

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.590/95

Date of order: 23/2/2001

K.S.Arora, S/o late S;hri Sardar Ajit Singh, R/o 1/1080
Malviya Nagar, Jaipur, Ex-postal Assistant, Gandhi
Nagar, Jaipur.

...Applicant.

VS.

Union of India through Secretary to the Govt of India,
Dept of Posts, New Delhi.

2. Chief Post Master General Rajasthan Circle, Jaipur.
3. Director Postal Services Jaipur Region, Jaipur.
4. Senior Superintendent of Post Offices, Jaipur City
Postal Division, Jaipur.

...Respondents.

Mr.C.B.Sharma - Counsel for the applicant.

Mr.Hemant Gupta- Proxy of Mr.M.Rafiq, Counsel for respondents.

CORAM:

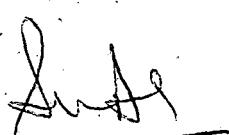
Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.Gopal Singh, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the order appellate authority (Annex.A1) and order of Disciplinary authority (Annex.A2) and to direct the respondents to reinstate the applicant in service with all consequential benefits.

2. In brief, facts of the case as stated by the applicant are that the applicant was involved in a criminal case in the year 1981 and he was charge sheeted for trial before special Magistrate for the offences under Sec.420, 477-A read with Sec.120-B IPC alongwith others. It is stated that the applicant was held guilty and was sentenced to 4 months rigorous imprisonment and fine of Rs.250/- alongwith others



and in default a simple imprisonment for one month. The applicant filed appeal against the conviction and sentence and the Addl. Distt. & Session Judge, Jaipur District, maintained the conviction of the applicant but instead of sentence the applicant was released under Sec.4 of Probation of Offenders Act, 1958. Feeling aggrieved the applicant filed Criminal Revision in the High Court which was decided on 23.7.92 by maintaining the judgement of Additional Distt. & Session Judge, Jaipur District and held the conviction of the applicant shall not effect his service career. It is stated by the applicant that on the basis of conviction of the applicant by the Special Magistrate, CBI Cases, respondent No.4 issued show cause notice to the applicant. The applicant challenged the show cause notice by filing Writ Petition No.246/85 and obtained stay which was later on confirmed. Thereafter, the said writ petition was transferred to this Tribunal which was dismissed in default vide order dated 18.12.86 and was again restored on 6.7.87. But in between this period, respondent No.4 removed the applicant from service on the basis of conviction without awaiting the reply to the show cause notice. Later on the T.A was also dismissed by this Tribunal vide order dated 13.9.93. The applicant filed an application to respondent No.4 to reinstate the applicant in service but no action was taken hence he filed O.A No.315/95 which was disposed of vide order dated 21.7.95 with direction to respondent No.2 to decide the appeal within 2 months. Thereafter, the applicant filed appeal which was also dismissed by the impugned order at Anxx.A1. It is stated that the High Court in revision held that the conviction of the applicant shall not affect his service career, therefore, the removal of the applicant by the disciplinary authority and the order of the appellate authority are not sustainable in law.

[Signature]

It is also stated that the disciplinary authority removed the applicant from service without waiting any reply and the appellate authority decided the appeal without application of mind, in violation of the principles of natural justice. Therefore, the applicant filed the O.A for the relief as above.

3. Reply was filed. In the reply it is stated that the action of the respondents was perfectly legal and valid. The applicant was provided with an opportunity of hearing and to submit written statement but instead of availing the same he challenged the show cause notice by filing Writ Petition which was ultimately dismissed. It is stated that the applicant was dismissed from service on the basis of misconduct which led to his conviction and the conviction was maintained by the appellate authority and in revision by the High Court. It is also stated that the order of removal was passed by the competent authority so also the appeal was decided by the competent authority by a reasoned and speaking order after full application of mind. The applicant was only granted the benefit of Probation of Offenders Act, 1958 and he was not acquitted from the charges. The applicant had authenticated the bogus commission bills as such he facilitated the false payment of Rs.2160.20 to the Agent. Therefore, removal of the applicant from service on the basis of this grave misconduct which led to his conviction is not in any way illegal and in violation of Articles 14, 16 and 21 of the Constitution of India. Therefore, the applicant is not entitled to any relief sought for.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The counsel for the applicant has argued that the High Court of Rajasthan, while deciding the Revision Petition, made

