केन्द्रीय प्रशासनिक अधिकरण (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत निःशुल्क प्रति

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 150/2003 & 199
T.A. No. 151/2003

DATE OF DECISION 16.08.2004

Prahalad Singh and anr. — Petitioner

Mr. Vijay Mehta — Advocate for the Petitioner (s)

Versus

UOI and ors. — Respondent

Mr. S.K. Vyas — Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. J K Kaushik, Judicial Member.

The Hon'ble Mr. G R Patwardhan, Administrative Member.

COMPARED & CHECKED

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes

(G.R. Patwardhan)
Administrative Member

(J K Kaushik)
Judicial Member.

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR

Original Application Nos. 150/2003 & 151/2003

Date of decision: 16.08.2004

The Hon'ble Mr. J K Kaushik, Judicial Member.

The Hon'ble Mr. G R Patwardhan, Administrative Member.

Prahalad Singh S/o Shri Man Singh, aged 41 years, Chowkidar, in the Office of the Garrison Engineer, Lal Garh, Jattan r/o MES Key Personnel Colony, Lal Garh Jattan, Distt. Shri Ganganagar.

: Applicant In O.A. No.150/03

Hanuman Singh S/o Shri Mukan Singh aged 47 years, Painter(SK), in the office of Garrison Engineer Lal Garh, Jattan r/o MES Key Personnel Colony, Lal Garh Jattan, Distt. Shri Ganganagar.

: Applicant In O.A. No.151/03

Rep. By Mr. Vijay Mehta: Counsel for the applicants.

VERSUS

1. Union of India, through the Secretary Ministry of Defence Raksha Bhawan, New Delhi.
2. Commander Works Engineer, MES, Shri Ganganagar,
3. Chief Engineer, Bhatinda Zone, Bhatinda.
4. Chief Engineer, HQrs. Western Command, Chandi Mandir.
5. Garrison Engineer (Army) Lal Garh Jattan, Distt. Ganganagar.

: Respondents in both the OAs

Rep. By Mr. S.K. Vyas: Counsel for the respondents.

ORDER

Mr. J K Kaushik, Judicial Member:

Shri Prahalad Singh and Shri Hanuman Singh have filed their individual Original Application Nos. 150/03 and 151/03, respectively. Common question of law and facts are involved in both these applications and thus the same are being decided by this common order.

2. The brief facts necessitating the filing of these Original Applications are that the applicants were employed on the post of Chowkidar and Painter (SK) respectively at Lalgarh Jattan. Both of them were convicted and sentenced for two years for offence under Sec 341, 323/34 and 325/34 (IPC). The incident arose out of quarrel of ladies of neighbours and had nothing to do with the official duties and discharging of public duties. The sentence imposed on the applicants by the Criminal Court has been suspended by the Hon'ble High Court of Rajasthan at Jodhpur vide order dated 17.07.2002 in S.B Criminal Revision No. 485/2002 at Annex. A/3. Despite the suspension of the sentence, the respondent No. 2 vide order-dated 22.07.2002 passed an order of removal from service of the applicants (Annex. A/4).

3. The further case of the applicants is that both of them preferred their individual appeal to the respondent No. 3, who vide order dated 13.01.2003 set aside the order of the

disciplinary authority after examining the entire circumstances leading to the conviction of the applicants and came to the conclusion that the act did not constitute a misconduct as specified in CCS (Conduct) Rules, 1964. Simultaneously, the applicants were placed under deemed suspension. The respondent No. 2 issued another order-dated 08.07.2003, whereby the order passed by him on 13.01.2003 has been cancelled and also directed the second respondent to cancel the order dated 25.01.2003 and 26.01.2003. The respondent No. 2 in turn issued the impugned order dated 16.07.2003, (A/1). The OAs have been filed on multiple grounds mentioned in para 5 and its sub paras, and we shall examine, only the grounds which are stressed during the arguments, in the later part of this order.

4. The respondents have filed detailed and exhaustive replies to the Original Applications, wherein they have given certain details regarding the subsequent behaviour of the applicants after their conviction in as much as they have submitted leave applications for two days while being under custody. They were removed from service by the appointing authority. Their conduct of cheating the department was taken into consideration under Article 311 of the Constitution of India and Rule 19 (1) of CCS (CCA) Rules, 1965, it was thought fit to remove them from service in view of their conviction and also misconduct of hiding the conviction. The higher authorities as mentioned in Annex

A/2 to the O.A upheld the punishments imposed on the applicants. The grounds mentioned in the O.As are generally denied. The main defence as set out in the replies to the OAs is that the orders passed at Annex. A/4 and A/1 are in consonance with the Art. 311 of the Constitution of India and Rule 19 (1) of the CCS (CCA) Rules, 1965. The respondent No. 3 after getting the whole case, scrutinised by the higher authorities in the headquarters i.e. respondent No.4, passed the impugned orders after due deliberations. The competent authority has passed the order imposing the penalty after perusal of their appeals filed before respondents No. 3 & 4, who have viewed the matter seriously in accordance with the rules.

5. A short rejoinder has been filed to the reply wherein it has been averred that the applicants have informed about their conviction. It is also denied that the penalty of removal was imposed on them after due consideration of the behaviour of the applicants. The impugned orders have been passed without following the principles of natural justice.

6. Both the aforesaid cases were listed for admission and with the consent of the learned counsel for the parties, the same were heard for final disposal keeping in view the urgency of the matter as well as the pleading being complete. We have carefully perused the records of this case.

7. The learned counsel for the applicants has reiterated the facts and grounds raised in the pleading of the applicants. He has submitted that after the conviction and sentence was suspended by the Hon'ble High Court, the applicants ought not to have been imposed the penalty of removal from service. He has also submitted that there is no indication as to which conduct of the applicants have been taken into consideration and only the phraseology which is used in Article 311 (2) of the Constitution and under Rule 19 (1) of the CCS(CCA) Rules have been used and nothing more. He has contended that the Appellate Authority after due application of mind has set aside the order of penalty imposed on the applicants by the Disciplinary Authority and has categorically indicated that the reasons for conviction does not constitute misconduct as per CCS(CCA) Rules, 1965. In pursuance of the said order, the applicants were kept under deemed suspension.

8. Subsequently, the Appellate Authority usurping the powers of Revising Authority has passed the order at Annex. A/2 on 08.07.2003. None of the authorities as per statutory rules have any power to revise or cancel its own orders. The order passed by the Appellate Authority reviewing its earlier order indicates that the same has been passed under the dictation of the higher authorities and is without application of mind. The same is, therefore, without jurisdiction Similar is the position with Annex. A/1. Annex. A/1 has been passed by the Disciplinary Authority

who had earlier imposed the penalty of removal from service. The Disciplinary Authority was bound to issue this order since there is specific direction from the Appellate Authority vide Annex. A/2. Thus the applicants have been imposed the penalty without application of mind. The learned counsel for the applicants has also tried to indicate that the subject matter of the criminal case was relating to some altercations, which has absolutely no relation with the working of the applicants, and it was not a case of committing offence relating to moral turpitude. He has also pointed out that the applicants were not issued show cause notice as per Rule 19 (1) of the CCS(CCA) Rules 1965. The learned counsel for the applicants has cited numerous judgements in support of his contentions.

9. Per contra, the learned counsel for the respondents has vehemently opposed the contentions raised on behalf of the applicants. He has submitted that as per the decision of the Apex Court in the case of **Union of India and Anr. Vs. Tulsi Ram Patel, [AIR 1985 SC 1416 para 127]** no prior notice is required to be given before imposition of penalty, in case one is convicted in a criminal case. He has also referred to the case of **Satyavir Singh Vs. Union of India AIR 1986 SC 555** in the same matter. He stressed on the point that the behaviour of the applicants has not been upto the standard in as much as they tried to conceal the fact regarding their conviction and even submitted leave applications in a very peculiar manner just to

deceive the respondents and the authorities after taking into consideration their entire behaviour and the factum of conviction, the applicants have been imposed the penalty of removal from service. He has submitted that no doubt that the Appellate Authority at the first instance set aside the order of removal from service but subsequently when the matter was taken up with the higher authorities, he ordered setting aside of the Appellate Authority's order and also imposition of the penalty of removal from service which has been done from the date when the original penalty order was passed. Thus no fault can be found with the action of the respondents.

10. We have considered the rival submissions put forth on behalf of both the parties. Examining the first contention of the learned counsel for the applicants that once the conviction and sentence have been suspended by the Hon'ble High Court, the departmental authorities would not have proceeded to invoke the provision of Art. 311 of the Constitution of India and Rule 19 (1) of the CCS(CCA) Rules, 1965. Firstly, we make it clear that in the instant cases, it is only the sentence has been suspended and not the conviction as such. On the question whether the suspension of the sentence order passed by the Criminal Court would stand in the way of competent authority to pass appropriate order under the provisions of Rule akin to Rule 19 of CCS(CCA) Rules, 1965, had been subject matter before the Hon'ble Supreme Court in 1995 (3) SCC 377 **Deputy Director**

of Collegiate Education (Administration) Madras vs. S. Nagoor Meera. The Hon'ble Supreme Court did not accept the said contention and rather held that if the concerned Government servant/accused is acquitted on appeal or otherwise, the penalty order can always be revised/reviewed. It would be expedient to note the relevant paras which reads thus:

> " ..... We are, therefore, of the opinion that taking proceedings for and passing orders of dismissal or removal or reduction in rank of a government servant who has been convicted by a criminal Court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal.
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> 9. The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311 (2) is not permissible. We see no basis of justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a Government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceedings, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court. It should be remembered that the action under clause (a) of the second proviso to Article 311 (2) will be taken only where the conduct, which has led to his conviction, is such that it deserves any of the three major punishments mentioned in Article 311 (2). As held by this Court in Shankar Dass vs. Union of India: (SCC P. 362, para 7)
>
> ' Clause (a) of the second proviso to Article 311 (2) of the Constitution confers on the Government the power to dismiss a person from service on the ground of conduct which has led to his conviction on a criminal charge. But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311 (2) makes the provisions of that article inapplicable when a penalty is to be imposed on a

Government servant on the ground of conduct, which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly."

10. What is really relevant thus is the conduct of the government servant, which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceedings, the matter can always be reviewed in such a manner that he suffers no prejudice. "

11. More recently the Hon'ble Supreme Court in **K.C.Sareen vs. CBI [(2001) 6 SCC 584]**, strongly deprecated the Court's action in suspending the conviction on filing an appeal by the delinquent Government official and further held that:

" When a public servant is found guilty of corruption after a judicial adjudicatory process conducted by a Court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes, even irreparably

(emphasis supplied)

12. In **K.C. Sareen's** case(supra) in para 10, the Hon'ble Supreme Court even observed that the power to suspend an order of conviction under Section 389(1) or even Section 482 of the criminal procedure Code, should not be exercised by the High Court in routine manner. It was stated that when

conviction is on a corruption charge against the public servant, the appellate Court or the revisional Court should not suspend the order of conviction during the pendency of appeal even if the sentence of imprisonment is suspended. The Hon'ble Court further observed that it would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision.

13. Having heard learned counsel for the parties at length and having regard to the law so noticed herein above as well as after giving our anxious and thoughtful consideration to the matter, we are of the considered view that when the conviction as well as sentence, both are suspended by the appellate court on an appeal/revision, neither the material is obliterated nor the said stay order prevents/bar the concerned authorities from taking appropriate action under Rule 19(1) of the CCS (CCA) Rules. Merely because in the present case, the sentence was suspended by the High Court of Rajasthan on an applicant's appeal vide order dated 17.7.2002, which remains in force as on date, the law laid down by the Hon'ble Supreme Court in **K.C.Sareen** as well as **S. Nagoor Meera** would not become inapplicable. Thus the contentions of the learned counsel are not well founded and are rather groundless.

14. As regards the following of the principles of natural justice is concerned, as per the rules, the embargo is only to provide an opportunity to make a representation before the action is taken under the said Rule particularly when the proposed penalty and action is based on a conduct which led to his conviction on the charge. This procedural requirement is of utmost importance. As far as the order dated 22.07.2002 Annex. A/4 is concerned, which was initially passed by the Disciplinary Authority is concerned, the same is not under challenge; rightly so because the Appellate Authority has set aside the same. Thus the question of giving opportunity of making representation prior to passing of the same has lost its significance. However, as regards the order at Annex. A/1 is concerned; we find that no opportunity to make such representation was given to the applicant. However, the same is also academic question for the reason that the same has been passed under the dictation of higher authorities as indicated in the succeeding paragraphs.

15. Now we would examine the vital question as regards the powers of the statutory authorities as to whether the statutory authority has got any power to review its own order. The necessity of this has arisen since the Appellate Authority has nullified its own order and has directed the Disciplinary Authority to pass an order to revive its earlier order i.e. order of penalty of removal from service. Specific instructions have been issued in the respect as per the Government of India instructions below

Rule 29 of the CCS(CCA) Rules, 1965 and the contents of the same are extracted as under:

> "(3) **Original punishing authority not competent to revise or cancel its own order in revision**
>
> The question whether after imposition of penalty under CCS(CCA) Rules, 1965, the Disciplinary Authority can cancel its order has been considered in consultation with Ministry of Law and Ministry of Personnel and Training and it has been held that under CCS(CCA) Rules, 1965, power revise means, the power to revise the orders of subordinate authorities and it does not embrace the original authority with the power to review its own order. In the absence of any provision to the contrary, therefore, it is not within the competence of the Disciplinary Authority to cancel its own order.
>
> The above decision may be brought to the notice of all Disciplinary and Appellate Authorities for their information and guidance. "

16. A mere perusal of the aforesaid would reveal that none of the authorities, may be Disciplinary Authority, Appellate Authority or any other authority, who originally passed the order cannot revise the order or cancel its own order. Admittedly, this has been done in the instant cases. Thus the same is void ab initio and shall have to be declared as inoperative, arbitrary and non-est in the eye of law. The Original applications are therefore deserves to be allowed on this ground alone.

17. Now adverting to the other facet of the controversy involved, a merely perusal of the Annex. A/2 reveals that the same has been passed at the instance of yet another authority i.e. the Head Quarters Chief Engineer, Western Command which is sought to have scrutinised the whole case and issue directions to revoke the order of removal. This clearly indicates that the Appellate Authority did not apply its own mind and passed the order under the dictation of the higher authority. Such order

also cannot be sustained in the eye of law and we are supported of this proposition of law from a judgement of the Apex Court in the case of **Nagraj Shivaral Karjagi vs. Synbdicate Band Head Office, Manipal and another** [AIR 1991 SC 1507]. The relevant portion from para 19 is extracted as under:

> "True S.8 empowers the Govt. to issue direction in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act to the dictation of the Central Vigilance Commission or the Central Govt. No third party like Vigilance Commission or the Central Govt. could dictate the disciplinary authority or the appellate authority as to how they should exercise their powers and what punishment they should impose on the delinquent officer "

18. Now adverting to yet another ground, as regards the contention of the learned counsel for the applicants that the subject of the criminal case had no relation with the discharge of public duties of the applicants and the conduct which led to their conviction was not considered, we are refraining from adjudicating on this issue since, firstly, it is subjective satisfaction of the concerned authorities and also we have not been furnished with the complete information in as much as the very original judgement by which the applicants have been convicted is not placed on record. We, otherwise, also do not find any necessity to examine the same since we have come to the conclusion than that the action of the respondents after passing of the order by the Appellate Authority dated 13.01.2003 at Annex. A/5 and 25.1.2002 (A/6) cannot stand to

the scrutiny of the law and both the OAs deserve to be allowed on the aforementioned grounds.

19. In the premise, the Original Application Nos. 150/03 and 151/03 have ample merit and substance and the same stands allowed, accordingly. The Impugned orders Annex. A/1 and Annex. A/2 in both the OAs are hereby quashed. The applicants shall be treated as under deemed suspension and their services – be regulated as per the order passed by the Appellate Authority on 13.01.2003 accordingly. This order shall be complied with within a period of two months form today. However, in the facts and circumstances of this case, there shall be no order as to costs.

(G R Patwardhan)
Administrative Member.

(J K Kaushik)
Judicial Member

jsv

प्रमाणित सही प्रतिलिपि
30/8/04
अनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर