

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

Allahabad the 26th day of May 1995.

1. O.A. No. 42/1988

Pratap Singh son of Sri Randhir Singh resident of village and post office Banshi District Lalitpur.

Applicant.

versus

1. Sub Divisional Inspector (Post South Sub Division Jhansi).

2. Pravar Adhikshak, Post Offices, Bundelkhand, Jhansi Mandal, Jhansi.

Respondents.

2. O.A. No. 176/1988

Durga Singh son of Sri Randhir Singh village and Post office Banshi, District Lalitpur.

Applicant.

versus

As in O.A. No. 42/1988 as above

Respondents.

3. O.A. No. 177/1988

Sri Karan Singh, son of Sri Ram Raja, resident of village and post office Banshi, District Lalitpur.

Applicant.

versus

As in O.A. No. 176/88 and 42/88

Respondents.

Shri R.K. Asthana, Counsel for applicant.

Shri N.B. Singh, Counsel for respondents.

HON. MR. S. DAS GUPTA, MEMBER (A)
HON. MR. T.L. VERMA, MEMBER (J)

(By Hon. Mr. T.L. Verma, Member (J))

O.A. 42/1988, O.A. 176/1988 and O.A. 177/1988

involve common question of law and fact, hence have been heard together and are being disposed of by this

common judgement.

2. Prata-p Singh, applicant in O.A, No.42 of 1988 and Karan Singh applicant in O.A. No. 176/88 were employed as Extra Departmental Mail Peon in Nadharwara Branch Post Office and Jamalpur Branch Post Office respectively and Durga Singh, applicant in O.A. No.176/88 was working as E.D. Packer Branch Post Jhansi at the relevant time . They belong to the same family. It is stated that they were involved in a criminal case no.886/85 under Section 323 I.P.C. They were found guilty of the charge levelled against them and were convicted and sentenced to rigorous imprisonment for 3 months.each. The criminal appeal no.44 of 1986 filed by them against their conviction was dismissed. The applicants, thereafter, moved the High Court in its revisional jurisdiction by filing criminal revision no.62 of 1987. The High Court, while admitting the criminal revision has passed the following order:

"Admit,


Summon the record and list for hearing. Randhir Singh will deposit the fine imposed on him by the trial court and the remaining applicants were on bail during the trial, They are released on bail on each of them furnishing a personal bond of rupees three thousand with two surties each in the like amount to the satisfaction to the Chief Judicial Magistrate, concerned."

After the appeal of the applicants was dismissed by the Sessions Court, the respondents passed the impugned orders on 30.3.87 whereby the applicants have been removed from service because of their having been convicted and sentenced to 3 months R.I. for the offence under Section 323 I.P.C. in criminal case no. 886/85.

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3. The impugned orders of removal from service of the applicants have been assailed mainly on the ground that the same have been passed without application of mind and without recording finding that they were guilty of conduct deserving the penalty of dismissal.

4. The respondents have resisted the claim of the applicants. In the counter-affidavit filed on behalf of the respondents, it has been stated that the competent authority in exercise of the powers conferred under rule 8-A of the E.D. (Conduct and Service) Rules, passed the impugned orders and as such cannot be faulted with for the reasons stated in the application. We have heard the learned counsel for the parties and perused the record. The provision of Rule 8-A of the E.D. (Conduct and Service) Rules reads as follows:

"8-A Provisions of rule 8 shall not apply:



- (i) where any penalty is imposed on an employee on the ground of conduct which has led to his conviction on a criminal charge; or
- (ii) where the appointing authority empowered to dismiss or remove an employee is satisfied that for some reason, to be recorded by that authority in writing it is not reasonably practicable to hold such enquiry; or
- (iii) where the President is satisfied that in the interest the security of the State it is not expedient to follow the procedure prescribed in that rule; and the appointing authority may consider the circumstances of the case and make such orders thereon as it deems fit."

5. The Supreme Court in Union of India Vs. Tulsi Ram Patel reported in 1985 SCC(L & S) page 672 has considered the provisions of Article 310 and 311 of the Constitution. In the said case, the Supreme Court while

holding that the pleasure doctrine as invogue, ^{in England} has been incorporated in Article 310 of the Constitution.

According to the provisions of Article 310 of the Constitution, a civil servant holds offence during pleasure of the President or the Governor as the ^{may be} case ~~need~~. This pleasure doctrine, however, is subject to the limitation placed by provisions of Clause(2) of Article 311 of the Constitution.

The Clause(2) of Article 311 of the Constitution reads as under

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Provided that where it is proposed after such inquiry to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply:

(a) Where 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;"

(b).....

(c).....

The Clause(2) of Article 311 gives a constitutional mandate to the principles of natural justice and the audi alteram partem rule by providing that a person employed in civil capacity under Union or State shall not be dismissed or removed from service or ~~or~~ reduced in rank only after an enquiry in which he has been

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informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges. The principle of natural justice and audi alteram partem rule is also subject to the proviso (a), (b) and (c) appended to the said article. In para 62 of the judgement in Tulsi Ram's case, the Supreme Court has observed :

"Before, however, Clause (a) of the second proviso can come into force, the condition laid down in it must be satisfied. The condition for the application of each of these clauses is different. In the case of clause(a), a government servant must be guilty of conduct deserving the penalty of dismissal, removal or reduction in rank which conduct has led him to being convicted on a criminal charge."

6. In the instant case, we are concerned only with the application of proviso(a) of clause(2) of the Article 311. It is by now a settled principle of law that proviso to Article 311(2) does not give unbridled power to the competent authority. The competent authority before acting under proviso (a) of Article 311(2) which corresponds, to sub rule(1) of rule 8-A of the E.D.A. (Conduct and Service) Rules, is expected to exercise its power under this proviso after due caution and considerable application of mind.

7. The principle of natural justice and audi alteram partem postulates that the competent authority, ~~should~~ before acting under Rule 8 A(i) of E.D. A. (Conduct and Service) Rules, is required to record finding that the conviction of the government servants is such that his further retention in public service

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is undesirable and, thereafter, issue a notice to show-cause to the concerned government servant as to why the proposed penalty of removal from service should not be imposed upon. After the representation to the show-cause is submitted, the same should be considered alongwith the judgement and the circumstances that led to the conviction of the government servant and then decide whether in the circumstances of the case, the government servant deserves the penalty of removal from service.

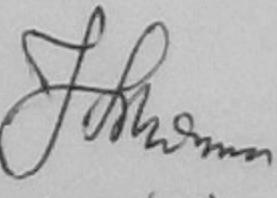
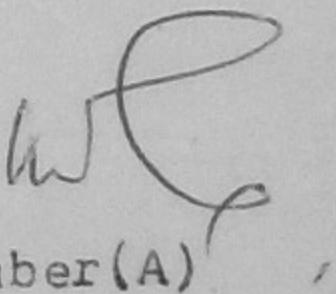
8. We have examined the record carefully and we find that the competent authority has neither recorded any finding that the conduct of the applicant which led to his conviction was such as deserved his removal from service nor issued a notice to him to submit a representation as to why the penalty of removal from service should not be imposed upon him. In this connection, it may also be relevant to mention that an offence under Section 323 I.P.C. is not an offence of moral turpitude. The offence under Section 323 I.P.C. pertains to causing simple injury and generally results in conviction ^{and} ~~in~~ sentence of payment of fine. The dispute ^{of the case} ~~which~~ gave rise to the institution ⁱⁿ in which they have connected, was admittedly a private dispute. This fact also was very relevant for deciding as to whether penalty of removal from service should be imposed on the applicants. In this view of the matter and having

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regard to the material of record, we are satisfied that the competent authority has not considered the conduct of the applicants leading to their conviction before passing the impugned orders.

9. In view of the above, we have no manner of doubt in holding that the applicants have been removed from service by the competent authority without complying with the requirement of law. That being so, the impugned orders cannot be allowed to stand. In the result, the O.A. No. 42/1988, O.A. No. 176/1988 and O.A. No. 177/1988 are allowed and the impugned orders removing the applicants from service are quashed. The applicants shall be re-instated in service within a period of one month from the date of communication of this order. They shall not be entitled to any pay and allowances for the period in between the date of their dismissal and the date of re-instatement. This period, however, shall count for all other service benefit.

10. There will be no order as to costs.


Johnson
Member(J)
Member(A)

/M.M./