

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
S.P.A. (JODHPUR BENCH, JODHPUR)

O.A. No. 302/2001
T.A. No.

199

DATE OF DECISION

I.K.Bhatnagar

Petitioner

Mr.N.K.Khan delwal

Advocate for the Petitioner (s)

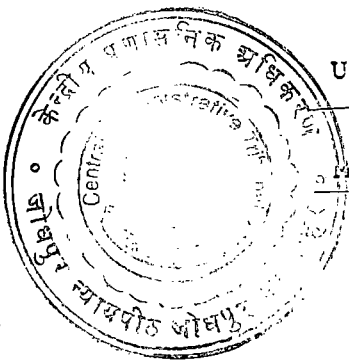
Versus

Union of India & Ors.

Respondent

Mr.Arun Bhansali

Advocate for the Respondent (s)



CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

The Hon'ble Mr. Gopal Singh, Adm.Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?

✓ 2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the Judgement ?

4. Whether it needs to be circulated to other Benches of the Tribunal ?

- sd -

(GOPAL SINGH)
MEMBER (A)

- sd -
(G. L. GUPTA)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.

* * *

Date of Decision: 18.11.02

OA 302/2001

I.K.Bhatnagar s/o Shri Anand Swaroop Bhatnagar r/o Qr.No.T-2/78, Anudeep Colony, Bhabha Nagar, Rajasthan Atomic Power Station, 3&4, Post Office Anu Shakti via Kota.

... Applicant

Versus

1. Union of India through Secretary, Deptt.of Atomic Energy Power Section, Anu Shakti Bhawan, CSM Marg, Mumbai.
2. Dy.Secretary to Govt.of India & Disciplinary Authority, Department of Atomic Energy Power Section, Anu Shakti Bhawan, CSM Marg, Mumbai.
3. Addl.Secretary, Deptt.of Atomic Energy, Anu Shakti Bhawan, CSM Marg, Mumbai.
4. Dy.General Manager, Nuclear Power Corporation, Rajasthan Atomic Power Station, 3&4 Anu Shakti, Distt.Chittorgarh via Kota.
5. Sr.Manager (P&IR) Estate Officer, Rajasthan Atomic Power Station 3&4, Post Office Anu Shakti via Kota.
6. Project Director, Rajasthan Atomic Power Project 3&4 Anu Shakti District Chittorgarh via Kota.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.GOPAL SINGH, ADM.MEMBER

For the Applicant

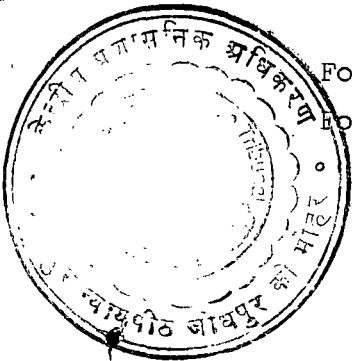
... Mr.N.K.Khandelwal

For the Respondents

... Mr.Arun Bhansali

O R D E R

PER MR.JUSTICE G.L.GUPTA



Through this OA u/s 19 of the Administrative Tribunals Act, 1985, the applicant calls in question the order (Ann.A/1) dated 19.4.2001, whereby the penalty of removal from service was imposed on the applicant, order (Ann.A/2) dated 16.8.2001, whereby the appeal preferred by the applicant, against the penalty of removal, was dismissed, and the order (Ann.A/3) dated 13.9.2001, whereby the applicant was declared in unauthorised occupation of the government quarter w.e.f. 28.5.2001.

2. The relevant facts. The applicant was an employee in the office of the respondents at Bhabha Nagar. He was allotted quarter No.T-2/78 in Anudeep Colony. A criminal case was registered against him u/s 292 IPC in the year 1992. The Police filed challan in the court of Civil Judge

(Junior Division) & Judicial Magistrate, First Class, Rawat Bhata. After trial, the applicant was convicted u/s 292 IPC vide judgement dated 20.2.96 and sentenced to undergo rigorous imprisonment for six months and a fine of Rs.100/-, in default, 15 days imprisonment. The applicant challenged the said judgement by way of appeal which however proved abortive. The applicant thereafter preferred Revision Petition in the High Court, which is pending, wherein vide order dated 5.7.2001 the sentence was suspended.

