CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Friday, 23rd day of April Two Thousand And Twenty One

PRESENT:
THE HON'BLE SHRI S.N. TERDAL, MEMBER(J)
THE HON'BLE SHRI C.V. SANKAR, MEMBER(A)

O.A.310/01114/2015

Sheshachalam,
Village Administrative Officer,
Taluk Office, Villianur,
Pondicherry. …….Applicant

(By Advocate: M/s. P.S. Ganesh)

Vs

Union of India Rep. by its
1. The Secretary to Revenue (South),
Chief Secretariat of Puducherry;

2. The Deputy Collector Revenue (South),
Cum Disciplinary Authority,
O/o. Deputy Collector Revenue (South),
Villinaur, Puducherry;

3. Special Officer,
Office of the Deputy Secretary Revenue,
Puducherry.

...Respondents

(By Advocate: Mr. R. Syed Mustafa)

CAV On :19.04.2021

O R D E R

(Pronounced by Hon'ble Mr. C.V. Sankar, Member(A))

The relief prayed in this OA is as follows:-

> "(i) to call for records pertaining to the order Dt. 16.06.2015 under reference No. 2210/scrs/Estt/A2/2015 passed by the 2nd respondent and quash the same;
>
> ii) Consequently direct the respondent to reinstate the applicant;
>
> iii) to pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. The brief facts of the case of the applicant are as follows:-

The applicant was a Village Administrative Officer (VAO) under the Government of Puducherry and while he was working as VAO at Villianur, on 20.03.2009 he was caught by the Police for accepting bribe to issue necessary certificate to avail the benefit under a Social Welfare Scheme. A complaint was lodged and a Criminal Case was taken up on file as Special C.C. 16 of 2010 in the court of Special Judge (under Prevention of Corruption Act) Principal Sessions Judge at Puducherry. The Special Judge convicted the applicant on 22.4.2015 with a punishment to undergo rigorous imprisonment for a period of

four years and to pay a fine of Rs. 1000/- for the offence under Section 7 of Prevention of Corruption Act 1988 R/w 34 IPC and further sentenced to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs. 1,000/- for the offence U/s. 13(2) of Prevention of Corruption Act r/w 34 IPC with the sentences of imprisonment to run concurrently. Against the conviction, an appeal was preferred under the file of Hon'ble High Court of Madras in C.A. Appeal No. 274 of 2015 and the sentence against the applicant was suspended. On 12.05.2015, a show cause notice was issued under Rule 19 of the CCS(CCA) Rules 1965 as to why the major penalty of dismissal from service which shall also be a disqualification for future employment under the Government should not be imposed against him and the applicant was given an opportunity to make a representation on the penalty proposed vide Anneuxre-R9. The applicant replied to the same vide Annexure-R10, which is his representation dated 21.05.2015 wherein he pointed out certain lacunae in the case of the prosecution based on which he was convicted by the Trial Court and requested the respondents to defer the imposition of punishment till the disposal of the Criminal Appeal CRL.A. No. 273/2015 and if not acceptable, to impose any other

penalty other than dismissal/removal/compulsory retirement etc.,. Vide Anneuxre R/11, a further notice was given to the applicant dated 27.5.2015 wherein he was given an opportunity of personal hearing and was asked to appear before the disciplinary authority. A final order was issued on 16.06.2015 vide Annexure-R12 wherein the applicant was dismissed from service with dismissal being a disqualification for future employment in Government service.

3. The main contention of the applicant is that the respondents have taken the extreme step of imposing the major penalty of dismissal against him merely on the basis of conviction without application of mind relating to the actual offence committed by him and the alleged misconduct. The other contention of the applicant is that the respondents should have waited for the final disposal of the Criminal Appeal pending before the Hon'ble High Court of Madras before deciding on the major penalty of dismissal. The applicant has cited the case of *Om Prakash vs. The Director Postal Services (Posts and Telegraphs Deptt) Punjab Circle, Ambala And Ors in Civil Writ No. 2192 of 1970 decided on 07.12.1971,* wherein the Hon'ble High Court of Punjab & Haryana, inter alia, held as follows:-

"3. xxxx xxxx xxxx xxxx

12. xxxx xxxx xxxx xxxx

xxxx xxxx xxxx the dismissal from service is a disqualification attached to the conviction. This, however, is not correct. No service rule has been cited before us which entails automatic dismissal or removal from service consequent on mere conviction by a Criminal Court. On the other hand Rule 19(i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter called the 1965 Rules), under which the impugned action is claimed to have been taken, merely provides that the disciplinary authority may consider the circumstances of the case and make such orders thereon as it thinks fit in the course of the proceedings for the imposition of any penalty on a Government servant "on the ground of conduct which has led to his conviction on a criminal charge" notwithstanding anything contained in Rules 14 to 18 which rules deal with the normal procedure for taking disciplinary action against a delinquent Government Servant.

xxxx xxxx xxxx xxxx

The above quoted rule shows that the penalty which can be imposed on a Government servant under that rule (without following the normal procedure of notices and inquiry laid down in Rules 14 to 18) is not for his having been convicted on a criminal charge but for the misconduct which has led to his such conviction. Departmental punishment, is, therefore, not a necessary and automatic consequence of conviction on a criminal charge. The competent disciplinary authority has to consider all the circumstances of the case and then make such orders in relation to the question of imposition of penalty on the Government servant for his original conduct which has led to his conviction.

