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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 257 of 1986
~~T.A. No.~~

DATE OF DECISION 16th May 1986

Shri Anand Prakash Petitioner

Shri B.S. Charya, Mr. M.S.Kapoor Advocate for the Petitioner(s)

Versus

Union of India Respondent

None. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P.MUKERJI, Member

The Hon'ble Mr. H.P.BAGCHI, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

JUDGMENT:

This is an application under Section 19 of the Administrative Tribunals Act 1985, in which the applicant has prayed for quashing of the order dated 13.1.84 passed by the Deputy Post Master retiring the applicant compulsorily under Rule 19(1) of the Central Civil Services (Classification, Control and

Appeal) Rules 1965 (hereinafter referred to as Rules) with effect from 13.1.84 on the basis of conviction of criminal charge under Section 52 of the Indian Post Office Act, 1898. He has also prayed for setting aside of the appellate order dated 9.8.84 rejecting the appeal and the order dated 25.9.84 treating the period of suspension between 21.8.78 and 12.1.84 as not on duty. The brief facts of the case which are not in dispute can be summarised as follows:-

2. The applicant was working as packer with the Post & Telegraph Department since 4.10.58. He was convicted by the court of law under Section 52 of the Indian Post Office Act for committing theft of 3 letters at the time of sorting. He was sentenced to one year's rigorous imprisonment and a fine of Rs.500/- and in default thereof to undergo two months' simple imprisonment. The appellate court upheld the judgment and conviction of the petitioner but set aside the order of sentence and granted him the benefit of probation under Section 4 of the Probation of First Offender's Act and directed him to furnish a personal bond in the sum of Rs.50000/- with one surety in the like amount for keeping peace and good behaviour for a period of one year subject to the condition that in case he was found guilty of any offence during this period, he shall be called upon by the Court to receive such sentence as may be imposed.

3. The disciplinary authority initiated action

under Rule 19 of the Rules of 1965 and after holding a skeleton inquiry imposed on him the penalty of compulsory retirement from service vide impugned order dated 13.1.84. The Appellate Authority on appeal did not find any merit in the appeal and rejected the same by the impugned memorandum of 13.3.84. The second appeal was also rejected by the Member (Administration) P&T Board.

4. We have heard the arguments of the learned counsel for the petitioner and gone through the record very carefully. The main contention of the learned counsel for the petitioner is that the disciplinary authority and the appellate authority did not pass speaking orders and did not follow the rules of natural justice. Admittedly the impugned order retiring the petitioner compulsorily was passed under Special Procedure of the Rules of 1965 contained in Rule 19 which reads as follows:

> "Special Procedure in certain cases
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> 19. Notwithstanding anything contained in Rule 14 to Rule 18:-
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> (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
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> (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
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> (iii) where the President is satisfied that in the interest of the secuirity of the State, it is not expedient to hold any inquiry in the manner provided in these Rules,
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> the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:
>
> Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule."

The impugned order was passed under clause (i) of the aforesaid rules. The learned counsel for the applicant agrees that the conviction has not been set aside even though the sentence has been set aside under the Probation of Offender's Act. This has been repeatedly supported by a number of rulings notable among which is that of the Hon'ble High Court of Punjab and Haryana in Om Prakash Vs. P&T Department reported in AIR 1973 Vol.60 page 1. In so far as the following of the rules of natural justice under special provision of Rule 19(i) are concerned, it will be useful to quote the following paragraph from the celebrated judgment of the Hon'ble Supreme Court in Union of India Vs. Tulsi Ram Patel (1985) 2 S.C.C. 358) on Clause (a) of the second proviso to Article 311 of the Constitution:-

> "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 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 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 reinstate 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 this court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellate 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."

5. In the instant case not to speak of exparte the petitioner was given an opportunity of personal hearing and offer of written explanation was also given and show cause notice was also issued to him. The impugned order cannot be said to be a non-speaking order. The appellate orders dated 13.3.84 and 9.8.84 appended with the application are also very comprehensive and well reasoned. We are fully satisfied that the applicant has been treated with a proper measure of justice and generosity considering the gravity of his offence for which he was convicted by the criminal court and there is no ground for us to even admit the application. In the circumstances the application is rejected under section 19(3) of the Administrative Tribunals Act 1985.

(H.P.BAGCHI)
JUDICIAL MEMBER

(S.P.MUKERJI)
MEMBER