

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

T.A. No.109 of 1996
(CR No.9147-W/80)

Present: Hon'ble Mr. D. Purkayastha, Judicial Member
Hon'ble Mr. B.P. Singh, Administrative Member

Hrishikesh Chakraborty, S/O Late Ramesh
Chandra Chakraborty, residing at 140,
D.J.Road, Kalimandir, P.O.Bhadrakali,
Dist.Hooghly

.... Applicant

VS

1. Union of India, represented by the
Secretary, Ministry of Communication,
Government of India, New Delhi

2. The Post Master General, West Bengal
Circle, 1 Council House Street,
Calcutta-1

3. Director, Postal Services,
Headquarters, West Bengal Circle,
1, Council House Street, Calcutta-1

4. The Presidency Post Master,
General Post Office, Calcutta

5. The Senior Superintendent of Post
Offices, North Calcutta Division,
Post Belgachia, Calcutta-37

.... Respondents

For the Applicant : Mr. A. K. Banerjee, counsel

For the Respondents: Mr. A. Hossain, counsel

Heard on 11.1.99

: : Date of order: 09-2-1999

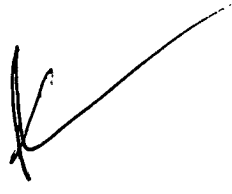
O R D E R

D. Purkayastha, JM

Applicant, Shri Hrishikesh Chakraborty had challenged the order of dismissal dated 3.7.78 passed by the respondent No.4, Presidency Post Master, General Post Office, Calcutta, Annexure/D to the application, as well as the order of suspension dated 2.2.74, Annexure/A to the application issued by the Sr. Supdt. of Post Offices, North Calcutta Division, respondent No.5 on the ground that while the applicant was serving as Sub-Postmaster, Pathuriaghat P.O. a complaint was filed before the Police on 15th July, 1976 alleging that the applicant and one Shri Satya Saran Bhattacharjee had misappropriated a sum of Rs.500/- from

the saving bank account of one Sm. Rama Chatterjee and that they misappropriated Rs.900/- which was deposited by one Sm. Jonha Devi in her saving bank account No.890610. On the basis of the said allegations Police filed a complaint on 15.7.76 before the 4th Additional Special Judge, Calcutta under section 409/120B/465/471 of the Indian Penal Code and a criminal case was started. In the said case the applicant was convicted under section 120B(1), 409 and 465 of the Indian Penal Code in respect of the charge of criminal breach of trust of Rs.500/- and he was sentenced to rigorous imprisonment for 6 months and to pay a fine of Rs.500/-, in default to suffer rigorous imprisonment for 3 months more. The applicant preferred an appeal before the Hon'ble High Court and in the said appeal the Hon'ble High Court admittedly on 30.5.78 issued order staying the realisation of the fine imposed on the applicant and allowed the applicant to remain on bail pending disposal of the said appeal. It is also alleged by the applicant that he was placed under suspension with effect from 2.2.1974 by an order dated 2.2.74 (Annexure/A to the application). During the pendency of the appeal the applicant came to know that he has been dismissed from service by the Presidency Post Master, respondent No.4 by a letter dated 3.7.78, Annexure/D to the application. Feeling aggrieved by the said order of dismissal the applicant made representation to the authorities, but to know effect. It is alleged by the applicant that the respondent No.4 ignoring the order passed by the Hon'ble High Court and without taking any disciplinary proceeding under Rule 14 of the CCS(CCA) Rules, 1965 dismissed him from service. So, the impugned order of dismissal is violative of the principle of natural justice and is liable to be quashed.

2. The respondents did not file any written reply in this case. Mr. A. Hossain, learned advocate appears on behalf of the respondents at the time of hearing. It is found that the applicant filed this case before the Hon'ble High Court at



Calcutta in the year of 1980 and the case was registered as Civil Rule No.9147-W/80 and that has been transferred to this Bench in the year of 1996 and renumbered as TA 109/96. Mr. A. K. Banerjee, learned advocate appearing on behalf of the applicant contended that the instant order of dismissal of the applicant from the service issued by the respondent No.4, Presidency Post Master on 3.7.78 (Annexure/D to the application) is violative of the principle of natural justice and arbitrary in view of the fact that no disciplinary proceeding has been initiated by the respondents before dismissing the applicant from service on the basis of the conviction and sentence passed by the 4th Additional Special Judge in a criminal case which was stayed by the Hon'ble High Court on appeal. Mr. Banerjee further contended that as the applicant was dismissed from service without initiating any disciplinary proceeding for imposing major penalty, as laid down under the relevant rules, such dismissal is illegal and is liable to be quashed. Mr. Banerjee also submits that Rule 14 of the CCS(CCA) Rules prescribes the procedure to be followed for dismissal of a public servant and the respondents as the statutory authority are under obligation to follow the same, but in the instant case the respondents blatantly violated the said provision. He further contended that the order of conviction passed by the 4th Additional Special Judge has been stayed by the higher appellate authority i.e., the Hon'ble High Court. So the respondents is under legal obligation to proceed in accordance with the order passed by the appeal Court, but the authority had ignored the order passed by the Hon'ble High Court. The applicant made representation to the authorities, but they did not consider the case of the applicant. Thereafter the applicant filed the case before Hon'ble High Court which was transferred to this Tribunal for disposal according to law. So the instant order of dismissal is illegal, highly arbitrary and liable to be quashed.



3. Mr. A. Hossain, learned advocate appearing on behalf of the respondents submits that the disciplinary authority or appointing authority is empowered to pass appropriate order dismissing the applicant on the ground of conduct which has led to his conviction on criminal charges, as contemplated under Rule 19 of the CCS(CCA) Rules, 1965 and that power is absolute one and that cannot be challenged in the Court of law. Mr. Hossain further submits that under the rule a Government servant in appropriate cases on conviction in a criminal charge may be placed under suspension, if not already suspended. Similarly, a Government servant on conviction in criminal charges in appropriate case may also be dismissed from service without holding any enquiry as contemplated under CCS(CCA) Rules and thereby the application is devoid of merit and is liable to be dismissed.

4. In order to resolve the controversy between the parties we would like to refer to the relevant provision of Rule 19 of the CCS(CCA) Rules, which runs as follows:

"Special procedure in certain cases

Notwithstanding anything contained in Rule 14 to Rule 18-

- (i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or
- (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
- (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules.

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule."

In the instant case admittedly the applicant was convicted in a criminal case on the ground of misappropriation of Rs.500/- and he was sentenced to rigorous imprisonment for six months and to pay a fine of Rs.500/-, in default to suffer rigorous imprisonment for another 3 months. It is also an admitted fact that the applicant had preferred an appeal before the Hon'ble High Court who was pleased to admit the appeal and directed the applicant to remain on bail till the disposal of the appeal. It is also an admitted fact that the Hon'ble High Court directed the stay of realisation of the fine imposed by the 4th Additional Special Judge on the applicant on conviction. On a perusal of the rule 19 of the CCS(CCA) Rules it is found that the Government of India issued instruction which should be followed in a case where a Government servant is convicted on a criminal charge and the said instruction runs as follows :

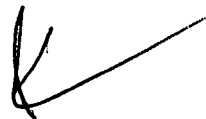
"(i) In a case where a Government servant has been convicted in a Court of Law of an offence which is such as to render further retention in public service of a Government servant prima facie undesirable, the disciplinary authority may, if it comes to the conclusion that an order with a view to imposing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

So, the said instruction indicates that if an appeal is preferred and pending before the Hon'ble High Court, the disciplinary authority is vested with the power to pass appropriate order on the delinquent officer involving criminal charge without waiting for decision from the first Court of appeal. But the proviso of the Rule states that the disciplinary authority should give an opportunity to the applicant for making representation on the penalty proposed to be made before an order is issued under sub-clause (i). But in the instant case we find that no opportunity of being heard or making representation on the

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penalty imposed has been afforded to the applicant as required under the proviso of Rule 19 of the CCS(CCA) Rules. We have gone through the order dated 3.7.78 and it is found that in the said order the disciplinary authority i.e., the Presidency Postmaster, Calcutta opined that it was considered that the conduct of Shri Hrishikesh Chakraborty, Ex-SPM, Pathuriaghata P.O. which has led to his conviction in such as to render his further retention in the public service was undesirable, since he was convicted on criminal charges under sections 120B, 409 & 469 of the IPC. But on a perusal of the rule it is found that the power of dismissal is vested with the disciplinary authority in a case when a delinquent officer is convicted on a criminal charge, but before passing such order without holding any inquiry as contemplated in rule 19 an opportunity should be given to state his case. In the instant case it is found that no opportunity has been afforded to the applicant before passing the order on 3.7.78 by the respondent. Thereby it is found that the impugned order of dismissal has been issued by the authority in violation of the provisions of Rule 19 of the CCS(CCA) Rules, 1965. So, the said order is not tenable in law and liable to be quashed.

5. In view of what has been stated above we set aside the order of dismissal dated 3.7.78 (Annexure/D to the application) and remand the case to the disciplinary authority for passing appropriate order within a period of three months from the date of communication of this order, after giving an opportunity to the applicant as it is provided under proviso to Rule 19 of the CCS(CCA) Rules or to proceed in accordance with the law. Be it mentioned that the applicant did not produce any order relating to the fate of the appeal preferred by him. Mr. Banerjee, learned advocate for the applicant on our query also could not produce any order that the applicant was acquitted by the Hon'ble High Court on appeal preferred by him. Since the applicant could not furnish any information relating to the fate of the appeal



preferred by him it can be simply presumed that the applicant's appeal is still pending or the applicant's order of conviction has been upheld. The case is disposed of accordingly without any order as to costs.

B. P. Singh
(B. P. Singh) 9/2/99

MEMBER (A)

D. Purkayastha
(D. Purkayastha) 9/2/99

MEMBER (J)