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Reserved

Central Administrative Tribunal, Allahabad.
LUCKNOW BENCH

Registration T.A.No.1120 of 1987 (W.P.No.702 of 1983)

Ram Kishore Sharma .... Petitioner

Vs.

1. Union of India

2. Chairman Post and Telegraphs Deptt.
New Delhi

3. Post Master General, U.P.Circle,
Lucknow and

4. Superintendent, Post Offices,
Nainital Division, Nainital ... Respondents.

Hon'ble D.S.Misra, AM
Hon'ble G.S.Sharma, JM

(By Hon'ble G.S.Sharma, JM)

In this writ petition under Article 226 of the Constitution of India received on transfer from the High Court of Judicature at Allahabad u/s.29 of the Administrative Tribunals Act XIII of 1985, the Petitioner has prayed that the order dated 28.12.1978, copy annexure 3, passed by the Superintendent of Post Offices, Naintial Respondent no.4 dismissing him from service be quashed and the Petitioner should be treated to be in continuous service.

2. The relevant facts of this case are that the Petitioner was initially appointed as a Clerk in the Indian Posts and Telegraphs Department allegedly under the orders dated 11.12.1970 of the Post Master Genera, U.P Lucknow- Respondent no.3. The Petitioner was suspended from service w.e.f. 30.11.1971 in contemplation of a disciplinary proceedings against him and on 1.1.1972 he was served with a charge sheet with the allegation that while working as Registration Clerk at Ramgarh Post Office, he failed to discharge his legitimate duties resulting in loss of an insured letter for Rs.557 and thereby failed to maintain absolute integrity

to duty required by R.3 of Central Civil Services (Classification, Control and Appeal)Rules. In the statement of his defence, the Petitioner explained the circumstances under which the insured article was lost pleading his innocence. His contention was, however, rejected by the disciplinary authority- Respondent no.4 and by way of punishment, Rs.500 were ordered to be recovered from his pay and the period of his suspension from 4.12.1971 to 18.12.1972 in connection with that case was not regularised and he was also not paid any pay and allowances over and above the subsistence allowance for the said period vide order dated 29.11.1972, copy annexure 2.

3. The loss of the insured article having been reported to the Police, he was prosecuted u/s.409 IPC and the Chief Judicial Magistrate Nainital convicted him in 1978 and sentenced him to R.I. for 2 years and a fine of Rs.1000, ~~was imposed~~. The appeal preferred by the Petitioner was rejected by the Sessions Judge. IN revision preferred by the Petitioner, the Allahabad High Court maintained his conviction but reduced the sentence of imprisonment to the period already undergone. On the basis of his conviction u/s.409 IPC, the Respondent no.4 dismissed the Petitioner from service by passing the impugned order dated 28.12.1978. The appeal preferred by him could not be disposed of to his knowledge till he preferred this writ petition.

4. The Petitioner has challenged the validity of the order of his dismissal from service on the ground that his very conviction was illegal in view of the provisions of S.72 of the Post Offices Act and R.80 of the Post and Telegraph Manual, Vol.III(Disciplinary Rules) as no criminal Court could take cognizance of any offence in the absence of a complaint made by order or under the authority of the Director General or Post Master General and on the basis of his illegal conviction, the

Respondents could not take the action for his dismissal from service. It is further alleged that in view of the protection guaranteed by Art.20 of the Constitution, the Petitioner could not be prosecuted and punished by his Department in view of his earlier prosecution and punishment by the Department vide annexure 2 and his dismissal is also hit by Art.311 of the Constitution, as the Post Master General was his appointing authority and he could not be dismissed by a lower ranked officer- Respondent no.4.

5. The Respondents have contested the case and in the counter affidavit filed on their behalf by the Respondent no.4, it has been stated that the Petitioner had received the insured article for Rs.557 on 18.9.71 and did not note the same in the relevant register G-9. When the fact came to the notice of the Sub Post Master the matter was reported to the Patti Patwari (Police) The Petitioner was asked to credit the amount of the insured article voluntarily but he did not do so and he was served with a charge sheet dated 1.1.1972 for this misconduct. The Petitioner was found responsble for the departmental lapses and it was accordingly ordered that a sum of Rs.500 be recovered from his pay in 20 monthly instalments vide memo dated 27.3.72. On the request of the Petitioner, who was placed under suspension after this incident, his suspension was revoked vide order dated 18.4.1972 and on his conviction u/s.409 IPC by the competent Court, he was rightly removed from service. The departmental appeal filed by the Petitioner was duly considered and rejected and his contention to the contrary is not correct. It has been further stated that the Respondent no.4 was the appointing authority of the Petitioner and only the selection of the Petitioner was made by the office of the Post Master General, U and the actual appointment was made by the Responden

no.4. The validity of the prosecution of the Petitioner was duly considered by the Courts and his contention that his conviction is illegal, is not correct. Art.20 of the Constitution has also no application to the case of the Petitioner and he is not entitled to any relief.

6. In his rejoinder, the Petitioner has stated that he having been once punished for certain misconduct, could not be punished again for the same and the validity of the criminal proceedings can be challenged even now as his prosecution was really barred by law and his dismissal from service is not warranted on the basis of the conviction in criminal case and in any case, the dismissal order is too severe and uncommensurate with the gravity of the offence.

6. In our opinion, only two points - (i) whether the Petitioner has been removed by an officer of the lower rank than his appointing authority and (ii) whether the Petitioner can be punished again for the same misconduct- arise for determination in this case. In support of the first point the Petitioner has filed copy of letter dated 11.12.1970 of the Respondent no.4 addressed to him stating that he has been provisionally selected for the post of Clerk in Nainital Division by the Post Master General, U.P.Circle and has been allotted Nainital Division. The Applicant was asked to ~~observe~~ comply with certain formalities before appointment letter could be issued to him and it was clearly stated that his selection is only provisional and letter, annexure 1, does not entitle him to claim any appointment as of right. We are, therefore, inclined to accept the contention of the Respondents that only the selection of the Petitioner was provisionally made at the level of the PMG but the actual appointment was made by the Respondent no.4 on his being allotted the Nainital Division. The Petitioner has not produced any other

document before us to show that he was actually appointed by the Respondent no.3 or the Respondent no.3 ever acted as his appointing or disciplinary authority in the past. On the own showing of the Petitioner, he was initially proceeded against departmentally by the Respondent no.4, who had awarded the punishment of recovery of Rs.500 from his pay by way of compensation on account of loss of the insured article caused by the Petitioner and the Respondent no.4 had also disposed of the question of his suspension by passing the order dated 29.11.1972, copy annexure 2. This shows that the Petitioner himself treated the Respondent no.4 as his appointing and disciplinary authority in the past and his contention to the contrary made for the purpose of this case is an afterthought and against the facts. This contention is accordingly rejected.

7. To substantiate the allegations made by the Petitioner regarding the validity of his conviction, he should have produced the orders of the trial, appella-te and Revisional Courts in his criminal case. These documents have, however, not been filed by any party on record and in para 19 of his counter affidavit, the Respondent no.4 has quoted certain observations of the trial court dealing with the objections of the Petitioner regarding the maintainability of the criminal proceedings against him in the absence of a complaint from the concerned departmental authority and it was held that on the basis of two provisions of law relied upon by the Petitioner, the criminal proceedings against him were not liable to be quashed. The Appellate Court and the Revisional Court must have considered the correctness and validity of these objections of the trial Court and as the conviction of the Petitioner was upheld upto Hon.High Court, we are of the view that the validity of the criminal proceedings against the Petitioner was duly considered by the

competent Courts and the Petitioner now cannot challenge the effect of his conviction before this Tribunal. There is nothing on record to show that the Petitioner ever challenged the validity of his conviction on this ground before the Hon.Supreme Court or any matter is still pending there. We are, therefore, unable to attach any significance to the contention of the Petitioner about the validity of the criminal proceedings against him and, in our opinion, his conviction is not bad on the ground alleged by the Applicant.

8. Now coming to the main point whether the Petitioner having been once punished by an order for recovery of Rs.500 from his pay by way of compensation to make good the loss occasioned by him by the loss of insured article of Rs.557, could be punished again for the same misconduct on his conviction u/s.409 IPC. The Petitioner has placed his reliance on Art.20 of the Constitution which reads as under :-

> "20. **Protection in respect of onviction for offences-** (1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
>
> (2) No person shall be prosecuted and punished for the same offence more than once.
>
> (3) No person accused of any offence shall be compelled to be a witness against himself."

