3. It is, therefore, apparent that the highest Court of the land has veered away from its earlier view. If the order of the dismissing authority is deemed to have been merged in the order of the appellate authority, then the limitation for challenging that order shall obviously commence from the date when that order is passed. The decision rendered by the Courts below on this point, is, therefore, reversed.

4. In R.S.A. No. 1264 of 1973 (*Parshotam Singh* v. *State of Punjab etc.*), the additional point on which the appellant has been non-suited is that the Courts at Patiala had no jurisdiction to try this case. This appellant is said to have embezzled some funds belonging to the Government, which are admittedly being recovered at Patiala. Since the funds are being recovered at Patiala, at least a part of the cause of action has accrued there and the Courts at Patiala had the jurisdiction to try this case. On merits, a finding has been recorded in favour of the appellant and he has only been non-suited on these two technical grounds.

5. For the reasons aforementioned, these appeals are allowed, the judgments and decrees of the Courts below are set aside the suits of the plaintiffs-appellants are decreed. The parties are left to bear their own costs.

H. S. B.

Before P. C. Jain and J. M. Tandon, JJ.

JARNAIL SINGH,—*Petitioner.*

versus

STATE OF PUNJAB and another,—*Respondents.*

Civil Writ Petition No. 3632 *of* 1979.

September 23, 1980.

Constitution of India 1950—*Article* 311(2) (*a*)—*Government servant convicted of a criminal charge—Appeal against the said conviction pending—Disciplinary authority—Whether can avail of the provisions of proviso* (*a*) *to Article* 311(2) *to dismiss the government servant during the pendency of the appeal—Term 'conviction' used therein—Whether includes the one recorded by the trial Court.*

Held, that it is clear that the disciplinary authority can dispense with the enquiry envisaged under clause (2) of Article 311 of the Constitution of India 1950 where a development servant is convicted of a criminal charge and it is proposed to dismiss him on the ground that his conduct which led to his conviction rendered him unfit to be retained in service. There is nothing in proviso (a) to suggest that the term 'conviction' used therein is restricted to the one affirmed by the appellate court where an appeal is preferred against the order of the trial Court. A convict is one who has been pronounced guilty of a criminal charge. After a delinquent servant is convicted by a trial Court of a criminal charge, he shall be taken to be a convict. The conviction recorded by a trial Court is of course liable to be affirmed or set aside by the appellate Court. The conviction of an accused does not cease to exist as a result of the appeal filed by him against the order of his conviction. The conviction would cease only in the event of the same being set aside as a result of the acceptance of the appeal. Under these circumstances, it shall be open for the disciplinary authority to avail of proviso (a) to Clause (2) of Article 311 of the Constitution during the pendency of the appeal filed by a deliquent servant. Should a delinquent servant be dismissed, reduced in rank on the ground of conduct which led to his conviction on a criminal charge during the pendency of the appeal filed by him against the order of his conviction, he will become entitled to reinstatement in the event of his conviction being set aside by acceptance of his appeal. Thus, a disciplinary authority is competent to avail of the provisions of the Act contained in proviso (a) to Clause (2) of Article 311 of the Constitution on the basis of the conviction of a delinquent servant by the trial Court during the pendency of the appeal filed by him against the order of conviction. The disciplinary action so taken shall be liable to be reversed in the event of the conviction being set aside in appeal.

(Paras 8, 13 and 15).

Petition under Article 226 of the Constitution of India praying that :—

(a) *That the impugned notice annexure P/1 being without jurisdiction be quashed by a writ of certiorari.*

(b) *That the Collector, respondent No. 2 be directed by a writ of prohibition/mandamus from taking further proceedings on the basis of the impugned notice.*

(c) *That the production of certified copy of notice annexure P/1 and its reply annexure P/2 be dispensed with.*

(d) *Prior notices on respondents be dispensed with.*

(e) *It is further humbly prayed that an ad-interim order be issued forthwith to the Collector not to take any disciplinary action against the petitioner on the basis of the impugned notice annexure P/1. In the absence of such an order the petitioner will be exposed to serious financial embarrassment and irrepairable loss and will be further involved into unnecessary litigation.*

(f) *The petitioner prays that his petition be accepted and costs awarded against the respondents.*

C. D. Dewan, Advocate, *for the Petitioner.*

A. S. Sandhu Additional A. G. (Pb.) *for the respondent.*

JUDGMENT

J. M. Tandon, J.

(1) This order will dispose of three Civil Writ Petition Nos. 3632 (*Jarnail Singh* v. *State of Punjab and another*), 3888 of 1979 (*Bakhtawar Singh* v. *State of Punjab and others*) and 1540 of 1980 (*Mohinder Kumar and others* v. *Superintending Engineer, Ambala Circle*) *which involve a common point.*

(2) In Civil Writ Petition No. 3632 of 1979 Jarnail Singh petitioner, who was a Patwari, was convicted by the Special Judge, Ludhiana, on March 26, 1979, under section 5(2) of the Prevention of Corruption Act and section 161, Indian Penal Code, and was sentenced to 1½ years' rigorous imprisonment and a fine of Rs. 1,000, in default of payment further rigorous imprisonment for two months. The petitioner filed an appeal against the order of the Special Judge which is still pending. The Collector, Ludhiana,—*vide* order, dated September 22, 1979, dismissed the petitioner on the ground that his conduct which led to his conviction rendered him unfit for retention in service. The Collector did not conduct any enquiry and availed of the provisions contained in proviso (a) to Clause (2) of Article 311 of the Constitution. The petitioner has filed the present writ alleging that in view of the fact that he had preferred an appeal against the order of the Special Judge, dated March 26, 1979, convicting and sentencing him, as stated above, which is still pending, the disciplinary authority could not dismiss him from service by availing of the provisions contained in proviso (a) to Clause (2) of Article

311 of the Constitution. He has, therefore, prayed that the order of his dismissal be set aside.

(3) In the remaining two writ petitions Nos. 3888 of 1979 and 1540 of 1980, the petitioners were similarly convicted and sentenced by the trial Court against which they preferred appeals which are still pending. The disciplinary authority without conducting a regular enquiry dismissed them on the ground that their conduct which led to their conviction on a criminal charge rendered them unfit for retention in service by availing of the provisions contained in proviso (a) to Clause (2) of Article 311 of the Constitution. In their writ petitions they have challenged their dismissal on the same plea that they could not be dismissed without conducting a regular enquiry because their appeals against their conviction were still pending in the appellate Courts.

(5) The sole point for consideration in all the three writ petitions is: whether the disciplinary authority can avail of the provisions contained in proviso (a) to Clause (2) of Article 311 of the Constitution during the pendency of an appeal by the delinquent servant against his conviction on a criminal charge.

(6) The contention of the learned counsel for the petitioners is that the term 'conviction' used in proviso (a) to Clause (2) of Article 311 of the Constitution implies final conviction recorded by the appellate Court and not one recorded by the trial Court. The conviction recorded by the trial Court cannot be treated as 'Conviction' in terms of proviso (a) and, therefore, the disciplinary authority has no jurisdiction to punish the delinquent servant thereunder, without conducting a regular enquiry during the pendency of the appeal filed by him against the order of the trial Court. Reliance has been placed on *Dhanji Ram Sharma* v. *Union of India and another* (1), *Dilbagh Rai Jarry* v. *The Divisional Superintendent, Northern Railway and others* (2), *R. S. Das* v. *Divisional Superintendent, Allahabad* (3), *and The Divisional Superintendent, Northern Railway, Allahabad* v. *Ram Saran Dass* (4).

(1) A.I.R. 1965 Punjab 153.

(2) A.I.R. 1959 Punjab 401.

(3) A.I.R. 1960 Allahabad 538.

(4) A.I.R. 1961 Allahabad 336.

(7) The contention of the learned counsel on behalf of the State is that the term 'conviction' does include the one recorded by the trial Court and the disciplinary authority is competent to avail of the provisions contained in proviso (a) to Clause (2) of Article 311 of the Constitution even during the pendency of the appeal against the order of the trial Court.

(8) The relevant part of Article 311 of the Constitution reads:—

"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 criminal charge; or

. . . . . .

(9) It is clear that the disciplinary authority can dispense with the enquiry envisaged under Clause (2) where a delinquent servant is convicted on a criminal charge and it is proposed to dismiss him on the ground that his conduct which led to his conviction rendered

him unfit to be retained in service. According to the learned counsel for the petitioners, the term 'conviction' used in proviso (a) to Clause (2) of Article 311 is restricted to the conviction affirmed by the appellate Court. In other words, the conviction of a delinquent servant recorded by the trial Court does not entitle the disciplinary authority to avail of the provisions contained in proviso (a) to Clause (2) of Article 311 during the pendency of an appeal filed against it. We are unable to uphold this view. There is nothing in proviso (a) to suggest that the term 'conviction' used therein is restricted to one affirmed by the appellate Court where an appeal is preferred against the order of the trial Court.

(10) In *Dhanji Ram Sharma's case* (supra), a railway servant was convicted in a criminal case and was dismissed from service during the pendency of the appeal filed by him against the order of his conviction and in spite of his request that no departmental action be taken against him till the decision of the appeal. His appeal was accepted and his conviction set aside but he was not reinstated. In the writ petition filed by him it was held that proviso (a) to Clause (2) of Article 311 did not apply as there has been no conviction on a criminal charge. The word 'conviction' used in proviso (a) can have only one meaning that the person convicted must have been convicted finally. In other words, if a person is acquitted by a Court of appeal it cannot be said that there is any conviction in the sense in which it is used in the aforesaid provisions. Therefore, merely because a person has been convicted by a Subordinate Court, his case is not covered by the proviso. The facts of the case now under consideration are different. The appeal preferred by the petitioners are still pending and their convictions have not been set aside so far. The ratio of *Dhanji Ram Sharma's case* (supra) would be relevant if any after their appeals are accepted and their conviction set aside and further the State refuses to reinstate them. The learned counsel for the State frankly (and rightly) conceded that the petitioners will *at once* become entitled to reinstatement if the appeals preferred by them against the order of their convictions are accepted and their convictions set aside.

(11) In *Dilbagh Rai Jarry's case* (supra), it was again held that proviso to Article 311(2) becomes applicable only if a person has been convicted on a criminal charge. Conviction here can have only one meaning, namely, that the person must have been convicted finally. In other words, if a person is acquitted by a Court of appeal,

then it cannot be said that there is any conviction in the sense in which it is used in the aforesaid provision. The ratio of this authority is analogous to that of *Dhanji Ram Sharma's case* (supra) and has no application to the facts of the present writ petitions.

(12) In *R. S. Das's case* (supra), some Railway employees were dismissed under proviso (a) to Article 311 when their appeals against their conviction on a criminal charge were pending. The appeals were accepted and their conviction set aside. Having failed to secure reinstatement after their acquittal by the appellate Court they filed writ petitions. It was held that the words 'led to his conviction' mean not merely to bring a criminal charge against the delinquent servant but further imply that as a result or consequence it has ended in conviction also. A proceeding will not be said to have led to his conviction if it has not resulted ultimately in conviction or, as a consequence of appeal, has ended in an acquittal. Their cases were held not covered by proviso (a) to Article 311(2). The facts of this authority are again different from those of the writ petitions now under consideration inasmuch as the appeal filed by the petitioners are still pending.

(13) In *Ram Saran Das's case* (supra) also, the case of a delinquent servant whose appeal had been accepted against the order of his conviction was under consideration. It was held that the result of reversal by the appellate Court of the Order of conviction passed by the trial Court, and its substitution by the order of acquittal would be that there would be no existing order of conviction left at all. The punitive action taken against the delinquent servant was based solely on the order of conviction. The removal of the order of conviction by the appellate Court has the effect of removing the entire basis of such an order and the order of dismissal, removal or reduction in rank falls with it. In the writ petitions now under consideration, the appeals filed by the petitioners against the orders of their convictions are still pending and as such the ratio of *Ram Saran Das's case* (supra), as well has no application thereto.

(14) A convict is one who has been pronounced guilty of a criminal charge. After a delinquent servant is convicted by a trial Court of a criminal charge, he shall be taken to be a convict. The conviction recorded by a trial Court is of course liable to be affirmed or set aside by the appellate Court. The conviction of an accused does not cease to exist as a result of the appeal filed by him against

the order of his conviction. The conviction would cease only in the event of the same being set aside as a result of the acceptance of the appeal. Under these circumstances, it shall be open for the disciplinary authority to avail of proviso (a) to Clause (2) of Article 311 of the Constitution during the pendency of the appeal filed by a delinquent servant. Should a delinquent servant be dismissed, reduced in rank on the ground of conduct which led to his conviction on a criminal charge during the pendency of the appeal filed by him against the order of his conviction, he will become entitled to reinstatement in the event of his conviction being set aside by acceptance of his appeal.

(15) In *Kunwar Bahadur* v. *Union of India* (5), the principle laid down was that there is no point in holding a departmental enquiry against a delinquent servant who has been convicted by a criminal Court. But proviso (a) to Article 311(2) implies that the delinquent servant's conviction stands. If the conviction is ultimately set aside in appeal or in revision, it cannot be said that the delinquent servant's misconduct has been established before a Criminal Court. In such a case the delinquent servant can properly claim, a departmental enquiry under Article 311(2). This authority supports the view expressed above that the conviction of a delinquent servant by the trial Court can be availed of for taking disciplinary action under proviso (a) to Clause (2) of Article 311 even during the pendency of the appeal. The disciplinary action so taken will, however, be liable to be reversed if the appeal filed against the order of the trial Court is accepted.

(16) In view of the discussion above, we hold that the disciplinary authority is competent to avail of the provisions contained in proviso (a) to Clause (2) of Article 311 of the Constitution on the basis of the conviction of a delinquent servant by the trial Court during the pendency of the appeal filed by him against the order of conviction. The disciplinary action so taken shall be liable to be reversed in the event of the conviction being set aside in appeal.

(17) In the result, all the writ petitions fail and are dismissed with no order as to costs.

Prem Chand Jain, J.—I agree.

(5) 1969 Lab. I.C. 990.

S. C. K.