

**Anil Kumar Vs. a and N Administration and ors.**

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**Court :** Kolkata

**Decided On :** Jul-09-2007

**Reported in :** 2007(4)CHN400

**Judge :** Bhaskar Bhattacharya, J.

**Acts :** Code of Criminal Procedure (CrPC) - Section 378(1); ;Central Civil Services (Classification Control and Appeal) Rules, 1965 - Rule 19 and 19(1)

**Appeal No. :** W.P. No. 69 of 2005

**Appellant :** Anil Kumar

**Respondent :** A and N Administration and ors.

**Advocate for Def. :** S.K. Moudal, Adv. for respondent Nos. 1 and 3 and ;Anjili Nag, Adv. for respondent Nos. 2 and 4

**Advocate for Pet/Ap. :** Mohd. Tabraiz, Adv.

**Disposition :** Application dismissed

**Judgement :**

**Bhaskar Bhattacharya, J.**

1. By this writ application, the writ petitioner, a dismissed employee, has challenged the order dated 20th May, 2005 issued by the employer by which it has

in exercise of the power under Rule 19(1) of the CCS (CCA) Rules, 1965 has dismissed the writ petitioner from service of the Port Management Board w.e.f. 1st October, 2004.

2. It appears from record that the writ petitioner was implicated in a criminal case alleging offence involving moral turpitude and ultimately, was acquitted of the charges by the learned Sessions Judge.

3. Being dissatisfied, the prosecution preferred an appeal against the order of acquittal under Section 378(1) of the Code of Criminal Procedure and the High Court was pleased to allow such appeal thereby holding the writ petitioner guilty of the charges and inflicted rigorous imprisonment for seven years and also sentenced him to pay a fine of Rs. 10,000/- in default of payment of fine, he was directed to undergo further rigorous imprisonment for six months.

4. After the aforesaid order of conviction passed by this Court, the disciplinary authority was of the prima facie opinion that the circumstances/offence committed which led to the conviction warranted penalty of dismissal from service as his retention in public service was undesirable in public interest and as such, a notice to show cause was given to the writ petitioner asking him to submit his explanation in writing as to why the penalty of dismissal from the service under Rule 19(1) of CCS (CCA) Rules, 1965 should not be imposed on him w.e.f. 1st October, 2004 i.e. from the date of conviction order.

5. Pursuant to such show-cause notice, the writ petitioner gave answer and after considering such written submission, the employer found such explanation to be not convincing as he had given more emphasis on the effort made by him by seeking bail against his conviction but did not take any step for exonerating the charges of conviction. The employer further observed that charges against him involved moral turpitude which could not be ignored and at the same time, the writ petitioner also did not obtain any order of stay of disciplinary proceeding from the competent Court of Law.

6. After making the aforesaid observations, the employer in exercise of power conferred under Rule 19(1) mentioned above dismissed the writ petitioner from

service w.e.f. 1st October, 2004.

7. Being dissatisfied, the writ petitioner has come up with the present writ application.

8. Mr. Tabraiz, the learned Advocate appearing on behalf of the petitioner at the first instance, contended before this Court that his client having already obtained bail from the Hon'ble Supreme Court, the employer acted illegally in dismissing him from service. According to Mr. Tabraiz, the petitioner could be placed under suspension till the disposal of the application before the Supreme Court. Mr. Tabraiz contends that so long the order of conviction is not upheld by the Supreme Court, it cannot be said that his client has really been finally convicted of any offence.

9. Mr. Tabraiz next contends that from the notice to show-cause issued by the employer, it will appear that the employer had already closed its mind and was determined to dismiss him from service before getting any explanation and on that ground alone, the order should be set aside and the employer should be directed to reconsider the case.

10. Mrs. Nag, the learned Advocate appearing on behalf of the employer has, however, opposed the aforesaid contentions advanced by Mr. Tabraiz and has contended that Rule 19(1) itself contemplates that the Government servant should be given opportunity of making representation on the 'penalty proposed' to be imposed before any order is passed under Clause (1). According to Mrs. Nag, the reference of the proposed punishment therefore, did not indicate the closed mind of the employer. Mrs. Nag further contends that having regard to the nature of the offence committed by the writ petitioner which has been found by this Court, for public interest the writ petitioner should be dismissed from service. Mrs. Nag contends that if the writ petitioner is acquitted in the long run, the employer will restore him to service with all benefits.

11. After hearing the learned Counsel for the parties and after going through the materials on record, I am of the opinion that in view of the decision of the Supreme Court in the case of Deputy Director of Collegiate Education (Administration)

Madras v. S. Nagoor Meera reported in 1995(2) All India Service Law Journal page 89, the respondent before us has taken the correct approach in dismissing the writ petitioner from service after he has been found to be guilty of the serious offence involving moral turpitude. The view taken in the said decision has been approved by the Supreme Court in the subsequent decisions in the case of K.C. Sareen v. CBI, Chandigarh reported in : 2001 CriLJ4234 and also in the case of State of Maharashtra v. Gajanan reported in AIR 2004 SC 1189.

12. I, therefore, find substance in the contention of Mrs. Nag that mere grant of bail by the Supreme Court cannot stand in the way of the employer in proceeding against the writ petitioner on the basis of conviction passed by this Court.

13. I, now, propose to deal with the following two decisions cited by Mr. Tabraiz:

(1) Divisional Personal Officer v. T.R. Challappan reported in : (1976)ILLJ68SC ;

(2) Satyavir Shing v. Union of India reported in : (1986)ILLJ36SC .

14. The principles laid down in the case of Divisional Personal Officer (supra) has been expressly overruled by the Constitution Bench of the Supreme Court in the case of Union of India v. Tulsiram Patel reported in AIR 1985 SC 1146 and therefore, the same does not deserve any discussion.

15. In the other case of Satyavir Singh (supra), the appellants were employees of the Research and Analysis Wing (RAW), Cabinet Secretariat, Govt. of India. The RAW was concerned with international affairs and under cover activities pertaining to national security. Certain cadres of employees of RAW formed an association. They submitted a charter of demands. Earlier different branches and departments of the RAW in Delhi were scattered in several buildings. Ultimately a new building was constructed in Delhi. In the building the Counter Intelligence Section (CIS) was also housed. After the CIS was shifted to this building strict security measures were introduced and the employees, when going from one floor to the other had to show their identity cards. This was resented by the employees and they demanded the withdrawal of this regulation and insisted that the identification check should be made only at the time of entering the building. On 27.11.1980, a

number of staff members collected in the galleries leading to the CIS room protesting against the security regulation and demanding its immediate withdrawal. All attempts to pacify them proved unsuccessful. Several employees forced their entry into the room of the Director (CIS) and forced him as also the Assistant Director and Security Field Officer, who were in the room to stand in the corner and did not allow them to move from the spot but kept them as hostages. The situation was brought under control by police help. There was pen down strike in Delhi which spread to many parts of India. The appellants who had taken active part in the disturbance were dismissed from service without holding any inquiry by applying to them Articles 311(2) Second Provisio Clause (b) read with Rule 19 of the Rules. In such a case the Apex Court held that Clause (b) of second of proviso to Article 311(2) and Rule 19 of the Rules were properly applied to the case of each of the appellants and the impugned orders of dismissal were validly passed against them. I fail to appreciate how the said decision can be of any help to the writ petitioner.

16. Therefore, the decisions cited by Mr. Tabriaz are of no assistance of his client.

17. I, thus, find no merit in this writ applicant dismissed. No costs.

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