IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.557/99.

FRIDAY , this the 31st day of March, 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member(A).

Hari Krishan Hirani,
136/7, Customs Quarters,
Five Garden, Matunga,
Mumbai - 400 019. ...Applicant.
(By Advocate Mr.G.K.Masand)

Vs.

1. Union of India through
Secretary in the Ministry of
Finance, Department of Revenue,
North Block,
New Delhi.

2. Chairman,
Central Board of Excise & Customs,
North Block,
New Delhi.

3. Commissioner of Customs (G),
New Custom House,
Ballard Estate,
Mumbai ...Respondents.
(By Advocate Mr.M.I.Sethna)

O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard the counsels appearing on both sides regarding admission of the O.A.

2. The applicant is working as an Appraiser (non-technical) in the Department of Customs at Bombay. He has filed this application challenging the show cause notice dt. 20.4.1999.

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The applicant was prosecuted by Central Bureau of Investigation (CBI) before the Special Judge of Greater Bombay in four Special Cases viz. 78/89, 49/90, 50/90 and 51/90 for offences punishable under section 120 B, 420, 468 and 471 I.P.C. and also for an offence under section 5(2) read with 5(1) of the Prevention of Curruption Act. The cases ended in the conviction of the applicant for those offences and he is awarded a sentence of rigorous imprisonment for seven years and a fine of Rs.1 lac. Being aggrieved with the judgment of conviction and sentence, the applicant preferred four appeals before the High Court of Bombay in Criminal Appeals 453/97, 464/97, 465/97 and 466/97. The applicant moved for suspension of the conviction and sentence and for bail. The Hon'ble High Court of Bombay suspended the sentence and granted bail by order dt. 26.8.1997 in all the four cases.

Subsequently, the applicant has received the show cause notice issued by the Disciplinary Authority viz. the Commissioner of Customs, Mumbai calling upon the applicant to show cause as to why disciplinary action should not be taken against him under Rule 19 of the CCS (CCA) Rules in view of the conviction and sentence of the applicant in the Criminal Cases.

Being aggrieved by the show cause notice and the purported action to be taken under Rule 19 of the CCS (CCA) Rules the applicant has come up with the present application. He has taken few grounds challenging the action of the Disciplinary Action. According to him , when the High Court has stayed and suspended the impugned Judgment of the Special Judge, the action

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by the disciplinary authority in issuing the show cause notice is unwarranted and liable to be quashed.

3. The respondents in their reply have justified the action taken by the Disciplinary Authority. It is stated that the grant of stay or grant of bail by the High Court will not come in the way of taking action under Rule 19 in view of the law declared by the Apex Court. They have also taken the plea that the application is pre-mature since the matter is still at the show cause notice stage.

4. In our view, the contention of the respondents that the application is pre-mature and therefore should not be admitted has sufficient force. The matter is still at the show cause notice stage. The applicant has an opportunity to reply to the show cause notice and pursuade the Disciplinary Authority not to take any action on the basis of the show cause notice in view of the stay orders passed by the High Court. If any adverse orders are passed by the disciplinary authority, then the applicant has a right of statutory appeal to higher authorities and if he still feels aggrieved, he can approach this Tribunal seeking judicial review. Even under section 20 of the Administrative Tribunals Act, 1985 a party has to exhaust statutory remedies before approaching this Tribunal. Rule 19 itself provides the issue of show cause notices on the basis of conviction and sentence in a criminal case and then disciplinary authority can take action according to law. Therefore, in such circumstances, filing of the OA at the threshold is certainly pre-mature. We are fortified in our view by an order of the Division Bench of the Madras Bench of this Tribunal, to which one of us was a party

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{Hon'ble Shri B.N.Bahadur, Member (A)} in the case of S.Kannan Vs. Union of India and Ors. (2000 (1) SLJ (CAT) 167), where the Division Bench of the Madras Bench of the Tribunal has held that such an application at the stage of show cause notice is premature and Tribunal should not interfere at this stage. It is further pointed out that even if the High Court has suspended the sentence, it wont affect the jurisdiction of the disciplinary authority to take action under Rule 19 and it is open to the affected party to convince the disciplinary authority that it is not a fit case for action under rule 19.

For the above reasons, we hold that the OA is premature and could not be entertained, giving liberty to the applicant to file reply to the show cause notice and if any adverse order is passed to exhaust statutory remedy of appeal and then approach this Tribunal.

5. Even though we have held that the OA is premature and should not be admitted, we will briefly refer to some of the contentions urged by the learned counsel for the applicant.

The first contention is that when the Disciplinary Authority had already issued a major penalty charge sheet under Rule 14 of the CCS (CCA) Rules and started departmental enquiry he cannot not abandon the regular enquiry and have recourse to the summary enquiry or summary power under Rule 19. It is true that major penalty charge sheet had been issued to the applicant under Rule 14 and Enquiry Officer has submitted a report. In the meanwhile, the applicant has suffered conviction in the criminal case. The question is whether the Disciplinary Authority should complete the departmental enquiry and pass a final order in that

case or he can have recourse to summary power under Rule 19. The question admits of no doubt, since the Rule itself is very clear.

Rule 19 starts with a opening saving clause which reads as follows:

"Notwithstanding anything contained under Rule 14 to 18" Therefore, the rule itself says that notwithstanding Rule 14 to 18 action could be taken under Rule 19 if the case falls under any of the sub-clause of Rule 19. One of the clauses of Rule 19 speaks about taking action on the basis of a conviction by a Criminal Court. Therefore, the power under Rule 19 is wholly independent, distinct and different from the power under Rules 14 to 18 of CCS (CCA) Rules. Rules 14 to 18 do not control the power to be exercised under Rule 19. When there is already a conviction by a Criminal Court, it will be an empty formality to proceed with the departmental enquiry and then take action under Rule 14. Therefore, in our view, the argument addressed at the bar on behalf of the applicant that power under Rule 19 cannot be exercised when a charge sheet had been issued under Rule 14 has no merit and is accordingly rejected.

6. Then, it was argued that since a doubt had been raised by the applicant before the Disciplinary Authority that he has no powers to proceed under Rule 19 when there is a stay order by the High Court, then the Disciplinary Authority should have stayed the matter and referred the matter to the President for opinion and final orders as provided in Rule 3(4) and Rule 35 of the CCS (CCA) Rules. In our view, this argument has no merit. It is only if the disciplinary authority entertains a doubt about application of any of the provisions of the Rules to a particular

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case he has to make a reference to the President for opinion. In this case, the disciplinary authority has no doubt in his mind and he has not entertained any such doubt. It is applicant who is creating doubt or raising doubt which is not shared by the disciplinary authority. Therefore, the argument that the Disciplinary Authority should have referred the matter to the President has no merit as long as the disciplinary authority does not entertain any doubt about his powers or about the application of provision of CCS (CCA) Rules.

7. Another argument that action is initiated only against the applicant and not against other co-delinquents under Rule 19 has also no merit. It may be, that there was a clubbed departmental enquiry against applicant and other co-delinquents. But, here there is conviction only against applicant. Therefore, the disciplinary authority has every right to proceed under Rule 19. There is no question of violation of Article 14 or 16 of the Constitution as contended by the applicant. There cannot be any equality in treatment between a person who is convicted by the Criminal Court and others who are not convicted by Criminal Court.

8. Then, the argument about merits of the Judgment of the Criminal Court and about previous conduct of the applicant in the department having meritorious service etc. are not relevant for our present purpose. We are only testing the legality and validity of the show cause notice. If the applicant has meritorious record, he can press the same before the disciplinary authority and request him not to take any action. We are not concerned about that aspect in the present case. We cannot also

go into the question of the correctness or legality of the judgment of the Criminal Court. We have no jurisdiction to test the correctness and legality of the Criminal Court. Further, the matter is subjudice when the High Court is seized of the matter.

9. The only other argument which was seriously pressed and highlighted by the learned counsel for the applicant is that in view of the order passed by the High Court in staying the impugned judgment and granting bail to the applicant, the disciplinary authority has no right to issue the show cause notice on the basis of the conviction and sentence which has been stayed by the High Court.

The order of the High Court granting bail and suspension of the sentence under section 389 (1) Cr.P.C. dt. 26.8.1997 reads as follows:

> " Considering the circumstances that the applicant has been sentenced to undergo 7 years RI, was on bail in the court below, and did not misuse the same, and as his appeal would take a considerable time for disposal we think it expedient to enlarge him on bail provided he furnishes a personal bond of Rs.50,000/- and two sureties of the like amount to the satisfaction of the trial court. Realisation of the fine shall remain stayed.
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> Execution of the sentence and the order appealed against would remain suspended in terms of section 389(1) Cr.P.C."

From the above order we find that the sentence and the order obtained have been suspended in terms of Section 389(1) Cr.P.C. and consequently applicant has been granted bail. Section 389 Cr.P.C. speaks only about suspension of sentence and granting of bail to an accused who appeals against a Judgment of conviction

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and sentence. The order does not say that the conviction has been kept in abeyance or suspended. As already stated section 389 speaks only about the suspension of the sentence during the pendency of the appeal. It may be, that the High Court had vide powers under section 482 Cr.P.C. where it can grant any order including suspension of conviction.

It is true that in the application for stay, applicant had taken number of grounds for stay of the Judgment of the Trial Court including a ground that he might be removed from the service on the basis of conviction and sentence. In many cases, number of grounds are taken in a writ petition or appeal or an application. It is not the mere grounds that are taken in the application which are relevant, the question is what grounds or what reasons weighed with the High Court in passing a particular order. We cannot visualise as to what transpired in the mind of the Hon'ble Judges of the High Court or what considerations weighted with the Hon'ble Judges in granting the order of stay dt. 26.8.1997. We have to interpret the order of the High Court as available on record. The order does not indicate that the High Court was concerned with the possible action that may be taken against the applicant under Service Rules. The order does not give an indication that the High Court intended to stay any action that may be taken by the Disciplinary Authority under the Service Rules against the applicant on the basis of the impugned Judgment of conviction. We have to go by the order of the High Court as it stands and the order does not give any such indication. What was urged in the stay application or what grounds were taken are themselves not relevant unless the order gives an indication that the Court had applied its mind to

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this fact and granted stay of any action against the applicant on the basis of the impugned Judgment of conviction.

10. In this connection, the learned counsel for the respondents has invited our attention to two authorities of the Apex Court.

In **Union of India Vs. V.K.Bhaskar** (1998 SCC (L&S) 162, the applicant was sentenced and convicted for offences of corruption u/s. 5 of Prevention of Corruption Act, 1947 and offences u/s.409 and 477-A IPC. The official Bhaskar had filed an appeal against the Judgment of conviction and sentence in the High Court of Punjab & Haryana. During the pendency of the appeal the official came to be dismissed from service by the Disciplinary Authority on the basis of the Judgment of the conviction. That order was challenged before the Principal Bench of this Tribunal at New Delhi. The Tribunal held that in view of the pendency of the appeal in the High Court, the Disciplinary Authority could not have passed an order of dismissal on the basis of conviction and hence set aside that order and allowed the application. Then, the Government of India took the matter in appeal before the Supreme Court. The Supreme Court has observed that the order of stay was passed under section 389(1) Cr.P.C. which only speaks about suspending the execution of the sentence or order and does not expressly speak of suspension of conviction. Therefore, Supreme Court held that pendency of the appeal or suspension of the sentence of order will not come in the way of the Disciplinary Authority taking action under Rule 19 of the CCS (CCA) Rules and accordingly allowed the appeal and set aside the order of the Tribunal.

Then, the next case referred to is Union of India & Ors.

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Vs. Ramesh Kumar (1997 SCC (L&S) 1774), which is also an identical case where the Disciplinary Authority had taken action and passed an order of dismissal against an official on the basis of his conviction by the Criminal Court. That order was challenged before the Principal Bench of the Tribunal who allowed the application and set aside the order of dismissal on the grounds that appeal had been filed in the High Court against the conviction and the High Court had granted stay of the sentence passed by the Trial Court.

The Supreme Court has referred to the order of stay passed by the High Court granting suspension of the execution of the sentence and grant of bail. The Supreme Court observed that a bear reading of Rule 19 shows that Disciplinary Authority can take action under Rule 19 when he has been convicted on a criminal charge. The suspension of execution of sentence by the Appellate Court will not obliterate the conviction and therefore, the Disciplinary Authority has full powers to pass appropriate order under Rule 19 notwithstanding the suspension of sentence. It is further stated that the Rules do not require that disciplinary authority should stay his hands and wait till the disposal of the appeal by the Appellate Court. It is clearly pointed out that suspension of execution of sentence under section 389 Cr.P.C. will not come in the way of Disciplinary Authority passing an order under Rule 19. It, therefore, held that notwithstanding the suspension of sentence/order of the Criminal Court by the High Court, the Disciplinary Authority's power to take action under Rule 19 is not taken away. We hasten to add that it is for the Disciplinary Authority to decide whether in a given case, action to be taken under Rule 19 when

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appeal is pending and when stay is granted and then apply his mind and take a decision according to law. We are only saying that pendency of appeal or grant of suspension of sentence is not a bar for exercise of discretion or power under Rule 19 by the Disciplinary Authority.

11. Let us look this point from another angle.

Suppose an adverse order is passed against the applicant that he should be removed from service or dismissed from service and ultimately he succeeds in the appeal and the order of conviction is set aside. Then, certainly he can move the Disciplinary Authority and he can be reinstated in service. On the other hand, if applicant's request is now granted and further proceedings before the Disciplinary Authority are stayed till the disposal of the appeal and if ultimately the appeal fails, then Disciplinary Authority will have permitted the applicant to work inspite of his suffering conviction. The applicant himself has stated in his bail application that the appeal may take about 10 to 12 years for disposal before the High Court. In some cases, during that period of 10 to 12 years official may even retire from service. If he is allowed to work inspite of his conviction and if subsequently the conviction is confirmed, then the department cannot take any action against the applicant. On the other hand, applicant will have a remedy for reinstatement or getting back wages etc. in case he succeeds in the appeal. Having regard to the facts and circumstances of the case the balance of convenience is in favour of the administration and not in favour of the applicant since applicant can always be compensated in case he succeeds in the High Court in getting order of conviction set aside. In the facts and circumstances of

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the case, we are not inclined to admit this application.

12. The learned counsel for the applicant made an alternate submission that in case the Tribunal is not inclined to accept the arguments, then the interim order of stay against the disciplinary authority may be continued for some more time. We have held that the application itself is premature and not maintainable, since the matter is still at the show cause notice stage. Then, we have held that on the basis of the law declared by the Apex Court that pendency of criminal appeal and grant of suspension of sentence/order will not affect the jurisdiction of the Disciplinary Authority in taking action under Rule 19. In these circumstances, we are not inclined to extend the stay order since our decision is based on the law declared by the Apex Court.

13. In the result, the application is rejected at the admission stage. The interim stay order dt. 30.8.1999 granted in this case and extended from time to time is hereby vacated. No order as to costs.

(B.N.BAHADUR)
MEMBER(A)

31/3/2000
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.