CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 403/2000

Tuesday this the 18th day of April, 2000

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. G. RAM AKRISHNAN, ADMINISTRATIVE MEMBER

S. Unnikrishnan,
S/o the late Sreedharan Pillai, aged 50 years
Postal Assistant, Chengannur Head
Office, Thiruvalla Postal Division,
residing at Thompil Vattathara House,
Ezhumattoor PO,
Thirvalla. ... Applicant

(By Advocate Mr. O.V. Radhakrishnan)

Vs.

1. Superintendent of Post Offices,
Thiruvalla.

2. Union of India, represented by
its Secretary
Ministry of Communications,
New Delhi. .. Respondents

(By Advocate Mr.S.K. Balachandran ACGSC)

The application having been heard on 18.4.2000, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The challenge in this application filed under Section 19 of the Administrative Tribunals Act is against the notice issued by the first respondent to the applicant on 31.3.2000 (Annexure.A6) proposing to remove him from service on account of his conduct which led to his conviction in a criminal case for an offence under Section 409 of Indian Penal Code and sentence for rigorous imprisonment for two years and payment of Rs.1000/- as fine. After holding a skelton enquiry as is required under the

provisions of Rule 19 of the CCS (CCA) Rules the impugned notice has been issued giving the applicant an opportunity to make representation against the proposed penalty. That the applicant was convicted by the Chief Judicial Magistrate, Pathanamthitta in C.C. 245/97 for an offence under Section 409 of the IPC and that he has been sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/- is not disputed. The grievance of the applicant is that that the provisions of Article 311(1) and (2) have been violated inasmuch as the Superintendent of Post Offices is lower in rank than the Sr.Supdt. of Post Offices who appointed the applicant in service and that the show cause notice does not indicate the reason for coming to the tentative conclusion that the applicant is not a fit person to continue in service. The applicant has alleged that the show cause notice having been issued by an incompetent person and it being non speaking resulting in deprival of reasonable opportunity to put forth his defence, the impugned show cause notice is unsustainable. The applicant, therefore, seeks to have the show cause notice set aside.

2. We have perused the voluminous materials placed on record including the application, the show cause notice, enquiry report and the judgment of the criminal court convicting the applicant for offence under Section 409 of IPC. Shri Radhakrishnan the learned counsel of the applicant with considerable vehemence and tenacity argued

that the show cause notice is totally vague as to the reasons for coming to the tenative conclusion that the applicant is not a fit person to be retained in service. On account of this vagueness, counsel argued that it would not be possible for the applicant to give an effective reply or representation. Under these circumstances, the show cause notice is liable to be struck down, argued Shri Radhakrishnan. In support of this contention the counsel referred to us the ruling of the Apex Court in B.D.Gupta Vs. State of Haryana reported in AIR 1972 SC 2472. The facts of this case are totally different. Here is a case where the applicant has been prosecuted found guilty convicted for offence under Section 409 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of two years and for payment of a fine of Rs.1000/-. In the impugned show cause notice it has been very clearly stated that taking into account the gravity of the criminal charge the enquiry report and other relevant materials, the competent authority came to the tentative conclusion that the applicant is not a person fit to be retained in service and that for that reason a penalty of removal from service has been proposed. We do not find any vagueness in the matter. What more is required to be mentioned to enable the applicant to give an effective reply to this show cause notice is not clear to us. The learned counsel argued that from the show cause notice it is not evident as to what weighed with the competent authority to conclude that the applicant is not a fit person to be retained in service. We

do not agree. In the show cause notice it has been said that the applicant was convicted and sentenced to undergo R.I. for two years and to pay a fine of Rs.1000/- for an offence under Section 409 of the IPC, and that taking into account the gravity of the criminal charge and the enquiry report the competent authority has provisionally came to the conclusion that the applicant is not a fit person to be retained in service and therefore it was pro posed to remove him from service. This averment and the copy of the enquiry report annexured to the impugned order would make it abundantly clear as to what weighed with the authority. Hence the case of the applicant that the order is vague has no force at all.

3. Learned counsel argued that in Shanker Das Vs. Union of India and another reported in AIR 1985 SC 772 it was held that an order of dismissal cannot automatically follow a conviction and that the competent authority should take a decision taking into account the circumstances leading to conviction and the order should reflect the application of mind. The facts of the case are different. In this case what is under challenge is not an order of removal from service, but only a show cause notice only. In the show cause notice it has been clearly stated that the representation of the applicant against the proposal would be considered. So the application of mind to the judgment of the criminal court, the representation of the applicant, the enquiry report and other relevant factors would be

reflected in the order that the competent authority might issue. This application therefore, is premature. Hence we are of the view that the application is premature.

4. At this juncture, learned counsel of the applicant further referred us to the ruling of the Supreme Court in SMD Kiran Pasha Vs. Govt. of A.P. and another reported in 1990(1) SCC 328 and argued that as the right to life of the applicant is under threat even before the violation of the right materialises, the tribunal has jurisdiction to intervene and prevent that. Here again the facts of the case are totally different. In the case under citation the court was considering a case of preventive detention. Here the applicant is challenging a show cause notice. After the applicant gives his explanation the competent authority would apply his mind and pass an appropriate order. If the applicant is aggrieved by that order he is free to file an appeal. After exhausting the statutory remedies he can challenge the final order before the Tribunal should he feel further aggrieved.

5. In the consepectus of facts and circumstances, we do not consider it a fit case for admission. Hence, we reject it under Section 19(3) of the Administrative Tribunals Act. There is no order as to costs.

Dated this the 18th day of April, 2000

G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A.V. HARIDASAN
VICE CHAIRMAN

s.

List of annexure referred to:

Annexure.A6: True copy of Memo No.F1/IV-3/95-96 dated 31.3.2000 by the Ist respondent.

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