

5

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. NO. 168/90

New Delhi this the 10th day of June, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN

THE HON'BLE MR. P. T. THIRUVENGADAM, CHAIRMAN

Jaswant Singh S/O Jai Lal,
working at COD, New Delhi.
R/O 8, Biswa Gurgaon Village,
Gurgaon, Haryana.

... Applicant

By Advocate Shri P. P. Khurana

Versus

1. Union of India through
its Secretary, Ministry
of Defence, South Block,
New Delhi.
2. The Commandant,
Central Ordnance Depot,
Delhi Cantt.
3. The Karyabhari Afsar/
Officer-in-Command,
Sena Corps,
Abhilekh Karyalaya,
Army Ordnance Corps Records,
Post Box. No.3,
Trimulgherry P.O.,
Secunderabad - 500015.

... Respondents

By Advocate Shri M. L. Verma

C O R D E R (CRAL)

Shri Justice V. S. Malimath -

The petitioner, Shri Jaswant Singh, has stated in his application that he is an UIC under the control of the Central Ordnance Depot, Delhi Cantt. He was convicted under sections 323, 325 IPC, read with sections 148 and 149 IPC by the court of Additional District & Sessions Judge, Gurgaon on 26.11.1988. The petitioner

preferred an appeal against the said order of conviction before the Punjab & Haryana High Court at Chandigarh in criminal appeal No. 535/88. He says that the said appeal was admitted on 17.12.1988 and he was granted bail by order passed on the same date. After the conviction of the petitioner a show cause notice was issued to him by the disciplinary authority requiring him to show cause why he should not be dismissed from service having regard to his conviction by the criminal court. After considering the cause shown by the petitioner, he was removed from service by the impugned order Annexure-B dated 15.11.1989. It is the said order that has been challenged by the petitioner in this application.

2. The principal contention of the petitioner is that having regard to the fact that the petitioner had been granted bail by the High Court, the disciplinary authority had no competence to remove him from service on the ground of his conviction. It was urged that the petitioner having been granted bail the order of conviction stood suspended thus depriving the right of the disciplinary authority to remove the petitioner from service on the ground of conviction on criminal charge. Proviso (a) to Article 311 (2) of the Constitution says that where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, no inquiry as contemplated by Article 311 (2) shall be held. It is well settled that it is enough if an

opportunity is given to the government servant of showing cause and the cause shown is taken into account. This part of the obligation has been complied with by issuing appropriate notice and considering the cause shown by the petitioner. Rule 19 of the CCS (CCA) Rules as engrafted is the same as contained in Article 311 (2) proviso (a), which says that 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, the disciplinary authority may consider the circumstances of the case and make such order thereon as it deems fit provided the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed. As already stated, this part of the obligation has been discharged by the disciplinary authority. The only question that survives for consideration is as to why the power invoked by the disciplinary authority to remove the petitioner from service was not available to him having regard to the fact that the petitioner was on bail after his conviction by the criminal court. Shri Verma, learned counsel for the respondents invited our attention to the Full Bench decision of the Tribunal reported in Full Bench Judgments of CAT (1986-89) p.21 between Om Prakash Narang vs. Union of India & Ors. The precise question was examined by the Full Bench of the Tribunal and it has been categorically laid down that the grant of bail does not have the effect of

8

suspending the conviction. The Full Bench decision therefore, fully supports the contention of Shri Verma. It is, however, contended on behalf of the petitioner that there is a decision of the Supreme Court reported in 1966 (1) LLJ 730 wherein the following proposition has been laid down :-

"The termination of Sharma's services in the events that happened was treated to be entirely wrong. After his appeal was admitted and bail was granted to him, there was no final judgment against him. The company had two courses open to it - either to continue in his post, or his services could have been terminated after proper period or enquiry - but by now following the other course and resisting his efforts to reinstate that termination of Sharma's services became illegal from the very beginning."

Apart from the above extracts in para 5 (III) of the application, the judgment proper was not placed for our consideration. The party's name was, however, given to us as being Workmen U.P. State Electricity Board vs. Upper Ganges Vally Electric Company. It was contended by the learned counsel for the respondents that the said decision is rendered under the industrial law and not in respect of a Government servant who is governed by Article 311 of the Constitution and the CCS (CCA) Rules. That appears to be so. In that view of the matter, we are bound by the Full Bench decision of the Tribunal in Om Prakash Narang's case and take a view that mere grant of bail does not have the effect of suspending the conviction and that, therefore, it is no bar for invoking the power under Article 311 (2) or Rule 19 of the CCS (CCA) Rules. In that view of

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the matter, it is not possible to take the view that the disciplinary authority committed any error in terminating the services of the petitioner.

3. This application fails and is dismissed. No costs.

P. T. Thiruve ngadam

(P. T. Thiruve ngadam)
Member (A)

V. S. Malimath

(V. S. Malimath)
Chairman

/as/