CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.3381/2013

New Delhi this the 29th day of February, 2016

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)

Prahlad Raut
S/o Shri Laxman Raut
Attar Singh House 58A,
Ward No.4, Mehrauli,
New Delhi-110030. …Applicant

By Advocate: Shri Deepak Verma with Shri K.R. Sachdeva.

Versus

1. The Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi-110001.

2. The Director,
All India Institute of Medical Sciences (AIIMS),
Ansari Nagar,
New Delhi-110029.

3. The President & Appellate authority,
All India Institute of Medical Sciences,
Ansari Nagar,
New Delhi-110029. …Respondents

By Advocate: Shri Hailal Haider for Respondent No.1.
Shri R.K. Gupta for Respondent No.2.

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The challenge in this Original Application (OA) filed by the applicant, is to the impugned order dated 06.01.2000, by virtue of which he was retrospectively removed from service with effect from 16.09.1993, the date of his conviction (Annexure A-1/Colly), in exercise of power conferred by Rule 19(I) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [for brevity CCS(CCA) Rules] by the competent authority.

2. The contour of the facts and material which needs a necessary mention for a limited purpose of deciding the core controversy involved in the instant OA and emanating from the record is that, the applicant had joined his service on 09.02.1972 as a Bearer at AIIMS. Later on, he was posted as Steward with effect from 15.10.1987 in the All India Institute of Medical Sciences (for short AIIMS). He was stated to have misappropriated the funds of the Society along with other co-

accused and a criminal case was registered against them vide FIR No.91 dated 05.03.1991, on accusation of having committed the offences punishable under Section 406/420/468/471/477A/120B IPC by the police of Police Station, Defence Colony (for brevity first case). Subsequently, the Hon'ble High Court of Delhi quashed the FIR on the basis of settlement.

3. Sequelly, the case further proceeds that another criminal case was registered against the applicant vide FIR No.868 dated 05.03.1991 u/s 356/379/411 IPC by the police of Police Station, Connaught Place, New Delhi (for short second case). However, he was charged and tried for an offence punishable under Section 379 IPC only. After the conclusion of the trial, the applicant was held guilty and convicted for the commission of offence punishable under Section 379 by means of judgment of conviction dated 15.09.1993 and was granted the benefit of probation through an order of sentence dated 16.09.1993 passed by the Trial Magistrate.

4. Thereafter, in contemplation of departmental proceedings on the basis of registration of criminal cases and police custody for 48 hours, applicant was placed under deemed suspension with effect from 05.06.1991 by the competent authority. Later on, instead of holding a regular enquiry as contemplated under Rules 14 to Rule 18 of the CCS (CCA) Rules, the competent authority invoked the powers under Rule 19(I) of the said rules and removed him from service retrospectively with effect from 16.09.1993, the date of his conviction by virtue of the impugned order dated 06.01.2000 (Annexure A-1).

5. Aggrieved thereby, applicant filed appeal dated 23.02.2000 (Annexure A-5) to the Appellate Authority which was received on 25.02.2000 by the office of the Director, AIIMS, New Delhi. Subsequently, he has also filed a representation dated 21.02.2013 (Annexure A-6 Colly.) against the order to deposit the amount of subsistence allowance beyond 16.09.1993. According to the applicant, the appeal/representation has not yet been decided as no such order has been communicated to him by the Appellate Authority. It necessitated him to file the instant OA along with Miscellaneous Application No.2556/2013 for condonation of delay. In all, the applicant claimed that neither the authority was competent to retrospectively remove him from service nor can he be removed simply on the basis of conviction in a criminal case. So the impugned order has to be termed as void *ab*

initio and illegal. On the strength of the aforesaid grounds, the applicant has sought the following reliefs in the present OA:-

> "8. (i)Quash and set aside the Memo No. F-9-2/72-Estt.(H) Vol I dated 6.1.2000, Memo dated 11.9.1991 (impugned as Annexure-AI).
>
> (ii) Direct the respondents to treat applicant as on duty w.e.f. 16.9.1993 with all consequential benefits along with pension/other benefits which would have accrued on his superannuation with interest.
>
> (iii) Direct the respondents to pay penal interest @24% p.a on amount of his GPF and other savings, illegally withheld.
>
> (iv)Any other or further relief(s) the Hon'ble Tribunal may deem fit in the interest of justice with costs."

