

OPEN COURT

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 8th day of January, 1997
Original Application No. 1549 of 1992

District : Kanpur

CORAM :-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Jamuna Prasad S/o Late Shri Buddha,

Ticket No. 15/FS O.E.F.C.

R/o House No. 29, Ghola Ghat Cantt,

Kanpur-208004.

(BY Sri AK Sachin, Advocate)

.. . . . Applicant

Versus

1. The Union of India through the
Ministry of Defence
Directorate General Ordnance Factory,
New Delhi.
2. Directorate General of Ordnance Factory,
Ordnance Equipment Factory, Gr. Hqrs, ESIC Bhawan,
Sarvodaya Nagar, Kanpur-208005.
3. General Manager,
Ordnance Equipment Factories,
Kanpur Nagar.

(By ~~Sxxx~~ Km. Sadhna Srivastava, Advocate)

.. . . . Respondents

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ORDER (O r a l)

By Hon'ble Mr. S. Das Gupta, A.M.

This application was filed under Section 19 of the Administrative Tribunals Act, 1985, challenging the order dated 5-12-1991 by which the disciplinary authority had imposed the penalty of removal from service on the applicant and also the order dated 4-8-1992 by which the applicant's appeal was rejected. The facts of the case giving rise to the application are that the applicant was convicted in criminal proceedings under Section 498/30 I.P.C. During the criminal proceeding, he was suspended from service and after he was convicted, he was removed from service under the power conferred on the disciplinary authority under Rule 19(1) of the CCS (CCA) Rules, 1965 after service of a show cause notice. The applicant filed an appeal and the same was also dismissed.

2. The only ground taken by the applicant is that in a subsequent appeal filed by the applicant in the Hon'ble High Court of Judicature at Allahabad, he has been granted bail and the operation of the sentence against him was stayed. His contention is that once the Hon'ble High Court has stayed the operation of the sentence, the disciplinary authority could not have imposed penalty of removal from service on the basis of conviction.

3. The respondents have filed a counter affidavit, in which the circumstances leading to the imposition of penalty on the applicant have been explained. They

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have relied on the decision of the Principal Bench in the case of PK Gupta to contend that it is open to the Government to exercise power conferred on it by Sub Section (2) of Article 311 of the Constitution of India as long as conviction stands.

4. The applicant has filed a rejoinder affidavit reiterating his contention in the OA.

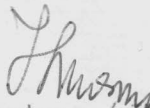
5. When the case was taken up for hearing, none appeared for the applicant. As none had appeared for the applicant on several occasions in the past, we heard learned counsel for the respondents and perused the record and proceeded to pass order in this case.

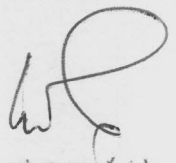
6. The applicant admittedly was convicted in a criminal case on serious charges. In such a situation, it was open to the appropriate authority to impose any penalty on the applicant including removal from service after giving him show cause notice as provided for in Section 19(1) of the CCS (CCA) Rules, which is actually framed on the basis of the provisions contained in Section 311(2) of the Constitution of India. The applicant admittedly had filed an appeal against his conviction in the Hon'ble High Court of Judicature at Allahabad and the Hon'ble High Court had suspended this sentence. The conviction, however, has not been set aside. In the circumstances the basis for passing the impugned order still exists. In the case reported in 1995 SCC(L&S) 686 - Dy Director of Collegiate Education (Administration) Madras Vs. S. Nagoor Meer, the Hon'ble Supreme Court in a similar controversy held that suspension of sentence or release on bail does not render the provisions contained in Article 311(2) inoperative.

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7. In view of the foregoing, the applicant has not made out any case for our interference. In case eventually the appeal is allowed in his favour and conviction is set aside, it would be open to the petitioner to make representation to the respondents for reinstatement in service.

8. The present application is dismissed accordingly. The parties shall, however, bear their own costs.


Member (J)


Member (A)

Dube/