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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.
LUCKNOW CIRCUIT BENCH,
LUCKNOW.

Regn. No. OA 269 of 1989(L) Date of decision: 25.5.90

A.N. Dixit Applicant.

Vs.

Union of India & Others Respondents.

PRESENT

Shri T.N. Tewari, counsel for the applicant.

Shri V.K. Choudhary, counsel for the respondents.

CORAM

Hon'ble Shri B.C. Mathur, Vice-Chairman.

Hon'ble Shri D.K. Aggarwal, Member (J).

(Judgement of the Bench delivered by Hon'ble
Shri D.K. Aggarwal, Member (J).)

This application under Section 19 of the Administrative Tribunals Act, 1985, is directed against the order of removal of the applicant from service dated 29.8.1989.

2. The brief facts are that the applicant employed as Extra Departmental Runner at Branch Post Office Sursa, Distt. Hardoi, was convicted on 19.5.87 by the VII Additional District & Sessions Judge, Hardoi, under Section 306 I.P.C. and awarded an imprisonment of five years on the charge of murder of his daughter-in-law on the issue of demand of dowry. Therefore, his services were terminated by an order dated 5.6.1987 under clause (a) of proviso to Article 311(2) of the Constitution. The said order of removal was challenged by means of OA 211/88 which was decided by an order dated 2.5.1989 whereby the order of removal was quashed on the ground that the competent authority had failed to take into account the conduct of the applicant which led to his conviction. It was directed that the applicant shall be deemed to have continued in service as Extra Departmental Mail Runner with all consequential benefits, but it shall be open to the

DK Aggarwal

competent authority to re-examine the case and pass fresh orders with respect to the conduct of the applicant which led to his conviction in accordance with law. Thereafter, the competent authority, in the first instance, passed an order dated 25.5.89 which was a composite order treating the applicant to have been put off duty with effect from 5.6.1987 (date of order of termination) and further requiring him to show cause why he need not be removed from service. After considering the reply of the applicant, the competent authority passed the impugned order dated 29.8.89 removing him ^{from} service. The present application is directed against both the orders i.e. 25.5.89 and 29.8.89.

3. We have heard the learned counsel of the parties and perused the records. The order of conviction dated 19.5.87 was stayed by an order dated 17.7.87 by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow. A copy of the said order was filed in OA 211/88 as Annexure V. A reference thereof finds place in the judgement of OA 211/88. Further, it was not clear from the language of the order dated 17.7.87 as to whether the operation of sentence only was suspended or the operation of the order of conviction was also suspended. Therefore, the applicant, it appears, moved another application before the High Court of Judicature, Allahabad, Lucknow Bench, Lucknow, whereupon an order or order dated 18.8.89 was passed. A copy thereof has been supplied to us at the conclusion of the arguments which we have placed on record. It reads like this:

"This is an application for staying the conviction and sentence awarded by the 7th Addl. Sessions Judge, Hardoi by order dated 17.7.87. This court has stayed the operation of order as sentence dated 19.5.87. Therefore, there is no question for staying conviction and sentence therefore, reject."

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A perusal of the aforesaid order leaves no scope for doubt that the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow, had stayed the operation of the order of conviction as well as the sentence. If so, no conviction order remains in force till the decision of appeal. In the circumstances, without further dilating on the point, it can be at once observed that the impugned order of removal under clause (a) of provision to Article 311(2) of the Constitution is not sustainable in law. Therefore, we are constrained to quash the impugned order of removal with a direction to treat the applicant in service with all consequential benefits throughout. Accordingly, the application is allowed without any order of cost.

D.K. Aggarwal
25.5.90
(D.K. Aggarwal)
Member (J)

B.C. Mathur
25.5.90
(B.C. Mathur)
Vice-Chairman (A)