

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

\* \*

Allahabad : Dated this 19<sup>th</sup> day of November, 1998

Original Application No. 1614 of 1992

District : Kanpur Nagar

CORAM :-

Hon'ble Mr. S. Dayal, A.M.  
Hon'ble Mr. S.K. Agrawal, J.M.

Radha Kisan Awasthi,  
S/o Late Chunni Lal Awasthi,  
R/o Village & Post Tikara,  
P.S. Bithoor,  
Kanpur Nagar.

(Sri Haider Zaidi, Advocate)

. . . . Applicant

Versus

1. Union of India  
Through Secretary  
Ministry of Defence,  
New Delhi.
2. Deputy Director General,  
Ordnance Factories (Disciplinary Authority),  
Director General,  
Ordnance Factories,  
Ordnance Equipment Factories Gr. Hd. Qrs.,  
ESIC Bhawan, Sarvodaya Nagar,  
Kanpur.
3. Additional Director General/  
Ordnance Factories, O.E.F. Hd. Qrs.  
Addl Directorate General,  
Ordnance Factories, Ordnance  
Equipment Factories (Group),  
E.S.I.C. Bhawan, Sarvodaya Nagar,  
Kanpur-5.

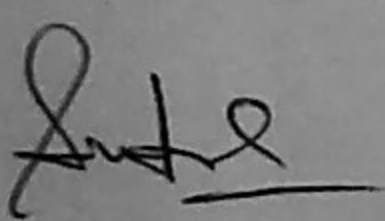
(Sri N.B. Singh, Advocate)

. . . . Respondents

O R D E R

By Hon'ble Mr. S.K. Agrawal, J.M

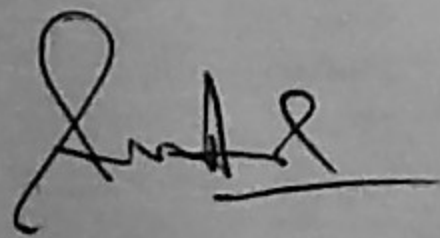
In this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer that the impugned order no. 1648/A/VIG/OEF dated 1-6-1992 passed by the respondent no. 2 and subsequent order no. DO.PT.II No. 236 dated 4-6-1992 passed by the respondent no. 3 confirming the dismissal





of the applicant (Annexures-1 and 2) respectively be quashed and the applicant be treated in continuance in service without any break during the pendency of the criminal appeal no. 1883/1991 - Radhak Kishan Awasthi Vs. State of U.P. with all consequential benefits.

2. In brief the facts of the case as stated by the applicant are that the applicant was appointed as LDC in the year, 1982 and since then he was working with utmost devotion. In the year, 1988, he was involved in a criminal case. The allegation against the applicant was that he had committed murder of his wife. The applicant was convicted. He filed an appeal before the Allahabad High Court. The Hon'ble High Court of Judicature at Allahabad after admission released the applicant on bail during the disposal of the appeal and stay the execution of sentence by the 2nd Session Judge, Kanpur. On conviction, the respondent no.2 issued a notice to show cause to the applicant and the applicant submitted his reply but after consideration of his reply respondent no.2 passed the impugned order of termination. It is stated by the applicant that when an appeal is filed challenging the conviction, it is a continuation of proceeding and does not conclude conviction, until the appeal is finalised. It is also submitted that the applicant is discharging his duties with utmost sincerity and honesty and the termination on the basis of conviction is against the provisions of law. It is, therefore, prayed that the impugned order of termination and subsequent order thereof at Annexures-A-1 and A-2 be quashed and the applicant





be treated in continuation of his service and he be allowed be treated in continuous service without any break during the pendency of the criminal appeal no. 1883 of 1991 - Radha Kishan Awasthi vs. State of U.P. with all consequential benefits.

3. That a counter affidavit has been filed. In the counter affidavit, it is stated that after filing a copy of the judgement of the Session Court a show cause notice was given to the applicant under Rule 19 (of the Rules, 1965) proposing the penalty for dismissal from service. The applicant submitted his explanation and after considering his explanation dated 5th December, 1991, an order of dismissal was ~~issued~~<sup>made</sup>. It is admitted that the applicant filed an appeal against his conviction by the Session Judge before the High Court of Judicature at Allahabad and the appeal was admitted. The applicant was released on bail during the disposal of this appeal and the sentence was suspended till the decision of this appeal. It is also stated that only the sentence was suspended and not conviction. Therefore, the services of the applicant can be dismissed without waiting for disposal of the appeal pending before the Hon'ble High Court. It is also stated that the conduct of the applicant in murdering his wife for dowry necessitated his dismissal. Therefore, penalty of dismissal is just and proper and there is no violation of any rules or principle of natural justice. In this way by this counter affidavit, respondents have submitted to discuss this DA with costs.

*[Handwritten signature]*



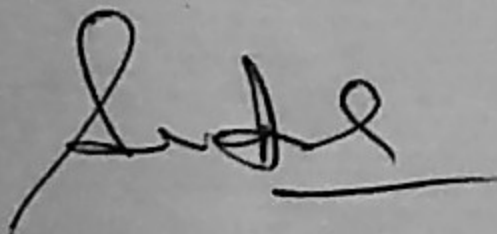
4. No rejoinder affidavit has been filed inspite of sufficient opportunity given to the applicant.

5. Heard learned counsel for the applicant and learned counsel for the respondents and perused the whol record carefully.

6. In this connection instructions are issued from time to time by the Government of India. These instructions provide, "it has been decided and it is hereby made clear that it shall hereafter be the duty of a Government servant who may be convicted in a criminal court to inform his official superiors of the fact of his conviction and the circumstances connected therewith, as soon as it is possible for him to do so. Failure on the part of any Government servant so to inform the official superiors will be regarded as suppression of material information and will render him liable to disciplinary action on this ground alone, apart from the penalty called for on the basis of the offence on which, his conviction was based. (G.I.M.H.A. D.M. No. 25/70/49 Ests., dated the 26th December, 1949.)

(2) ~~Action~~ on conviction.--(a) On a criminal charge.--  
The following principles should apply in regard to action to be taken in cases where Government servants are convicted on a criminal charge:-

(i) in a case where a Government servant has been convicted in a Court of Law of an offence which is such as to render further retention in public service of a Government servant prima facie undesirable the disciplinary authority may, if it comes to the conclusion that an order with a view to imposing a penalty on the Government servant on the ground of conduct which had led to his conviction





on criminal charges should be issued, issue such an order without waiting for the period of filing an appeal, or, if an appeal has been filed, without waiting for the decision in the first Court of appeal. Before such an order is passed, the Union Public Service Commission should be consulted where such consultation is necessary".

7. Article 311 of the Constitution of India provides as follows:-

"311. x x x x x x x x x

(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.

x x x x x x x x x

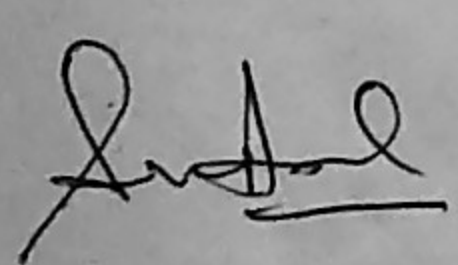
Provided further that this clause shall not apply :-

(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; or"

8. In Deputy Director College Education, Madras Vs. S. Nagoor, Meera, 1995 (29) ATC 574, it was held by the Apex Court that on conviction the departmental authorities can proceed against the delinquent under Rule 19 of OCA Rules. It is further held that on appeal against conviction and sentence only sentence is suspended under Section 389 Cr.P.C. Therefore, the proceeding against the applicant under 19 of OCA Rules is not in any manner against any provisions of law.

9. On the basis of above legal propositions and facts and circumstances of this case, it can be held that in the instant case, there is no violation of the principles of natural justice while passing the impugned order of dismissal, against the applicant.

10. It is also submitted by the learned lawyer for the applicant that punishment of dismissal is disproportion-





ionate to the gravity of the offence as it has no nexus with the official duties of the applicant. On the the other hand learned lawyer for the respondents have submitted that the applicant has been convicted for the offence under Section 302/498-A I.P.C. for murdering his wife for dowry. Therefore, for such a heinous offence, the penalty of dismissal from service is not grave.

11. Heard learned lawyer for the applicant and learned lawyer for the respondents and perused the whole record.

12. In Ranjit Thakur Vs. UOI 1987 (4) SSC 611, it was held that in that case appellant was found guilty of *lesser* punishment and was quashed on the ground of strictly being disproportionate. The court interfered with the punishment as the punishment was outrageous defiance of logic and was shocking.

13. In UOI Vs Parmanand, 1989 SC page 1185, it has been held that where a person without inquiry is dismissed, removed or reduced in rank solely on the basis of conviction by a criminal court under Clause 'A' of the 2nd proviso to Article 311(2) of the Constitution of India and the penalty imposed in the light of conviction and punishment of sentence inflicted on the person. If the penalty imposed is apparently unreasonable or excessive having regard to any other criminal charge, the Tribunal may step in rendering 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'.

*[Signature]*



14. In B.C. Chaturvedi Vs. UOI, 1995 (6) SSC 749(3) the Apex Court held that the High Court or Tribunal while exercising the power of judicial review cannot normally substantiate its own conclusion on penalty and impose some more other penalty. If the punishment imposed by the disciplinary authority or the appellate authority *appears to be disproportionate to the gravity of charge* in High Court or Tribunal, it would be appropriately mould to resolve by directing the disciplinary authority or appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself impose appropriate punishment with cogent reasons in support thereof.

15. The same view was also taken in Indian Oil Corporation Vs Ashok Kumar Arora (1997) (3) SSC 72 and it was held, "that the High Court in such cases of departmental inquiry and findings recorded therein does not exercise the power of appellate court/ authority. The jurisdiction of the High Court in such cases is very limited. For instance, where it is found that domestic inquiry is vitiated by non-observance of the principles of natural justice:-  
(2) denial of reasonable opportunity, if findings are based on no evidence (3) punishment is disproportionate to the proved misconduct of the employee.

16. In Deo Kishan Sharma Vs. UOI and Ors, OA No.585/1995, decided on 29-1-1997, by Jaipur Bench, 1997 (2) SLR 434, it was held that penalty can be imposed without awaiting the result of the appeal in criminal case. The authority may impose penalty on the basis of conviction in criminal case, instead departmental case, even when an inquiry has been done. Therefore, the contention of the learned lawyer

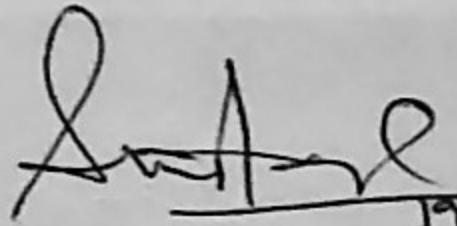


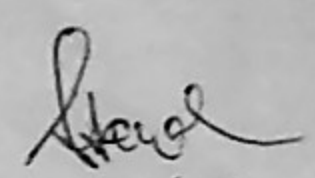
for the applicant has no force.

17. In the instance case the punishment imposed upon the applicant does not appear to be disproportionate to the gravity of the offence which was proved against the applicant. Therefore, there is no basis to interfere in the impugned order of dismissal passed by the respondent.

18. We, therefore, find no merit in this OA.

19. Therefore, this original application is dismissed with no order as to costs.

  
Member (J) 19/11/58

  
Member (A)

Dube/