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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 1171/2015**

Date of decision: 17th March, 2016

RADHA KISHAN MEENA ..... Petitioner
Through Mr. M. Atyab Siddiqui, Advocate.

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondent
Through Ms. Neha Rastogi, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

With the consent of the learned counsel for the parties, we take up the present writ petition for final hearing and disposal.

2. Radha Kishan Meena, a Physical Education Teacher in the Directorate of Education, Government of NCT of Delhi, in this writ petition impugns order dated 16th December, 2014 passed by the Central Administrative Tribunal, Principal Bench, Delhi, whereby his OA No.639 of 2014 was dismissed, upholding the order under Rule 19(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 [CCS(CCA) Rules, for short].

3. By the judgment of the Sessions Court, district Dausa, Rajasthan

dated 14th September, 2012, the petitioner was convicted under Sections 308, 324 and 325 of the Indian Penal Code, 1860 [IPC, for short].The petitioner has filed Criminal Appeal No.797/2012, before the High Court of Rajasthan, which is pending. By order dated 1st February, 2013, the said High Court had disposed of an interim application filed by the petitioner for stay of conviction, recording:-

> "2) Counsel submits that this application for stay of conviction of the order dated 14.09.2012 for offences under the trial court arises in the circumstance that the accused-applicant is a highly qualified person and is presently employed as PET, GBSSS, No.1, Molarband, New Delhi. It is submitted that the accused-applicant has been terminated from service under the order dated 17.12.2012 issued under the hand of the Director of Education, Government of National Capital Territory of Delhi, Directorate of Education, Old. Sectt. Delhi (Vigilance Branch-HQ) and a bare look at the order indicates that the termination is founded upon the order of the applicant's conviction dated 14.09.2012 for offences under Sections 323, 341, 324/34, 325/34 & 308/34 IPC.
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> 3) x x x x x x
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> 4) x x x x x x
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> 5) Having heard the counsel for the parties, in the facts of the case, it is directed that judgment of conviction dated 14.09.2012 against the accused-applicant for offences under Sections 323, 341, 324/34, 325/34 & 308/34 IPC passed by the learned trial court shall remain stayed during the pendency of the appeal."

4. Thus, the High Court has stayed the judgment of conviction dated 14th September, 2012. This is not a case, where the sentence stands suspended

and the petitioner has been granted bail, but one in which the judgment of conviction has been stayed.

5. After the judgment of conviction was pronounced on 14th September, 2012, the petitioner was dismissed from service, vide order dated 17th December, 2012 under Rule 19 of the CCS(CCA) Rules. This order dated 17th December, 2012, was before the stay of conviction order dated 1st February, 2013 passed by the High Court. However, the petitioner had preferred a statutory appeal under the CCS(CCA) Rules, which was disposed of on 6th December, 2013. By then the order of stay of conviction had been passed by the High Court. The appellate order dated 6th December, 2013 does not refer to and examine the effect and consequence of the order dated 1st February, 2013.

6. There is another aspect, as to why the two orders dated 17th December, 2012 and 6th December, 2013 suffer from procedural irregularities for they are contrary to the mandate and stipulations of Rule 19(2) of the CCS (CCA) Rules. The said Sub- Rule reads as under:-

> "19. Special procedure in certain cases
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> (2) **Action on conviction**.- (a) On a criminal charge.-The following principles should apply in regard to action to be taken in cases where Government servants are convicted on a criminal charge:-
> (i) In case where a Government servant has been convicted in a Court of Law of an offence which is such as to render further retention in public service of a

> Government servant prima facie undesirable, the Disciplinary Authority may, if it comes to the conclusion that an order with a view to imposing a penalty on the Government servant on the ground of conduct which had led to his conviction on a criminal charge should be issued, issue such an order without waiting for the period of filing an appeal, or, if an appeal has been filed, without waiting for the decision in the first Court of appeal. Before such an order is passed, the Union Public Service Commission should be consulted where such consultation is necessary.
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> (ii) As soon as a Government servant is convicted on a criminal charge, he may, in appropriate cases, be placed under suspension, if not already suspended.
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> (iii) In case where the conviction is not for an offence of the type referred to in sub-paragraph (i) above, the Disciplinary Authority should call for and examine a copy of the judgment with a view to decide on taking such further departmental action, as might be deemed appropriate."

The Rule 19(2) empowers the disciplinary authority to impose penalty on a Government servant on the ground of conduct which has led to his conviction on the criminal charge. The crucial aspect required to be examined by the disciplinary authority is whether the conduct of the Government servant, which had led to his conviction on a criminal charge, warrants punishment of dismissal from service on the ground that retaining the public servant in Government service is undesirable. This safeguard and protection ensures that a government servant is not dismissed from service for technical offences. It is not mandatory or automatic that the Government servant upon conviction on a criminal charge be dismissed from service. The conduct of the Government servant, which had led to his conviction,

has to be examined and a considered decision taken. This is clear from sub-clause (iii) to Rule 19(2), which refers to conviction of a Government servant for an offence of the type not referred to in sub-clause (i), i.e., the conviction should be for an offence which would render further retention of public servant undesirable.

7. The legal issue is not *res integra* and was examined by the Supreme Court, when they dealt with a similar provision in ***Divisional Personnel Officer, Southern Railway Vs. T.R. Chellappan***, (1976) 3 SCC 190 and had observed:-

> "9 An analysis of the provisions of Article 311(2)*(a)* extracted above would clearly show that this constitutional guarantee contemplates three stages of departmental inquiry before an order of dismissal, removal or reduction can be passed Proviso *(a)* to Article 311(2), however, completely dispenses with all the three stages of departmental inquiry when an employee is convicted on a criminal charge. The reason for the proviso is that in a criminal trial the employee has already had a full and complete opportunity to contest the allegations against him and to make out his defence. In the criminal trial charges are framed to give clear notice regarding the allegations made against the accused, secondly, the witnesses are examined and cross-examined in his presence and by him; and thirdly, the accused is given full opportunity to produce his defence and it is only after hearing the arguments that the Court passes the final order of conviction or acquittal. In these circumstances, therefore, if after conviction by the Court a fresh departmental inquiry is not dispensed with, it will lead to unnecessary waste of time and

> expense and a fruitless duplication of the same proceedings all over again. It was for this reason that the founders of the Constitution thought that where once a delinquent employee has been convicted of a criminal offence that should be treated as a sufficient proof of his misconduct and the disciplinary authority may be given the discretion to impose the penalties referred to in Article 311(3), namely, dismissal, removal or reduction in rank. It appears to us that proviso *(a*) to Article 311(2) is merely an enabling provision and it does not enjoin or confer a mandatory duty on the disciplinary authority to pass an order of dismissal, removal or reduction in rank the moment an employee is convicted. This matter is left completely to the discretion of the disciplinary authority and the only reservation made is that departmental inquiry contemplated by this provision as also by the Departmental Rules is dispensed with. In these circumstances, therefore, we think that Rule 14*(i*) of the Rules of 1968 only incorporates the principles, enshrined in proviso *(a*) to Article 311(2) of the Constitution. The words "where any penalty is imposed" in Rule 14*(i*) should actually be read as "where any penalty is imposable", because so far as the disciplinary authority is concerned it cannot impose a sentence. It could only impose a penalty on the basis of the conviction and sentence passed against the delinquent employee by a competent court. Furthermore the rule empowering the disciplinary authority to consider circumstances of the case and make such orders as it deems fit clearly indicates that it is open to the disciplinary authority to impose any penalty as it likes. In this sense, therefore, the word "penalty" used in Rule 14*(i*) of the Rules of 1968 is relatable to the penalties to be imposed under the Rules rather than a penalty given by a criminal court."

