

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

T.A. No. 1830 of 1987.

Om Prakash .....Petitioner/Applicant.

Versus

Union of India & others .....Respondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, A.M.

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

The applicant was appointed as Safaiwala in 1961. A case was registered against him. The applicant was released on bail on 16.2.81. He was placed under suspension vide order dated 6.3.81 w.e.f. 16.2.81. The suspension order was revoked in the month of August, 1981 and the applicant was allowed to resume his duties. It was thereafter that the applicant was convicted for life imprisonment vide judgment and order dated 3.1.84 against which he filed an appeal before the High Court which was admitted and he was released on bail on 9.1.84. He again approached the authority concerned for job but he was not allowed to join the duties. Thus according to the applicant, neither he was under suspension nor his services have been terminated yet he has not been allowed to join his duty. As required by the Sanitary Inspector, the applicant thereafter submitted all the papers. Even though the papers have been furnished but the applicant has not been allowed to join the duty. Subsequently, it appears, the applicant was removed from service without any enquiry and as such the applicant has claimed that he is entitled to get back service and salary from the year 1984.

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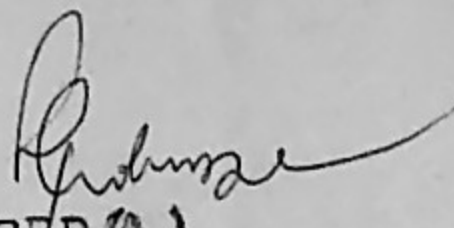
2. The respondents, in their return, have pointed out that the applicant was charged by the criminal Court for committing a murder and that is why he was placed under suspension. The applicant absented himself from duty thereafter as such he was treated absent from duty. The copy of the bail order was never furnished by the applicant before the departmental authorities but in the absence of counter affidavit, the High Court passed an order for payment of salary with arrears to the applicant which was done even though the applicant was not on duty. Meanwhile the applicant vide order dated 16.1.86 was removed from service. He preferred an appeal.

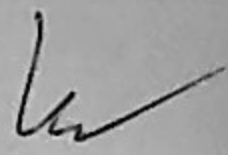
3. Learned counsel for the applicant contended that the applicant will be deemed to be in service as the salary was also paid to him and the removal order cannot stand in the way in view of the fact that he has been bailed out. It may be that as the appeal was pending, the applicant may have been bailed out. But the conviction still subsists and only it is the sentence which remains under suspension. Because the applicant was convicted under section 302 IPC, the respondents were within their right to remove the applicant from service without holding any departmental enquiry. In our opinion, it is not a case in which interference can at this stage be made. In case, the applicant is ultimately acquitted, he may get back the service because then there will be no conviction. In case of 'Union of India & others Vs. Parmanand' 1989 SCC 177, it has been stated that in these circumstances, the tribunal may examine the adequacy of the penalty imposed in the light of conviction and sentence inflicted on the person concerned. If the penalty imposed is unreasonable or uncalled for having regard to the nature of the criminal charge,

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the tribunal may still render substantial justice and the tribunal may remit the matter to the competent authority for reconsideration by itself as provided under Clause (a). As the case is under section 302 IPC, either of the aforesaid two things at this stage is not to be done. Accordingly, this application deserves to be dismissed and it is dismissed with the observation that it will be open for the applicant after decision of the criminal appeal to take recourse of law. No order as to costs.

  
MEMBER (A)

  
VICE CHAIRMAN.

DATED : DECEMBER 3, 1992 .

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