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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 08.01.1998

OA 03/98

Bahadur Chand, Postal Assistant (under Suspension), Jawahar Nagar, Jaipur.

... Applicant

Versus

1. Union of India through the Secretary, Ministry of Communication, Deptt. of Posts, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Director, Postal Services, Jaipur Region, Jaipur.

... Respondents

CORAM:

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

HON'BLE MR. G.P. SHARMA, ADMINISTRATIVE MEMBER

For the Applicant

... Mr. D.V. Singh

For the Respondents

...

O-R-D-E-R

PER HON'BLE MR. G.P. SHARMA, ADMINISTRATIVE MEMBER

In this application under Section 19 of the Administrative Tribunals Act, 1985, Shri Bahadur Chand has prayed that the order dated 24.12.97 (Annexure A/1), placing the applicant under suspension, may be quashed and the notice dated 24.12.97 (Annexure A/7), calling upon the applicant to explain why appropriate penalty should not be imposed upon him under Rule-19 of the CCS (CCA) Rules, 1965, on the ground of his conviction on a criminal charge, may also be quashed because a departmental penalty has already been made on the applicant vide order dated 18.11.96 (Annexure A/5).

2. The case of the applicant is that in pursuance of a charge-sheet dated 8.11.88 (Annexure A/2), an enquiry was conducted. In pursuance thereof, an order dated 18.11.96 (Annexure A/5) was passed imposing on the applicant penalty of reduction in pay by two stages for one year w.e.f. 1.12.96. On the same charges, the applicant was also prosecuted under Sections 409, 420, 467 and 468 IPC. He was convicted and sentence was awarded to him. The applicant preferred an appeal against the order of conviction and sentence and vide Annexure A/6 dated 23.10.97 execution of the sentence imposed on the applicant was stayed on his furnishing appropriate surities. The respondents have, however, placed the applicant under suspension vide order Annexure A/1 dated 24.12.97 on the ground that he has been convicted on a criminal charge, as aforesaid. They have also issued a show-cause notice (Annexure A/7) dated 24.12.97 to the applicant calling upon him to explain why appropriate penalty under Rule-19 of the CCS (CCA) Rules, 1965, should not be imposed on him.

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3. Applicant's grievance is that a departmental penalty on the same charges, which were the subject matter of the criminal charges against him, has already been imposed upon him vide Annexure A-5 dated 13.11.96. On the same charges he has been prosecuted, convicted and sentenced by the court of law. On his preferring appeal against the order of conviction and sentence, the execution of the sentence has already been stayed. The effect of the stay granted by the appellate court, according to him, is that no conviction or sentence is in existence at present and, therefore, the respondents were not justified in issuing the show-cause notice, at Annexure A-7, dated 24.12.97, proposing to impose any penalty under Rule-19 of the CCS (CCA) Rules, 1955. Also, according to him, this is a case of double jeopardy inasmuch as a penalty has already been imposed upon him departmentally for the same charges on which he has been convicted and sentenced. The department cannot, therefore, now propose to impose any penalty upon him on the grounds on which he was convicted by the court of law.


4. Arguing before us for the purpose of admission and interim direction that the applicant may be continued in service pending the outcome of the OA, the learned counsel for the applicant placed before us a judgement of the Hon'ble High Court of Delhi, which, according to him, shows that once the execution of sentence has been stayed, no action can be taken against the person concerned merely on the basis of his conviction. He apprehends that the applicant would be removed from service in pursuance of the show-cause notice issued to him, as at Annexure A-7, and has, therefore, prayed for an interim direction also to the effect that the applicant should be allowed to be continued in service till the outcome of the OA.

5. We have heard the learned counsel for the applicant and have perused the material on record.

6. We cannot give any finding at this stage on the merits of the case because no notice has been issued to the respondents. The applicant has not preferred any appeal against the order of suspension. The learned counsel for the applicant states that he has, however, submitted a reply to the show-cause notice, at Annexure A/7, dated 24.12.97. However, he admits that there is no reference to the filing of the reply in the OA because the reply was filed after the filing of the OA. Copy of the reply is also not available on the record. In the circumstances of the present case, we deem it proper to direct that firstly, the applicant should prefer an appeal against the order of suspension. Secondly, if he has not filed any reply to the show-cause notice, at Annexure A/7, dated 24.12.97, he should submit such reply to the respondents forthwith. We further direct that if the applicant prefers an appeal against

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the order of suspension and also files a reply to Annexure A/7 or if he has already filed a reply thereto, the respondents shall consider these on merits before taking any final decision. In pursuance of the show-cause notice, at Annexure A/7, dated 24.12.97, the respondents are directed to consider the reply of the applicant on merits if it has already filed or if it is filed by the applicant now within a period of 15 days. The OA stands disposed of accordingly, at the stage of admission. A copy of this order shall be sent to the respondents alongwith a copy of the OA and the annexures thereto.


(G.P. SHARMA)
ADM. MEMBER
VK


(GOPAL PRISHNA)
VICE CHAIRMAN