6. The contesting respondent Nos.2 and 3 refuted the claim of the applicant and filed their reply, inter alia, pleading and admitting therein that he was retrospectively removed from service simply on the basis of his conviction in the indicated criminal case through impugned order dated 06.01.2000 (Annexure A-1 Colly). It was alleged that applicant was involved in two criminal cases and was convicted in the second case (FIR 868). He has not informed the department with regard to his conviction. According to the contesting respondents, since the applicant was detained in police custody exceeding 48 hours, so as per Rule 10(2) of the CCS (CCA) Rules, he was placed under deemed suspension with effect from 05.06.1991. He continued to get subsistence allowance as per rule by submitting requisite certificate that he was not engaged in any business/profession or vocation during the period of his suspension.

7. As soon as the answering respondents came to know about the conviction, a show cause notice was issued to the applicant under Rule 19(i) of the CCS(CCA) Rules, 1965, and he was retrospectively removed from his service with effect from 16.09.1993, the date of his conviction by punishment order dated 06.01.2000 (Annexure A-1 Colly). An opportunity of being heard was provided to the applicant by the punishing authority. The impugned removal order is valid and passed after following the due process of law. The facts of quashing the first case by the Hon'ble High Court and grant of benefit of probation by the Trial Magistrate, in second case, were not denied. It will not be out of place to mention here that the contesting respondents have stoutly denied all other allegations contained in the main OA and prayed for its dismissal.

8. Reiterating the grounds contained in the OA and denying the allegations in the reply of the contesting respondents, the applicant filed the rejoinder. That is how we are seized of the matter.

9. At the very outset, learned counsel for contesting respondents has raised a preliminary objection of limitation in filing the instant OA after expiry of the statutory period. He urged that the impugned order (Annexure A-1 Colly) was passed on 06.01.2000 whereas this OA was filed by the applicant on 23.09.2013.

10. On the contrary, learned counsel for applicant has submitted that although there is no actual delay, nevertheless he has filed a Miscellaneous Application for condonation of delay in order to avoid any technical objection. In this regard he contended that the impugned order dated 06.01.2000 is void ab initio, per se illegal and the same gave a recurring cause of action to the applicant. It has also been argued that the applicant has filed the appeal dated 23.02.2000 (Annexure A-5 Colly) to the Appellate Authority (President, AIIMS) which was received on 25.02.2000 by the office of the President, AIIMS, New Delhi. It was also stated that the applicant subsequently sent his representation dated 21.09.2013 (Annexure A-6 Colly) to the President, AIIMS but no decision has yet been communicated to the applicant. Hence, the main OA is within limitation.

11. Having considered the matter, we are of the firm view that the OA was filed within the period of limitation. It is not a matter of dispute that the punishing authority has retrospectively removed the applicant from service with effect from 16.09.1993, that being the date of his conviction in a criminal case by means of impugned order dated 06.01.2000. Such orders are illegal, void ab initio and can be challenged at any time. The Hon'ble Apex Court in a celebrated judgment in the case of ***State of Madhya Pradesh Vs. Syed Qamarali 1967 (1) SLR 228***, which was subsequently followed in many decisions, has authoritatively ruled that the order of dismissal having been made in breach of mandatory provision of the rules, such order of dismissal had, therefore, no legal existence and it was not necessary for the respondents to have the order set aside by the court. The defence of limitation which was based only on the contention that the order has to be set aside by a court before it became invalid must, therefore, be rejected.

12. Not only that, the applicant claimed that he has filed the appeal on 23.02.2000 (Annexure A-5 Colly) to the Appellate Authority which was received by the office of the President, AIIMS, on 25.02.2000. Subsequently, he moved a representation dated 21.01.2013 (Annexure A-6 Colly) claiming all the consequential benefits by ignoring the impugned removal order.

13. The contesting respondents have neither specifically denied nor produced any cogent record even to indicate that applicant has not filed any appeal (Annexure A-5 Colly)/representation (Annexure A-6 Colly) or the same were decided by the Appellate Authority. Moreover, the applicant has claimed all consequential benefits along with amount of pension and other emoluments along with interest, which to our mind, is recurring and continuing cause of action.

