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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

DATED : THIS THE ...^{11th} DAY OF JANUARY, 1996.

QUORUM :- Hon. Mr. T. L. VERMA, Member-J
Hon. Mr. D. S. Bawej, Member-A.

Original Application No. 1067 of 1993.

Amruddin s/o. Sri Ghassu,
R/o. Plot No. 161-A, near Hari Masjid,
By Pass Road, Bara-6, District Kanpur.
Nagar. Applicant.
(BY ADVOCATE SRI Haider Zaidi)

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1. The Union of India through the Secretary, Ministry of Defence, New Delhi.
2. The General Manager, Ordnance Equipment Factories, Ministry of Defence, Government of India, E.S.I.C. Bhawan, Sarvodaya Nagar, Kanpur.
3. The Assistant Workshop Manager/Personnel, Ordnance Equipment Factories, Ministry of Defence, Government of India, E. S. I. C. Bhavan, Sarvodaya Nagar, District Kanpur Nagar.

.... Respondents.

(BY ADVOCATE KM. SADHNA SRIVASTAVA)

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O R D E R

(By Hon. Mr. T. L. Verma, Member-j)

This application under Section 19 of the Administrative Tribunals Act, 1985 has been filed for quashing the orders dated 15.05.1995.

2. The applicant while working in Ordnance Equipment Factory, Kanpur was charged and tried for the offences under Section 498-A and 306, I. P.C. in the Court of Additional District & Sessions Judge, (IV), Kanpur. He has been convicted by the said Court on the said charges and sentenced to three years imprisonment.

3. The applicant has filed an appeal in the High Court against the conviction and sentence aforesaid. The High Court has suspended the sentence imposed, passed by the said Court and release him on bail.

4. On 16.4.1993, the General Manager issued a notice to the applicant calling upon him to show cause as to why he should not be removed from service in view of his conviction, by the Criminal Court. The applicant submitted show-cause. The General Manager considered the show cause filed by the applicant and in exercise of power ~~arising~~ ^{Conferred under} Section 19(1) of the CCS CCA Rules, 1964, removed him from service. This application has been filed for quashing the aforesaid order on the ground that the execution of sentence imposed by the Additional District and Sessions Judge, (IV), Kanpur has been suspended by the High Court.

5. The respondents have resisted the claim of the applicant. In the written statement filed on behalf of the respondents, it has been stated that the impugned order has been passed by the competent authority

on being satisfied that the conduct of the applicant which led to his conviction on a criminal charge is such that his retention in service was not in the public interest. Hence the impugned orders can not be interfered with in exercise of the power of judicial review.

6. We have heard the learned counsels for the parties and perused the record. Article 311(2) of the Constitution of India declares that no person, who is member of Civil services of the Union or an All India Service or a civil service of the State or holds a civil post, under Union or a State 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. The second proviso, however, carves out three exceptions to the said rule. We are concerned with the first exception mentioned under Clause 'A' which reads as follows :-

"Provided further this clause shall not apply :-

(a) Where a person is dismissed or removed or reduced in the rank on the ground of conduct which has led to his conviction on a criminal charge.

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Analogous provisions have been made in rule 14 and 19(1) of the CCS CCA Rules. According to the provisions of Rule 14(1) of the CCS CCA Rules, no order imposing any of the penalty specified in Clause 5 to 9 of the Rule 11 shall be made except after an inquiry held as far as may be in the manner provided in these rules or in the manner provided by the public servant Enquiries Act, 1815, where such inquiry is held under that Act. Rule 19(1) provides that notwith-

standing anything contained in Rule 14 to 18 of the rules, the disciplinary authority may dismiss or remove or reduce in rank a government servant without holding inquiry on the ground of conduct which has led to his conviction on a criminal charge. The proviso to Rule 19, however, provide that the Government servant may be given an opportunity of making representation against the penalty proposed to be imposed before any order is made in a case under Clause I.

7. The Proviso II of Article 311 of the Constitution of India and Rule 19 of the CCS CCA Rules, it would thus appear empower the disciplinary authority to dismiss, remove or reduce in rank a government servant, if the conduct of such government servant which has led to his conviction on a criminal charge is such that his retention in service was not in public interest.

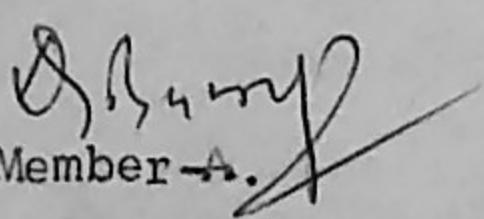
8. In view of the above position of law holding of an inquiry, before removing the applicant, in view of the provisions of Article 311(2) and 19(1) of the CCS CCA Rules was not necessary. We are unable to agree with this contention of the learned counsel for the applicant that the action under Rule 19(1) of the CCS CCA Rules should have awaited for the decision in appeal filed against conviction. The proper course in such case is to take action under Rule 19(1) of the CCS CCA Rules once the government servant is convicted of a criminal charge and not to wait for the decision in appeal or revision as the case may be. If, however, the accused government servant is acquitted in appeal, the order can be revised and if the government servant is reinstated, he shall be entitled to all the benefits to which he would

have been entitled to had he continued in service.

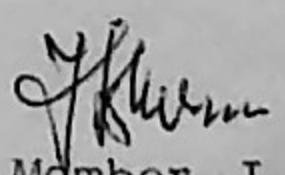
9. Before passing order under Rule 19(1) the disciplinary authority is required to give an opportunity to the government servant as to why proposed penalty be not imposed on him. If after considering the show cause and the circumstances of the case in which the concerned Government servant has been convicted, the disciplinary authority comes to the conclusion that his conduct, which led to his conviction on a criminal charge, is such that he should not be retained in service, he can pass an order of removal, dismissal or reduction in rank of the said government servant. In this case the competent authority has complied with the aforesaid requirement of law.

10. What is really relevant, in a case like this, is the conduct of the Government servant which has led ^{to} his conviction on a criminal charge. The applicant has been convicted of the charges of subjecting his wife to cruelty and for abatement of suicide. Both the charges are serious in nature. The decision of the disciplinary authority removing the applicant from service in the aforesaid context cannot be faulted with.

11. In view of the facts and circumstances discussed above we find no merit in this application and the same is dismissed, leaving the parties to bear their own costs.


Member-A

Pandey/-


Member-J.