(8) (A2/1)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH- ALLAHABAD.

O.A. No. 110 of 1987.

Om Prakash Chauhan..... Applicant.

Versus

Director Telecom.,Bareilly and 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.)

Against the dismissal order dated 27.3.85 and the appellate order dated 2.4.86 passed by the General Manager and Director Telecom Services, the applicant has approached this Tribunal.

2. The applicant ~~was~~ was Junior Engineer Telephones at the relevant point of time at Gajraula District Moradabad. There was some complaint against him that he has accepted ~~him~~ illegal gratification of Rs. 500/- from one Onkar Singh Tyagi on 6.8.80 and ~~has~~ has also thereby committed an offence punishable under Section 5 (2) read with Section 5(1) (d) of the Prevention of Corruption Act. A criminal case was started against the applicant and was sentenced to undergo R.I. for one year and a fine of Rs. 500/- . Against the said judgment passed by Special Judge Dehradun, the applicant filed an appeal (1050/83) before the High Court and High Court granted the bail and suspended the sentence. The applicant was earlier placed under suspension. After conviction a notice was issued to the applicant on 3.1.1985 asking to show cause as to why the penal action should not be taken ~~x~~ against him in pursuance of the rule 19 of CCS (CCA) Rules of 1965. The applicant alongwith the letter of Enquiry Report dated 22.1.1985 was sent. According to the applicant that no enquiry has taken place and the letter itself shows that summary enquiry will be held. The applicant made representation against the proposed penalty, but even thereafter the penalty of dismissal was imposed. The applicant filed a Writ Petition before the High Court which was dismissed on the ground that he had alternate remedy by way of filing departmental appeal, whereafter he filed a departmental appeal, this too was dismissed as mentioned above.

The applicant has challenged the said order on the ground that as his conviction was set-aside, the High court has admitted the appeal and he was bailed out and his sentence was ordered to be set-aside and it was taken as if no conviction against the applicant stands, the provisions of Rule 19 (1) CCS (CCA) Rules 1965 could not have been used against him and even otherwise if it could have been done, the same could not be done on the basis of summary enquiry and the same can be done on the basis of ful-fledged departmental enquiry.

2. Learned counsel for the applicant contended that because of the order passed by the High Court it was to be taken that there was no conviction. ~~There is fallacy~~ in the argument in-as-much as bailing out of a person or suspending the sentence could not be suspension of the conviction. The conviction stands except that the sentence x is stayed and as such conviction is still stands against the applicant nothwithstanding the pendency of the appeal. Whenever a person is convicted, it is not necessary to hold a ful-fledged inquiry which is also accepted under Article 311 of the Constitution of India. In this connection a reference may be made to the case of Union of India Vs.- Parmanand 1989 (2) SCC P. 177. In the said case while dealing with the jurisdiction of the Tribunal to interfere with the disciplinary matters, the Supreme Court observed that " If the penalty can lawfully be imposed and is

> imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

It was also further observed that -

> " Where a person, without enquiry is dismissed removed or reduced in rank solely on the basis of conviction by a criminal court, the Tribunal may examine the adequacy of the penalty imposed in the light of the conviction and sentence inflicted

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on the person. If the penalty imposed is apparently unreasonable or uncalled for, having regard to the nature of the criminal charge, the Tribunal may step into render substantial justice. The Tribunal may remit the matter to the Competent authority for reconsideration or by itself substitute one of the penalties provided under clause (a)".

4. As the conviction stands, the penalty which was imposed cannot be said to have stayed and as such the application has got no merit and is dismissed. Further we makes clear that in case his conviction is set-aside, it is open for the applicant to approach the authority concerned to re-instate him in service. This judgment will not stand in the way of the applicant to approach the authorities concerned.

No order as to the costs.

Member (A).
Dt: October 12, 1992.
(DPS)

Vice Chairman.