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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 524/2012**

Date of Decision: 28th February, 2017

GNCT OF DELHI AND ORS Petitioners
Through: Mr. Peeyosh Kalra, Advocate

versus

VISHAL NARULA Respondent
Through: Mr. Vikram Nandarajog, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **28.02.2017**

SANJIV KHANNA, J. (ORAL):

Vishal Narula was prosecuted and vide judgment dated 1.3.2008 passed by the Special Judge, Delhi convicted under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988. The charge was that he had asked and taken bribe from one Karamsheel to help him in getting the good marks in practicals in the selection process for appointment.

2. He was sentenced to undergo two years' rigorous imprisonment and pay fine of Rs.5,000/- for the two offences.

3. The appeal preferred, challenging the conviction was dismissed. It

has been stated at the Bar that the Special Leave to Appeal filed by Vishal Narula has also been dismissed. Vishal Narula has undergone the said sentence.

4. After the judgment on conviction came to the notice of the authorities, the Show Cause Notice dated 2.1.2009 referring to the gravity of the criminal charges was issued under Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rule, 1969 ('Rules' for short). Vishal Narula made a representation which was considered but rejected, and penalty of dismissal from service was imposed vide the order dated 18.1.2010 passed by the Secretary, Department of Training and Technical Education. The appeal preferred was dismissed vide the order dated 14/20.5.2010.

The respondent challenged these orders of the Disciplinary Authority and the Appellate Authority by filing OA No.3552/2010, which was partly allowed vide impugned order dated 12.8.2011. The Tribunal, in the impugned order, has observed as under:

“6. Having considered the respective submissions carefully, we find a merit in the legal infirmities pointed out by the applicant's learned counsel in the impugned Show Cause Notice as well as the penalty orders. The provisions of Rule 19

are extracted as here 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):

Provide further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.]”

6.1 As per Rule 19 (i), the provision is for imposition of penalty on the ground of conduct which has led to conviction on a criminal charge. Thus, mere fact of conviction in itself would not suffice for the purposes of this Rule. However, the Show Cause Notice as well as the impugned orders imposing the

penalty do not fulfil this requirement. A perusal of the SCN at Annex A/9 reveals that it does not even mention the conduct that had led to the criminal conviction. To extract from the concluding para of the Disciplinary Authority's order:

"The reply filed by Sh. Vishal Narula has been gone through carefully and examined in the light of set of rules. Principle of Natural Justice was followed giving personal hearing to Sh. Vishal Narula. Narula into facts and circumstances of the case in totality, I am of the opinion that since Sh. Vishal Narula has been convicted in the criminal case and therefore his retention in service is undesirable. I being the Disciplinary Authority in the case of Sh. Vishal Narula, Programme Assistant and in exercise of powers conferred under rule 19 (i) of CCS (CCA) Rules, 1965, hereby impose the penalty of "Dismissal from Service" with immediate effect."

The same is also found to be borne out by the order of the Appellate Authority, where it is clearly stated that the penalty of dismissal has been imposed following the conviction in the bribery case.

The pleas raised by the applicant of there being certain mitigating factors in this case and the extreme penalty of dismissal being grossly disproportionate given the factual matrix, and non-consideration of all such factors by the Disciplinary Authority merit consideration. We also find the reliance placed by the applicant's learned counsel on the observations of the Hon'ble Apex Court in Shankar Dass's case

about the requirement of a fair, just and reasonable exercise of the power to dismiss a person from service on the ground of conduct leading to conviction on a criminal charge under Article 311 (2) as apt in the present case.

6.2 It is further noted that the standard form of Show Cause Notice under Rule 19 stipulates mention of the penalty proposed to enable the concerned official to make appropriate representation. However, this also has not been observed in the instant case. As per the applicant, this coupled with non-accordance an opportunity for personal hearing by the Appellate Authority, as stipulated under the Rules and the prescribed format, has meant denial of a reasonable opportunity for defence. The reliance placed on the decision of the Apex Court in Khem Chand's case (supra) lends force to this plea.

6.3 This is also found to be suffering from the vice of double jeopardy. Negating the plea to this effect raised in the appeal, the Appellate Authority had taken the following view-

“Penalty of reduction by three stages in the time scale of pay for a period of three years with cumulative effect was imposed upon him after conducting the disciplinary proceedings under rule 14 of CCS (CCA) Rules whereas the order dated 18.01.2010 dismissing him from service was imposed under rule 19 of CCS (CCA) Rules after he was convicted by the Court of law.

