

A

UNION OF INDIA AND ORS.

v.

SHRI RAMESH KUMAR

SEPTEMBER 2, 1997

B

[K. VENKATASWAMI AND V.N. KHARE, JJ.]

*Service Law :*

C  
D  
Conviction—Conviction of government employee on a criminal charge of illegal gratification—Dismissal from the service without holding proper enquiry—Criminal appeal against conviction pending—Employee filing application for reinstatement—Tribunal allowing the application—Held, the employee has no right to be reinstated in service when his appeal against conviction is admitted and execution of sentence suspended during the pendency of appeal—CCA (CCS) Rules, 1965, Rule 19(i)—Vigilance Manual, Chapter VII, paras 15.2 and 15.3—Prevention of Corruption Act, 1947, Section 5(2).

E  
Reinstatement—Right to—Held, does not arise on mere filing of appeal against the conviction upon which disciplinary action was based—The conviction stands during the pendency of the appeal till it is set aside.

*Criminal Procedure Code, 1973 :*

F  
Section 389—Suspension of sentence by the appellate court—Implication of—The sentence based on the conviction gets postponed or is kept in abeyance during pendency of appeal—Conviction however continues till it is set aside—Disciplinary action against the government servant based on such conviction, held, will stand unimpaired during the pendency of the appeal.

G  
H  
The respondent, a government employee, was arrested on the ground that he accepted illegal gratification and he was placed under suspension. The trial court convicted him for an offence under Section 5(2) of the Prevention of Corruption Act. As a result of his conviction, the Disciplinary Authority dismissed him from service by invoking Rule 19 of the CCS (CCA) Rules without holding detailed enquiry. The High Court admitted the respondent's appeal against his conviction and passed an interim order suspending execution of the sentence. After four years of his dismiss-

al, respondent filed an application before the Central Administrative Tribunal seeking his reinstatement in service. The Tribunal allowed the application. Hence this appeal by the Union of India. A

Allowing the appeal, the Court

HELD : 1. Under Rule 19 of the CCS (CCA) Rules, the Disciplinary Authority is empowered to take action against a government servant on the ground of misconduct which has led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of execution of sentence by the appellate court, the order of dismissal based on conviction stands obliterated and the dismissed government servant has to be treated under suspension till disposal of appeal by the appellate court. The rules also do not provide the Disciplinary Authority to await disposal of the appeal by the appellate court for taking action against him on the ground of misconduct which has led to his conviction by a competent court of law. Having regard to the provisions of the rules, the order dismissing respondent from service on the ground of misconduct leading to his conviction by a competent court of law has not lost its sting 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. [672-F-H] B C D E

2. Under Section 389 Cr.P.C., the appellate court has power to suspend the execution of sentence and to release the accused on bail. When the appellate court suspends execution of the sentence and grants bail to the accused, the effect of the order is that the 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 government servant on a misconduct which lead to his conviction by the court of law does not lose its efficacy merely because the 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 disposal of criminal appeal by the High F G H

**A Court. [673-B-D]**

*State of Maharashtra v. Chandrabhan Tale*, AIR (1983) SC 803, distinguished.

**B** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1323 of 1991.

From the Judgment and Order dated 2.3.90 of the Central Administrative Tribunal, Delhi in O.A. No. 1087 of 1989.

**C** H.L. Aggarwal, Avatar Singh Rawat, D.S. Mahara and C.V.S. Rao for the Appellants.

K.K. Gupta (N.P.) for the Respondent.

The Judgment of the Court was delivered by

**D** V.N. KHARE, J. This appeal is directed against the order dated March 2, 1990 passed by the Central Administrative Tribunal, New Delhi whereby it has set aside the order of dismissal dated August 30, 1983 and further directed the appellants to treat the period beginning from the date of dismissal of the respondent till the disposal of criminal appeal filed by the respondent in the Delhi High Court, as period of suspension for which the respondent would be entitled to get normal subsistence allowance in accordance with the relevant rules.

**E** The respondent while serving as Inspector in Food & Civil Supplies Department of the Delhi Administration was arrested by Anti-Corruption Branch for accepting illegal gratification. Consequently the respondent was placed under suspension. Later on, the Special Sub Judge, Delhi on 30.7.83 convicted the respondent under Section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him to undergo imprisonment for three years and to pay a fine of Rs. 500 and in default to further undergo six months' imprisonment. After the respondent was convicted by Special Sub Judge, Delhi, the Disciplinary Authority dismissed the respondent from service under Rule 19 of CCS (CCA) Rules, 1965 read with the provisions of Vigilance Manual. Simultaneously, the respondent filed a criminal appeal, along with a prayer for bail against conviction and sentence recorded by Special Sub Judge, Delhi before the High Court of Delhi. After the appeal **F** was admitted, the High Court passed the following order :-

**G**

**H**

"Pending hearing of the appeal, the execution of the sentence shall remain suspended and he shall be released on furnishing a personal bond in the sum of Rs. 5,000 with one surety in the like amount to the satisfaction of the trial Court." A

After a lapse of four years of passing of the order of dismissal, the respondent filed an application before the Central Administrative Tribunal, New Delhi, under Section 19 of the Central Administrative Tribunal Act, 1985 (hereinafter referred to as the Act) for quashing the order of dismissal and issuing a direction to the appellants to grant subsistence allowance for the period beginning from the date of dismissal till filing of the criminal appeal in the High Court. The Tribunal, by the impugned order allowed the application of the respondent and granted reliefs as prayed for, in the application. B C

It appears that the Tribunal while allowing the application, was of the view that by suspension of the execution of sentence by the High Court the conviction recorded by the Special Sub Judge against the respondent and the order of dismissal passed by the Disciplinary Authority have lost their efficacy and the respondent is to be treated under suspension till the final judgment to be delivered by the High Court in appeal preferred by the respondent. This view of the Tribunal is neither borne out from the rules applicable to the respondent nor by any judicial decisions cited before the Tribunal. Undisputedly, the respondent is governed by the CCS (CCA) Rules, 1965 read with the provisions of Vigilance Manual. Rule 19 of CCS(CCA) Rules, 1965 which is applicable in the present case reads thus:- D E

*"Rule 19 of CCS(CCA) Rules, 1965* F

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 G

(ii) & (iii) ..... provided in these rules.

The disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit. H

A Rules 15.2 and 15.3 as occurring in Chapter-VII of the Vigilance Manual are extracted below :-

Chapter-VII of Vigilance Manual (Para 15.2 & 15.3)

B 15.2 ..... accused public servant.

C 15.3. If the Disciplinary Authority comes to the conclusion that the offence for which the public servant has been convicted was such as to retention in the public service *prima facie* undesirable, it can impose upon him under Rule 19(1) of CCS (CCA) Rules, 1965, the penalty of dismissal or removal or compulsory retirement from service as may be considered appropriate, with reference to the gravity of offence, without holding any enquiry or giving him a show-cause notice as provided in proviso to Article 311(2) of the Constitution.

D F.R. 54(1) ..... make a specific order :-

(a) Regarding the pay and allowance to be paid to the Govt servant for the period of his absence from duty including the period of suspension proceeding his dismissal, removal or compulsory retirement; as the case may be; and

E (b) Whether or not the said period shall be treated as period spent on duty."

F A bare reading of Rule 19 shows that the Disciplinary Authority is empowered to take action against a Govt. servant on the ground of misconduct which has led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of execution of sentence by the Appellate Court the order of dismissal based on conviction stands obliterated and dismissed Govt. servant has to be treated under suspension till disposal of appeal by the appellate Court. The rules also do not provide

G the Disciplinary Authority to await disposal of the appeal by the Appellate Court filed by a Govt. servant for taking action against him on the ground of misconduct which has led to his conviction by a competent Court of law. Having regard to the provisions of the rules, the order dismissing the respondent from service on the ground of misconduct leading to his

H 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.

Before we part with this case, we would like to refer the decision of this Court in the case of *State of Maharashtra v. Chandrabhan*, AIR (1983) SC 898, and two administrative orders heavily relied upon by the Administrative Tribunal in allowing the application of the respondent. In the case of *Chandrabhan* (supra) the validity of second proviso to Rule 151 of the Bombay Civil Service Rules which provided for payment of subsistence allowance at the rate of Rs. 1 per month to a Govt. servant who is convicted by a competent Court of law and sentenced to imprisonment and whose appeal against the conviction and sentence is pending, was challenged and struck down by this Court. The question involved in the said case was entirely different than the question which was to be resolved by the Tribunal. We are, therefore, of the opinion that reliance of this decision of the Supreme Court was totally misplaced. The Tribunal further relied upon two administrative orders passed by the Delhi Administration whereby two employees of the Delhi Administration were reinstated after the High Court suspended the execution of their sentences in appeals filed by them. Assuming that the facts of those cases and the present case are alike,

A reliance of such orders was totally misplaced for the reason being that those orders passed were not in conformity with law.

For the foregoing reasons, the order dated 2.3.1990 passed by the Central Administrative Tribunal, New Delhi is set aside. The appeal is allowed. There shall be no order as to costs.

R.K.S.

Appeal allowed.