

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

O.A.2718/91

Date of decision: 3.2.93

P.C.Jain

.. Applicant.

versus

Director General Civil

Aviation and Anr.

.. Respondents.

Sh.K.N.R.Pillai

.. Counsel for the applicant.

Sh.Jog Singh with

Ms.Jaswinder Kaur

.. Counsel for the respondents.

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice Chairman(J)

The Hon'ble Sh.I.P.Gupta, Member(A).

J U D G E M E N T (oral)

The applicant was convicted in a criminal case. The disciplinary authority passed the order of dismissal on the applicant. The applicant has prayed for quashing of the order of punishment. The main ground taken by the learned counsel for the applicant was that the proviso to Rule 19 of C.C.S.(C.C.A.) Rules says that the Government servants may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a

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case where penalty is imposed on the ground of conduct which led to his conviction on a criminal charge. It was after the 42nd amendment to the Constitution dispensing with the need to give a second show cause notice under Rule 311(2) of the Constitution that the said proviso to Rule 19 of the C.C.S.(C.C.A.) rules was notified. to apply in a case where penalty was imposed as a result of conviction on criminal charge and not on the basis of an enquiry.

2. The learned counsel for the respondents admitted that proviso to Rule 19 was included in the C.C.S.(C.C.A.) Rules but she strongly contended that the discretion lay with the respondents while imposing the penalty consequent upon conviction. She stressed that the word used in the amendment is 'may' and not 'shall' and further no chargesheet is given in such a case because the conduct of the government servant has been gone into by the criminal court which has passed the order of conviction and therefore, it was open to the respondents to pass the order of penalty keeping into account the nature of the criminal case and the sentence passed in the case.

3. In view of the clear provisions under the proviso to Rule 19 and keeping in view the principles of natural justice, we are of the view that since the

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penalty has been imposed as a result of a conviction on a criminal case, the applicant should be given an opportunity of making representation on the penalty proposed to be imposed; the nature of penalty is also important in such a case. We, therefore, quash the order of penalty of dismissal passed on the applicant. The respondents, however, are at liberty to impose a penalty after giving the applicant an opportunity to represent and after considering his representation. The manner in which the period from the date of suspension to the date of the final order that may be passed after consideration of the representation of the applicant may be decided by the respondents keeping in view the totality of factors including his conviction and the nature of penalty that may be finally imposed in the disciplinary case. With this direction and order the case is disposed of with no order as to costs.

*I.P. Gupta*  
(I.P.Gupta) 3/2/93  
Member (A)

*Ram Pal Singh*  
(Ram Pal Singh) 3.2.93  
Vice Chairman (J)