Similarly the plea of the appellant that he has been penalized twice for the same offence is wrong. The correct position is

that the punishment of reduction in the time scale of pay was imposed upon him by the Disciplinary Authority for administrative misconduct, whereas the penalty of dismissal has been imposed upon him following his conviction in bribery case. Both the matters are different & distinguished and cannot be seen in similar perspective.”

However, given the fact that the penalty of dismissal in this case is purely on the ground of criminal conviction based on the same misconduct, which had formed subject of an earlier disciplinary proceeding and culminated in imposition of a different penalty, the above view is not found to be in consonance with law.

6.4 The other plea raised regarding alleged non-sanction of the prosecution in the criminal case is not really relevant to the issue at hand and hence need not be discussed further. Even the argument of the trial court's verdict not attaining finality during the pendency of the appeal is found unacceptable. The decision of the Apex Court in Akhtari Bi vs State of MP (supra), on which reliance has been placed, would not be applicable in the present case, as the facts were utterly distinguishable. Further, dealing with exactly a similar issue, the Hon'ble Supreme Court in the case of Union of India vs Ramesh Kumar, reported in 1997 (7) SCC 514, while dealing with Rule 19 of the CCS (CCA) Rules, had held as follows:-

“.... 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 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”.

7. *To conclude, after a careful consideration of the matter, we have found the impugned penalty orders untenable for imposing the penalty of dismissal merely on criminal conviction, without considering the conduct and other mitigating factors - as projected by the applicant - leading to it. Further it has been held that non-mention of the specific penalty proposed in the Show Cause Notice and non-according of a personal hearing by the Appellate Authority before upholding the extreme punishment of dismissal have amounted to denial of reasonable opportunity to the applicant. The impugned penalty is also found to be inflicted by the vice of ‘double jeopardy’ and in contravention of the Constitutional provisions under Article 20 (2).*

8. *In view of the above, we do not find the impugned orders in consonance with law. Resultantly, they are quashed and set aside. The applicant would be reinstated in service though no back wages for the interregnum would be admissible on the principle of ‘no work no pay’. The direction for reinstatement is to be complied with forthwith and latest within a month from the date of receipt of a copy of this order. The respondents would however be at liberty, if so advised, to take action in*

accordance with law.”

5. We are somewhat surprised that the authorities, despite no stay being granted, did not process the case by issue of fresh show cause notice under Rule 19 of the Rules. In fact, this would have been a pragmatic approach for the authorities to take. The Tribunal, in the impugned order, has applied the principle of ‘no-work no-pay’ and, therefore, no benefit would have accrued to the respondent-Vishal Narula.

6. However, we are not inclined to dispose of the present writ petition only for the said reason, as the present writ petition has remained pending in this Court for the last six years and notice was issued to the respondent on 2.2.2012. We would, in view of the time lapse, examine the aforesaid reasoning and findings of the tribunal.

7. It is correct that the respondent had earlier faced departmental proceedings under Rule 14 of the aforesaid Rules and penalty of reduction of scale 3 lower stages in the time-scale of pay for a period of three years with cumulative effect was imposed. However, the doctrine of double jeopardy does not apply, for the conviction of Vishal Narula under Sections 7 and 13(2) of the Prevention of Corruption Act falls under Clause (a) of the proviso to Article 311(2). The said Clause is a separate and independent

ground as held by the Constitution Bench in *Union of India And Another vs. Tulsiram Patel And Others, AIR 1985 SC 1416*. Therefore, the authorities were justified and correct in issuing Show Cause Notice under Rule 19 of the aforesaid Rule. The Show Cause Notice dated 2.1.2009 specifically refers to the criminal charges and conviction under Sections 7 and 13(2) of the Prevention of Corruption Act and the punishment imposed. The Show Cause Notice did not specify a particular penalty, albeit had specified that appropriate penalty, taking into account the gravity of the criminal charges. This would show a lack of predisposed mind. Thus, an opportunity was granted to Vishal Narula to make a reply. The final order imposing punishment of dismissal dated 18.1.2010 refers to the representation made by the respondent as also his conviction. The relevant portions of the order dated 18.1.2010 read as under:

“Anti Corruption Branch vide its letter dated 31.03.2008 intimated that the court of Special Judge Sh. A.S.Yadav, Tis Hazari has awarded the sentence vide order dated 03.03.2008 in case FIR No.47/02 P.S. Anti Corruption Branch vide which he has been sentenced and convicted to undergo R.I. for a period of two years and a fine of Rs.5000/- u/s 7 of Prevention of Corruption Act, 1988 and in default of payment of fine, convict shall undergo S.I. for period of two months. Convict is

further sentenced to undergo R.I for a period of two years and a fine of Rs.5000/- (Rupees Five Thousand Only) u/s 13(2) of the Prevention of Corruption Act 1988 and in default of payment of fine, convict shall further undergo S.I. for a period of two months. Both the sentences shall run concurrently and the convict shall be entitled to benefit under section 428 Cr.P.C.

.....

Sh. Vishal Narula filed an appeal in the Hon'ble High Court against the order passed by the Hon'ble Lower Court dated 03.03.2008. The Hon'ble High Court pleased to opined vide its judgment dated 06.05.2008 that the substantive sentence against the appellant is stayed till the disposal of the appeal. Since, Sh. Vishal Narula was convicted by the Court of Law, the matter was referred to DOV for seeking advice as to Disciplinary Proceedings u/r 19 of the CCS (CCA) Rules 1965 can be initiated against him as he was convicted by The Court of Law. Accordingly, DOV vide its advice dated 27.11.2008 opined that " GOI Rules on the subject anticipated immediate action. The Disciplinary Authority, therefore, take action as prescribed u/r 19(1) of the CCS (CCA) Rules 1965 without waiting for the decision of the appeal filed by Sh. Vishal Narula against the order of the Lower Court."

8. Thereafter, it is recorded that personal hearing was granted to Vishal Narula, who had also submitted his representations dated 20.2.2009,

24.11.2009 and 26.11.2009. After taking into consideration the aforesaid facts, the Disciplinary Authority concluded that Vishal Narula's continuation in service was undesirable. Hence, the penalty of dismissal from service was imposed.

9. The respondent had preferred an appeal, which, as noticed above, has been dismissed by the Appellate Authority vide order dated 14.-20.5.2010. After examining the factual matrix, the Appellate Authority passed the order, recording the following reasons:

“The undersigned has considered the submission made by the appellant in his appeal as also the related record of the case and observed that the arguments put forth by the appellant are bereft of evidence and lacking in substance. Penalty of reduction by three stages in the time scale of pay for a period of three years with cumulative effect was imposed upon him after conducting the disciplinary proceedings under Rule 14 of CCS (CCA) Rules whereas the order dated 18.01.2010 dismissing him from service was imposed under Rule 19 of CCS (CCA) Rules after he was convicted by the Court of law. The delay on the part of the Department in issuing the notice under Rule 19 is due to administrative reasons which cannot become a ground for not intimating any action. Similarly the plea of the appellant that he has been penalized twice for the same offence is wrong. The correct position is that the punishment of reduction in the

time scale of pay was imposed upon him by the Disciplinary Authority for administrative misconduct, whereas the penalty of dismissal has been imposed upon him following his conviction in bribery case. Both the matters are different & distinguished and cannot be seen in similar perspective.

It is not incumbent on the Competent Authority to wait for the decision of the High Court/Appellate Court in appeal before resorting to action under Rule 19 of the CCS(CCA) Rules, 1965. Mere filing of an appeal would not ipsofacto stay the operation of the judgment appealed against. The conviction remains unaffected during the pendency of the appeal.

Since Shri Vishal Narula has been convicted in a bribery case involving moral turpitude, it may not be administratively expedient to retain such tainted person in Govt. service. In view of this the undersigned is not inclined to interfere with the decision of the Disciplinary Authority. Now, therefore, the undersigned hereby dismiss the appeal preferred by Shri Vishal Narula.”

10. One could urge that the Show Cause Notice and the impugned orders dated 18.1.2010 and 14-20.5.2010 should have been better worded. Appropriate wordings would have curtailed and ensured that no technical grounds were available to challenge and question the said orders. However, we do not think that this is a case in which the authorities did not apply their

minds to the gravity of the offence as proved and established. They had thoroughly applied their minds and examined whether the respondent should be retained in service. Taking bribe regardless of the amount, which was proved and established in the criminal case, is a serious and grave matter. It is immoral and vicious conduct, which cannot be mistaken as an innocent or a technical violation.

11. In view of the aforesaid discussion, we modify the impugned order passed by the Tribunal and uphold the impugned orders passed by the Disciplinary Authority and the Appellate Authority. OA No.3552/2010 will be treated as dismissed. No order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

FEBRUARY 28, 2017

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