

# THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH, JAIPUR ORDER SHEET

(12)

APPLICATION NO.: \_\_\_\_\_

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

**03.11.2008**  
**OA 401/2006**

**Present : Mr. S.B.Gupta, proxy counsel for  
Mr. S.K.Jain, counsel for the applicant.  
Mr. Siya Ram proxy counsel for  
Mr. T.P.Sharma, counsel for the respondents.**

**This case has been listed before the Deputy Registrar due to non-availability of the Division Bench. Be listed before the Hon'ble Division Bench on 25.11.2008.**


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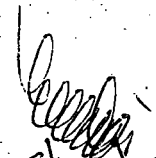
  
**(GURMIT SINGH)**  
**DEPUTY REGISTRAR**

25-11.08

Mr. Shashi Bhushan Gupta, Counsel for applicant  
Ms. Shabnam Singh, Proxy Counsel for  
Mr. T.P.Sharma, Counsel for respondent

Heard learned Counsel for the parties.  
For the reasons dictated separately,  
the OA is disposed of.

  
**(B.L. Khatri)**  
**MLA**

  
**(M.L. Chauhan)**  
**M(L)**

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

*Jaipur, the 25<sup>th</sup> day of November, 2008*

**ORIGINAL APPLICATION NO.401/2006**

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

Mushtaque Ahmad,  
S/o Shri Chirmauli Khan,  
R/o Qtr.No.64-T, Behind Railway Lobby,  
Gangapur City,  
District Sawai Madhopur.

... Applicant

(By Advocate : Shri Shashi Bhushan Gupta)

Versus

1. Union of India through  
General Manager,  
West Central Railway,  
Jabalpur.
2. Sr.D.O.M.,  
West Central Railway,  
Kota Division,  
Kota.
3. D.O.M.,  
West Central Railway,  
Kota Division,  
Kota.

... Respondents

(By Advocate : Ms.Shabnam Singh, proxy counsel for  
Shri T.P.Sharma)



**ORDER (ORAL)**

PER HON'BLE MR.M.L.CHAUHAN

The applicant has filed this OA thereby praying that in view of the order passed by the Hon'ble High Court dated 7.3.2006 (Ann.A/5), whereby conviction of the applicant has been stayed, the respondents may be directed to reinstate the applicant in service forthwith.

2. Briefly stated, facts of the case are that a criminal case was registered against the applicant under Section 302 & 304 IPC and pursuant to the said criminal case, the applicant was convicted by the trial court vide judgement dated 2.6.92. Since conduct of the applicant was found to be serious, he was placed under suspension vide order dated 2.6.92. Subsequently, a show-cause notice was issued to the applicant in view of conviction order passed by the Trial Court, whereby the applicant was intimated that his conduct is not proper to retain him in government service and also that his further retention in public service is undesirable. Thus, the competent authority proposed to impose the penalty of removal from service upon the applicant.

3. It is admitted case between the parties that after issuing the show-cause notice, the respondents imposed the penalty of removal from service vide order dated 21.6.99 (Ann.A/4). It may be relevant to submit here that pursuant to filing of appeal against judgement of the trial court, the sentence of the applicant was suspended on 14.7.92. From the material placed on record, it is also evident that subsequently the applicant moved a further application before the Hon'ble High Court praying that his conviction may be stayed and the Single Judge of Hon'ble High Court vide order dated 7.3.2006 (Ann.A/5) allowed the said application and the order of conviction dated 2.6.92 was stayed. Thereafter, the applicant made a representation dated 20.3.2006 (Ann.A/1) to the authority

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concerned praying that he may be reinstated in service as two persons namely S/Shri Kanheya & Ghanshyam, who were also similarly situated and were convicted under Section 302 & 304 IPC, are still continued in service by quashing the order dated 21.6.99 with immediate effect. Since nothing was heard, the applicant has moved this OA thereby praying that action of the respondents in not deciding the representation/appeal dated 20.3.2006 (Ann.A/1), which is deemed to have been rejected, is liable to be quashed and set aside in view of the order passed by the Hon'ble High Court dated 7.3.2006 and the respondents may be directed to reinstate the applicant in service forthwith.