As is apparent from the very wordings of clause (2) of this Article, the protection afforded by this Article is limited to criminal liability and a person once convicted and punished for one offence cannot be prosecu-ted and convicted for the same offence again. Such guarantee has also been afforded by S.300 ofthe Cr.P.C. Strictly

speaking, this Article has, ~~therefore,~~ no application to the case of the Petitioner. However, principle of double jeopardy recognised on the basis of the spirit of Art.20 of the Constitution is fully applicable to the case of the Petitioner. It is not in dispute that before the Petitioner was convicted u/s.409 IPC by the Criminal Court, the departmental authorities proceed-ed against him under the provisions of CCS (CCA) Rules. He was not only placed under suspension but was also charge sheeted under R.14 of CCS (CCA) Rules and after considering his statement of defence, he was awarded the punishment of recovery of Rs.500 from his pay. He was further deprived of the pay for the period of suspension and was not paid anything more than the subsistance allowance. The period of suspension was also not regularised and it was to be treated as period of suspension and not as spent on duty for all purposes during his service career as is apparent from annexure 2. The Petitioner, ~~thus~~, was thus already amply punished for the misconduct of causing loss of the insured article and for the same misconduct which fell within the definition to misappropriation of Govt. property, he was prosecuted and convicted u/s.409 IPC by the CJM Nainital subsequently in 1978. As the Petitioner was already punished for this miscon-duct and the Respondents did not await the result of the criminal prosecution, he cannot be punished again for this misconduct merely because he was convicted by the Court for the same misconduct. In our opinion, in order to avoid such an anomolous situation it is always advisable that the result of the criminal prose-cution should be awaited before passing the final orders

in the disciplinary proceedings, if any, initiated against a Govt. servant for the same misconduct. Somewhat, similar question had arisen before the Hon'ble Supreme Court in Shankar Das Vs. Union of India (1985 SCC (L&S) 444). The appellant before the Hon'ble Supreme Court was a Cash Clerk and he was prosecuted u/s. 409 IPC on the charge of breach of trust involving a sum of Rs.500 only. He repaid the amount and pleaded guilty of the charge. He was convicted by the Magistrate u/s.409 IPC but finding him to be a victim of adverse circumstances, released him u/s.4 of the Probation of Offenders Act. On his conviction he was summarily dismissed from service by the Govt. He challenged his dismissal before the Delhi High Court. The Single Judge of the High Court allowed the writ petition holding that u/s.12 of the Probation of Offenders Act the appellant could not be dismissed but the Division Bench allowed the Letters Patent Appeal of the Govt. and the matter was brought before the Hon.Supreme Court by way of Special Appeal. The Hon. Supreme Court held that S.12 of the Probation of Offenders Act was not applicable and the reasonings of the learned Single Judge of the Delhi High Court could not be accepted but allowed the appeal and upheld the finding of the Single Judge on other considerations. After noting the observations of the learned Magistrate giving the benefit of the Probation of Offenders Act,1958 to the appellant, the Hon.Court proceeded to make the following observations:-

> " It is to be lamented that despite these observations of the learned Magistrate, the Govt. chose to dismiss the appellant in a huff, without applying its mind to the penalty which could appropriately be imposed upon him insofar as his service career was concerned Clause (a) of the second proviso to Art.311(2) of the Constitution confers on the Govt. 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 Govt. 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 Art.311(2) makes the provision of that Article inapplicable when a penalty is to be imposed on a Govt. 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. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical."

With these observations, the appellant was directed to be reinstated in service forthwith with full back wages from the date of his dismissal until reinstatement and he was also awarded the costs of the case.

9. The case of the Petitioner before us is not much different. He accepted the first punishment awarded to him by the disciplinary authority by way of recovery of Rs.500 from his pay and did not challenge the same in any court of law. It is not shown that the recovery ordered to be made was actually not made due to any fault or other act of the Petitioner. The further loss sustained by the Petitioner on being deprived of his pay for the period of his suspension as well as the order of the disciplinary authority that the period of suspension shall not be regularised and shallbe treated as suspension for all purposes was an additional punishment indirectly sufferred by the Petitioner on account of the same misconduct. His conviction for the same misconduct, therefore, could not entitle the Respondent no.4 to punish him again for the same misconduct and that too by awarding the maximum punishment of dismissal from service. This

will amount to double jeopardy which is not permissible under the law and, in our opinion, no further punishment could be awarded to the Petitioner on the basis of his conviction and the impugned order, therefore, cannot be sustained.

10. The petition is accordingly allowed and the impugned order dated 28.12.1978 dismissing the Petitioner from service is hereby quashed and the Respondents are directed to reinstate him in service with all back wages and other consequential benefits. There will be no order as to costs.

MEMBER (J)

MEMBER(A)

Dated: July 4, 1989
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