IN THE HIGH COURT OF ORISSA: CUTTACK

WRIT APPEAL No. 558 of 2019

An application under Article 4 of the Orissa High Court Order, 1948 read with clause 10 of the Letters Patent Act, 1992 read with Chapter VIII Rule 2 of the Rules of the High Court of Orissa, 1948.

Suresh Chandra Mishra ..... Appellant

-Versus-

State of Odisha & Anr. ..... Respondents

For Appellant: - Mr. Goutam Mukherjee
(Senior Advocate)
Partha Mukherji
A.C. Panda
Ankita Mukherji
S. Sahoo, S. Panda
S.D. Ray, Mohit Agarwal
Soumya Priyadarsini

For State: - Mr. Jyoti Prakash Patnaik
Addl. Govt. Advocate

P R E S E N T:

THE HONOURABLE KUMARI JUSTICE SANJU PANDA

AND

THE HONOURABLE MR. JUSTICE S.K. SAHOO

.....

Date of Judgment: 29.04.2020

.....

S.K. SAHOO, J. The appellant Suresh Chandra Mishra has filed this appeal seeking to set aside the impugned order dated 30.09.2019 passed by the learned Single Judge in W.P.(C) No.17417 of 2019 wherein while declining to entertain the writ petition, liberty was granted to the appellant to approach the appropriate authority, if he is so advised. The appellant has further prayed to set aside the impugned order dated 07.09.2019 of his dismissal from Government service passed by the Disciplinary Authority and Director, Panchayati Raj & Drinking Water Department, Government of Odisha under Annexure-5.

2. The case of the appellant is that a vigilance case bearing Berhampur Vigilance P.S. Case No.04 dated 12.01.1994 for the offences under section 13(2) read with section 13(1)(c) of the Prevention of Corruption Act, 1988 and under sections 409/477-A/34 of the Indian Penal Code was instituted against him on the F.I.R. presented by the Inspector of Vigilance, Paralakhemundi before the S.P., Vigilance, Berhampur on the accusation of misappropriation of Government money amount to the tune of Rs.52,000/- (rupees fifty two thousand only) of eleven beneficiaries by falsifying their accounts and preparing false records under the Integrated Rural

Development Programme (in short 'IRDP') Scheme during the year 1991-92 while he was working as Progress Assistant, Raighar Block under the Department of Panchayati Raj and Drinking Water. In the meantime, the appellant was transferred from Raighar Block and he was working as Progress Assistant, Papadahandi Block of Nabarangpur district when the vigilance case was registered.

The appellant was charge sheeted and faced trial in the Court of learned Special Judge (Vigilance), Jeypore in G.R. Case No.04 of 1994(V)/T.R. No.14 of 2007 for offences punishable under section 13(2) read with section 13(1)(c) of the Prevention of Corruption Act, 1988 and sections 409/477-A/34 of the Indian Penal Code and vide judgment and order dated 04.01.2011, the learned trial Court found him guilty of the offences charged and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.5000/- (rupees five thousand only), in default, to undergo R.I. for four months on each count.

The appellant challenged the said judgment and order passed by the learned Special Judge (Vigilance), Jeypore before this Court in CRLA No.59 of 2011 which was admitted and he was directed to be released on bail in Misc. Case No.136 of

2011 and the realization of fine amount imposed by the learned trial Court was directed to be stayed in Misc. Case No.137 of 2011 as per order dated 03.02.2011.

It is the further case of the appellant that the General Administration Department (Vigilance), Odisha vide letter dated 20.01.2011 intimated the Collector, Nabarangpur that the appellant has been convicted and his conviction order has not been stayed and thus he is liable for dismissal in terms of Rule 13 read with Rule 18(1) of the Odisha Civil Services (Classification, Control and Appeal) Rules, 1962 (hereafter '1962 Rules') and accordingly requested to take appropriate action against him. The appellant filed an application for stay/suspension of conviction vide Misc. Case No.233 of 2011 in CRLA No.59 of 2011 and on 25.04.2011 this Court directed that the sentence imposed by the learned trial Court shall remain suspended during pendency of the appeal. The appellant intimated the order dated 25.04.2011 to the respondents and prayed that no coercive action be taken against him and accordingly, he was allowed to discharge his duties.

