REPORTABLE

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

\+ **LETTERS PATENT APPEAL No. 1367/2007**

% **Date of decision: March 30, 2009**

BSES RAJDHANI POWER LIMITED .... Appellant

Through Mr. Sandeep Sethi, Sr. Advocate
with Mr. S.N. Choudhri, Advocate.

versus

MADAN MOHAN RATAWAL AND ANOTHER .... Respondents

Through Mr. G.D. Gupta, Sr. Advocate with
Mr. S.K. Sinha & Mr. Vikram Saini, Advocates.

CORAM:
HON'BLE MR. JUSTICE AJIT PRAKASH SHAH, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes.
3. Whether the judgment should be reported in the Digest ? Yes.

SANJIV KHANNA, J:

1. BSES Rajdhani Power Limited has filed the present intra court appeal against the judgment dated 23rd October, 2007 allowing the writ petition filed by Mr. Madan Mohan Ratawal, the respondent herein and quashing and setting aside the order of removal dated 6th

February, 2006 and order passed by the Appellate Authority dated 26th April, 2006 confirming the said order of removal. Learned single Judge has directed that the respondent-Mr. Madan Mohan Ratawal be reinstated with consequential benefits including arrears of pay.

Facts

2. The respondent was appointed with Delhi Electricity Supply Undertaking, subsequently rechristened as Delhi Vidyut Board, in Janauary,1983. Consequent upon unbundling of Delhi Vidyut Board in 2002, the respondent started working with the appellant company.

3. The respondent was convicted under Section 324B of the Indian Penal Code by the judgment dated 14th January, 2005 of the Sessions Court on an FIR registered pursuant to a complaint filed by the respondent's wife.

4. The respondent has filed an appeal against the said judgment and conviction before the High Court of Allahabad, which was admitted on 2nd March, 2005.The respondent has been admitted to bail.

5. Consequent upon conviction, a show cause notice dated 5th January, 2006 was issued to the respondent under Section 19(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 (hereinafter referred to as the CCS(CCA) Rules). By Order dated

13th February, 2006 the respondent was dismissed from service on the basis of his conviction under Section 324B of the Indian penal Code.

6. In the meanwhile, the respondent had filed an application for stay of judgment and conviction before the High Court of Allahabad making specific reference to the pendency of departmental proceedings and the order terminating his service on the basis of conviction by judgment dated 14th January, 2005. The respondent made a prayer for stay of conviction and sentence. High Court of Allahabad on 7th March, 2006 passed the following order:-

> "Heard learned counsel for the appellant.
>
> Operation of the order of conviction and sentence dated 14.1.2005 passed in Sessions Trial No. 423 of 2005 shall remain suspended till the pendency of this appeal."

7. Armed with the aforesaid order dated 7th March, 2006, the respondent pressed his appeal before the Appellate Authority against the order of termination. The Appellate Authority by its order dated 26th April, 2006 dismissed the appeal. As stated above, both the order of removal dated 6th February, 2006 and the order of the Appellate Authority confirming the said order dated 26th April, 2006 have been set aside by the learned single Judge.

The Relevant Rule

8. Rule 19(2) of the CCS(CCA) Rules reads as under:-

> "(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 a 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.
>
> (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.
>
> (iii) In a 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."

9. The said Rule empowers the Disciplinary Authority to impose penalty on a Government servant on the ground of conduct, which has led to his conviction on a criminal charge. What is required to be examined by the Disciplinary Authority is whether the conduct of the Government servant that has led to his conviction on the criminal charge, warrants punishment of dismissal from service on the ground that retaining the public servant in Government service is undesirable. It is not mandatory for Disciplinary Authority to dismiss a Government servant convicted on a criminal charge. The conduct of the officer which has led to his conviction has to be examined and a considered decision taken. This is clear from sub-clause (iii) which refers to conviction of a Government servant for an offence of the type not referred in sub-clause (i), i.e., for an offence which would render further retention of public servant undesirable. In such cases, further departmental action as may be deemed appropriate can be initiated. Thus, Rule 19(2) is an enabling provision, which requires the Disciplinary Authority to consider, examine and come to the conclusion, after application of mind and considering the entire circumstances of the case, whether the employee should be dismissed from service in view of the conviction or any further departmental action should be taken. In a given case upon conviction, the Government servant in question may be suspended if

he is not already suspended, or dismissed or departmental action may be initiated under Rule 19(2) of the CCS(CCA) Rules. Albeit, in a given case no action whatsoever may be warranted or taken. Examining a similar provision in ***Divisional Personnel Officer, Southern Railway Vs. T.R. Chellappan,*** reported in (1976) 3 SCC 190, the Court examined Articles 311(2) and (3) of the Constitution of India as well as the relevant Rules and had observed as under:-

> "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."(emphasis supplied).