When the respondent authorities came to know about the decision of the Magistrate dated 20.2.96, a memorandum dated 30.9.97 (Ann.A/6) was issued to the applicant alleging that he did not inform the respondents about the fact that a criminal case u/s 292 IPC was registered against him and that he was even convicted in that case. The applicant filed reply to the memorandum. The enquiry officer was appointed.

During the pendency of that inquiry, the respondents issued a notice dated 2.3.2000 (Ann.A/10), whereby the applicant, who has been convicted in a criminal case u/s 292 IPC, was called upon to say as to why penalty under Rule-19 of the CCS (CCA) Rules, 1965 (for short, the Rules, 1965) be not imposed upon him. The applicant filed his reply to the notice. Ultimately, the disciplinary authority passed the order (Ann.A/1) dated 19.4.2001, imposing penalty of removal from service. The appeal preferred by the applicant against the order was dismissed vide order dated 16.8.2001.



3. The case for the applicant is that he was already facing disciplinary proceedings under memorandum dated 30.9.97, in which he had filed reply and even the enquiry officer had been appointed and, therefore, the respondents had no right to switch over to the provisions of Rule-19 of the Rules, 1965 and pass the impugned order without fullfledged inquiry. It is prayed that the impugned orders be declared illegal and the respondents be directed to reinstate the applicant in service and restart the inquiry which was dropped/closed without assigning cogent reasons.

4. In the counter, the respondents have come out with the case that the applicant having been convicted u/s 292 IPC, the provisions of Rule-19 of the Rules, 1965 have been rightly invoked. It is stated that the disciplinary proceedings started against the applicant pursuant to the memorandum dated 30.9.97 have been suspended because of the removal order issued ⁱⁿ the subsequent enquiry.

5. Rejoinder has been filed by the applicant, in which he has reiterated the facts stated in the OA.

6. We have heard the learned counsel for the parties and perused the documents placed on record.

7. Rule-19 of the Rules, 1965, under which the order (Ann.A/1) has been issued, reads as follows :

"19. 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:

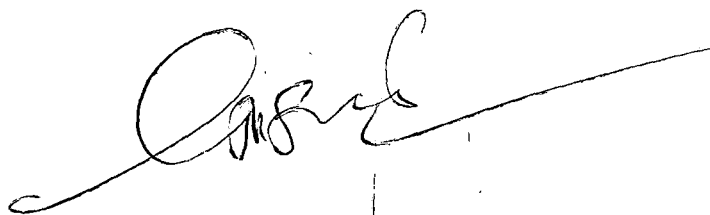
[Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under Clause (i):

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

8. The opening words of the rule indicate that the provisions of Rule-19 have over-riding effect on the provisions contained in Rule-14 to 18.

Rule-14 provides procedure for imposing major penalties. The memorandum dated 30.9.97 (Ann.A/6) was issued to the applicant on the ground that he had not informed the respondents about the registration of a criminal case and conviction therein by the competent court, wherein sentence of six months was also imposed. It is evident that when the authorities came to know about the registration of the criminal case u/s 292 IPC against the applicant and his conviction, the charge-sheet was issued.

9. The subject matter of the memorandum dated 2.3.2000 (Ann.A/10) is



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totally different. It is not that fresh proceedings have been started against the applicant for not informing about registration of the criminal case or about the judgement convicting and sentencing the applicant. What is stated in the memorandum was that the applicant has been convicted u/s 292 IPC and sentenced to rigorous imprisonment for six months and a fine of Rs.100/- by Rawat Bhata Court and, therefore, the competent authority proposed to award appropriate penalty under Rule-19 of the Rules, 1965.

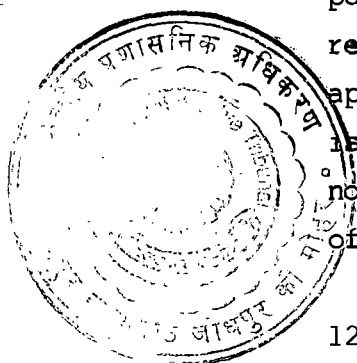
10. From a reading of Rule-19 above, it is manifest that penalty can be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge.

Rule-19 envisages special procedure in the matters where a government servant is convicted on a criminal charge or where the disciplinary authority is satisfied that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or that where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry.

11. The instant case falls under clause (i) of Rule-19. Since the applicant had been convicted u/s 292 IPC for keeping cassettes of pornography. The disciplinary authority thought it proper to take recourse of Rule-19 of the Rules, 1965 and issued notice to the applicant. Under Rule-19 it is not necessary that the detailed inquiry is held. It is only required that the disciplinary authority issue a notice to the government servant and after considering the circumstances of the case, make appropriate order.

12. The applicant was issued the memorandum (Ann.A/10), to which the applicant replied. His reply is dated 7.4.2000 (Ann.A/13). The competent authority considered the reply and thereafter passed the order Ann.A/1. It cannot be said that any illegality has been committed when the order (Ann.A/1) was passed. When the order has been passed after giving the applicant an opportunity of making representation, it cannot be held that the order suffers from illegality.

13. It may be that, at the time the memorandum (Ann.A/10) was issued to the applicant, the disciplinary proceedings initiated vide memorandum dated 30.9.97 were already pending against the applicant, yet there was no legal bar in doing so. As already stated, the charges in the earlier inquiry were with regard to concealment of the facts of registration of criminal case and conviction u/s 292 IPC from the



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respondents.


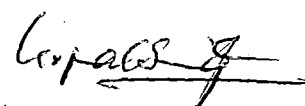
14. The respondents cannot be said to have faulted when they suspended the proceedings of the inquiry initiated pursuant to the memorandum dated 30.9.97, when the removal order (Ann.A/1) was issued. It is true that the applicant has preferred Revision Petition against his conviction u/s 292 IPC but that did not prevent the respondents from passing the order Ann.A/1. It is significant to point out that the order of suspension of the sentence has been passed by the High Court after the completion of the proceedings initiated vide memorandum Ann.A/10. In case, the applicant succeeds in the Revision and is acquitted, he shall be at liberty to make application before the respondents for recalling the order of removal. But, for the present, it cannot be said that any illegality has been committed when the respondents have issued the order (Ann.A/1), which has been affirmed by the appellate authority vide order (Ann.A/2).

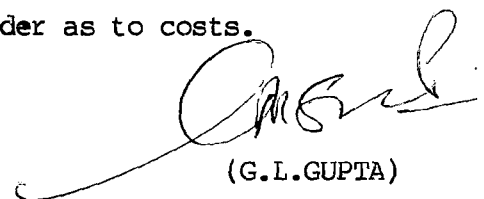
15. The learned counsel for the applicant did not cite any authority laying down that during the pendency of disciplinary proceedings notice could not be issued under Rule-19 of the Rules, 1965, more so, when the subject matter is different. As already stated, the inquiry pending against the applicant was for concealment of the facts, whereas the proceedings under Rule-19 were initiated because of the conviction of the applicant on a criminal charge.

16. The last contention of the learned counsel for the applicant was that the penalty imposed is harsh. He contended that the applicant had rendered the services without any stigma and, therefore, extreme penalty of removal should not have been imposed.

It is noticed that the allegations against the applicant were that he used to keep pornographic cassettes and earned money by hiring them alongwith VCP. The cassettes were of blue films. Keeping in view the nature of the charge, it cannot be said that the penalty imposed on the applicant is shockingly disproportionate to the alleged misconduct.

17. Having considered the entire material on record, we find no merit in this OA. It is hereby dismissed. No order as to costs.



(GOPAL SINGH)
MEMBER (A)


(G.L.GUPTA)
VICE CHAIRMAN