

(S)

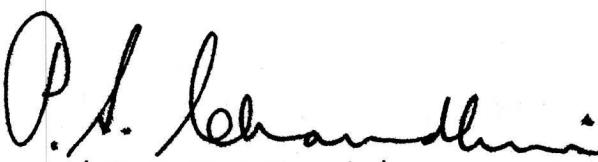
CORM : Hon'ble Mr. P.M. Joshi : Judicial Member
Hon'ble Mr. P.S. Chaudhuri : Administrative Member

20/04/1989

Heard Mr. N.S. Shaikh for Mr. B.M. Mangukiya and Mr. J.D. Ajmera, the learned counsel for the petitioner and respondents respectively. The final orders is passed as under :-

^M
In view of the foregoing reasons, the application merits no consideration and it is rejected summarily. "

The reasons will be recorded during the course of the day.


(P S Chaudhuri)
Administrative Member


(P M Joshi)
Judicial Member

*Mogera

Girishchandra Ramkrishna Adhvaryu,
Residing at L-5 - 4/105,
Shastrinagar,
Narainpura,
Ahmedabad.

...Petitioner

(Advocate : Shri B.M.Mangukiya)

Versus

1. The Union of India
(Notice to be served through
The Secretary,
Department of Telecommunications,
New Delhi.)
2. The General Manager,
Telecommunications,
Gujarat Circle,
Ambica Bhavan,
Nr.High Court,
Ahmedabad - 380 009.
3. Mr.S.C. Kakar,
Dy. General Manager (Admn),
Gujarat Telecommunication Circle,
Ahmedabad - 380 009.

...Respondents.

(Advocate : Shri J.D. Ajmera)

Coram :	Hon'ble Mr.P.M. Joshi	:	Judicial Member
	Hon'ble Mr.P.S. Chaudhuri	:	Administrative Member

20/04/1989

ORAL - ORDER

Per :	Hon'ble Mr.P.M. Joshi	:	Judicial Member
-------	-----------------------	---	-----------------

The petitioner Shri Girishchandra R. Adhvaryu has filed this application under Section 19 of the Administrative Tribunals Act, 1985. He has challenged the validity of the order at Annexure-A-1, dated 8th September 1987, whereby the disciplinary authority (Deputy General Manager (Admn) Gujarat Telecom Circle, Ahmedabad, imposed the penalty of "Dismissal from service" under Rule 19 (1) of the Central Civil Services (Classification control and appeal) Rules 1965. The said order reads as under :

ORDER

Whereas Shri Girishchandra Ramchandra Adhvaryu, formerly Cashier, O/o General Manager Telecommunications, Gujarat Circle, Ahmedabad-9, now under Suspension, has been convicted on a criminal charge under Section-409, 467, 468, 471, IPC and 5 (1) (d) read with 5 (2) of the PC Act 1947.

AND WHEREAS it is considered that the conduct of the said Girishchandra Adhvarya, which has led to his conviction, is such as to render his further retention in the Public Services undesirable/ gravity of the charge is such as to warrant the imposition of major penalty.

Now, therefore, in exercise of the powers conferred by Rule 19 (i) of the Central Civil Services (Classifications Control and Appeal) Rules, 1965, the undersigned hereby dismisses the said Shri Girishchandra Ramchandra Adhvaryu, formerly Cashier, office of General Manager, Telecommunications, Gujarat Circle, Ahmedabad-380 009, from the services with effect from 8th September 1987, After-noon.

2. According to the petitioner he being aggrieved by the Judgment and order of conviction passed by the learned Special Judge, Ahmedabad, in Special Case No. 20/1984, he has preferred an appeal in the High Court which is registered as Criminal Appeal No. 782/87 and since the said appeal is pending, no final order of conviction can be said to have been passed. It is therefore, contended by the petitioner that the impugned order is bad in law and deserves to be set aside.

3. Mr. N. S. Shaikh for Mr. B. M. Mangukiya, the learned counsel for the petitioner contended inter alia that when the petitioner had already filed a Criminal Appeal No. 782/87 in the High Court, the disciplinary authority was not competent to initiate the proceedings under Rule 19 of the C.C.S. (C.C.A.) Rules 1965, and hence the impugned order is bad in law. Mr. J. D. Ajmera the learned counsel for the respondents opposed the admission of the application on the ground that the disciplinary authority is competent to take the decision on the

basis of the order of conviction passed against the Government employee. According to him the pendency of the appeal does not debar the disciplinary authority in resorting to the powers conferred under Rule -19 (1) of the C.C.S. (C.C.A.) Rules 1965.

4. The fact that the petitioner while holding same time scale as the post of cashier in the Upper Division Clerk in the Office of the G General Manager, Gujarat Telecommunications was indicted for the offences punishable under Section 409, 467 and 468 and 471 of Indian Penal Code and also under Section 5 (1) of the Prevention of Corruption Act 1947, is not indispute. It was alleged inter alia against him that he deposited a cheque of Rs.9000/- by converting it to Rs.2,09,000/- and encashed the said amount from State Bank of India, and accordingly misappropriated the said amount. Moreover the fact that the petitioner was convicted and sentenced to suffer 2 years rigorous imprisonment and a fine of Rs. 500/- ~~and~~ on the ground for the aforesaid offences by the Special Judge, vide his Judgment dated 31/8/1987 in Special Case No. 20, 1984, is not controverted. The disciplinary authority on the basis of the aforesaid order of conviction has passed the impugned order.

5. The sole ground on which the impugned order is assailed is that the petitioner has appealed against the order of conviction passed by the Special Judge and hence the matter being subjudice the competent authority was not entitled to pass the impugned order. According to him, the matter becomes 'res-integra'. The issue

raised by the petitioner in this application is now well settled by the Full Bench of the Tribunal (comprising of Hon'ble Mr. Justice K. Madhava Reddy, Chairman, Hon'ble Mr. Kaushal Kumar, Member (Administrative), Hon'ble Mr. Ch. Ramkrishna Rao, Member (Judicial), Full Bench was constituted in the case of Shri Om Prakash Narang v/s. Union of India & Ors. The Full Bench in its considered Judgment dated 7-9-1988 held as under :

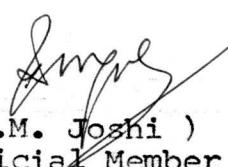
"We are unable to agree with this. "While the right of an appeal is a vested right and the order of conviction and sentence made by the trial court may be set aside by the appellate Court, after a review of the entire evidence, but until the appeal is heard and allowed, the conviction and Sentence very much operate. In fact, unless the accused appellant, who now stands convicted of the offences is released on bail, he would also undergo the sentence and the period of suspension which he undergoes under the amended code of criminal procedure is set off against the sentence, if any, ultimately imposed by the appellate or revisional court. Unless the conviction operates, the sentence could not have been undergone. Only because the convicted accused is undergoing the sentence, the appellate court may release him on bail. Merely because the appellate court is seized of the matter, the conviction and sentence does not stand suspended. Even the sentence stands suspended only if the appellate court choose to suspend it and release the appellate on bail. The basic assumption that on a mere filing of the appeal or upon the appeal being admitted the conviction and sentence itself does not stand cannot be accepted as correct position of law. Neither Rule 19 (i) of the CCS (CCA) Rules nor Clause (a) to the second proviso to Article 311 (2) of the Constitution speaks of a final order of conviction, they only speak of conduct disclosed which has led to his conviction on a criminal charge. We are, therefore, unable to agree with the view taken by the Calcutta Bench in the aforesaid case."

6. In the present case the petitioner has not been granted bail by the High Court in the criminal appeal No. 782/88 filed by him. Even otherwise he is admittedly convicted and sentenced by the criminal court. He was already placed under suspension w.e.f. 8.8.1983. After his conviction, the disciplinary authority has found that his conviction has rendered his retention in the public service undesirable. The disciplinary authority has power to impose any penalty under Rule 19 of C.C.S. (CCA) Rules, 1965, on the ground of conduct which has led to his conviction on a criminal charge even if an appeal against the conviction and sentence is pending and even if the sentence is suspended and the delinquent petitioner is enlarged on bail.

7. The petitioner, has no valid ground to assail the impugned order. We however, have no doubt that the petitioner would not be without the remedy for ever. If he, ultimately succeeds in the appeal pending before the Hon'ble High Court and if the order of conviction and sentence are set aside, he will be reinstated to his former post.

In view of the foregoing reasons, the application merits no consideration and it is rejected summarily.


(P.S. Chaudhuri)
Administrative Member


(P.M. Joshi)
Judicial Member