It is the further case of the appellant that though CRLA No.59 of 2011 is still subjudiced before this Court and all the interim orders passed in different Misc. Cases are also under

operation, but then after eight years of passing of such interim orders, all of a sudden the respondent no.2 vide impugned letter dated 07.09.2019 (Annexure-5) dismissed the appellant from Government service with effect from the date of issuance of such order in terms of Rule 13 read with Rule 18(1) of 1962 Rules and as per Article 311 of the Constitution of India in view of the judgment dated 04.01.2011 of the learned trial Court relying on the observation made by the Hon'ble Supreme Court in the case of **K.C. Sareen -Vrs.- C.B.I., Chandigarh reported in (2001) 6 Supreme Court Cases 584**. The appellant challenged the dismissal order before this Court in W.P.(C) No.17417 of 2019 and accordingly, the learned Single Judge passed the impugned order dated 30.09.2019.

3. Mr. Goutam Mukherjee, learned Senior Advocate appearing for the appellant emphatically contended that the learned Single Judge has failed to consider that the impugned order dated 07.09.2019 (Annexure-5) is clearly contemptuous in the teeth of the order dated 25.04.2011 passed by this Court in Misc. Case No.233 of 2011 arising out of CRLA No.59 of 2011. This Court while considering the fact that the respondents are about to dismiss the appellant from service, examined the merits of the case and was prima facie satisfied that the appellant has

every likelihood of success in the appeal and accordingly, suspended the sentence imposed by the learned trial Court on the appellant pending disposal of the appeal. He further contended that the impugned dismissal order dated 07.09.2019 vide Annexure-5 has been passed in gross violation of Article 311 of the Constitution of India and that to without considering the aforesaid order dated 25.04.2011 passed by this Court in Misc. Case No.233 of 2011 arising out of CRLA No.59 of 2011. There was no adverse report against the appellant after the order dated 25.04.2011 and even though General Administration (Vigilance) Department, Cuttack vide its letter dated 20.01.2011 intimated the Collector, Nabarangpur to take action against the appellant in view of his conviction but for eight years, nothing was done and all of a sudden rising from deep slumber, the impugned dismissal letter was issued without giving any show cause notice to the appellant and in gross violation of principles of natural justice. According to Mr. Mukherjee, any order which imposes a liability upon a person and prejudicially affects him must be preceded with an opportunity to such person to put forth his case. In the instant case, the impugned order has been passed behind the back of the appellant rendering him remediless. He further contended that the learned Single Judge

failed to realize that the impugned order does not satisfy any of the three criteria of Rule 18 of 1962 Rules, basing upon which the said order has been passed. He placed reliance in the case of **Surya Narayan Acharya -Vrs.- State of Orissa reported in 2013 (Supp.-I) Orissa Law Reviews 736.** While concluding his arguments, he submitted that since the impugned order of dismissal has been passed in gross violation of principles of natural justice, the alternative remedy, if any, to challenge such order, is not a bar in such cases to entertain the writ petition.

4. Mr. Jyoti Prakash Patnaik, learned Additional Government Advocate on the other hand submitted that the learned Single Judge has rightly held that the impugned order of dismissal is an appealable one. As per Rule 29 of 1962 Rules, where the penalty imposed as per Rule 13 is found to be excessive, the appellate authority has got power to set aside or reduce the penalty imposed. It is argued that an equally efficacious and statutory remedy is available under the relevant service rules and therefore, the appellant is in no way prejudiced by the impugned order passed by the learned Single Judge and as such there is no cause of action to file this writ appeal. He further argued that after the judgment and order of conviction

was passed by the learned trial Court, the General Administration (Vigilance) Department, Cuttack vide its letter dated 20.01.2011 intimated the Collector, Nabarangpur about the same and citing the case of **K.C. Sareen** (supra) requested that appropriate action be taken against the appellant and ultimately, the appellant was dismissed from Government Service. He argued that delayed passing of the order of dismissal does not vitiate the same rather the appellant has enjoyed the service benefits during that period which he would not have got, had the dismissal order been passed early. According to Mr. Patnaik, though an application was filed by the appellant for stay/suspension of conviction but this Court suspended the sentence passed by the learned trial Court pending disposal of the appeal vide order dated 25.04.2011 in Misc. Case No. 233 of 2011 and not the conviction and as per the observation made in the case of **K.C. Sareen** (supra), in the event of preference of appeal by the convicted public servant, sentences get suspended till the final orders on such appeal but the conviction continues in respect of such public servant and therefore, there is no illegality or perversity in passing the order of dismissal of the appellant from Government service. He placed reliance in the cases of **Deputy Director -Vrs.- S. Nagoor Meera reported in 1995**

(3) Supreme Court Cases 377, **Government of Andhra Pradesh -Vrs.- B. Jagjeevan Rao reported in (2014) 13 Supreme Court Cases 239**, **State of Maharashtra -Vrs.- Balakrishna Dattatrya Kumbhar reported in (2012) 12 Supreme Court Cases 384**.

5. The following undisputed factual aspects are noticed at the very threshold of discussion:

(i) The appellant was found guilty by the learned trial Court for offences punishable under section 13(2) read with section 13(1)(c) of the Prevention of Corruption Act, 1988 and sections 409/477-A/34 of the Indian Penal Code and sentenced accordingly;

(ii) The appellant preferred appeal before this Court in CRLA No.59 of 2011 which was admitted and he was directed to be released on bail and the realization of fine amount imposed by the learned trial Court was also directed to be stayed;

(iii) The appellant filed an application for stay/suspension of conviction in the criminal appeal and on 25.04.2011 this Court directed that the sentence imposed by the learned trial Court shall remain suspended during pendency of the appeal.

6. Adverting to the rival contentions raised at the Bar, the following points are required to be adjudicated:-

(i) Whether in view of availability of alternative remedy in the form of appeal against the impugned order of dismissal, the writ petition is maintainable?

(ii) When this Court suspended the sentence imposed by the learned trial Court in the appeal, whether the impugned order of dismissal vide Annexure-5 could have been passed ignoring the suspension order?

(iii) Whether the impugned order of dismissal could have been issued without giving any show cause notice to the appellant and not following the principles of natural justice?

(iv) When Rule 18 of 1962 Rules states that where a penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, the disciplinary authority may consider the circumstances of the case and then pass such orders as it deems fit, whether the impugned order could have been passed only on account of conviction in the corruption case?

(v) Whether the impugned order of dismissal passed more than eight years after the conviction is sustainable?

Discussion on point no. (i):

It is not in dispute that the impugned order of dismissal is an appealable one and that is the sole ground for which the learned Single Judge was not inclined to entertain the writ petition. It is also not in dispute that as per Rule 29 of 1962 Rules, where the penalty imposed as per Rule 13 is found to be excessive, the appellate authority has got power to set aside or reduce the penalty imposed but it cannot be lost sight of the fact that the learned counsel for the appellant has raised certain vital points that the impugned order of dismissal has been passed in gross violation of principles of natural justice and that the satisfaction of the disciplinary authority as required to be arrived at before passing an order of dismissal as envisaged under Rule 18 is conspicuously absent in the order which goes to the root of the matter and that when this Court suspended the sentence imposed by the learned trial Court in the criminal appeal, the impugned order of dismissal basing on judgment and order of conviction is not legally sustainable.

In the case of **State of Uttar Pradesh -Vrs.- Indian Hume Pipe Co. Ltd. reported in A.I.R. 1977 S.C. 1132**, it is held that there is no rule of law that the High Court should not entertain a writ petition where an alternative remedy

is available to a party. Where adjudication involved pure question of determination of law, the High Court may in its discretion entertain writ applications.

In the case of **Whirlpool Corporation -Vrs.- Registrar of Trade Marks reported in (1998) 8 Supreme Court Cases 1**, it is held that under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. The alternative remedy is not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

In view of the ratio laid down by the Hon'ble Supreme Court and the points involved in the case, we are of the view that the learned Single Judge should have considered the same on merits and should not have relegated the matter to the appellate Court. We could have sent the matter back to the learned Single Judge to adjudicate the points raised on merit but in order to cut short the time and avoid protracted litigation, we think it proper to decide the case ourselves on merits.

