

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 07.09.2012

W.P.(C) 5559/2012

RAVINDER KUMAR MIRG

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Shanker Raju.

For the Respondents : Mr R.V.Sinha, Mr R.N.Singh and Mr A.S.Singh.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is aggrieved by the orders dated 22.09.2011 and 19.01.2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.1303/2011 and R.A. No.15/2012. By virtue of the said orders the petitioner's said O.A. and R.A. have been rejected.
2. The entire issue in this writ petition concerns the procedure to be adopted under Rule 19 of the CCS(CCA) Rules, 1965.

3. The admitted facts are that the petitioner was convicted in a criminal case under Section 120-B IPC read with Section 7 of the Prevention of Corruption Act, 1988 as also under Sections 7 and 13(2) read with Section 13(1)(d) of the said Act. By virtue of the order on sentence dated 25.03.2004 the petitioner, along with the Additional Commissioner of Income Tax, Mr Shib Lal, was sentenced to undergo two years rigorous imprisonment as also to pay a fine of ₹10,000/- in respect of the offence under Section 120-B IPC. Further, the petitioner was also required to undergo two years rigorous imprisonment and was subjected to a fine of ₹10,000/- in respect of the offence under Section 7 of the Prevention of Corruption Act, 1988 as also rigorous imprisonment of three years and fine of ₹30,000/- in respect of the offences under Section 7 and 13(2) read with Section 13(1)(d) of the said Act. All the sentences were directed to run concurrently. It is also relevant to note that the petitioner has filed an appeal against the said conviction and order on sentence and the said appeal is pending before this court. In that appeal, the sentence of the petitioner has been suspended.

4. On 23.12.2004 the Disciplinary Authority sought to follow the procedure under Rule 19 of the CCS(CCA) Rules, 1965 and consequently issued a show cause notice to the following effect:-

“WHEREAS Sh. RAVINDER KUMAR MIRG, Inspector of Income Tax, has been convicted on a criminal charge of demanding and accepting illegal gratification of Rs.1 lakh, vide the Special Judge Delhi’s Order dated 25.3.04 in RC No.62(A)/94, CC No.75/99, and has been sentenced to (i) rigorous imprisonment for two years and to pay a fine of Rs.10,000/- for the offence punishable u/s 120-B of the IPC r/w Section 7 of the Prevention of Corruption Act, 1988, (ii) rigorous imprisonment for two years and to pay a fine of Rs.10,000/- for the offence punishable u/s 7 of the Prevention of Corruption Act, 1988 and (iii) rigorous imprisonment for three years and to pay a fine of Rs.30,000/- for the offence punishable u/s 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act; with the stipulation that all the substantive sentences shall run concurrently.

AND WHEREAS the undersigned proposes to award an appropriate penalty under Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, taking into account the gravity of the criminal charges;

AND WHEREAS on a careful consideration the undersigned has provisionally come to the conclusion that Shri RAVINDER KUMAR MIRG is not a fit person to be retained in service/the gravity of the charge is such as to warrant the imposition of a major penalty and accordingly proposes to impose on him the penalty of Dismissal for Government Service.

NOW, THEREFORE, Shri RAVINDER KUMAR MIRG Inspector of Income Tax, is hereby given an opportunity of making representation on the penalty proposed above. Any representation which he may wish to make against the penalty proposed will be considered by the Undersigned. Such a representation, if any, should be made in writing and submitted as to reach the undersigned not later than fifteen days from the date of receipt of this memorandum by Sh. RAVINDER KUMAR MIRG.

The receipt of this Memorandum should be acknowledged.”

5. Thereafter the petitioner filed a representation which was received in

the office of the Disciplinary Authority on 24.01.2005. Apparently the Disciplinary Authority considered the said representation and passed the order dated 31.07.2009 deciding to levy penalty of dismissal from service on the petitioner with the further direction that the dismissal shall ordinarily be a disqualification for further employment under the Government.

6. The petitioner, being aggrieved by the said order dated 31.07.2009, filed the said O.A. No.1303/2011 which has been rejected by the Tribunal by virtue of the order dated 22.09.2011. The review application has also been rejected by virtue of the order dated 19.01.2012. Being aggrieved by the said orders the petitioner is before us by way this writ petition.

7. The only point urged by the learned counsel for the petitioner was that the Tribunal has erred in not considering the argument raised by the petitioner that the order dated 31.07.2009 has been passed entirely on the basis of consideration of the co-accused Shib Lal's case and that, too, on the basis of UPSC's advice rendered in Shib Lal's case. In order to fortify this submission the learned counsel for the petitioner took us through the order dated 31.07.2009 passed by the Disciplinary Authority. We find that the entire paragraph 5 which spans across six pages refers to the co-accused Shib

Lal's case and the UPSC's advice rendered in that case. It appears to us that the order dated 31.07.2009 has been rendered and modeled entirely on the basis of the earlier order of the Disciplinary Authority in the case of Shib Lal. The learned counsel for the respondent submitted that the Disciplinary Authority has relied on the case of Shib Lal inasmuch as the case of the present petitioner and that of Shib Lal were identical and they were convicted by a common order and also sentenced in identical fashion. Consequently, it was the submission of the learned counsel for the respondent that there was no harm in the Disciplinary Authority considering Shib Lal's case while coming to a decision with regard to the penalty to be imposed on the petitioner inasmuch as Shib Lal's case was identical to that of the petitioner.

8. After having considered the arguments advanced by the learned counsel for the parties we feel that the procedure laid down in Rule 19 of the CCS(CCA) Rules, 1965 ought to be followed scrupulously. The said Rule 19 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.”

9. It is apparent that the present case falls within Clause (i) of Rule 19, that is, where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. There is no doubt that the petitioner has been convicted in a criminal case as mentioned above. In such an eventuality notwithstanding anything contained in Rules 14 to 18, the Disciplinary Authority is permitted to consider the circumstances of the case and make such orders thereon as it deems fit. However, this is subject to a proviso that the Government servant may be given an opportunity of making a representation on the penalty proposed to

be imposed before any order is made in a case under Clause (i).

10. In the present case we find that although the first part of the proviso has been followed inasmuch as the show cause notice dated 23.12.2004 was issued to the petitioner by the Disciplinary Authority, and the petitioner has also made a representation on the penalty proposed to be imposed, the Disciplinary Authority has not applied its mind fully to the representation made by the petitioner and has gone merely by the case of the co-accused Shib Lal as also the UPSC's advice rendered in that case. We may point out that insofar as the petitioner is concerned, he being a Group-B employee, consultation of the UPSC was not necessary. Therefore, it was not at all incumbent upon the Disciplinary Authority to lay emphasis on the UPSC's advice rendered in the case of Shib Lal who was a Group-A employee and in whose case the UPSC was required to be consulted.

11. We may refer to a decision of the Supreme Court in the case of **Union of India and Ors. vs. Sunil Kumar Sarkar**, (2001) 3 SCC 414, wherein the correct procedure to be adopted when Rule 19 of the said Rules is invoked has been made clear. The Supreme Court observed as under:-

“Rule 19 of the Central Rules is in conformity with the above provisions of the Constitution. This, as we see, is a summary procedure provided to take disciplinary action against a

government servant who is already convicted in a criminal proceeding. The very foundation of imposing punishment under Rule 19 is that there should be a prior conviction on a criminal charge. Therefore, the question of having a predetermined mind does not arise in such cases. All that a disciplinary authority is expected to do under Rule 19 is to be satisfied that the officer concerned has been convicted of a criminal charge and has been given a show-cause notice and reply to such show-cause notice, if any, should be properly considered before making any order under this Rule. Of course it will have to bear in mind the gravity of the conviction suffered by the government servant in the criminal proceedings before passing any order under Rule 19 to maintain the proportionality of punishment.”

12. We feel that the representation made by the petitioner has not been “properly considered” by the Disciplinary Authority inasmuch as the entire focus of the Disciplinary Authority was that on the case of the co-accused Shib Lal and the UPSC’s advice rendered in the Shib Lal’s case.

13. Consequently, we set aside the impugned orders passed by the Tribunal as also the Disciplinary Authority’s order dated 31.07.2009 and direct that the Disciplinary Authority shall consider the representation of the petitioner which is already with the Disciplinary Authority and pass an appropriate order in consonance with law. The said order be passed within three weeks. We make it clear that no other point was argued before us. The quashing of the order of the Disciplinary Authority dated 31.07.2009 will not amount to reinstatement. We are also making it clear that we have not

expressed our view on the merits of the penalty order. We made it clear that the petitioner shall be under deemed suspension till the Disciplinary Authority passes the order under Rule 19.

14. The writ petition stands disposed of. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

SEPTEMBER 07, 2012

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