5. xxxx xxxx xxxx xxxx. Departmental proceedings are not taken because the man has been convicted. The proceedings are directed against the original misconduct of the Government servant. Only the procedure varies in a case where the necessity of

a formal inquiry into the allegations of misconduct is rendered unnecessary on account of such an inquiry having been held by a Criminal Court on the basis of a much higher standard of proof requisite for the conviction of an accused. Section 12 does not wash away the misconduct of the Government servant. No part of Section 12 is intended to exonerate a Government servant of his liability to departmental punishment for misconduct. This provision does not afford immunity against disciplinary proceedings for the original misconduct. What forms basis of the punishment is the misconduct and not the conviction.

21. For the foregoing reasons, it is held that:-

(i) the departmental punishment of removal or dismissal from Government service is not an essential and automatic consequence of conviction on a criminal charge;

(ii) the authority competent to take disciplinary action under Rule 19(i) of the 1965 Rules against a Central Government servant convicted on a criminal charge has to consider all the circumstances of the case and then to decide (a) whether the conduct of the delinquent officer which lead to his conviction is such as to render his further retention in public service undesirable; (b) if so, whether to dismiss him or to remove him from service, or to compulsorily retire him: and (c) if the said conduct of the official is not such which renders his further retention in service undesirable, whether the minor punishment, if any, should be inflicted to him;"

4. The sum and substance of the arguments made by the applicant is that the disciplinary authority cannot simply go by the conviction but has to apply its mind on the misconduct which led to the conviction and decide in an independent manner whether the punishment proposed would be justified based on the facts and circumstances of the case. The applicant contends

that the impugned order of the disciplinary authority does not show that such application of mind has been made and an independent conclusion arrived at.

5. The respondents state that the impugned order has been passed after due consideration of all the facts and circumstances of the case including the conviction and, therefore,

there is absolutely no evidence to support the claim of the applicant that the impugned order has been passed merely based on the conviction.

6. From the perusal of the impugned order, it is clearly seen that the disciplinary authority had specifically mentioned vide Para-16 that the oral and written submissions made by both the charged officials were carefully considered by the disciplinary authority. The order also states that the Hon'ble Court of Special Judge of Puducherry had convicted them only after considering all their submissions in detail. The order concludes that in the light of the judgment order dated 22.4.2015 and the circumstances, the said officials, namely, the applicant and one more person who was convicted in the same case are guilty of moral turpitude under the gross misconduct which renders them

unfit for further retention in public service in public interest. The order is crystal clear in relation to the consideration of the oral and written submissions made by the applicant and it also cites the fact of all the details and submissions having been considered in detail by the Trial court. Therefore, we cannot accept the contention of the applicant that the disciplinary authority has proceeded merely on the basis of conviction by the Trial court. On his point regarding the pre-conceived decision of the disciplinary authority as could be seen in the show cause notice, we are again unable to accept the contention of the applicant. Mere mention of the proposed major penalty does not mean that a decision has already been taken, especially in such cases, where the public servant is convicted by the Trial Court after detailed submissions by the Prosecution. As has been held in a number of decisions, the standard of proof for conviction in a Criminal Court is substantially of a higher nature and more stringent than the disciplinary proceedings. It is precisely for this purpose that proceedings under Rule 19 do not require a detailed second inquiry for ascertaining the truth of these facts for inflicting the departmental punishment after a full-fledged inquiry by a regular court. The disciplinary authority has to

satisfy himself based on the facts and circumstances of the case and submissions made by the delinquent government servant that the Government servant is guilty of grave misconduct which renders him/her unfit for further retention in public service in public interest. In the present application, the applicant has not been able to bring in any further supporting documents to prove that the disciplinary authority had not applied its mind based on the facts and circumstances of the case.

7. On the point that the disciplinary authority should have waited for the Criminal Appeal to be decided also does not merit consideration since the offence for which the applicant was convicted is of a serious nature and leniency cannot be the rule in such cases as held by the Hon'ble Apex Court in a catena of decisions. It is always open to the applicant to raise this contention as and when he is exonerated honorably and finally in the judicial proceedings.

8. In view of the above, we find no merit in the OA. It is therefore dismissed. No costs.

(C.V. SANKAR)
MEMBER(A)

(S.N. TERDAL)
MEMBER(J)

Asvs. 23.04.2021