Discussion on point no. (ii):

The appellant filed an application for stay/suspension of conviction vide Misc. Case No.233 of 2011 in CRLA No.59 of 2011 and on 25.04.2011 this Court directed that the sentence imposed by the learned trial Court shall remain suspended during pendency of the appeal. Thus there is nothing in the order regarding stay or suspension of the operation of the order of conviction till the impugned order of dismissal was passed.

Suspension of execution of sentence and stay or suspension of the operation of the order of conviction under section 389 of the Code of Criminal Procedure is two different aspects altogether. The appellant though filed an application for stay/suspension of conviction but this Court directed for suspension of sentence.

The Hon'ble Supreme Court in the case of **K.C. Sareen** (supra) has indicated that ordinarily, the Superior Court should suspend the sentence of imprisonment in the matters relating to the offence under the P.C. Act unless the criminal appeal could be heard soon after filing. The Court pointed out the subtle distinction in the proposition for suspension of an

order of conviction on one hand and that for suspension of sentence on the other. It is observed as follows:

> "11. The legal position, therefore, is this: though the power to suspend an order of conviction, apart from the order of sentence, is not alien to section 389(1) of the Code, its exercise should be limited to very exceptional cases.....No doubt when the appellate Court admits the appeal filed in challenge of the conviction and sentence for the offence under the P.C. Act, the Superior Court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard soon after the filing of the appeal. But suspension of conviction of the offence under the P.C. Act, dehors the sentence of imprisonment as a sequel thereto, is different matter.
>
> xx xx xx xx
>
> 13.....If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant, the appellate Court or the revisional Court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. It would be a sublime public policy

> that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision."

In the case of **Ravikant S. Patil -Vrs.- Sarvabhouma S. Bagali reported in (2007) 1 Supreme Court Cases 673**, it is held that where the execution of the sentence is stayed, the conviction continues to operate.

In the case of **S. Nagoor Meera** (supra), the Hon'ble Supreme Court held as follows:-

> "8.....We are, therefore, of the opinion that taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal Court is not barred merely because the sentence or order is suspended by the appellate Court or on the ground that the said government servant-accused has been released on bail pending the appeal."

In the case of **B. Jagjeevan Rao** (supra), the Hon'ble Supreme Court held that conviction on the charge of corruption has to be viewed seriously and unless the conviction is annulled, an employer cannot be compelled to take an employee back in service.

In the case of **Balakrishna Dattatrya Kumbhar** (supra), the Hon'ble Supreme Court held that corruption is not only a punishable offence but also undermines human rights, indirectly violating them, and systematic corruption, is a human rights' violation in itself, as it leads to systematic economic crimes. The Court further held that the appellate Court in an exceptional case, may put the conviction in abeyance along with the sentence, but such power must be exercised with great circumspection and caution, for the purpose of which, the applicant must satisfy the Court as regards the evil that is likely to befall him, if the said conviction is not suspended. The Court has to consider all the facts as are pleaded by the applicant, in a judicious manner and examine whether the facts and circumstances involved in the case are such, that they warrant such a course of action by it. The Court additionally, must record in writing, its reasons for granting such relief. Relief of staying the order of conviction cannot be granted only on the ground that an employee may lose his job, if the same is not done.

Therefore, when this Court has merely suspended the sentence imposed by the learned trial Court in the criminal appeal and the conviction continues to operate, we are of the view that there was no legal bar on the part of the disciplinary

authority in passing the impugned order of dismissal vide Annexure-5.

Discussion on point no. (iii):

It is not in dispute that the impugned order of dismissal has been issued without giving any show cause notice to the appellant and no principle of natural justice has been followed in passing such order.

Rule 13 of 1962 Rules deals with the nature of penalties that can be imposed on a Government servant for good and sufficient reasons and one of such penalties is dismissal from service which shall ordinarily be a disqualification for future employment. Though Rule 15 of the said Rules prescribes procedure for imposing such penalty but in view of Rule 18, the procedure may not be followed in certain cases. One of such case is where a penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. In such case, the disciplinary authority can pass such orders as it deems fit after considering the circumstances of the case.

Rule 18 starts with a non-obstante clause with the words, "notwithstanding anything contained in Rules 15, 16 and

17". A non-obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found in the same enactment, that is to say, to avoid the operation and effect of all contrary provisions. (Ref: **Union of India -Vrs.- G.M. Kokil, 1984 Supp Supreme Court Cases 241**). Non-obstante clauses are to be regarded as clauses which remove all obstructions which might arise out of any of the other provisions of the Act in the way of the operation of the principal enacting provision to which the non-obstante clause is attached. (Ref: **State of Bihar -Vrs.- Bihar Rajya M.S.E.S.K.K. Mahasangh : (2005) 9 Supreme Court Cases 129**). While interpreting a provision containing a non-obstante clause, it should first be ascertained what the enacting part of the section provides, on a fair construction of the words used according to their natural and ordinary meaning, and the non-obstante clause is to be understood as operating to set aside as no longer valid anything contained in any other law which is inconsistent with the section containing the non-obstante clause. (Ref: **Aswini Kumar Ghosh -Vrs.- Arabinda Bose : A.I.R. 1952 S.C. 369**; **A.V. Fernandez -Vrs.- State of Kerala : A.I.R. 1957 S.C. 657**).

The appellant has been convicted under section 13(2) read with section 13(1)(c) of the Prevention of Corruption Act, 1988 and sections 409/477-A/34 of the Indian Penal Code by the learned trial Court and taking into account such conviction, the appellant was dismissed from Government service keeping in view the observation made by the Hon'ble Supreme Court in the case of **K.C. Sareen** (supra). The power vested under Rule 18 of 1962 Rules is unfettered and not restricted to the Rules 15, 16 and 17. On a conviction by a criminal Court, an employee may be discharged or removed from service without following the principle of natural justice as enshrined in Rules 15, 16 and 17. (Ref: **2011 (Supp.-II) Orissa Law Reviews 848, Prasant Kumar Sahoo -Vrs.- State of Orissa**). Though clause (2) of Article 311 of the Constitution of India provides for holding an inquiry, informing of the charges and also giving a reasonable opportunity of hearing in respect of the charges to the 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 before dismissing or removing or reducing him in rank and to impose upon him any such penalty on the basis of evidence adduced during such inquiry only but the second proviso states that this clause shall not apply 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. Thus no such inquiry is required to be conducted for the purposes of dismissal, removal or reduction in rank of the concerned person when the same relates to his conduct which led him to his conviction on a criminal charge. In the case of **State of Orissa -Vrs.- Golekha Chandra Routray reported in 2015 (II) Orissa Law Reviews 480**, it is held that non-obstante clause contained in Rule 18 of 1962 Rules having excluded the application of rules of procedure incorporating principle of natural justice, the case of dismissal on the ground of conduct leading to conviction on a criminal charge directly empowers the disciplinary authority to consider the circumstances of the case and pass such orders thereon as deem fit. Therefore, it is clear that the powers of considering the circumstances of the case are conferred upon the disciplinary authority and even if it is considered to be power coupled with duty, it nowhere prescribes recording of reasons or affording an opportunity of hearing to the delinquent. At the same time, what factors may go into consideration by the disciplinary authority are also not prescribed.

Therefore, we are of the humble view that the impugned order of dismissal cannot be said to be unjustified, illegal or perverse merely because it was issued without giving any show cause notice to the appellant and not following the principles of natural justice.

Discussion on point no. (iv):

Before entering into discussion on this point, let us now carefully examine the impugned order of dismissal dated 07.09.2019 vide Annexure-5. The operative portion of the order reads as follows:-

> "Therefore, in view of the judgment dated 04.01.2011 of the Hon'ble Special Judge, Vigilance, Jeypore, the convict Sri Suresh Chandra Mishra...is hereby dismissed from Government service with effect from the date of issue of this order in terms of Rule 13 r/w Rule 18(1) of the OCS (CC & A) Rules, 1962 and as per Article 311 of the Constitution of India."

In the *first paragraph* of the impugned order of dismissal, it is mentioned on what accusation, the vigilance case was instituted against the appellant. In the *second paragraph*, it is mentioned under what offences the appellant was found guilty and what was the sentence imposed on him. In the *third*

paragraph, it is mentioned about the law laid down by the Hon'ble Supreme Court in the ***K.C. Sareen***'s case (supra) in such matters. In the *fourth paragraph*, the order of dismissal has been passed in view of the conviction of the appellant.

In view of Rule 18 of 1962 Rules, where a penalty is proposed to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit. Since the authority is empowered to impose any of the penalties mentioned in Rule 13 of 1962 Rules for good and sufficient reasons, the gravity of charge under which the Government servant was convicted and the circumstances of the case are to be considered.

Active application of the mind by the disciplinary authority after considering the entire circumstances of the case is necessary 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. (Ref: **A.I.R. 1975 S.C. 2216, Divisional Personnel Officer, Southern Railway -Vrs.- T.R. Challapan**). A conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of

the concerned government servant and therefore, it is not mandatory to impose any of those major penalties. The disciplinary authority in order to determine whether the conduct of the government servant which has led to his conviction on a criminal charge warrants the imposition of a penalty, have to peruse the judgment of the criminal Court and consider all the facts and circumstances of the case. (Ref: **(1985) 3 Supreme Court Cases 398, Union of India -Vrs.- Tulsiram Patel)**.

In the case of **Union of India (UOI) -Vrs.- V.K. Bhaskar reported in(1997)11 Supreme Court Cases 383** when a submission was raised that Rule 19(i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereafter '1965 Rules') requires the disciplinary authority to consider the circumstances of the case and it cannot pass an order of dismissal or removal only for the reason that the employee had been convicted on a criminal charge, the Hon'ble Court held as follows:

> "7. We do not find any merit in this submission. The order of dismissal has to be read as a whole. If it is thus read, it would be found that in the *first paragraph* of the order the authority has referred to the fact of the respondent having been convicted on a criminal charge under

Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947 and Sections 409, 477-A and 120-B I.P.C. and his having been awarded the penalty of rigorous imprisonment for one year and a fine of Rs. 500 by the Special Judge, Jalandhar, on 17.5.1985. In the *second paragraph* of the said order the disciplinary authority has stated:

> "It is considered that the conduct of Shri Vinod Kumar Bhaskar which has led to his conviction is such as to render his further retention in the public service undesirable/the gravity of the charge is such as to warrant the imposition of a major penalty of misappropriation of a sum of Rs. 300 (approx.) along with other accused Man Singh, Jawala Das and Kewal Chander Kumar."

8. The said statement in the order of dismissal indicates that the disciplinary authority has applied its mind and after considering the conduct of the respondent which has led to his conviction on a criminal charge, has arrived at the conclusion that the said conduct was such as to render the further retention of the respondent in the public service undesirable. It cannot, therefore, be said that the order of dismissal was passed without the disciplinary authority applying its mind to the nature of the conduct of

> the respondent which led to his conviction on a criminal charge and which has rendered him undesirable to be retained in service."

While considering Rule 19 of 1965 Rules which is a parimateria provision like Rule 18 of 1962 Rules, wherein it is stated that notwithstanding anything contained in Rule 14 to Rule 18, where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit, the Hon'ble Supreme Court in the case of **Union of India (UOI) and Ors. -Vrs.- Ramesh Kum reported in (1997) 7 Supreme Court Cases 514** held as follows:-

> "6. A bare reading of Rule 19 shows that the disciplinary authority is empowered to take action against a government servant on the ground of misconduct which has led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of execution of sentence by the appellate Court, the order of dismissal based on conviction stands obliterated and dismissed government servant has to be treated under suspension till disposal of appeal by the appellate Court. The rules also do not provide the disciplinary

authority to await disposal of the appeal by the appellate Court filed by a government servant for taking action against him on the ground of misconduct which has led to his conviction by a competent Court of law. 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. This matter may be examined from another angle. Under section 389 of the Code of Criminal Procedure, the appellate Court has power to suspend the execution of sentence and to release an accused on bail. When the appellate Court suspends the execution of sentence, and grants bail to an accused, the effect of the order is that sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence under section 389 Cr.P.C., an accused avoids undergoing sentence pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a government servant on a misconduct which led

to his conviction by the Court of law does not lose its efficacy merely because appellate Court has suspended the execution of sentence..."

In the case of **S. Nagoor Meera** (supra), the Hon'ble Supreme Court held as follows:

"8. We need not, however, concern ourselves any more with the power of the appellate Court under the Code of Criminal Procedure for the reason that what is relevant for clause (a) of the second proviso to Article 311(2) is the "*conduct* which has led to his conviction on a criminal charge" and there can be no question of suspending the conduct.

xx xx xx xx

10. What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a criminal Court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice."

Therefore, when the appellant has been found guilty of charges of corruption by the learned trial Court and the disciplinary authority discussed briefly the accusation against the appellant, the judgment and order of conviction and the sentence passed, the law laid down by the Hon'ble Supreme Court in such matters before passing the order of dismissal, it cannot be said that such order was passed merely on the ground of conviction even though in the last paragraph, such aspect has been highlighted. When the authority was conscious what was the accusation, under what offences the appellant was found guilty and what sentence was imposed on him by the learned trial Court and why the Hon'ble Supreme Court has said that a public servant who is convicted of corruption charge should not be allowed to continue to hold public office, it cannot be said the order has been passed without application of mind to the nature of the conduct of the respondent which led to his conviction on a criminal charge. Even though the learned counsel for appellant submits that the order could have been written in a better and elaborate way, we are not inclined to set aside the order on that ground as we clearly see the reason behind passing of the dismissal order. The learned Additional Government Advocate produced the file relating to disciplinary proceeding against the

appellant. It contains several notings including recommendation of the G.A. (Vigilance) Department, suggestion of the legal advisor and deliberation on the basis of the suspension order of sentence passed by this Court in the criminal appeal, preparation of draft speaking order of dismissal and its approval by the competent authority.

The factual scenario of **Surya Narayan Acharya** case (supra) on which reliance was placed by the learned counsel for the appellant is different. That was not a case where the petitioner was found guilty of the corruption charge. In that case, on receipt of a note from the Deputy Secretary to Government in General Administration Department, the disciplinary authority passed the order of dismissal against the petitioner who was found guilty by the trial Court under sections 304-B/498-A read with 34 of the Indian Penal Code and section 4 of the Dowry Prohibition Act and the administrative file was found to be completely silent as to under what circumstances the order was passed.

Therefore, we are of the view that if the impugned order of dismissal is tested in the touchstone of Rule 18 of 1962 Rules, it is sustainable and we find no flaw in it.

Discussion on point no. (v):

In this case, the State Government took the decision to dismiss the appellant under Rule 18(1) of the 1962 Rules more than eight years after the date of conviction. The record produced by the learned Additional Government Advocate reveals that because of the interim orders passed by this Court, there were a lot of deliberations, inter-departmentally and ultimately the State Government took the decision to dismiss the appellant. There is absence of any rule prescribing any period/limitation for passing such order. On account of delay in taking decision, the appellant is not prejudiced in any way rather he himself has enjoyed the service benefits even though the conduct of the appellant leading to his conviction in a corruption case affected public money. Even though no adverse report against the appellant was brought to our notice after the order of this Court dated 25.04.2011 in suspending the sentence, we are of the view that there was no bar on the part of the disciplinary authority to pass the impugned order of dismissal. The Hon'ble Supreme Court in the case of **K.C. Sareen** (supra) has observed that when a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and

consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person.

7. In view of the foregoing discussions, we find no illegality or perversity in the impugned order of dismissal dated 07.09.2019 of the appellant from Government service. Accordingly, the writ appeal being devoid of merits, stands dismissed. No costs.

……
S.K. Sahoo, J.

S. Panda, J. I agree.

…….
S. Panda, J.

Orissa High Court, Cuttack
The 29th April 2020/RKM/Sukanta