of 102 (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Writ petition No. 2899 /2003.

PETITIONER : Kushal Singh Naik S/o Sri Shobha Singh Naik, Aged about 46 years, R/o Village-Mardum Distt - Bastar (C.G.)

Versus

RESPONDENTS :
(1) State of C.G. Through Secretary Forest Department, D.K.S. Bhawan, Raipur(C.G.)
(2) Divisional Forest Officer Jagdalpur, Distt- Bastar.
(3) Forest Conservator, Jagdalpur, Distt- Bastar.

No. 2743/03 presented by Shri Manoj Parashar dated 13.08.03

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA

AFR

28-2-06

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2899 of 2003

Petitioner : Kushal Singh Naik

Versus

Respondent : State of Chhattisgarh & others

Post for order on 28th February, 2006.

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2899 of 2003

Petitioner : Kushal Singh Naik

Versus

Respondent : State of Chhattisgarh & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Manoj Paranjpe, Advocate for the petitioner.

Shri Sandeep Dubey, Govt. Advocate for the respondents.

ORDER

(28th February, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The facts in nut shell as stated by the petitioner are that the petitioner was initially appointed as a Koop-Guard in the year 1977. The petitioner thereafter was promoted to the post of Forest Guard.

2. One Liti Ram Mandavi lodged an F.I.R. against the petitioner alleging that the petitioner has used abusive language against the complainant with intent to insult and humiliate the complainant, who is a member of Scheduled Tribe on 11.9.2002 in the police station Ajak, Jagdalpur. The case was registered under sections 294 and 506-II of the Indian Penal Code (for short 'I.P.C.') read with Section 3(1)(x) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act, 1989). Prosecution for offences under section 294 and 506 Part-II of the I.P.C. on the basis of the application dated 30.6.2003 for compromise, filed by the complainant Liti Ram Mandavi, was dropped. The offence under section 3(1) (x) of the Act, 1989 is not compoundable and as such it could not be compounded. Accordingly, the petitioner was discharged

from the offences punishable under section 294 and 506 Part-II of the I.P.C. With regard to the offence under section 3(1) (x) of the Act, 1989, learned Special Judge came to the conclusion that the petitioner was guilty of using abusive language with intent to insult and humiliate a person of the Scheduled Tribe- the complainant and accordingly held that the petitioner has committed an offence under section 3 (1)(x) of the Act, 1989. On the question of conviction learned Special Judge by the judgment and order dated 11.7.2003 (Annexure P/1) awarded one year's rigorous imprisonment with payment of fine of Rs. 1000/- as penalty, in default, to further undergo three months rigorous imprisonment, additionally.

3. The petitioner filed an appeal being Criminal Appeal No. 812/2003 against the judgment and order dated 11.7.2003 in this Court. This Court vide order dated 31.7.2003 stayed the conviction. The appeal is pending consideration.

4. On the basis of the conviction passed by a criminal Court, the Divisional Forest Officer, Baster (T) Forest Division, Jagdalpur dismissed the petitioner from service as specified in Rule 10(ix) of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short 'the State Rules,1966') by order dated 29.7.2003 (Annexure P/3) under Rule 19 (i) of the State Rules 1966 . The petitioner filed a representation to the Chief Conservator of Forest, Raipur submitting that since the criminal appeal is pending consideration before the High Court and the conviction passed by the Special Judge has been stayed by the High Court, the petitioner should be reinstated till the order of the High Court is passed in appeal. No order on his representation was passed.

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5. Rule 23 of the State Rules 1966 provides for statutory appeal against an order imposing any of the penalties specified in Rule 10 of the State Rules 1966 by the disciplinary authority or appellate authority or reviewing authority. The petitioner without resorting to the alternative remedy of filing statutory appeal, has filed this petition before this Court under Article 226/227 of the Constitution of India seeking a writ of certiorari for quashing the impugned order dated 29.7.2003 passed by the Divisional Forest Officer, Jagdalpur and further a direction to reinstate the petitioner in service.

6. Shri Manoj Paranjpe, learned counsel appearing for the petitioner submitted that alternative remedy as provided under Rule 23 of the Rules, 1966 is a time consuming process and no useful purpose would be served if the petitioner is driven to take resort to the alternative remedy as provided under Rule 23 of the State Rules 1966. Learned counsel further submitted that in the facts and circumstances of the case the penalty of dismissal imposed upon the petitioner under Rule 19 (i) of the State Rules 1966 is arbitrary and whimsical. Learned counsel further submitted that the penalty imposed on the basis of the conviction by the criminal Court is excessive in view of the fact that overall conduct of the petitioner has to be looked into to decide whether moral turpitude is involved to impose extreme punishment of dismissal from service. Penalty of dismissal from service is disproportionate to the alleged conduct of the petitioner.

7. It was next contended that the conviction of the petitioner under section 3 (1) (x) of the Act, 1989 does not involve moral turpitude so as to deprive the petitioner from opportunity to serve the State. The

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impugned order imposing the penalty of dismissal without holding even summary enquiry is arbitrary and illegal.

8. Shri Sandeep Dubey, learned Govt. Advocate appearing for the respondents, per contra, submitted that this petition should be dismissed on the ground of availability of the alternative remedy. Rule 23 of the State Rules 1966 provides for statutory appeal. The petitioner should not be permitted to bypass the alternative remedy of the statutory appeal before approaching this Court under Article 226/227 of the Constitution of India. Learned counsel further submitted that Rule 19 of the State Rules 1966 is Non-obstante clause and for imposition of a penalty on the Govt. Servant which has led to his conviction on a criminal charge, no enquiry/notice is required to be held/given before imposing the penalty.

9. It was next contended that Second proviso to Article 311(2) of the Constitution of India provides that Article 311 (2) shall not be applicable to a case where a person is dismissed or removed or reduced in rank on the ground of conduct which led to his conviction on a criminal charge. Hence, the requirement of even summary enquiry or notice is not necessary in case of imposition of penalty of dismissal on the ground of conduct which has led to his conviction on a criminal charge.

10. I have heard learned counsel for the parties and have perused the documents appended to the petition as well as to return filed by the respondents.

11. This petition has been filed on 12.9.2003. I am of the opinion that in view of the statutory provisions, availing alternative remedy of the statutory appeal, before approaching this Court, will not provide an efficacious remedy. Thus, the matter is being considered in this

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petition without directing the petitioner to avail alternative remedy of statutory appeal, first, then come to this Court.

12. The petitioner was dismissed from service as specified in Rule 10 (ix) of the State Rules 1966 on the ground of conduct which has led to his conviction on criminal charge. Rule 19 of the State Rules 1966 reads as under:-

> "19. Special procedure in certain cases.- Notwithstanding anything contained in rule 14 to 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 Governor 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 Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule."

13. Rule 19 of the State Rules 1966 is a Non-obstante provision and has overriding effect on other provisions under Rule 14 to 18 of the Rules, 1966. Rules 14 to 18 of the Rules, 1966 provides for procedure for imposing penalties, as such, procedure for imposing penalties as provided in Rules 14 to 18 are not applicable in case of any penalty imposed on a Govt. Servant on the ground of conduct which has led to his conviction on a criminal charge. Admittedly, the petitioner was convicted for an offence under Section 3 (1) (ix) of the Act, 1989.

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Second proviso to Article 311 (2) of the Constitution of India was incorporated in the Constitution by the (Forty-second Amendment) Act, 1976 (w.e.f. 3.1.1977). Second proviso to Clause (2) of Article 311 provides that clause (2) shall not apply in certain cases, inter alia, in cases where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. Article 311 reads as under:-

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State-(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

14. Second proviso to clause (2) of the Article 311 of the Constitution was considered by the Supreme Court of India in **Union of India and another Vs. Tulsiram Patel**[1] wherein in paras 54, 61 and 62 held as under:-

"54. Clauses (1) and (2) of Article 311 impose restrictions upon the exercise by the President or the Governor of a State of his pleasure under Article 310 (1). These are express provisions with respect to termination of service by dismissal or removal as also with respect to reduction in rank of a civil servant and thus come within the ambit of the expression "Except as otherwise provided by this "Constitution" qualifying Article 310(1). Article 311 is thus an exception to Article 310 and was described in Parshotam Lal Dhingra v. Union of India, 1958 SCR 828, 839 : (AIR 1958 SC 36 at P.41) as operating as a proviso to Article 310 (1) though set out in a separate Article. Article 309 is, however, not such an exception. It does not lay down any express provision which would derogate from the amplitude of the exercise of pleasure under Article 310 (1). It merely confers upon the appropriate Legislature or executive the power to make laws and frame rules but this power is made subject to the provisions of the Constitution. Thus, Article 309 is subject to Article 310 (1) and any provision restricting the exercise of the pleasure of the President or Governor in an Act or rule made or framed under Article 309 not being an express provision of the Constitution, cannot fall within the expression "Except as expressly provided by this Constitution" occurring in Article 310 (1) and would be in conflict with Article 310 (1) and must be held to be unconstitutional. Clauses (1) and (2) of Article 311 expressly restrict the manner in which a Government servant can be dismissed, removed or reduced in rank

(1AIR 1985 SC 1416)

and unless an Act made or rule framed under Article 309 also conforms to these restrictions, it would be void. The restrictions placed by clauses (1) and (2) of Article 311 are two : (1) with respect to the authority empowered to dismiss or remove a Government servant provided for in clause (1) of Article 311; and (2) with respect to the procedure for dismissal, removal or reduction in rank of a government servant provided for in clause (2). The second proviso to Article 311(2), which is the central point of controversy in these Appeals and Writ Petitions, lifts the restriction imposed by Article 311(2) in the cases specified in the three clauses of that proviso.

61. The language of the second proviso is plain and unambiguous. The keywords in the second proviso are "this clause shall not apply". By "this clause" is meant clause (2). As clause (2) requires an enquiry to be held against a government servant, the only meaning attributable to these words is that this inquiry shall not be held. There is no scope for any ambiguity in these words and there is no reason to give them any meaning different from the plain and ordinary meaning which they bear. The resultant effect of these words is that when a situation envisaged in any of the three clauses of the proviso arises and that clause becomes applicable, the safeguard provided to a government servant by clause (2) is taken away. As pointed out earlier, this provision is as much in public interest and for public good and a matter of public policy as the pleasure doctrine and the safeguards with respect to security of tenure contained in clauses (1) and (2) of Article 311.

62. Before, however, any clause of the second proviso can come into play the condition laid down in it must be satisfied. The condition for the application of each of these clauses is different. In the case of clause (a) a government servant must be guilty of conduct deserving the penalty of dismissal, removal or reduction in rank which conduct has led to him being convicted on a criminal charge. In the case of clause (b) the disciplinary authority must be satisfied that it is not reasonably practicable to hold an inquiry. In

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the case of clause (c) the President or the Governor of a State, as the case may be, must be satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry. When these conditions can be said to be fulfilled will be discussed later while dealing separately with each of the three clauses. The paramount thing, however, to bear in mind is that the second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311 (2) is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an inquiry. The extent to which a government servant can be denied his right to an inquiry formed the subject-matter of considerable debate at the Bar and we, therefore, now turn to the question whether under the second proviso to Article 311 (2) even though the inquiry is dispensed with, some opportunity at least should not be afforded to the government servant so that he is not left wholly without protection. As most of the arguments on this part of the case were common to all the three clauses of the second proviso, it will be convenient at this stage to deal at one place with all the arguments on this part of the case, leaving aside to be separately dealt with the other, arguments pertaining only to a particular clause of the second proviso.

The Extent of Denial of Opportunity under the second proviso".

15. In Para-102 the Supreme Court further held as under :-

"102 .....Thus, where the second proviso applies, though there is no prior opportunity to a government servant to defend himself against the charges made against him, he has the opportunity to show in an appeal filed by him that the charges made against him

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are not true. This would be a sufficient compliance with the requirements of natural justice....."

16. The Supreme Court has considered earlier decisions in the case of Shankar Dass Vs. Union of India (1985) 2 SCC 358 and The Divisional Personnel Officer, Southern Railway and others Vs. T. R. Challappan (AIR 1975 SC 2216) and has held in para 128 as under:-

"128. The main thrust of the arguments as regards clause (b) of the second proviso to Article 311 (2) was that whatever the situation may be a minimal inquiry or at least an opportunity to show cause against the proposed penalty is always feasible and is required by law. The arguments with respect to a minimal inquiry were founded on the basis of the applicability of Article 14 and the principles of natural justice and the arguments with respect to an opportunity to show cause against the proposed penalty were in addition founded upon the decision in Challappan's Case (AIR 1975 SC 2216). These contentions have already been dealt with and negatived by us and we have further held that Challappan's Case in so far as it held that a government servant should be heard before imposing a penalty upon him was wrongly decided."

17. The Supreme Court in **Trikha Ram Vs. V. K. Seth and another**[2] held that in view of the decision of the five Judges Bench of the Supreme Court in Union of India Vs. Tulsiram Patel { 1985 3 SCC 398} a civil servant convicted for criminal offence is not entitled to hearing before imposing punishment of dismissal.

18. The Supreme Court in the **State of Maharashtra and another Vs. The Jalgaon Municipal Council and others**[3] held that the basic principle of natural justice is to be moulded in their application to suit peculiar situation of a given case, for the variety and complexion of the situation defies narration. The Supreme Court in para 32 held as under:-

{ [2]1987 (Supp) SCC 39, [3]AIR 2003 SC 1659}

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"32. The caution of associating rules of natural justice with the flavour of flexibilities would not permit the Courts applying different standards of procedural justice in different cases depending on the whims or personal philosophy of the decision maker. The basic principles remain the same; they are to be moulded in their application to suit the peculiar situations of a given case, for the variety and complexity of situations defies narration. That is flexibility. Some of the relevant factors which enter the judicial process of thinking for determining the extent of moulding the nature and scope of fair hearing and may reach to the extent of right to hearing being excluded are: (i) the nature of the subject-matter, and (ii) exceptional situations. Such exceptionality may be spelled out by (i) need to take urgent action for safeguarding public health or safety or public interest, (ii) the absence of legitimate exceptions, (iii) by refusal of remedies in discretion, (iv) doctrine of pleasure such as the power to dismiss an employee at pleasure, (v) express legislation. There is also a situation which Prof. Wade and Forsyth terms as "dubious doctrine" that right to a fair hearing may stand excluded where the Court forms an opinion that a hearing would make no difference. Utter caution is needed before bringing the last exception into play.(Administrative Law, ibid, at pp. 543-544).

19. The Supreme Court in **Caltex (India) Ltd. Calcutta Vs. Presiding Officer, Labour Court, Patna & others**[4] in para-5 has held as under:-

"5. .....It is well known that in industrial law there are two kinds of misconduct, namely, (i) major misconducts which justify punishment of dismissal/discharge, and (ii) minor misconducts which do not justify punishment of dismissal/discharge but may call for lesser punishments. Therefore, when the legislature indicated that the State Government will prescribe the kinds of misconduct on proof of which no notice will be required and services of an employee can be dispensed with it was clearly indicating to the State Government to include in its list of misconducts such of them as are generally understood as major

(4AIR 1966 SC 1729)

misconducts which justify the dismissal/discharge of an employee. This in our opinion is sufficient guidance to the State Government to specify in the rule it was expected to make such misconduct as is generally understood in industrial law to call for the punishment of discharge/dismissal....."

20. Learned counsel for the petitioner has relied on a decision of the Supreme Court in **Pawan Kumar Vs. State of Haryana and another**[5] wherein the delinquent employee was convicted under section 294 of the I.P.C. the Supreme Court considering the particular facts of the case held that the offence under section 294 of the I.P.C. is not found enlisted in the offence constituting moral turpitude, and as such, the appeal was allowed and the order of termination was set aside. In the present case the charge for committing an offence under Section 294 of the I.P.C. against the petitioner was dropped and the petitioner was convicted for a conduct under Section 3 (1) (x) of the Act, 1989. Thus in the facts of the case the decision of the Supreme Court in **Pawan Kumar's** case (Supra) is not applicable.

21. The Supreme Court has recently considered second proviso to Article 311(2) of the Constitution in the case of **Union of India & others Vs. Sunil Kumar Sarkar**[6] wherein Rule 19 of the Central Civil Services (Classification and Control and Appeal) Rules 1965 was in question, has held in para-8 as under:-

"8. .....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 pre-determined 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

([5]AIR 1996 SC 3300, [6]AIR 2001 SC 1092)

any, should be properly considered before making any order under this Rule....."

22. In **Laxmi Narayan Hayaran Vs. State of M.P. & another**[7] the Full Bench of High Court of Madhya Pradesh at Jabalpur while considering Rule 19 (i) of the State Rules 1966, in para 12 held as under:-

"12. The second premise in the Sheetal Kumar Bandi (supra) that in exercise of the power of judicial review, the Court can examine whether there was consideration of the relevant facts and circumstances by the disciplinary authority in imposing the penalty and correct the penalty if it is excessive, is in consonance with the decisions of the Supreme Court in Challappan, Shankar Dass, Tulsiram Patel and Sunil Kumar Sarkar(supra). If the conviction is for any minor offence which does not involve any moral turpitude, a punishment of removal or dismissal from service will certainly be excessive. But where the conviction is on the ground of corruption, as in this case, there can be no two views that imposition of punishment by way of dismissal is just and proper and not excessive."

23. Rules 19 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (for short 'the Central Rules 1965') and Rule 19 of the State Rules, 1966 are in pari-materia. The Govt. of India by its circular No. D.G., P.&T.'s No. 105/52/77-Disc.II, dated 3rd August, 1977, which reads as under:-

"Rule 19 of the C.C.S. (C.C.&A.) Rules only envisages that an order can be straight away made by the disciplinary authority to impose a penalty without following the prescribed detailed procedure under Rules 14, 15 and 16 of the said rules. It is, however, observed that the disciplinary authorities have, in a large number of cases, interpreted the provisions of this rule to mean that only one of the extreme penalties such as dismissal / removal

([7]2004(4) MPLJ 555)

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compulsory retirement is to be imposed in such cases as a matter of course. This interpretation is not at all correct and the disciplinary authority is supposed to give proper consideration to the offence actually committed by the Government Servant as a result of which he was convicted by the Court of law. It is only where the Government Servant has been convicted on ground of moral turpitude that there is justification for holding the view that such Government official's retention in service is not desirable and one of the three extreme penalties mentioned above can be imposed in such a case. In all other cases, the disciplinary authorities should go through the judgment in its entirety and give proper consideration to the gravity of the offence committed by the convicted Government Servant to decide whether any of the other penalties could be appropriately imposed in those cases. The Heads of Circles should personally ensure that the above guidelines are properly brought home to all the disciplinary authorities and any breach of the above guide-lines should be viewed by them seriously."

has clarified that the disciplinary authority is supposed to give sufficient consideration to the offence actually committed by the Govt. Servant as a result of which he is convicted by the Court of law. Rule 19 of the Rules 1965 does not mean that extreme penalty such as dismissal/removal, compulsory retirement is to be imposed in such cases.

24. In the present case, admittedly, the petitioner was charged for the offence of abusing a member of the Scheduled Tribe with intent to insult and humiliate him (the complainant) under section 294 read with section 506 Part-II of the I.P.C. For the same offence, the petitioner was prosecuted under the provisions of Section 3 (1) (x) of the Act, 1989. The complainant entered into a compromise and the offence for the same act of the petitioner under section 294 read with 506 Part-II of the I.P.C. was dropped and the petitioner was

accordingly discharged on the basis of the application made by the complainant. The petitioner was prosecuted for the same act of the offence under the provisions of Section 3 (1) (x) of the Act, 1989. The offence under provisions of the Act 1989 is not compoundable. The application of the petitioner for compromise itself indicates that for the act of the petitioner to the above stated offence, the complainant was not serious.

25. In view of the foregoing decisions of the Supreme Court, it is well settled that though under the second proviso to Article 311(2) enquiry is dispensed with as provided under Article 311(2), but the delinquent employee be given an opportunity to explain his case with regard to the imposition of extreme penalty of dismissal/removal from service. Article 311 (2) (a), (b) and (c) are identical to Rule 19 of the State Rules 1966 and Rule 19 of the Central Rules 1965. In State Rules 1966 and Central Rules 1965 the word 'penalty' has been used which varies from the major penalty of 'dismissal' to minor penalty of "Censure". The power to impose penalty vests with the authority concerned to exercise his powers judiciously for imposing penalty, which varies from 'dismissal' to 'censure'. Keeping in view the said anomaly, the Central Government by its circular dated 3.8.1977, as stated above, has clarified that the disciplinary authority is supposed to give proper opportunity to explain the offence actually committed by the Govt. servant, as a result of which he was convicted in the Court of law. The disciplinary authority should not in all cases impose the extreme penalty of dismissal/removal from service.

26. The Supreme Court while considering Rule 19 of the Central Rules 1965 in the case of **Union of India & others Vs. Sunil Kumar Sarkar** (supra) has clearly settled the position of law that in case of imposing

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punishment under Rule 19, the officer concerned should be given a show cause notice and reply to show cause notice, if any, should be properly considered before passing an order of punishment under the Rules.

27. In the facts of the present case, it is true that the complainant and the petitioner have settled the dispute amicably, in case of prosecution of the petitioner from the offence under Section 294 read with Section 506 Part-II of the I.P.C. However, the petitioner was convicted for the offence under provisions of Section 3 (1) (x) of the Act 1989. Consequently, the petitioner was punished with extreme penalty of dismissal under the provisions of the Rule 19 (i) of the State Rules, 1966. The Disciplinary authority ought to have given a notice to consider the case of the petitioner keeping in view the facts and circumstances of the case before imposing the penalty of dismissal from service, as specified in Rules 10(ix) of the State Rules 1966.

28. Learned counsel for the parties were heard on the question of punishment.

29. In the case of **Shankar Dass Vs. Union of India and another**[8], the facts involved therein were that the employee was convicted for an offence under Section 409 of the I.P.C. and he was released under Section 4 of the Probation of Offenders Act, 1958. The petitioner therein was dismissed from service on the ground of his conduct which led to his conviction on criminal charge. The petitioner therein filed a suit for reinstatement in service on the ground that the petitioner therein was released under the Probation of Offenders Act, and as such, penalty of dismissal from service was not appropriate.

([8]AIR 1985 SC 772)

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The matter came up to the Supreme Court. The Supreme Court in para-7 held as under:-

> "7. It is to be lamented that despite these observations of the learned Magistrate the Government chose to dismiss the appellant in a huff without applying its mind to the penalty which could appropriately be imposed upon him in so far as his service career was concerned. Clause (a) of the second proviso to Article 311 (2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge." But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may perhaps not be entitled to be heard on the question of penalty since Cl. (a) of the second proviso to Art. 311 (2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical."

30. In the case of **Pawan Kumar** (supra) the petitioner was convicted upon a plea of guilt for which he was ordered to pay a find of Rs. 20/-. In the facts of the case, the Supreme Court came to the conclusion as under:-

> "Section 294, I.P.C. still remains out of the list. Thus the conviction of the appellant under Section 294, I.P.C. on its own would not involve moral turpitude depriving him the opportunity to serve the State unless the facts and circumstances, which led to the conviction, met the requirement of the policy decision above-quoted."

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31. The facts of the case of **Shankar Dass**(supra) and case of **Pawan Kumar** (supra) are not relevant in the present case as in both the cases the employee was not convicted for undergoing imprisonment and as such the facts of the said cases are not applicable to the facts of the present case. In the present case the petitioner has been convicted to undergo one year's rigorous imprisonment with payment of fine of Rs. 1000/- as penalty, in default, to further undergo three months rigorous imprisonment, additionally. It may be true that the complainant, on the basis of whose complaint, the petitioner was convicted for offence under Section 3 (1) (x) of the Act, 1989, was not serious, however, the conviction of one year R.I. passed by the Special Judge, under S.C. S.T. Act, cannot be set aside in this proceeding. A person who has been convicted to undergo imprisonment for one year R.I. can, in the same time, not be allowed to join the services. The offence involves moral turpitude. The offence involving moral turpitude has been defined by the Supreme Court in **Pawan Kumar's** case (supra) as under:-

> "12. "Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity."

32. Keeping in view of the fact that the conviction and the offence committed by the petitioner, which involves moral turpitude and further, in view of the fact that for the same offence other proceedings under Section 294 read with 506 Part-II of the I.P.C. have been compounded. Removal of the petitioner from services as specified under Rules 10(ix) of the State Rules 1966 is excessive. Therefore, I convert the punishment from "dismissal from service" to that of

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"compulsory retirement" as specified in Rule 10 (vii) of the State Rules, 1966 w.e.f. the date the petitioner was dismissed from service.

33. For the reasons stated above, the petition is allowed to the above extent. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur