

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 1/94
T.A. No.

199

DATE OF DECISION 3.8.1995

S.K.Pathak **Petitioner**

Mr. Sanjeev Kumar **Advocate for the Petitioner (s)**

Versus

Union of India & Ors. **Respondent**

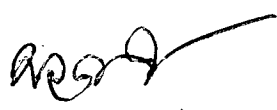
Mr. M. Rafiq **Advocate for the Respondent (s)**


CORAM :

The Hon'ble Mr. O.P.Sharma, Member(A)

The Hon'ble Mr. Ratan Prakash, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? α
4. Whether it needs to be circulated to other Benches of the Tribunal ? 9


(Ratan Prakash)
Member(J).


(O.P.Sharma)
Member(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

T.A.No.1/94

Dt. of order: 3-8-1995

S.K.Pathak

: Applicant

Vs.

Union of India & Ors.

: Respondents.

Mr.Sanjeev Kumar

: Counsel for the applicant

Mr.M.Rafiq

: Counsel for respondents.

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Adm.)

Hon'ble Mr.Ratan Prakash, Member(Judl)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

1. Shri S.K.Pathak had filed a Civil Writ Petition No.376/85 before the Rajasthan High Court, Jaipur Bench, wherein he had prayed that the order of Sr.Superintendent of Post Offices dated 9.9.1976 (Annx.A2) by which the petitioner was dismissed from service may be quashed, the respondents may be directed to dispose of the appeal filed by the applicant on 12.10.'76 and 5.1.'77 and they may be further directed not to take any disciplinary action against the petitioner till his criminal appeal No.194/74 is disposed of by the High Court. Finally he had prayed that the respondents may be directed to pay arrears of salary and other consequential benefits to the petitioner.

2. In their reply filed on 3.9.'87, the respondents had taken objection about the maintainability of the writ petition in the High Court in view of the setting up of the Central Administrative Tribunal. The writ petition was transferred to the Tribunal by letter dated 23.11.'94 from the Addl.Registrar, Rajasthan High Court, Jaipur Bench and was registered as T.A.No. 1/94.

3. The petitioner is hereinafter referred to as 'the applicant'.

4. The case of the applicant is that he was employed as a Postman in the Posts & Telegraphs Deptt, in 1957, was promoted as

Clerk in the normal course and was further promoted as Sub Post Master in 1970. A criminal case under Secs. 409 and 477-A of the IPC and Sec.5(1)(c) read with Sec.5(2) of the Prevention of Corruption Act, was instituted against the applicant. He was convicted by the Trial Court on 13.1.'75. The sentence was however suspended by the Trial Court. The applicant preferred an appeal against the aforesaid conviction in the Rajasthan High Court, it was admitted and by order dated 8.4.'75, the sentence awarded to the applicant was suspended (Annx.A1). The appeal filed before the High Court is still pending. The applicant's case is that since the conviction of the applicant was not final, it was not open to the respondents to take any disciplinary action against the applicant and to impose any penalty to him. However, without application of mind and without taking into consideration the circumstances leading to the applicant's conviction and without issuing any show cause notice, the Supdt. of Post Offices, Kota Division, passed order dated 9.9.'76 dismissing the applicant from Service. The applicant preferred an appeal on 12.10.'76 to the Post Master General (Annx.4) but the appeal has still not been disposed of. The applicant also preferred an appeal to the Director General Posts & Telegraphs, New Delhi on 5.1.77 (Annx.5). He also submitted a representation on 21.2.'79 to the Post Master General, that the applicant was entitled to be kept under suspension till the decision of the Criminal Appellate Court. Thereafter, the applicant made a further representation on 5.3.'79 to the Director Postal Services (Establishment). The last representation made by him was to the President of India on 5.4.'84. However, no action has been taken on the appeals and representations made by the applicant. Further according to the applicant, the Rajasthan High Court has held in D.B.Special Appeal No.191/81, Union of India Vs. B.D. Paghuvanshi decided on 28.9.'81 that if an appeal is pending against

conviction, the conviction is not final and it is not open to the disciplinary authority to take any action to impose penalty on the basis of the conviction by the trial Court. The order of dismissal was passed in a mechanical manner, only on the basis of conviction without issuing any notice to the applicant. The action of the respondents is against principles of natural justice and is in violation of Article 311 of the Constitution.

5. As stated above, the respondents had filed preliminary objections as to the maintainability of the writ petition in the High Court but there is no reply on merits of the writ petition.

6. During the arguments, the learned counsel for the applicant produced before us copies of certain judgments delivered by the High Court. In Dr. Trilochan Singh Vs. State of Rajasthan, RLW 1982 page 511, the High Court held that a person cannot be removed from service on the basis of his conduct which led to his conviction so long as his appeal is pending in the appellate Court. The other two cases cited by the learned counsel for the applicant were Jamaludin Vs. The State of Rajasthan, RLW 1983 page 191 and Purshottam Singh Vs. Union of India & Anr., WLN 1980 page 521. The arguments of the learned counsel for the applicant was that on his conviction and sentence, the applicant should have been placed under suspension and final order imposing penalty if any should have been passed only after the appellate court decided the appeal filed by the applicant against his conviction. He added that the applicant's conviction has since been upheld by the High Court, although this fact is not on record. However, for the period from the date of conviction and sentence to the date of final disposal of the appeal against the said conviction and sentence by the High Court, the applicant should be treated as under suspension and arrears of subsistence allowance payable during suspension should be granted to him.

7. We have heard the learned counsel for the parties and have

perused the material on record as also the judgments cited before us. The judgment in Dr. Trilochan Singh's case has relevance to the issue arising in the present case, although the judgment was in respect of action taken under Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958. In Jamaludin's case the Rajasthan High Court held that since the appeal against the conviction was pending and the conviction was not final, the order of dismissal was not maintainable. The facts of Purshottam Singh's case however, have no applicability of the present case. In that case, the High Court held that since after removal from service on the basis of the conviction, the accused was acquitted by the appellate court, the order imposing penalty of removal was not sustainable.

8. We have however a judgment of the Hon'ble Supreme Court before us which is directly on the point and the issue in the present case. This is Dy. Director of Collegiate Education (Admn), Madras Vs. S. Nagoor Meera (1995) 29 ATC 574. In this case, the respondent was convicted under Secs. 420 of IPC and 5 of the Prevention of Corruption Act and was sentenced to undergo rigorous imprisonment for one year in addition to fine of Rs. 5000/-. The respondent filed appeal in the High Court against conviction and sentence and the High Court suspended the sentence and released him on bail. Thereafter, the appellant issued a show cause notice calling upon the respondent to show cause why he should not be dismissed from service in view of his conviction. The respondent on receipt of the notice filed an O.A. before Tamil Nadu Administrative Tribunal which held that once the sentence had been suspended admitting the appeal, the criminal proceedings in the lower court which ended in conviction and sentence of the respondent were being continued in the appellate court and can end only when proceedings in the appellate court come to an end. Till then action under the Tamil Nadu (CCA) Rules

cannot be taken. The Hon'ble Supreme Court analysed the provisions of Article 311(2) and of clause (a) of second proviso thereto which speaks of 'conduct which has led to his conviction on a criminal charge', and not of sentence or punishment awarded. The Hon'ble Supreme Court further held that merely because the sentence is suspended and/or the accused is released on bail, conviction does not cease to be operative. In any case there can be no question of suspending the conduct which led to conviction. Therefore, taking proceedings for and passing order 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 government servant has been released on bail pending the appeal. The Hon'ble Supreme Court further held that more appropriate course of action in such cases would be that once a government servant is convicted on a criminal charge, action is taken under clause (a) of second proviso to Article 311(2) of the Constitution without waiting for appeal or revision as the case may be. If however, the government servant is acquitted on appeal or other proceedings, the order can always be revised and if he is reinstated, he will be entitled to all benefits. The other course suggested namely to wait till the appeal, etc. is 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 Hon'ble Supreme Court, however, further held that the right to impose penalties carries with it the duty to do it justly.

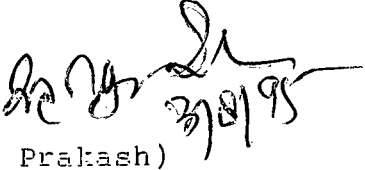
9. In view of the above unequivocal observations of the Hon'ble Supreme Court, the respondents were justified in taking action against the applicant on the basis of the conviction of the applicant by the trial court itself. The learned counsel for the applicant did not show us any rule or authority in support of

the plea that at the relevant time any show cause notice was required to be issued before imposing penalty on the basis of the conduct which led to the applicant's conviction. Therefore, the objection to the imposition of the penalty on the ground that show cause notice was not issued or that provisions of Article 311(2) were violated is not sustainable.


10. The learned counsel for the applicant stated during the argument that conviction of the applicant has since been upheld by the High Court in appellate proceedings. The charge against the applicant was serious. In our view, the penalty of dismissal imposed on the applicant was justified. Since the respondents were justified in imposing penalty of dismissal on the basis of the conviction by the trial court itself, there was no question of placing the applicant under suspension from the date of such conviction and treating him as under suspension till the final disposal of his appeal by the High Court. Therefore, the plea that the applicant would be entitled to subsistence allowance from the date of conviction and sentence to the date of final disposal of the appeal by the High Court is rejected.

11. It is unfortunate that the departmental appeals and representations made by the applicant remained undisposed of. A government servant is entitled to have his appeal considered on merits regardless of the grounds on which penalty has been imposed on him. However, we cannot overlook the fact that in the instant case, the conviction has been upheld by the High Court as admitted by the learned counsel for the applicant himself. The charges against the applicant on the basis of which he was convicted were grave. Penalty of dismissal from service does not seem to be disproportionate to the conduct of the applicant which led to his conviction. Therefore, at this stage, directing the appellate and other authorities to dispose of the appeals and representations of the applicant would not serve any purpose.

Accordingly, this T.A. is dismissed with no order as to costs.


(Ratan Prakash)

Member (Judl.).


(O.P. Sharma)

Member (Adm.).