14. Thus, seen from any angle, it cannot possibly be said that the OA filed by the applicant is barred by limitation as contrary urged on behalf of respondents. Hence, it is held that the main OA filed by the applicant is within the prescribed period of limitation and the crux of law laid down in ***Syed Qamarali*** (supra) is fully applicable in the present case.

15. Once it is held that the main OA has been filed within the period of limitation, learned counsel for applicant then contended with some amount of vehemence that there is no provision of law/rules that the applicant can retrospectively be removed from his service with effect from 16.09.1993, the date of his conviction, that too, simply on the ground of his conviction in a criminal case by the impugned order dated 06.01.2000 by the competent authority.

16. On the contrary, learned counsel for contesting respondents has vehemently argued that the jurisdiction of this Tribunal to interfere with the impugned punishment order passed by the competent authority is very limited. The argument further proceeds that since the punishing authority has passed the punishment order after following due procedure, so no interference is warranted in the matter.

17. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance and after bestowal of thoughts over the entire matter, we are of the considered opinion that the instant OA deserves to be allowed for the reasons mentioned herein below.

18. As is evident from the record, that applicant was working as a Bearer in AIIMS at the relevant time. The indicated two criminal cases were registered against

him. It is not a matter of dispute that in the wake of Criminal Miscellaneous Application No.3268/2012, the above mentioned FIR (first case) was quashed on the basis of settlement through an order dated 2nd November, 2012 (Annexure A-2) by Hon'ble High Court of Delhi.

19. Sequelly, the applicant was charge sheeted and put on criminal trial for commission of offence punishable under Section 379 in the second case. After the trial, although the applicant was held guilty and convicted for the commission of offence punishable under Section 379 vide judgment of conviction dated 15.09.1993 but at the same time, taking into consideration the peculiar facts, circumstances, nature of allegations and conduct, applicant was released on probation on his furnishing a personal bond with one surety in the sum of Rs.5000/- for a period of one year by means of order of sentence dated 16.09.1993 by the Trial Magistrate. The operative part of which is as follows:-

> "I have already convicted the accused vide separate judgment dated 15.09.1993 U/s 379 IPC. I have heard the accused on the point of sentence. It has been submitted that convict is first offender as no previous conviction has been proved against him. He is a Government servant and belongs to a respectable family. Considering the facts and circumstances and nature of allegations, I am of the opinion that this is fit in which accused be released on probation of good conduct. Hence, I direct the convict to furnish personal bond with one surety in the same of Rs.5000/- for a period of one year with the direction to keep peace and be of good behavior and not to commit any offence during the said period. Bond furnished and accepted. Case property shall be returned to rightful owner after the expiry of appeal or revision, if any".

20. Thereafter, instead of initiating the regular departmental enquiry against the applicant on account of criminal cases, under Rule 14 to 18 of the CCS (CCA) Rules, the punishing authority preferred to proceed under Rule 19(i) of the CCS (CCA) Rules and passed the order of removal from service of the applicant by means of the impugned order dated 06.01.2000 (Annexure A-1 Colly), which in relevant substance is; "Now, therefore, in exercise of the powers conferred by the Rule 19 (I) of the C.C.S. (C.C.A.) Rules, 1965 the undersigned removes the said Shri Prahlad Raut from the service of the Institute from the date of his conviction i.e. 16.9.1993. Shri Prahlad Raut therefore is directed to deposit the subsistence allowance as received by him from the A.I.I.M.S. beyond 16.9.1993."

21. The Rule 19 of the CCS (CCA) Rules, 1965 reads as under:-

> **"19. Special procedure in certain cases**
>
> **Notwithstanding anything contained in rule 14 to rule 18-**
>
> (i) where any penalty is imposed on a Government servant on the ground of **conduct** which has led to his conviction on a criminal charge, or
>
> (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
>
> (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules,
>
> the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:
>
> Provided that the Government 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 consultation is necessary, before any orders are made in any case under this rule".

22. At the very outset, possibly no one can dispute with regard to the observations of the Hon'ble Supreme Court in the cases of **Union of India Vs. Parma Nanda 1989 (2) SCC 177** and **Regional Manager, UPSRTC Vs. Hoti Lal and Another 2003 (3) SCC 605**, relied on behalf of the respondents, that the jurisdiction of the Tribunal to interfere in disciplinary matters is limited but the same would not come to the rescue of the respondents as the same are not at all applicable to the facts of the present case. At the same time, it is now well settled that such illegal, void ab initio and invalid orders can very well be set aside by the Tribunal.

23. Such being the legal provision and material on record, the following two short and significant questions arise for determination:-

(i) Whether the disciplinary authority has the jurisdiction to remove the applicant from service with retrospective effect, i.e., 16.09.1993 being the date of his conviction, by means of impugned order dated 06.01.2000 (Annexure A-1 Colly)? and

(ii) whether such a removal would merely be on the basis of his conviction and not on account of his conduct leading to his conviction?

24. Having regard to rival contention of learned counsel for the parties, to our mind neither the competent authority had the jurisdiction to retrospectively remove the applicant with effect from a retrospective date vide the impugned order dated 06.01.2000 (Annexure A-1 Colly) nor the impugned order could have been passed merely on the ground of conviction and such **disciplinary punishment can be imposed only on the basis of conduct of an employee leading to his conviction and not otherwise**. Hon'ble Apex Court in the case of **R. Jeevaratnam Vs. State of Madras AIR 1966 SC 951** has observed that an order of dismissal with retrospective effect is in substance an order of dismissal as from the date of the order with the super-added direction that the order should operate retrospectively as from an anterior date. Such retrospective dismissal order is inoperative. The same view was reiterated by a Division Bench of High Court of Madhya Pradesh in the case **Raja Ram Singh Vs. State of M.P. and Others 2004 (1) SLR 594** wherein it was held that such retrospective order of removal is illegal and inoperative. Hence, we hold that the impugned order is arbitrary, void ab initio and contrary to the service jurisprudence.

25. Now adverting to second question as to whether the removal order could have been passed only on the basis of conviction of the applicant or not? The answer must obviously be in the negative. Rule 19 postulates that where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in Rules 14 to 18 then the Disciplinary Authority can impose the punishment on the ground of **conduct of the applicant** which has led to his conviction on a criminal charge. A bare and meaningful reading of this rule posits that it was incumbent on the Disciplinary Authority to record the reasons in writing that it is not reasonably practicable to hold an enquiry in the manner provided under these rules. Having recorded such reasons, the Disciplinary Authority can punish a person under this rule that too only on the ground of conduct which has led to his conviction and not merely on the basis of his conviction on a criminal charge as has been done in the instant case.

26. The intention underlying Rule 19 of the CCS (CCA) Rules is very much clear. It was enacted to cut short the procedure of enquiry in case of grave

misconduct. At the same time, it prevents the unwarranted punishment to public servants. A government employee may be confronted with variety of situations culminating into his conviction though he may not be directly involved and it would not adversely affect his conduct. Moreover, the civil servant may be punished in case of minor scuffle, or for an offence in which, he is gravely provoked or minor accident etc. Not only that, even in a murder case punishable under Section 302 IPC, a government servant may not be actually accused but he may be a member of unlawful assembly. He may not have taken any part in murdering a person but still he can be charged for vicarious liability. This is not the end of the matter. There may be circumstances in which his action of culpable homicide may not amount to murder. Even law provides him right to exercise private (self) defence to protect himself, honour of family as well as property. Therefore, in that eventuality, in a given case he may be said to have exceeded his right of self defence. In that case, it cannot be termed that a person who is a government servant as well, is main accused of causing murder. Similarly, an act of murder in a state of grave and sudden provocation may also fall in such category. In such cases, a departmental enquiry may be held to consider his conduct de hors the conviction and punishment in the criminal trial.

27. Therefore, the Appointing Authority has to go through his conduct which includes the evidence, finding of criminal court and other relevant factors and circumstances of the case which led to his conviction. The government employee may require a reasonable opportunity to explain his conduct. Having considered the matter, if the competent authority comes to the conclusion that the acts of an employee fall within the ambit of his self defence and other indicated situations etc., then the conduct of the employee which led to his conviction would have no effect on his character. Then authority will not punish the employee irrespective of the fact he was convicted in a criminal charge. There may also be circumstances as have been described in case **Navjot Singh Sidhu Vs. State of Punjab AIR 2007 SC 1003** in which a person may apply to the appellate court to stay and set aside his conviction. On the other end, if a conclusion is reached that the conduct of such an employee is very grave, leading to his conviction and it is not prudent in the interest of the department to retain him in service, only then he can be

punished under this section and not otherwise. This matter is no more *res integra* and is now well settled.

28. An identical question came to be decided by a Full Bench judgment of **Hon'ble Punjab and Haryana High Court in case Om Prakash Vs. The Director, Postal Services (Posts and Telegraphs Department), Punjab Circle, Ambala and Others AIR 1973 Punjab and Haryana 1**. Having considered the similar matter, it was held as under:-

> "18. It was lastly submitted by the learned counsel that the impugned order is liable to be struck down as the petitioner has not been dismissed for the conduct which led to his conviction, but for the conviction itself. I have already observed that I am in agreement with the decision of the Division Bench of the Delhi High Court on that point. A reading of the order (Which has already been quoted verbatim in an earlier part of this judgment) shows that the conviction and the punishment have been related therein as the cause and the effect, and the two have been connected with the word "therefore". No mention has been made of the fact that the original conduct of the petitioner was being considered by the Postmaster, Amritsar, and no finding has been recorded by the competent authority about the retention of the petitioner in service (due to his such conduct) being not desirable. Even in A. Satyanarayana Murthy's case, AIR 1969 Andhra Pradesh 371 (supra), the impugned order was ultimately struck down on a similar ground. In that case the competent authority had merely stated (after referring to the factum of conviction) that he was dismissing Akella Satyanarayana Murthy "in view of the conviction".

29. Sequelly, again a Division Bench of Punjab and Haryana High Court in **Hari Ram Vs. Dakshin Haryana Bijli Vitaran Nigam Ltd. and Another 2006 (2) SLT 112**, held that such punishment order can only be passed if the competent authority finds that the relevant misconduct of the concerned Government servant render his further retention in public service undesirable in view of his conviction in the criminal case. The Hon'ble Division Bench has relied upon the law laid down by Hon'ble Apex Court in **U.O.I. Vs. Tulsi Ram Patel AIR 1985 SC 1416** wherein it was ruled as under:-

> "Where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose, it will have to peruse the judgment of the criminal Court and consider all the facts and circumstances of the case. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank, he must decide which of these three penalties should be imposed on him. This too it has to do

> by itself and without hearing the government servant concerned by reason of the exclusionary effect of the second proviso. **However, a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the government servant concerned and, therefore, it is not mandatory to impose any of these major penalties**."

30. Therefore, the crux of the law laid down in the indicated judgments *mutatis mutandis* is applicable to the present facts and completely-answer to the problem in hand. Hence, the contrary arguments of the learned counsel for the respondents *stricto-sensu* deserves to be and are hereby repelled in the present set of circumstances.

31. As indicated herein above, even the criminal court has considered the fact that applicant is a first offender, not previous convict and he belongs to a respectable family. Considering the facts and circumstances of the allegations, the Trial Court released him on probation of good conduct on his furnishing personal bond and surety.

32. Meaning thereby, indeed the punishing authority has just ignored, with impunity, the indicated judgments of the High Court, Trial Court and other relevant factors in this regard. Not only that it indeed omitted to record reasons in writing that it is not reasonably practicable to hold an enquiry in the manner provided under Rules 14 to 18 of CCS (CCA) Rules before exercising the power under Rule 19 of the CCS (CCA) Rules and that the conduct of the applicant is so grave that it is not expedient in the interest of justice and prudent to retain him in service leading to his conviction which is totally lacking in the present case. That means the punishing authority has just ignored the mandate of Rule 19 of the CCS (CCA) Rules, which vitiate the disciplinary proceedings and renders the impugned order of removal from service of applicant nullity. Moreover, the impugned order is cryptic, result of non-application of mind against record and was passed in a very casual manner. Therefore, the impugned order cannot legally be sustained, deserves to be and is quashed in the obtaining circumstances of the case.

33. No other point worth consideration has been urged or pressed by learned counsel for the parties.

34. In the light of the aforesaid reasons, the Original Application is allowed and impugned order dated 06.01.2000 (Annexure A-1/Colly.) is hereby set aside.

Needless to mention that the applicant would naturally be entitled to all consequential benefits. No costs.

(K.N. SHRIVASTAVA)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh