

PUNJAB STATE ELL Y. BOARD.
LEGAL SECTION

From

The Secretary
PSEB, Patiala.

To

1. All Er-in-Chiefs/CEs/GMs in PSEB
2. All SEs/Xens in PSEB
3. All Under Secretaries/Dy. Secretaries in PSEB
4. CAO/CA/CCF/Cost Controller in PSEB
5. ADG/V&S, PSEB, Patiala
6. Legal Advisor, PSEB, Patiala.

Memo No. 101511/102161/LB-3 (24) 144/95

Dated 7.8.95

Subject:- Imposition of major penalty following conviction
in a Court of law.

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Some employees after being convicted by the Criminal Court for some criminal charge(s) file an appeal in the Higher Court and pending appeal they are released on bail and their sentence of punishment is suspended by the Appellate Court till pendency of appeal. A good number of cases have been referred to this office from time to time by the different offices/ authorities of the Board raising question as to whether any departmental action can be taken against convicted employees on the basis of their conduct which had led to their conviction on criminal charges (s) particularly so when appeal against the judgement of trial court/lower court is pending and consequently employee is released on bail and /or his sentence of punishment is suspended during pendency of appeal.

Recently, the Supreme Court of India in Dy. Director of Collegiate Education (Admn.) V/S S. Nagor Meera-AIR 1995



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Supreme Court 1364 held as under :-

" 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. 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 criminal Court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said Govt. servant-accused has been released on bail pending the appeal.

The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a Government servant is convicted of a criminal charge and not to wait for the appeal or revision as the case may be. If, however, the Government servant-accused is acquitted on appeal or other proceedings, the order can always be revised and if the Govt. servant is re-instated he will be entitled to all benefits to which he would have been entitled to had he continued in service. The other course suggested viz; to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of serious offence by a criminal court. It should be remembered that the action under clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311 (2).

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 proceedings, the matter can always be reviewed in such a manner that he suffers no prejudice."

Accordingly it is advised that the principle of law as laid down by Supreme Court of India in its aforesaid judgement may be kept in mind and followed as and when conviction of some employee on criminal charge(s) is reported for taking departmental action.

Singh
Under Secretary/Legal
For Secy. PSEB, Patiala.

CC:- For information and necessary action to the followings:-

1. Dy. Secretary to Chairman, PSEB, Patiala.
2. Sr. Private Secretary to Members / Secretary, PSEB, Patiala.