10. In a subsequent portion of the judgment, the Supreme Court referred to aspects that should be taken into consideration while exercising power under Art. 311(2)(a) of the Constitution of India and under the relevant rules and it was observed;

> "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....."

11. Same view has been taken by the Supreme Court in ***Union of India Vs. Tulsiram Patel***, reported in (1985) 3 SCC 398, ***Union of India Vs. Sunil Kumar Sarkar***, reported in (2001) 3 SCC 414 and ***Union of India Vs. P.Chandra Mouli***, reported in (2003) 10 SCC 197.

The Orders

12. We have examined the two orders passed by the Disciplinary Authority and the Appellate Authority dated 6th February, 2006 and 26th April, 2006. The Disciplinary Authority while passing the order dated 6th February, 2006 has recorded as under:-

> "AND WHEREAS, Shri Madan Mohan Ratawal has been found guilty by the Hon'ble Addl. Session Judge, Gautam Budh Nagar under Section 324 IPC and has been sentenced to undergo rigorous imprisonment for a period of one year vide order dated 14/01/2005 announced in the open court.
>
> AND WHEREAS, A show cause notice bearing no. Sr. Mgr. [HR]/DC-26/2005-06/1998 dated 03/01/2005 was issued to Shri Madan Mohan Ratawal affording him an opportunity to show cause as to why a penalty of dismissal from service which will disqualification for future employment may not be imposed upon him.
>
> AND WHEREAS, Shri Madan Mohan Ratawal has submitted his reply dated 20/0/2006(sic) stating that he has filed an appeal against the conviction in the Hon'ble High Court and Hon'ble High Court has admitted his appeal for hearing.
>
> AND WHEREAS, the reply submitted by him has thoroughly been considered by the undersigned. The admission of appeal by the Hon'ble High Court does not mean that the conviction and sentence have been revoked. The reply has not been found convincing and satisfactory.

> NOW THEREFORE, the undersigned being the Disciplinary Authority, keeping in view all the facts and circumstances of the case has come to the conclusion that Shri Madan Mohan Ratawal is not a fit person to be retained in service and a penalty of Removal from Service of BSES Rajdhani Power Limited is hereby imposed upon him."

13. The above order passed by the Disciplinary Authority does not meet and satisfy the requirements of Rule 19(2) of the CCS(CCA) Rules. There is no reasoning or ground given by the Disciplinary Authority to come to the conclusion why and for what reason conviction of the respondent and the conduct justified his order of removal. The order does not show application of mind by the Disciplinary Authority for imposing the said punishment. The Disciplinary Authority was required to apply his mind to the allegations made, the order of conviction and the stand taken by the respondent including the decree of divorce by mutual consent and reach a conclusion that in view of the conviction, the conduct merits penalty of removal. We are not stating that the order of removal could not or should not have been passed in the present case. The Disciplinary Authority could have on the basis of material reached the said conclusion and finding, but Disciplinary Authority has failed to elucidate and disclose the basis and reasoning for his conclusion and thus there is a jurisdictional error in the order passed by the

Disciplinary Authority for failure to deal with the contentions raised and give his reasoning and grounds. The said error relates to the decision making process and is, therefore, amenable to judicial review.

14. The order dated 26th April, 2006 again is a non-speaking and a non-reasoned order, which does not refer to the requirements of Rule 19(2) of the CCS(CCA) Rules. The relevant portion of the said order reads as under:-

> "AND WHEREAS, the Appellate Authority has very carefully gone through the contents mentioned in the Appeal dated 17.03.2006. It has been observed that the sentence and conviction has temporarily been suspended vide order dated 07.03.2006 whereas a penalty of removal has already been imposed upon Shri Madan Mohan Ratawal vide order dated 06.02.2006 i.e. much prior to the delivering of the order of the Hon'ble High Court, Allahabad. Moreover the suspension of conviction and sentence does not mean that the conviction and sentence have been revoked whereas it remains alive.
>
> AND WHEREAS, Shri Madan Mohan Ratawal has been given personal hearing on 24.04.2006 and during the personal hearing also he could not adduce any new points.
>
> AND WHEREAS, the Appellate Authority taking into account all the facts and circumstances of the case in totality has rejected the appeal preferred by Shri Madan Mohan Ratawal, Sr. Instrument Repairer & Tester, E.No. 29108.

