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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD

Allahabad : this the 18 day of October 1995

Original Application No.1001 of 1987

Hon'ble Mr. T.L. Verma, J.M.
Hon'ble Mr. S. Dayal, A.M.

1. Kesh Pal Singh, son of
Shri Har Dayal Singh, Garden Attendant,
Rambagh Garden, Agra.
2. Hira Lal, son of Shri Khem Karan,
Garden Attendant, Garden Sikandara,
Agra.
3. Prakash Chandra, son of Shri
Lotan Ram, Garden Attendant,
Garden Sikandara, Agra.
4. Badlu Ram, son of Shri Ganga Ram,
Garden Attendant, Taj Mahal, Agra,
5. Nafis Ahmad, son of Shri Saeed
Khan, Garden Attendant, Taj Nursery,
Agra Applicants

Sri A.K. Gaur

Versus

1. Union of India,
Ministry of Human Resources Development
& Health & Family Welfare, New Delhi.
2. Chief Horticulturist,
Archaeological Survey of India,
Taj Mahal, Agra.
3. Deputy Superintending Horticulturist,
Archaeological Survey of India,
Horticulture Division No.1,
Taj Mahal, Agra.

. Respondents

Sri N.B. Singh

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ORDER

Hon'ble Mr. S. Daval. A.M.

This is an application under Section 19 of CAT Act No. XIII of 1985. The applicants seek the following reliefs :-

- (i) to set aside the impugned orders of suspension dated 18.10.1986 passed by the Chief Horticulturist, Archaeological Survey of India, Tajmahal, Agra and the impugned show cause notice/memorandum dated 6.10.1987 issued by the Chief Horticulturist.
- (ii) a direction to the respondents to refrain from dismissing the applicants from service or interfering with the applicants' right to continue in service and for payment of salary to the applicants.

2. The applicants claim that they were working as Garden Attendants under the Chief Horticulturist, Archaeological Survey of India, Taj Mahal, Agra, Survey of India, Taj Mahal, Agra under Government of India and were posted at Agra and they were Class IV employees. They claim that they were active members of INTUC and participated in the strike of workers of Clark Shiraj Hotel, Agra, at a time when Section 144 of Cr.P.C. was promulgated in order to espouse the cause of the workmen of Clark Shiraj Hotel. The Applicants were arrested by the police on 12-10-1986 and after their release they joined their duties, but came to know that the Chief

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Horticulturist Archaeological Survey of India, Agra had already passed ^{orders} on 18-10-1986 placing the applicants under suspension with effect from the date of detention i.e. 12-10-1986. The applicants were convicted under Section 188 I.P.C. on 10-12-1986 by the Judicial Magistrate City, 1st Class, Agra. The Applicants claim that they were continuing under suspension from 12-10-1986. They have claimed that they were asked to meet the Administrative Officer on 3-8-87, and that the Administrative Officer asked them some question and the applicants gave a reply on that day. They claim that they received no charge sheet or any other communication thereafter. The statements have not been recorded nor they have been given any opportunity to adduce evidence.

3. The Applicants received a notice from Chief Horticulturist & Disciplinary Authority on 6-10-1987 asking them to explain why penal action should not be taken against them under the provisions of Rule 19 of the CCS (CCA) Rules, 1965. The memo stated that the disciplinary authority has provisionally come to the conclusion that the applicants were not fit persons to be retained in service and accordingly proposed to impose on them the penalty of dismissal. They were allowed to make representation against the proposed penalty. They were given a copy of the alleged inquiry report of the Administrative Officer. The applicants claim that the suspension order and memorandum/notice of show cause were illegal and without jurisdiction. They claim that they were not guilty of any offence involving moral turpitude.

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They have said that no formal inquiry report by the Inquiry Officer was given to the Applicants and no opportunity to defend themselves was given as contemplated under rules. The inquiry conducted by the Administrative Officer contained allegations that the Applicants had instigated and threatened other workmen also but no opportunity was given to the Applicants to defend themselves against such a conclusion. Annexures-1, 2 and 3 to the O.A. are for Keshav Pal Singh only.

4. The Counter Affidavit has been filed on behalf of the Respondents. It is ~~being~~ mentioned in the C.A. that these Garden Attendants were arrested by the local police authorities in violation of Section 144 of the Criminal Procedure Code and Sri Keshav Pal Singh was detained in jail from 12.10.86 to 27-10-86, while others were detained from 15-10-86 to 21-10-86. The applicants themselves informed the Deputy Superintending Horticulturist, Horticulture Division No.1, Agra and the latter defended suspension of the Applicants on the ground that they were de-tained in jail for more than 48 hours ^{when} their suspension was ordered on 18-10-86. The case under Section 188 I.P.C. was heard by the Judicial Magistrate, 1st Class, Agra, who awarded conviction for the period already spent in jail under Criminal Procedure Code as per judgement dated 21-10-1986 and 10.12.1986 and the Applicant admitted their guilt. The Applicants could not have joined duties after relea-se from the jail as suspension order had already been passed on 18-12-1986. The Applicants were given opportunity to defend themselves in a preliminary inquiry by the Administrative Officer as per the provisions of Rule 19 of the Rules, 1965. The applicants had ac-cepted their misconduct which lead to their criminal conviction during the course preliminary inquiry. They also informed that they did not file any appeal against the judgement of the Judicial Magistrate. The Applicants were asked to submit reasons why penalty of dismissal should not be imposed on them

by a show cause notice dated 6-10-1986 under Rule CCS (CCA) Rules. The Applicants have sought an opportunity to defend themselves which had been provided to them by issuance of the show cause notice. They were given opportunity vide memo date 5-1-1988 to submit their explanation/statement/evidence so that the disciplinary authority may take a final decision in the matter. The Respondents also stated that the Applicants were working in Horticulture Division No.1, Agra, under the Deputy Superintending Horticulturist. It is stated that the Applicants have indicated different causes and places of their arrest in their applications and have wrongly claimed that they were arrested at Clarks' Shraj Hotel, Agra. They have stated that the applicants' case comes under the provision of Article 311(2) (a) of the Constitution of India. They can be proceeded against for conviction under any law which provides for punishment for criminal offence and no distinction is made between moral turpitude and other crimes. They have stated that full opportunity ~~was being~~ provided to the Applicants to defend themselves against the show cause notice. They have stated that the disciplinary proceedings were on account of their conduct which was unbecoming of a Government servant. It has been stated that the Applicants had not exhausted their departmental remedy.

5. The replies of the Applicants annexed to the CA are of all the four applicants except Sri Keshav Pal Singh.

6. The Applicants have stated in the RA that ~~no~~ regular inquiry was ^{not} started and ~~no~~ proper opportunity was ^{not} given to them to defend themselves. They have

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stated that the suspension order cannot be passed retrospectively. They have denied that any preliminary inquiry was held. They have stated that other persons, namely, Sri Prabhat Singh, Sri Shanker Dayal Shukla, Sri Ashok Kumar Singh and Sri Har Narain Singh were also suspended for the same charge and were dismissed from service but in appeal the dismissal order was set aside and a minor penalty of withholding two increments were imposed and they were reinstated in service. They have claimed that the penalty was, disproportionate to the gravity of the crime committed. They have stated that the provisions of Rule 19 is not applicable. They have denied that they have committed any act of unbecoming of Government servant.

7. A rejoinder Affidavit has been filed by Keshav Pal Singh. The Respondents have filed Supplementary Counter Affidavit in which they have reaffirmed that preliminary inquiry was conducted and on the report of the Deputy Superintending Horticulturist, Horticulture Division No.1, Agra, the Applicants were suspended. They have denied that any order of dismissal of other four persons were issued from the ^{office of the} Chief Horticulturist. They have also stated that the Applicants have not stated that the proceedings were pending with the Assistant Labour Commissioner (Central), Lucknow and thereby violated Section 21 of the CAT Act of 1985. The Applicants in his statement before the Administrative Officer had admitted that the Government of India's instructions below Rule 19 C.C.S.(C.C.&A.) Rules, 1965 were related to the matter. They have denied that there was any person known by the name Sri Prabhat Singh, Sri Shanker Dayal Shukla, Sri Ashok Kumar Singh and Sri Har Narain Singh, and working as Garden Attendants under the Chief Horticulturist. It is stated that the Applicants resorted to ^{proceedings} ~~proceed~~ before the CAT in violation of Section 20(2) of the CAT Act of 1985 with a view to delay finalisation of the disciplinary proceedings. Annexure-CA-2 to the D.A. shows that there was

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another criminal case against Sri Keshav Pal Singh in which he was punished by the court of rigorous imprisonment till the date of judgement. Thus Sri Keshav Pal Singh was in ~~jail~~ from 12.10.86 to 27.10.86 and was also in jail on 10.12.86.

8. That the applicants have filed Supplementary Rejoinder Affidavit. The applicants have stated in their S.R.A that they had filed annexure-2 to the R.A. to show that a compromise was entered into between the Union and the Management regarding taking back the applicants into service.

9. Sri A.K. Gaur and Sri N.B. Singh, learned counsel for the parties argued. They reiterated the grounds already covered in the written pleadings.

10. The relief sought by the applicants by making this application before the Tribunal shows that the applicants have preferred the application before passage of any final orders in the departmental proceedings initiated against them. The applicants have admitted that they violated orders of the magistrate promulgated under section 144 of the Criminal procedure code. They have also admitted that they were convicted for violation of orders under section 144 Cr. P.C. Under these circumstances, the respondents are fully justified in initiating departmental proceedings against the applicants under Rule 19 of the CCS (CCA) Rules, 1965. The applicants have mentioned that they were arrested for participating in trade union activities to support the cause of the workeres of clarks Shiraj Hotel. This, however, does not absolve them from their culpability in violating orders under section 144 Cr. P.C. and does in no way absolve them from liability of

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being proceeded against under Rule 19 (i) CCS (CCA) Rules.

11. Another ground advanced by the applicants in claiming the relief of setting aside of the show cause notice under Rule 19 of the CCS (CCA) Rules, 1965, is that the offence committed by them did not amount to an offence involving moral turpitude. The procedure under rule 19 (1) of CCS (CCA) Rules, 1965, can be resorted to by the Government "where any penalty is imposed on a Government Servant on the ground of conduct which has led to his conviction on a criminal charge." This provision is in consonance with ~~clause~~ ^{excerpts} ~~the~~ Second Proviso to Article 311 (2) which ~~excludes~~ ^{cases} from the operation of clause (a) of the Article 311 (2) in which "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." Thus this ground for seeking the setting aside of show cause notice is also specious. It is curious that although there are five applicants, only annexure relating to Keshpal Singh have been annexed to the application. Thus the other applicants have not even placed the show cause notice issued to them on record of this case.

12. The applicants have also sought the setting aside of the order of suspension on the ground that they had joined duties after release from detention. The respondents have shown in paragraph 5 of their counter affidavit that other applicants were under detention upto 21.10.86 barring Keshpal Singh, who was under detention till 27.10.86. The applicants had already been placed under suspension with effect from 18.10.86 on the basis of information regarding their arrest and detention furnished by them. Rule 10 (2) of CCS (CCA) Rules 1965 stipulates that suspension is deemed to have started with effect

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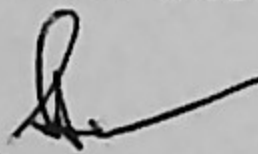
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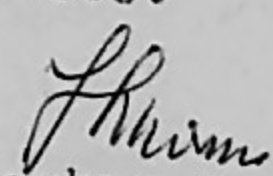
to have started with effect from the date of determination as soon as the period of detention exceeds forty eight hours. The written order regarding such a suspension will necessarily be retrospective and the claim of the applicants that they cannot be placed under suspension retrospectively by an order of the respondents is not tenable.

13. The applicants have sought as second relief a direction that they should not be dismissed from service that their continuation in service should not be interfered with and that salary should be paid to them. In view of the discussion in the preceding three paragraphs regarding the show cause notice and order of suspension, it is clear that such a preemptive direction will not at all be in order and in keeping with the demands of justice.

14. The application lacks merit and is dismissed.

15. There shall be no order as to costs.


Member-A


Member-J

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