4. Notice of this OA was given to the respondents, who have filed their reply. The facts, as stated above, are not in dispute. It has been stated by the respondents that the applicant had been convicted in a criminal case in the year 1992 and the penalty of removal from service was imposed on 21.6.99 and it is after the expiry of seven years the applicant got the stay on conviction, which has been referred for necessary action to the competent authority. It is further stated that the applicant has been convicted under Section 302 & 304 IPC which is an offence pertaining to moral turpitude, therefore, after considering the conduct of the applicant in the criminal case he was removed from service.

5. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

6. We have heard learned counsel for the parties and gone through the material placed on record.

7. The question which requires our consideration is what is the effect of suspension of sentence and conviction in terms of the provisions contained in Rule 14(1) of the Railway Servants (Discipline and Appeal) Rules, 1968 read with Article 311(2) (a) of the Constitution of India. The matter on this point is no longer res-integra. The similar question came for consideration

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before the Apex Court in the case of **Deputy Director of Collegiate Education v. S.Nagoor Meera** [1995 (2) SLJ 89].

The Apex Court considering the para-materia provisions contained in clause (a) of the second proviso to Article 311(2) of the Constitution of India has held that what is relevant for exercise of power thereunder is the conduct which has led to his conviction on a criminal charge and not the conviction itself. It was further held that there is no question of suspension of conduct of an employee when he has been convicted and in appeal the same is stayed. Since the disciplinary authority has to exercise the power considering the conduct of the employee which has led to his conviction on a criminal charge and since the conduct is not stayed, therefore, even if conviction is stayed in appeal, the power can be exercised by the disciplinary authority on the basis of the conduct which has led to conviction on a criminal charge. At this stage, it will be useful to quote para-7 of the judgement which thus reads :

"7. We need not, however, concern ourselves any more with the power of the appellate court under the Code of Criminal Procedure for the reason that what is relevant for clause (a) of the second proviso to Article 311(2) is the "conduct which has led to his conviction on a criminal charge" and there can be no question of suspending the conduct. We are, therefore, of the opinion that taking proceeding 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." (emphasis supplied)

It has also been held by the Apex Court in the judgement that where an employee has been convicted in a criminal charge, the appropriate course would be in such cases to take action and not to wait for appeal or its rejection, as the case may be. It is always open for the authorities to revise its order and reinstate the government servant with all the benefits if in appeal or other proceedings the government servant is acquitted.

8. Similar view has also been taken by the Apex Court in the case of **Union of India and Others v. Ramesh Kumar** [AIR 1997 SC 3531]. There, the Apex Court has considered Rule-19 of the CCS (CCA) Rules, 1965, which is para-materia to Rule-14 of the Railway Servants (Discipline and Appeal) Rules, and in para-7 has made the following observations :

"Having regard to the provisions of the rules, the order dismissing the respondent from service on the ground of misconduct leading to his conviction by a competent Court of law has not lost its string merely because a criminal appeal was filed by the respondent against his conviction and the Appellate Court has suspended the execution of sentence and enlarged the respondent on bail. This matter may be examined from another angle. Under Section 389 of the Code of Criminal Procedure, the appellate Court has power to suspend the execution of sentence and to release an accused on bail. When the appellate Court suspends the execution of sentence, and grants bail to an accused the effect of the order is that sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence under Section 389 Cr. P.C. an accused avoids undergoing sentence pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a Govt. servant on a misconduct which led to his conviction by the Court of law does not lose its efficacy merely because Appellate Court has suspended the execution of sentence. Such being the position of law, the Administrative Tribunal fell in error in holding that by suspension of execution of sentence by the appellate Court, the order of dismissal passed against the respondent was liable to be quashed and the respondent is to be treated under suspension till the disposal of Criminal Appeal by the High Court."

