patel (Supra)** has been met in the present case.

19. The applicant has availed the opportunity of appeal. The Appellate Authority had granted personal hearing to the applicant and considered the appeal. He has passed a detailed order covering each and every item of the appeal.

20. Since the disciplinary authority in the present case has considered the conduct of the applicant, which led to his conviction in the CBI court, the judgment of **Ram Kishna (Supra)** will not come to the aid of the applicant.

21. From the aforesaid, it is concluded that the applicant has not been able to make out a case in his favour.

22. We find that the disciplinary authority has followed all the steps as laid down in Rule 19 (i) of The Rules as well as the direction of Hon'ble Supreme Court in **Tulsi Ram Patel (Supra)**. Further, his appeal has also been considered and decided by the next higher authority i.e. Chief Commissioner (respondent no.3) as per rules. Hence, we do not find any irregularity in the action of the respondents.

23. Accordingly, the original application is dismissed being devoid of merit. No Costs.

**(Navin Tandon)
Member (Administrative)**

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**(Justice Vijay Lakshmi)
Member (Judicial)**