

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

ORIGINAL APPLICATION NUMBER 117 OF 2004

ALLAHABAD, THIS THE 17<sup>th</sup> DAY OF march, 2004

HON'BLE MAJ GEN K. K. SRIVASTAVA, MEMBER(A)  
HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Abdul Wahid  
son of Mohd. Abdullah,  
Resident of O.F.D. Estate Raipur,  
District-Dehradun.

.....Applicant

(By Advocate : Ms. Sufia Saba)

V E R S U S

1. Union of India through Secretary,  
Ministry of Defence, South Block, New Delhi.
2. Managing Director and Chairman  
Ordnance Factory Board, Kolkata.
3. General Manager,  
Ordnance Factory, Dehradun.

....Respondents

(By Advocate : Shri R.C. Joshi)

O R D E R

By Hon'ble Mrs. Meera Chhibber, Member (J)

By this Original Application applicant has challenged the order dated 12.12.2003 whereby the applicant has been imposed the penalty of compulsory retirement from service w.e.f.12.12.2003 under Rule 19(1) of CCS CCA Rules as he had been convicted on a criminal charge under section 307/149, 323/149, 147 of I.P.C. in case No.485 of 1995 whereby he was awarded a sentence of Rigorous Imprisonment for 7 years under Section 307/149, for six months under Section 323/149 and for one year under Section 147 vide judgment dated 04.04.2003 by the additional



Session Judge, Kanpur Nagar. Applicant has sought quashing of the said order on the ground that against the conviction he has already filed criminal appeal No.1605 of 2003 before Hon'ble High Court of Allahabad and he has been released on bail and fine has also been stayed by order dated 09.04.2003. (Annexure No.2).

2. He has further stated that by a subsequent order dated 24.07.2003, Hon'ble High Court of Allahabad was pleased to stay the execution of sentence during the pendency of the appeal. He has further submitted that he is a handicapped person and is not capable of doing normal labourious work but as far as his teaching is concerned he has given good results in the subject of Hindi in High School Examination 2002 for which he has been appreciated also. He was given show cause notice dated 03.09.2002, which was duly replied by the applicant but without considering his representation, applicant has been given the penalty of compulsory retirement.

3. It is submitted by the applicant that since criminal appeal is already pending in which stay has also been granted by the Hon'ble High Court, therefore, the order of compulsory retirement is absolutely <sup>arbitrary</sup> and without application of mind.

4. We have heard the applicant's counsel and perused the impugned order as well.

5. It is not disputed by the applicant that he has been convicted on a criminal charge under section 307, 323 read with 149 and 147 of I.P.C. and awarded the sentence of 7 years rigorous imprisonment. Hon'ble High Court has only stayed the sentence and that does not wipe out the conviction. Since applicant has <sup>been</sup> convicted on a serious charge, the competent authority has come to the conclusion that it is not desirable to





to keep him in service any further looking at the gravity of the charge. Therefore, the order imposing compulsory retirement has been passed against him by the competent authority.

6. It would be relevant to quote Rule 19 of CCS CCA Rules which gives full power to the competent authority to pass any order as is deemed fit on the ground of conduct, which has led to the conviction on a criminal charge. The only safeguard is that before imposing the penalty, Government Servant has to be given an opportunity of making a representation. The said opportunity has already been given to the applicant as per rules before passing the impugned order as admittedly. Show cause notice has been given to the applicant. Therefore, it cannot be said that the procedure laid down in Rule 19 of CCS CCA Rules has been violated.

7. Even otherwise, it would be relevant to quote the judgment reported in 1997(7) SCC 524 in the case of UNION OF INDIA AND OTHERS VS. RAMESH KUMAR wherein it was held as under:-

"Under Section 389 of the CrPC, the appellate court has power to suspend the execution of sentence and to release the accused on bail. When the appellate court suspends execution of the sentence and grants bail to an accused, the effect of the order is that the sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal. In other words by suspension of execution of sentence under Section 389 of CrPC an accused avoids undergoing sentence pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a government servant on a misconduct which lead to his conviction by the court of law does not lose its efficacy merely because the appellate court has suspended the execution of sentence. Such being the position of law, the Administrative Tribunal fell in error in holding





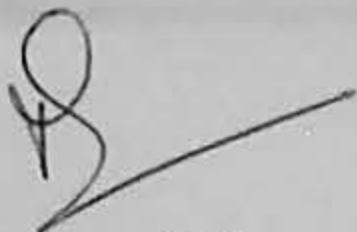
that by suspension of execution of sentence by the appellate court, the order of dismissal passed against the respondent was liable to be quashed and respondent is to be treated under suspension till disposal of criminal appeal by the High Court.

8. Perusal of the above paragraph shows that the present case is fully covered by the law laid down by Hon'ble Supreme Court in the above said case. Therefore, it does not require ~~along-~~  
~~with the~~ deliberation by the Tribunal any more. In that case it was further held that the right to reinstatement does not arise on mere filing of appeal against the conviction upon which disciplinary action was based because the conviction stands during the pendency of the appeal. We are therefore, satisfied that no relief as prayed for by the applicant can be granted.
9. Counsel for the applicant had relied on 2000 (1) LBESR 588 Allahabad to buttress her arguments that conviction alone is not enough to punish a government employee. She also relied on the judgment given by Hon'ble Supreme Court in the case of Union of India Vs. Tulsi Ram Patel reported in 1985(3) SCC 398. In particular she relied on <sup>para 8</sup> ~~page~~ 114, 127 and 130. Her main contention <sup>is</sup> ~~that~~ applicant could not have been dismissed from service without holding a departmental enquiry. It goes without saying that the case of Tulsi Ram was absolutely on a different ~~footing of~~  
~~altogether~~ in as much as there the respondents were dismissed by attracting Rule 311(2) proviso, which has absolutely a different <sup>conviction</sup> ~~contention~~. Whereas in the case before us applicant was given the penalty of compulsory retirement from service by attracting Rule 19(1) of CCS CCA Rules. Therefore, the said judgment would have no application in the present case at all. Since this case is fully covered by the judgment reported in 1997(7) SCC 514, there is no merit in the D.A. the same is accordingly dismissed with no order as to costs at admission stage itself. However, in



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case ultimately applicant's conviction is set aside by the Hon'ble High Court of Allahabad, it would be open to the applicant at that stage to give a representation to the authorities concerned for reinstatement in service in accordance with Rules.



Member (J)



Member (A)

shukla/-