9. At this stage, it will also be useful to quote a decision of the Constitution Bench of five Judges in the case of **B.R.Kapur v. State of Tamil Nadu & Another** [AIR 2001 SC 3435], wherein a submission was made before the Apex Court by the respondent therein that suspension of sentence passed against the respondent by the High Court of Madras was tantamount to suspension of the conviction against her. The Apex Court after reproducing the provisions of Section-389 of the Cr.PC in para-34 has held as under :


"34. It is true that the order of the High Court at Madras on the application of the second respondent, "Pending criminal appeals the sentence of imprisonment alone is suspended and the petitioners shall be released on bail .....", but this has to be read in context of S. 389 under which the power was exercised. Under S. 389 an appellate Court may order that "the execution of the sentence or order appealed against be suspended ....." It is not within the power of the appellate Court to suspend the sentence; it can only suspend the execution of the sentence pending the disposal of appeal. The suspension of the execution of the sentence does not alter or affect the fact that the offender has been convicted of a grave offence and has attracted the sentence of imprisonment of not less than two years. The suspension of the execution of the sentence, therefore, does not remove the disqualification against the second respondent. The suspension of the sentence, as the Madras High Court erroneously called it, was in fact only the suspension of the execution of the sentence pending the disposal of the appeals filed by the second respondent. The fact that she secured the suspension of the execution of the sentences against her did not alter or affect the convictions and the sentences imposed on her and she remained disqualified from seeking legislative office under S. 8(3)."

Thus, viewing the law as laid down by the Apex Court, it is clear that mere fact that the execution of sentence has been stayed cannot alter or affect the conviction or sentence in post on a person and also that what is relevant under the rules for the purpose of imposing penalty on a convicted person is the conduct which has led to his conviction on a criminal charge and there can be no question of suspending the conduct. Thus, we are of the firm view that the applicant has not made out any case for our interference simply because the sentence or conviction has been stayed. This fact itself is not sufficient that sentence or conviction remain in limbo automatically. The Apex Court in the case of **K.C.Sareen v. CBI, Chandigarh** [JT 2001 (6) SC 59] dismissed the appeal of the appellant whereby the High Court had declined the prayer of the appellant therein for staying the conviction during the pendency of appeal. For the purpose, the Apex Court has placed reliance upon its two earlier decisions i.e. S.Nagoor Meera (supra) and **State of**

**Tamil Nadu v. A.Jaganathan** [JT 1996 (6) SC 621]. The case of A.Jaganathan relates to some public servants who were convicted inter-alia of corruption charges. When the appeal filed by such public servants was dismissed, the High Court entertained a revision and ordered suspension of the sentence as well as the order of conviction, but when the State moved to the Apex Court against the order of suspension of conviction, a two judge Bench of the Apex Court interfered with it and set aside the order by remarking that in such cases the discretionary power to order suspension of conviction either under Section 389(1) or even under Section 482 of the Code should not have been exercised. Thus, for the foregoing reasons we are of the view that the applicant has not made out any case for our interference.

10. It may also be relevant to state here that the applicant was removed from service in the year 1992. He has not challenged the <sup>removed</sup> civil order on the ground that the statutory authority has not taken into consideration all the facts and circumstances of this case before imposing the punishment and thus has not acted reasonably and fairly. In other words, the conduct of the applicant is not of such nature which warrants imposition of penalty of removal from service. Such course was permissible for the applicant immediately after passing of the order of removal in the year 1999. Having not raised such contention at appropriate stage and in the averments made and grounds raised in this OA, we are not required to go into this question.

11. For the foregoing reasons, the OA is devoid of merit and stands dismissed accordingly.

  
(B.L.KHATRI)  
MEMBER (A)

  
(M.L.CHAUHAN)  
MEMBER (J)