In a subsequent portion of the same judgment, it was held:-

"21..... The word "consider" merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words, the term "consider" postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employee. It is not at all necessary for the disciplinary authority to order a fresh departmental inquiry which is dispensed with under Rule 14 of the Rules of 1968 which incorporates the principle contained in Article 311(2) proviso (*a*). This provision confers power on the disciplinary authority to decide whether in the facts and circumstances of a particular case what penalty, if at all, should be imposed on the delinquent employee. It is obvious that in considering this matter the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features if any present in the case and so on and so forth. It may be that the conviction of an accused may be for a trivial offence as in the case of the respondent T.R. Chellappan in Civil Appeal No. 1664 of 1974 where a stern warning or a fine would have been sufficient to meet the exigencies of service. It is possible that the delinquent employee may be found guilty of some technical offence, for instance, violation of the transport rules or the rules under the Motor Vehicles Act and so on, where no major penalty may be attracted. It is difficult to lay down any hard and fast rules as to the factors which the

> disciplinary authority would have to consider, but I have mentioned some of these factors by way of instances which are merely illustrative and not exhaustive. In other words, the position is that the conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction. This is a very salutary provision which has been enshrined in these Rules and one of the purposes for conferring this power is that in cases where the disciplinary authority is satisfied that the delinquent employee is a youthful offender who is not convicted of any serious offence and shows poignant penitence or real repentance he may be dealt with as lightly as possible. This appears to us to be the scope and ambit of this provision. We must, however, hasten to add that we should not be understood as laying down that the last part of Rule 14 of the Rules of 1968 contains a licence to employees convicted of serious offences to insist on reinstatement……"

8. Similar view has been taken by the Supreme Court in ***Union of India Vs. Tulsiram Patel***, (1985) 3 SCC 398, ***Union of India Vs. Sunil Kumar Sarkar***, (2001) 3 SCC 414 and ***Union of India Vs. P. Chandra Mouli***, (2003) 10 SCC 297.

9. In the present case, the order of the disciplinary authority dated 17th December, 2012, reads as under:-

> "Whereas, Sh. Radha Kishan Meena, PET, GBSSS, No.1, Molarband, New Delhi has been convicted under section 307/34 & 341, 323, 324/34, 325/34 of Indian

> Penal Code, Vide Session Case No.22/2007 at Bandikui, District Dausa, Rajasthan and has been awarded a Rigorous imprisonment of four years and with a fine of Rs. Five Thousand u/s 307/34 & 341, 323, 324/34, 325/34 of Indian Penal Code by the Hon'ble Court, Addl. Session Judge, Bandikui, Distt. Dausa, Rajasthan vide judgment dated 14.09.2012.
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> And whereas, it is considered that conduct of the said Sh. Radha Kishan Meena, PET, which has led to his conviction, is such as to render his further retention in the public service undesirable.
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> And whereas, that said Sh. Radha Kishan Meena, PET, has been given an opportunity, vide Show Cause Notice No. F.DE.50(1)/Vig/South/2011/573-574 dated 12.10.2012, for submitting his written explanation.
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> And whereas, the said Sh. Radha Kishan Meena, PET has given a written explanation dated 17.10.12, which has been duly considered by the undersigned and found not satisfactory.
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> No, therefore, in exercise of the powers conferred by Rule 19(i) of CCS (CCA) Rules, 1965, the undersigned hereby dismisses the said Sh. Radha Kishan Meena, PET from service with immediate effect."

10. The order of the appellate authority dated 6th December, 2013, is equally bereft of any reasoning or due consideration and application of mind as required under Rule 19 and as per the ratio of the aforesaid decisions. The relevant portion of the order dated 6th December, 2013, reads:-

> "5. In the instant case the penalty of dismissal has been imposed by the disciplinary authority under Rule 19(1) of the CCS (CCA) Rules 1965 after giving him the opportunity to make representation and considering the representation made by him. After having gone

> through the facts and circumstances of the case, I am of the view that the conclusions of the Disciplinary Authority are valid and that as such penalty imposed by him is justified."

11. In view of the aforesaid position, we set aside the impugned order of the Tribunal dated 16th December, 2014 as well as the orders of the disciplinary authority dated 17th December, 2012 and the appellate authority dated 6th December, 2013, and pass an order of remit to disciplinary authority to decide the issue afresh in accordance with law. The ratio of the aforesaid judgments will be kept in mind. If required and necessary consequential orders as regards treatment of the period post order dated 17th December,2012, whether an order of suspension can and should be passed, arrears etc. will be examined and addressed. We have refrained and not commented on merits i.e. acts and conduct subject of the judgment of conviction.

12. The writ petition is disposed of. There will be no order as to costs.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MARCH 17, 2016
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