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Reserved.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

O.A.No.1309 of 1988

Pramod Kumar Sharma	...	Applicant.
	Vs.	
Union of India & others	...	Respondents.

Hon'ble Mr. G.S. Sharma - J.M.

Hon'ble Mr. K.J. Raman - A.M.

(By Hon.K.J.Raman)

In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant, who was earlier a Stenographer Grade III in the Central Servicing Development Organisation under the Ministry of Defence, and who had been placed under suspension and later removed from service, has sought the quashing of the order of his removal from service and the order refusing to sanction increase in his subsistence allowance.

2. The facts briefly are that the applicant who was appointed as ^a Civilian Stenographer Grade III under the respondents (C.S.D.O) on 2.2.1984 was arrested by the Civil Police at Kanpur on 10.8.1985 in connection with offences under section 302 and 498A I.P.C. ("Dowry Death"), along with his parents. He was ordered to be under (deemed) suspension with effect from 10.8.1985, as per existing regulations. In due course, the case came for trial and the 1st Additional Sessions Judge, Kanpur, by his judgment dated 17.2.88, held the applicant and his father and mother guilty of

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offences punishable Under Section 498A and 304B IPC read with Section 34 IPC; and sentenced them to 3 years R.I. and 7 years R.I. each, under each section, the sentences to run concurrently. The applicant and his parents thereupon preferred an appeal before the Hon'ble High Court of Judicature at Allahabad which, by its order dated 25.2.88 allowed the applicant and his parents to be enlarged on bail, and also stayed operation of the lower court's order dated 17.2.88 convicting and sentencing the applicant and his parents.

3. The applicant had sent representations to ^{for} the respondents for augmentation of his subsistence allowance as permissible under the rules. The respondents, however, declined to sanction any increase, vide their order dated 26.7.1988, which is one of the two orders impugned and sought to be quashed.

4. The respondents by their order dated 7.11.1988, removed the applicant from service with effect from the said date, in exercise of the powers conferred by Rule 19 (i) of the Central Civil Services (Classification and Control) Rules, 1965. This is the other impugned order sought to be set aside in this case.

5. The case of the applicant, as regards the impugned order of removal under Rule 19 (i) CCS (CCA) Rules, 1965, is simply this, that the judgment dated 17.2.1988, by which the applicant was convicted,

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having been stayed by the Hon'ble High Court by its order dated 25.2.1988, the respondents had no power or jurisdiction to go beyond the said order and take action against the applicant. As regards the subsistence allowance the applicant contends that the impugned order dated 26.7.88, of refusal to increase the subsistence allowance, is not sustainable under the law, because the said order is arbitrary, non-speaking and against rules, as it does not disclose any reason for the refusal.

6. The respondents, in reply, merely state that the appropriate officer considered the application for increase in subsistence allowance and ordered not to increase the allowance. The reasons, if any, for the decision, is still undisclosed.

7. As regards the impugned order of removal, the respondents aver that, after finalisation of the disciplinary proceedings, the applicant was removed from service on 7.11.1988 under Rule 19 (i) of CCS (CCA) Rules, 1965, in accordance with the said rules and Govt. of India Ministry of Defence Memorandum No. 19 (3)/67/326/S/D(Lab) dated 16.2.1976 (Annexure CA-4 to the reply). Para-16 of the reply of the respondents is not quite intelligible; presumably it states that although the Hon'ble High Court stayed the operation of the judgment dated 17.2.1988 by which the applicant was convicted, there was no bar on the respondents from removing the applicant from service; and that the order was passed in accordance with the rules and the instructions of 1976 referred to above. It may be observed

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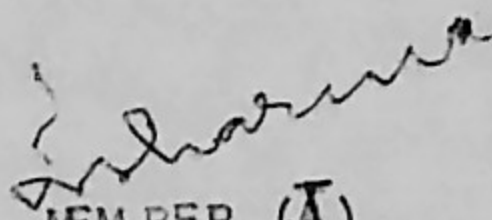
here that the said 1976 instructions do not refer to or deal with cases of stay of conviction by the appellate courts, and are, therefore, not ^{relevant} ~~relevant~~ so far as the present case is concerned. ¹⁹⁸²

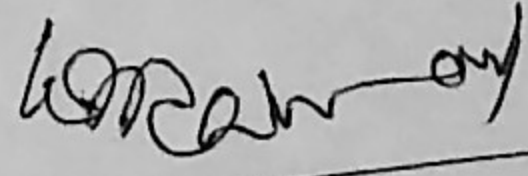
8. As regards the impugned order of removal from service, the same has been issued under Rule 19 (1) of the CCS (CCA) Rules, 1965. For invoking this provision, there must be a conviction of the Government servant. A conviction is thus a sine qua ~~non~~ ¹⁹⁸² or the very basis or foundation for action under the said rule. The removed ¹⁹⁸² order was issued on 7.11.88. The question is whether on that date, there was or had been an effective conviction of the applicant so as to attract the provision of the said Rule 19 (1). The order of conviction-cum-sentence was passed by the Addl. Sessions Judge, on 17.2.88. The Hon'ble High Court of Allahabad passed its order on 25.2.88, firstly, allowing release of the applicant on bail, and secondly, staying the operation of the order dated 17.2.1988, of the Addl. Sessions Judge. This undoubtedly means and connotes the staying of the conviction of the applicant. On 7.11.1988 when the impugned order was issued, there was or had been no effective order of conviction or sentence, on account of the stay order. The culpability ¹⁹⁸² of the applicant had again become res integra after the Hon'ble High Court's stay order. It follows from this that the respondents had really no basis or foundation for invoking the said Rule 19 (1), CCS (CCA) Rules, 1988, on the date of its issue. (For a ¹⁹⁸²

similar case and decision, reference may be made to the Calcutta Bench case of Ajit Kumar Banerjee V. Union of India AIR 1987 (1) CAT (Cal) 258. The impugned order of removal is thus unsustainable in law and is therefore hereby quashed. Consequently, the applicant shall continue and be deemed to continue, under suspension in continuation with effect from the date of his removal, namely 7.11.1988.

9. As regards the other impugned order of refusal of increase in subsistence allowance, it is seen that no reason or ground whatsoever is given or even indicated broadly, in the said order why the increase which is permissible under the rules, was not given to the applicant. This is arbitrary and unfair and unsustainable. The impugned order is dated 26.7.1988, ^{is} therefore, hereby quashed. The respondents shall reconsider the request of the applicant for permissible augmentation of his subsistence allowance in accordance with the rules, and, after giving due opportunity of being heard to the applicant, decide the matter, and, in case of refusal, issue a speaking order, within three months from the date of receipt of this order.

10. There will be no order as to costs.


MEMBER (A).


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Dated: May 2nd, 1989.

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