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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00102/2014

Date of Decision : 10.10.2014

CORAM: HON'BLE MR. SANJEEV KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. UDAY KUMAR VARMA, ADMINISTRATIVE MEMBER

ADP/D/944 (Lascar Pass No.ADP/D/944) Jaswant Singh, aged 51 years, son of Sh. Amar Singh, resident of V.P.O. Manko District Jalandhar (Punjab).

Applicant

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Versus

1. Union of India, Ministry of Defence, South Block, New Delhi through its Defence Secretary.
2. The Chief of the Air Force Headquarters WAC, IAF, Subroto Park, New Delhi-110011.
3. Air Vice Marshal, Senior Officer in Charge Administration, WAC, IAF, Subroto New Delhi.
4. Air Commodore, Air Officer Commanding, IAF Station Adampur (Punjab).

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Respondents

Present: None the applicant
Mr. Darshan Gupta, proxy for Mrs. Mohinder Gupta, counsel for the respondents

O R D E R (Oral)
HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-
 - "8 (i) To quash the order dated 17.08.2012 (Annexure A-2), order dated 23.01.2013 (Annexure A-4) and Order dated 13.12.2013 (Annexure A-6).
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(ii) Directions to the respondents to reinstate the service of the applicant with immediate effect."

2. Since hearing in the matter had been adjourned earlier on 16.09.2014 and today again none is present to represent the applicant, rule 15 of the C.A.T. (Procedure) Rules, 1987 is invoked. We proceed to decide the matter on the basis of pleadings available on record after hearing the counsel for the respondents.

3. Sh. Darshan Gupta, learned proxy counsel appearing on behalf of Mrs. Mohinder Gupta, learned counsel for the respondents seeks permission to file an MA to place on record the order dated 13.12.2013. Registry to give a proper number to the MA, the same is allowed. Annexure R-3 dated 13.12.2013 is taken on record.

4. The present OA is directed again an order dated 27.08.2012 (Annexure A-3), order dated 23.01.2013 (Annexure A-4) and the order dated 13.12.2013 (Annexure A-6), passed in Departmental Proceedings. The facts are not in dispute. The applicant herein, was convicted by the Additional Session Judge, Jalandhar, for an offence under Section 307, 326, 342 of IPC on 17.09.2009. The order / judgment passed by the Additional Session Judge was challenged by the applicant herein by filing CRA-S-2244-SB of 2009 before the Hon'ble High Court of Punjab and Haryana and vide its order dated 27.08.2012, notice was issued to the respondents and in the meantime they had suspended the sentence of

imprisonment. The applicant was served with a show cause notice under Rule 19 of CCS (CC&A) Rules, 1965 on 31.03.2012. Immediately, thereafter, the applicant moved Miscellaneous Application for staying the conviction during the pendency of the appeal and notice was issued for 27.08.2012 but on 17.08.2012 itself the applicant was dismissed from the service on the basis of show cause notice, which was issued on the basis of his conviction. He filed a response to the notice. He submitted that the Hon'ble High Court, subsequently, on 27.08.2012, stayed the conviction of the applicant as well. It is submitted that thereafter the applicant again approached the respondents for reconsideration his order of dismissal in view of the subsequent order passed by the Hon'ble High Court where his conviction has been stayed. It is thereafter that the impugned order dated 13.12.2013 (Annexure A-6) has been passed by the respondents dismissing the appeal of the applicant.

5. In the grounds for relief, it has been stated that once the conviction itself was stayed by the Hon'ble High Court, then dismissal order has to be reviewed, as the very basis of dismissal stood vanished.

6. In response to the notice, the respondents earlier filed a reply wherein they submitted that on being conviction of the applicant by the Criminal Court, the respondents served a show cause notice on 27.04.2012 upon him for filing written statement. After considering his reply, an order of dismissal was passed. The respondents have also filed

an additional affidavit wherein they submit that the order dated 27.08.2012 (Annexure R-1) has been passed for staying the subsequent order of conviction. They submitted that in terms of the order dated 17.10.2013 (Annexure R-2) passed in OA No.1260/PB/2013, the respondents have reconsidered the entire matter and have passed an order dated 13.12.2013, wherein the earlier order of the dismissal has been reiterated.

7. Mr. Darshan Gupta, learned proxy counsel appearing on behalf of Mrs. Mohinder Gupta, learned counsel for the respondents submitted that a detailed order has been passed by the respondents, which is liable to be upheld.

8. We have given our thoughtful consideration to the entire matter and perused the pleadings on record.

9. The question that emerges for our consideration is whether an order of dismissal from service, based upon conviction, is to be kept in abeyance when the conviction itself has been stayed by the Hon'ble High Court. From the consecutive of the perusal pleadings, it is clear that the applicant was served with a show cause notice upon his conviction by the learned Session Judge vide its judgment dated 17.09.2009. The applicant had already filed a Criminal Appeal before the Hon'ble High Court in which notice of motion was issued for 27.08.2012. Pending notice, the applicant was served with a show cause notice by the respondent Department

proposing imposition of penalty of dismissal from service on his conviction. Without considering his reply, not to take a final decision, upon the show cause notice, the respondents passed the impugned order dated 17.08.2012 imposing the punishment of dismissal from service upon him. The applicant had also moved Miscellaneous Application before the Hon'ble High Court in pending appeal for staying the conviction. The said application was allowed by the Hon'ble High Court vide order dated 27.08.2012 staying the conviction. Thereafter, the applicant moved this Court by filing OA No.1260/PB/2013 with a prayer to direct the respondents to reconsider his case in view of the changed circumstances, as his conviction had been stayed.

10. Based upon the above submission, vide order dated 17.10.2013, Court had remanded back the matter to the respondents to reconsider the same in the light of changed circumstances. It is, thereafter, that the respondents have passed the impugned order on 23.01.2013 reiterating the earlier order. Perusal of the order does not suggest that the respondents have considered this aspect of the matter that the basis of dismissal order i.e. the conviction had already been stayed by the Hon'ble High Court and therefore they have to reconsider the entire matter afresh because once the basis washed away, then they cannot impose any punishment on that basis and they have to virtually keep that order in abeyance in the light of changed circumstances. It is not

the case of the respondents that in a separate departmental proceeding the applicant was held guilty of charges and based upon that an order of dismissal has been passed.

11. In the light of the above, we are left with no other option but to allow this Original Application and the impugned order is hereby quashed and set aside being based upon conviction in a criminal case which has already been stayed by the Hon'ble Court. Resultantly, the matter is remitted back to the competent authority to reconsider the same in the light of the above observations. This exercise be carried out within a period of two months from the date of receipt of a certified copy of this order.

12. In terms of the above, the OA is allowed. No costs.

(SANJEEV KAUSHIK)
JUDICIAL MEMBER

(UDAY KUMAR VARMA)
ADMINISTRATIVE MEMBER.

Place: Chandigarh

Dated: 10.10.2014

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