

1.

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**PATNA BENCH, PATNA**

**O.A. No.670/2005**

**Date of order : 24<sup>th</sup> October, 2005**

**C O R A M**

**Hon'ble Mr. Justice P.K.Sinha, Vice-Chairman  
Hon'ble Mr. A.K.Singh, Member [Admn.]**

**Tarun Kumar Verma ..... Applicants**

**Vrs.**

**Union of India & Ors. ..... Respondents.**

**Counsel for the applicant : Shri M.P.Dixit**

**Counsel for the respondents : Shri M.K.Mishra, Sr.S.C.**

**ORDER[ORAL]**

**By Justice P.K.Sinha, V.C. :-**

Heard Shri M.P.Dixit, learned counsel for the applicant and Shri M.K.Mishra, Id. Sr.S.C. appearing for the respondents, on admission.

2. The facts in brief are that while the applicant was working as Postal Assistant at Patna G.P.O., a complaint case was lodged against him for alleged demand of bribe and one Special Case No.2 of 1994 was instituted which, after trial in the Court of the Special Judge, C.B.I. South Bihar,



Patna culminated into conviction and sentence was imposed, with fine. However, he was released on [provisional] bail by the Special Judge, C.B.I., whereafter he preferred an appeal before the High Court of Judicature at Patna [ Criminal Appeal No.270/05] which was admitted on 17.5.2005 and the provisional bail was confirmed and sentence was stayed.

3. First verbal then in writing [ on 28.4.2005 ], the Respondent No.1 was informed about the conviction. The applicant received letter dated 5.5.2005 issued by the Respondent No.4, Deputy Chief Postmaster [Admn.], Patna G.P.O. intimating that the applicant had been placed under deemed suspension and was served with show-cause notice against his dismissal, a reply to which was filed, giving instances of other employees who were reinstated.

4. Thereafter, the applicant received a letter at Annexure-a/6, an order dated 1.10.2005 intimating therein that he was ordered to be retired compulsorily from service on the ground of conviction in a criminal case, which was implemented without holding any departmental inquiry. This order has been impugned, including Annexure-A/1 under which he was placed under suspension after his conviction praying therein to quash these two orders.

5. When this matter was heard for the first time on 10.10.2005, this

A handwritten signature in black ink, appearing to read "S. N. G." or a similar name.

Tribunal drew the attention of Shri Dixit towards a decision of the High Court of Punjab and Haryana in the case of Sham Singh vs. State of Punjab and; 2005 ATJ 14 and the learned counsel took adjournment to go through the judgment and for further submissions. This way, the matter has been heard in detailed today. In the case of Sham Singh [supra], the applicability of Article 311[2] was examined. The appellant was dismissed from service on account of conviction by a Criminal Court under Prevention of Corruption Act. His Lordship answered in affirmative the question as to whether dismissal from service under such circumstances could be ordered without issuing any show-cause notice and without holding any inquiry.

6. Shri Dixit submitted that the aforesaid judgment is of a Single Judge Bench of the Punjab and Haryana High Court and a contrary view was taken by a Division Bench of Karnataka High Court in a case of N.K. Superna vs. Union of India & Ors; 2005[1] ATJ 420. However, that decision is quite distinguishable as in that case the question that was considered was the interpretation of words "after the conclusion of departmental or judicial proceedings," occurring in clause [b] of Sub Rule [1] of Rule 69 of the Central Civil Services [Pension] Rules, 1972. In that case, after conviction of the petitioner by a C.B.I. Court, the President of India, invoking his powers under Rule 9[1] of the CCS [Pension] Rules had forfeited the



pension and gratuity payable to the petitioner. Therefore, their Lordships held that in appeal was continuation of the case and it could not be said that the judicial proceedings had concluded before the appeal was decided.

7. Obviously, that decision is not applicable to the facts and circumstances of this case.

8. The decision in the case of Sham Singh [supra] is based on several decisions of the Apex Court. The decision of the Apex Court, by a constitutional Bench, in the case of Union of India vs. Tulsiram Patel; AIR 1985 SC 1416 was noticed in which the constitutional Bench had held that issuance of show-cause notice was not necessary for imposing penalty of dismissal or removal upon an employee convicted of a criminal charge. That decision had over-ruled ~~an~~ earlier decision of the same court in the case of ~~§~~ the Divisional Personnel Officer, Southern Railway and Another vs. P.R.Challappan; AIR 1975 SC 2216. Similar decision of the Apex Court in the case of Tirkha Ram vs. V..Seth and Another; AIR 1988 SC 285 was also noticed which had followed the judgment of the constitutional Bench in the case of Tulsiram Patel [supra].

9. The matter under contention in this case can be well resolved by quoting a paragraph of the judgment of the Apex Court in the case of Deputy Director of Collegiate Education [Administration], Madras vs.



S.Nagoor Meera; AIR 1995 SC 1364, which was also quoted in the case of Sham Singh, which runs as follows :-

“Taking proceedings for and passing orders of dismissal, 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. It cannot be said 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. 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 proceeding, 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. 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 punishment.”



mentioned in Article 311[2]."

10. Obviously, therefore, the point raised in this application is no longer res integra and the law stands well settled in various decisions of the Apex Court. Therefore, if a penalty had been imposed upon the applicant without issuing any show-cause to him or without conducting the departmental inquiry against him without awaiting result of the pending appeal, such an order cannot be said to be beyond the law. The argument of the learned counsel that in some other cases similar step has not been taken against other employees will not help the applicant as non action of the authority in some case would not change the law when correctly applied in connection with other employee.

11. Shri Dixit also submitted that there is a difference in this case when compared with the case of Sham Singh which is that in this case a show cause was called from the applicant. If action was taken against him without any show-cause, then the judgment aforesaid would have been applicable but when a show cause had been called for, before passing the impugned order the authority had to consider the points mentioned in the show cause.

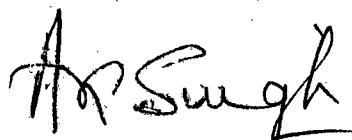
However, I have already mentioned above, <sup>that</sup> the grievance of the applicant <sup>was</sup> <sub>that</sub> action was not taken against some of the similarly situated persons which also was part of grievance in the show cause. If an employer



could take action without issuance of show cause, then the issuance of show cause could only be termed as an added precaution but the averments in the show cause submitted would not have taken away the right of the employer to take action against the employee once he is convicted by a Court for a criminal offence. Therefore, in our opinion, this argument also will not help the applicant.

12. However, if the applicant succeeds in his appeal, then he would be entitled to move the authorities for a revision of the impugned order and consequential benefits which may then be decided by the concerned authorities in accordance with law in tune with the judgment in the case of Deputy Director of Collegiate Education [supra].

13. Presently finding no merit in this application, the O.A. is not fit to be admitted and is dismissed, accordingly.



[ A.K.Singh]M[A]



[ P.K.Sinha ]JVC

mps.