it clear that the conviction of the applicant for the offence shall not affect his career, therefore, removal of the applicant on the basis of the said conviction is not sustainable in law. In support of his contention he has referred to: (i) AIR 2985 SC 772, Shankar Dass Vs. UOI & Anr and (ii) (1994) 26 ATC 409, Dwarka Dass Goyal Vs. UOI & Ors. On the other hand, the learned counsel for the respondents argued that as per provisions given in Rule 19 of the CCS(CCA) Rules, 1965, the respondents had rightly imposed the penalty of removal from service upon the applicant on the basis of grave misconduct which led to his conviction, therefore, there is no basis to interfere in the impugned orders of removal and the order passed by the appellate authority.

6. Rule 19 of the CCS(CCA) Rules provides a special procedure in certain cases which reads as under:

"Notwithstanding anything contained in Rule 14 to Rule 18:

(i) Where any penalty is imposed on a Govt servant on the ground of conduct which has led to his conviction on a criminal charge, or
 (ii) & (iii) ...

the disciplinary authority may consider the circumstances of the case and makes such orders thereon as it deems fit.

Provided that the Govt servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i);

Provided further that the Commission shall be consulted, where such situation is necessary, before any orders are made in any case under this rule."

7. In the instant case, the respondents issued memorandum

on 22.1.87 by which the applicant was removed from service on account of mis conduct which led to his conviction for the offence under Sec.420, 477A read with 120B IPC. The applicant was convicted for the aforesaid offences by Special Magistrate, CBI cases, which was upheld by the Court of Addl. District & Sessions Judge in appeal and by Hon'ble High Court of Rajasthan, in revision.

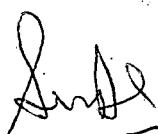
8. In Divisional Personnel Officer Southern Railway Vs. T.R.Challappan, 1976(3) SCC 190, Hon'ble Supreme Court held that Sec.12, of the Offenders Act does not contemplate automatic disqualification of a person released on probation.

9. Rule 19 of the above referred rules itself provides that where any penalty imposed on a government servant on the ground of misconduct which has led to his conviction on a criminal charge, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.

10. In the instant case, the disciplinary authority has taken into consideration the circumstances of the case which led to the conviction of the appellant on a criminal charge.

11. In Hari Chand Vs. The Director of School Education (1998) 1 Scale 136, Hon'ble Supreme Court has held that Sec.12 of the Probation of Offenders Act would apply only in respect of a disqualification that goes with a conviction under the law which provides for the offence and its punishment. Further it was observed that it cannot be held that by reason of Sec.12 a conviction for an offence should not be taken into account for the purposes of dismissal of the person convicted from Govt service.

12. In the instant case, merely because the appellate court had given the applicant the benefit of the provisions of Sec.12 of Probation of Offenders Act, would not mean that the



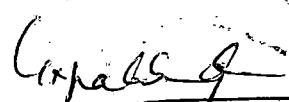
respondents cannot taken into account the fact of his conviction by passing the penalty orders, as provided under Rule 19(1) of the CCS(CCA) Rules.

13. The view of Hon'ble Supreme Court have been followed by the Principal Bench of the Tribunal, New Delhi in M.L.Gupta Vs. UOI & Ors, 2000(1) ATJ 305.

14. The applicant has also challenged the order of the appellate authority on the ground that the order is nonspeaking and based without any application of mind. We find that the order of the appellate authority is a reasoned and speaking order and almost all the points raised by the applicant in his appeal have been considered. The appellate authority has also taken into consideration the grounds which led to the conviction of the applicant. Therefore, we have no basis/ground to interfere with the order of the appellate authority.

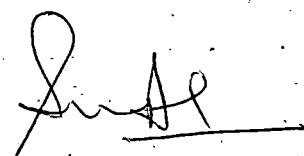
15. In view of the settled legal position and facts and circumstances of this case, we are of the considered opinion that the applicant has no case for interference by this Tribunal and this O.A devoid of any merit is liable to be dismissed.

16. We, therefore, dismiss the O.A having no merit with no order as to costs.



(Gopal Singh)

Member (A).



(S.K. Agarwal)

Member (J).