> NOW THEREFORE, the orders of the Appellate Authority are hereby conveyed to Shri Madan Mohan Ratawal, Sr. Instrument Repairer & Tester, E.No. 29108 accordingly."

15. In substance, the said order merely records that the Appellate Authority has taken into account all facts and circumstances and rejected the appeal without being specific and dealing with the contentions and issues raised and going into the aspects required to be examined for passing an order under Rule 19(2) of the CCS(CCA) Rules.

16. The Appellate Authority noticed the order passed by the High Court of Allahabad dated 7th March, 2006 staying both the conviction and sentence of the respondent. The said order dated 7th March, 2006 has been quoted above. The Appellate Authority has incorrectly recorded that suspension of conviction and sentence has no meaning as the conviction and sentence remain alive and have not been revoked. The difference between suspension of sentence and stay of conviction by the Appellate Court is not understood and appreciated. Mere filing and admission of an appeal or even grant of bail/suspension of sentence does not obliterate the judgment of conviction. An order granting stay of conviction has a different connotation and meaning. In a number of cases, the Supreme Court has drawn this distinction between an order suspending the sentence

and an order staying the conviction of an accused. To this extent the appellate order again suffers from jurisdictional and apparent legal infirmity.

17. An order suspending the sentence does not affect the order of conviction and the conviction does not cease to be operative. It only has the effect of releasing the appellant accused on bail. However, stay of conviction, which is rare and an exception, has the effect of staying the conviction itself, i.e., the conviction will not be operative from the date of the stay, though this by itself does not render the conviction or the judgment non-existent. The order of conviction cannot be given effect to (***Ravikant S. Patil Vs. Sarvabhouma S. Bagali,*** reported in JT 2006 (10) SC 578). Drawing this distinction, the Supreme Court in ***Lalsai Khunte Vs. Nirmal Sinha***, reported in (2007) 9 SCC 330 has held that once an order staying the conviction is passed, it makes the conviction non-operative and, therefore, in such cases the accused is not disqualified from contesting elections on the ground that he has been convicted.

18. ***Shree Chamundi Mopeds Limited Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras***, reported in (1992) 3 SCC 1 relied by the appellants is a case interpreting Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 and the effect of stay order passed in the writ

proceedings after dismissal of the appeal of the sick company by the Appellate Authority under Section 25 of the aforesaid Act. In the said case, on a writ petition filed by the sick company, a stay order was passed against the order of the Appellate Authority and the question arose whether this by itself would amount to revival of proceedings before the appellate authority under the Sick Industrial Companies (Special Provisions) Act, 1985. Supreme Court rejected the said contention. The said decision and observations made therein are not relevant to the issue and question raised before us. An order for stay does not mean that the judgment under appeal is wiped out from its existence nor do the disposed of proceedings get revived before the appellate authority. Quashing or setting aside an order or judgment results in restoration of the position as it stood on the date prior to passing of the impugned judgment. But once the appellate court passes an order staying the conviction, the said stay order has to be given effect to and the departmental authorities cannot ignore and proceed on the basis that the officer stands convicted by the lower Court. Conviction order, its implementation and consequences stand stayed.

Subsequent Events

19. Learned counsel for the appellant has submitted that the facts existing on the date when the Disciplinary Authority had passed the

order of termination dated 6th February, 2006 are relevant and subsequent order of stay of conviction dated 7th March, 2006 though passed before the order passed by the Appellate Authority dated 26th April, 2006 is wholly irrelevant.

20. The scope and power of the Appellate Authority under Rule 27 of the CCS(CCA) Rules is wide and broad. The said Rule reads as under:-

> "**27. Consideration of Appeal**
>
> (1) In the case of an appeal against an order of suspension, the Appellate Authority shall consider whether in the light of the provisions of Rule 10 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.
>
> (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the Appellate Authority shall consider-
>
> (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
>
> (b) whether the findings of the Disciplinary Authority are warranted by the evidence on the record; and
>
> (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the cases :

provided that-

(i) the Commission shall be consulted in all cases where such consultation is necessary;

(ii)if such enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in Clauses (v) to (ix) of Rule 11 and an inquiry under Rule 14 has not already been held in the case, the Appellate Authority shall, subject to the provisions of Rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 14 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit:

(iii)if the enhanced penalty which the Appellate Authority proposes to impose is one of the penalties specified in Clauses (v) to (ix) of Rule 11 and an enquiry under Rule 14 has been held in the case, the appellate authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty; and

(iv)no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of Rule 16, of making a

> representation against such enhanced penalty.
>
> (3) In an appeal against any other order specified in Rule 23, the Appellate Authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable."

21. The submission that Appellate Authority cannot take into consideration the stay order dated 7th March,2007, should be rejected in view of the language of Rule 27 of the CCS(CCA) Rules, which gives equal and co-extensive powers to the Appellate Authority. It gives discretion to the Appellate Authority to set aside the order passed by the Disciplinary Authority and remand the matter. In case a matter is remanded back, the Disciplinary Authority will be bound to take into consideration the order passed by the appellate Court staying the conviction and in such cases no order of dismissal can be passed. Secondly, appellate proceedings under Rule 27 are continuation of the disciplinary proceedings. The proceedings before the Disciplinary Authority and the Appellate Authority cannot be put into two watertight compartments. An appeal is normally continuation of the proceedings before the disciplinary authority. Thirdly, the Order passed by the lower authority merges in the order passed by the appellate authority.

22. In ***Rameshwar Vs. Jot Ram***, reported in (1976) 1 SCC 194, it was held that subsequent events can have three impacts. Firstly,

bearing on the cause of action; secondly, on nature of relief; and thirdly, on importance to create and destroy substantive rights. Relief can be moulded or become unserviceable or obsolete on account of subsequent developments even during appellate stage but the party claiming relief or relying upon the change must have the same right from which the first or moulded relief flows. Subsequent events can be constitutive of substantive rights but in narrow category of cases. However, subsequent events may influence equitable jurisdiction to mould reliefs. Where reliefs are discretionary, injustice due to change in facts should be avoided. Requirement of the statute on presence and absence of facts at the time of relief requires consideration of up-dated circumstances. However, rights vested by statute cannot be divested by equitable doctrine. The Supreme Court quoted with approval the following passage from ***Ramji Lal Vs. State of Punjab***, reported in AIR 1966 Punjab 274 and has observed as follows:-

> ".....Courts, do very often take notice of events that happen subsequent to the filing of suits and at times even those that have occurred during the appellate stage and permit pleadings to be amended for including a prayer for relief on the basis of such events but this is ordinarily done to avoid multiplicity of proceedings or when the original relief claimed has, by reason of change in the circumstances, become inappropriate and not when the

> plaintiff's suit would be wholly displaced by the proposed amendment (see *Steward* v. *North Metropolitan Tramways Company*) and a fresh suit by him would be so barred by limitation."
>
> One may as well add that while taking cautious judicial cognisance of "post-natal" events, even for the limited and exceptional purposes explained earlier, no court will countenance a party altering, by his own manipulation, a change in situation and plead for relief on the altered basis."

23. In subsequent judgments, the Supreme Court has held that subsequent events while the matter is sub-judice or in seisin before the appellate forum should be taken into consideration. Appellate Authority can grant relief taking into account subsequent facts, which have happened or come into existence after the order passed by the disciplinary authority. This is on the principle that appellate forums are entitled to examine both facts and law, perform nearly same duties and have same powers as courts/forums of original jurisdiction. Appeal is under the processual law is in nature of a rehearing and the appellate forum has right to mould the relief. (Refer ***Dalip Vs. Mohd. Azizul Haq*** reported in (2002) 3 SCC 607 and other decisions quoted therein).

24. In ***Kedar Nath Agarwal Vs. Dhanraji Devi***, reported in (2004) 8 SCC 76 decision in the case of ***Rameshwar*** (supra) was distinguished in the following words:-

> **"28.** Strong reliance was placed by the contesting respondents on a decision of this Court in *Rameshwar* v. *Jot Ram* before the High Court as well as before us. In *Rameshwar* the tenant had become "deemed purchaser" under the Punjab Security of Land Tenures Act, 1953. During the pendency of appeal, the "large" landowner died and his heirs became "small" landowners. It was, therefore, contended on behalf of the landowners in appeal that since appeal is continuation of suit, subsequent event of death of the original owner should be considered. This Court, however, refused to take note of subsequent event on equitable considerations. Keeping in view the agrarian reforms, this Court said:
>
> "To hold that, if the landlord dies at some distant date after the title has vested in the tenant, the statutory process would be reversed if by such death, his many children, on division, will be converted into small landholders, is to upset the day of reckoning visualised by the Act and to make the vesting provision 'a teasing illusion', a formal Festschrift to agrarian reform, not a flaming programme of 'now and here'. *These surrounding facts drive home the need not to allow futurism, in a dawdling litigative scene, to foul the quick legislative goals.*(emphasis supplied)

25. The Supreme Court also observed as under:-

> **"16.** In our opinion, by not taking into account the subsequent event, the High Court has committed an error of law and also an error of jurisdiction. In our judgment, the law is well settled on the point, and it is this: the basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit or proceeding and the suit/action should be tried at all stages on the cause of action as it existed at the commencement of the suit/action. This, however, does not mean that events happening after institution of a suit/proceeding, cannot be considered at all. It is the *power* and *duty* of the court to consider changed circumstances. A court of law may take into account subsequent events *inter alia* in the following circumstances:
>
> (*i*) the relief claimed originally has by reason of subsequent change of circumstances become inappropriate; or
>
> (*ii*) it is necessary to take notice of subsequent events in order to shorten litigation; or

> (*iii*) it is necessary to do so in order to do complete justice between the parties.

26. In ***Pratap Rai Tanwani Vs. Uttam Chand,*** reported in (2004) 8 SCC 490 the Supreme Court on the question of subsequent events and their relevance has held that the appellate court should evaluate and adjudicate the subsequent events and their effect. In ***Lekh Raj Vs. Muni Lal,*** reported in (2001) 2 SCC 762**,** the Supreme Court observed:

> "11**.** The law on the subject is also settled. In case subsequent event or fact having bearing on the issues or relief in a suit or proceeding, which any party seeks to bring on record, the court should not shut its door. All laws and procedures including functioning of courts are all in aid to confer justice on all who knock its door. Courts should interpret the law not in derogation of justice but in its aid. Thus bringing on record subsequent event, which is relevant, should be permitted to be brought on record to render justice to a party. But the court in doing so should be cautious not to permit it in a routine. It should refuse where a party is doing so to delay the proceedings, harass the other party or doing so for any other ulterior motive. The courts even before admitting should examine, whether the alleged subsequent event has any material bearing on issues involved and which would materially affect the result."

27. Rule 19(2) as quoted above states that an order under sub-rule 2 clause (i) can be passed without waiting for period for filing of appeal or if appeal is filed without waiting for the decision of the first

court of appeal. The Disciplinary Authority, therefore, is competent to pass an order under the aforesaid clause without waiting for the period for filing of an appeal to be over or without waiting for the order of the appellate court. Disciplinary Authority is not required to wait and has power to pass an order after conviction order is passed by the trial court. However, there is no bar in Rule 19(2) or under Rule 27 of the CCS(CCA) Rules prohibiting and debarring the Appellate Authority from taking into consideration subsequent events. Rule 19(2)(i) prevents the Government servant from taking an adjournment or deferring an order on the ground that he has preferred an appeal or time for preferring an appeal has not expired. The said words do not stipulate that an order passed by the Appellate Criminal Court staying the conviction cannot be taken into account. Neither the words bar or prohibit the Appellate Authority from taking into consideration the order passed by the Appellate Criminal Court. We may note here that the Disciplinary Authority while passing an order under Rule 19(2)(i) does not go into the merits and demerits of the conviction order. Its role and scope is confined to other aspects relating to retention/punishment of the Government servant in service i.e. whether it is undesirable to retain the Government servant in service in view of his conduct resulting in the conviction. It is the appellate criminal court which examines the question of

suspension of sentence or stay of conviction. Order of stay of conviction once passed has to be given due notice and cannot be ignored.

28. Learned counsel for the appellant submitted that if the Appellate Court acquits the respondent, he would be reinstated with back wages. On consideration, the said argument does not stand to reason. Firstly, there is an order of stay of conviction and the appeal is likely to be taken up for hearing after considerable time. Secondly, in such cases the employer normally invokes the principle of 'no pay for no work' and after reinstatement an order is passed on the right to back wages. Back wages cannot be claimed as a matter of right. Thirdly, the employee has to sustain himself and provide for self and his family during the period he has been granted stay of conviction and his appeal is heard by the Appellate Criminal Court. Fourthly, in case the Appellate Court upholds the conviction, the appellant will be at liberty to pass an order under Section 19(2) of the CCS(CCA) Rules.

29. In the present case, we have held that the order passed under Rule 19(2) of the CCS(CCA) Rules both by the Disciplinary Authority and the Appellate Authority are liable to be set aside. Even if we remand the matter back to the Disciplinary Authority, no order for

dismissal/removal can be passed in view of the stay order granted by the High Court of Allahabad dated 7th March, 2006.

30. Counsel for the appellant relied upon observations made in ***K. Prabhakaran Vs. P. Jayarajan***, reported in AIR 2005 SC 688. In this decision it has been observed that a judgment of an appellate criminal court exonerating the accused has the effect of wiping out the conviction by the lower court, but the result of this legal fiction is limited for the purpose for which it is created, should not be extended beyond its legitimate field. A legal fiction does not pre-suppose existence of state of facts that did not exist and were uncertain till the acquittal order was passed. Thus, acquittal by the Appellate Criminal Court by legal fiction has the effect of wiping out the lower court's conviction, yet it cannot be given retrospective effect to wipe out the disqualification on the date of scrutiny of nomination, when the conviction of the order of the lower court was operative. In the said case, nominations were filed on 24th April, 2001, poll was held on 10th May, 2001 and the result was declared on 13th May, 2001. On 15th June, 2001, the appellant therein had filed an election petition under the Representation of Peoples' Act, 1951 on the ground that the respondent therein was convicted for a total term exceeding two years and was disqualified. During the pendency of the said election petition, the Court of Session by order dated 25th July, 2001 partly allowed the appeal of the respondent therein maintaining conviction and sentence but held that the sentence would run concurrently and thereby reducing the total period of sentence to less than two years. The question arose whether judgment dated 25th July, 2001 passed by the Session Judge has retrospective operation, for the elections that were held earlier, i.e., before 25th July, 2001. The Supreme Court held that the

respondent therein was disqualified on the date of scrutiny of nominations, which was prior and before the pronouncement of the Session Judge. The factual and actual position existing on the said date was relevant and subsequent developments were not relevant. The Supreme Court in the said case was concerned with Section 8(3) of the Representation of Peoples' Act, 1951 and the question involved was with reference to the actual position as it existed on the specific date, i.e., the date of scrutiny of nomination papers before elections were held. It was observed that subsequent developments cannot be taken into consideration for the purpose of Section 8(3) of the Representation of Peoples' Act, 1951. The scrutiny of nomination is done before the elections are held and for the purpose to permit candidates to stand in elections. Per se, in such cases, the factual position existing on the date when nominations are scrutinized is relevant. Subsequent change in facts after scrutiny of nominations, if permitted and allowed will require taking into consideration the unknown and doubtful future. This will lead to odd results including situations where candidates, who are disqualified, being permitted and allowed to contest elections, only to be declared disqualified after elections results are declared. The ratio and the reasoning in the said case cannot be applied to the facts of the present case. The object and purpose of Rule 19(2) of the CCS(CCA) Rules is different and separate. Rule 19(2) of the CCS(CCA) Rules does not serve the same purpose and objective as Section 8(3) of the Representation of Peoples' Act, 1951. The election petition is filed after the election is held and cannot be considered as continuation of the scrutiny proceedings by the election officer. Election petitions are not and cannot be equated with appellate proceedings against an order passed by a disciplinary authority.

31. In the present case, before the appeal was decided by the Appellate Authority, High Court of Allahabad had already stayed the conviction order. This is the second distinguishing feature between the present case and the decision of the Supreme Court in the case of ***K. Prabhakaran*** (supra). Admittedly, in case there was an order of stay on conviction before the date of scrutiny of nominations, the respondent in ***K Prabhakaran's*** case (supra) would not have been disqualified. In the present case, on the date when the Appellate Authority had passed the order, the respondent's conviction had been stayed. This is a relevant factor and distinguishes the present case from the case of ***K. Prabhakaran*** (supra).

32. In these circumstances, we do not find any merit in the present appeal and the same is dismissed. However, we would like to clarify that the appellant will have to pass an order in respect of back wages for the period 7th February, 2006 till 23rd October, 2007 in accordance with the relevant service rules. The respondent will be at liberty to challenge the said order in case, if he so desires in accordance with law. The respondent will be entitled to full back wages with effect from 23rd October, 2007, i.e. from the date judgment was passed by the learned single Judge. Accordingly, with the aforesaid observations we quash the order of punishment/removal dated 6th February, 2006 and the order of the

Appellate Authority dated 26th April, 2006. Back wages with effect from 23rd October, 2007 will be paid within 4 weeks.

(SANJIV KHANNA)
JUDGE

(AJIT PRAKASH SHAH)
CHIEF JUSTICE

MARCH 30, 2009
VKR/P