

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
ORIGINAL APPLICATION NO.170/00426/2019
DATED THIS THE 12th DAY OF FEBRUARY, 2020
HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

P.Ravindra Naidu
Office Superintendent (Planning)
@ under Dismissal Stage
PCOM Office, Rail Soudha
Gadag Road, S.W.Railway
Hubballi, Dharwad-Dist.
PIN: 580020.
No.135/A, Railway Colony
Gadag Road
Hubballi-580020.

....Applicant

(Party-in-Person)

Vs.

1. Union of India (Ministry of Railways)
Represented by its Secretary to
General Manager, SWR
Rail Soudha
Hubballi-580020.
2. Principal Chief Operations Manager
South Western Railway
Rail Soudha
Hubballi-580020.
3. Principal Chief Personnel Officer
South Western Railway
Rail Soudha
Hubballi-580020.

...Respondents

(By Advocate Sri N.Amaresh)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he joined the railway services on 12.12.2003 and has put in nearly 14 years of service and now he is holding the post of Office Superintendent in the office of Principal Chief Operations Manager, South Western Railway, Hubballi. He submits that he was convicted under Sections 498 A and 304 B IPC by the Additional District Sessions Judge, Dharwad sitting at Hubballi and later on he was released from the Central Prison based on the order passed by the Hon'ble High Court of Karnataka, Dharwad Bench vide Criminal Appeal No.100268/2018 wherein it was ordered for suspension of the sentence and granted bail to the applicant. After release, he reported to duty in the office but the Railway administration has not taken him for duty. On 3.12.2018, the Railway Administration has served a show cause notice to him seeking reply within 14 days under Rule 14(i) failing which ex parte decision on the case will be taken by competent authority(Annexure-A2). The applicant has received the same with protest. The show cause notice clearly depicts that Railway administration has exercised the provisions mentioned under the Railway Servants(Discipline and Appeal) Rules, 1968. As the same indicates that Rule 5 and sub clause 2 have been enforced on the applicant, he was placed under deemed suspension. But subsistence allowance to that effect has not been enforced. The said show cause notice was challenged by the applicant before this Tribunal in OA.No.1840/2018. Then the Railway Administration has suddenly issued another order of dismissal from service with immediate effect from 20.12.2018(Annexure-R1) under Rule 14(ii) thereby making the OA.1840/2018 as infructuous. The Railway administration has approached the Hon'ble High Court in WP.No.108869/2018 which was disposed of with a direction to invoke jurisdiction at this Tribunal. Hence, he filed the present OA seeking to quash the

impugned order of dismissal issued by Railway Administration vide letter No.T/305/DAR/PBR/18 dtd.20.12.2018(Annexure-A1) and to set aside the same in the interest of justice.

2. The applicant submits that the power conferred under Article 309 of the Indian Constitution to Railway administration is that under the Railway Servants (Discipline & Appeal) Rules, 1968, Railway Administration is not empowered to act in contravention to the existing rules in force. Under Rule 14 of the Railway Servants (D&A) Rules, 1968, it is clear that the action shall be on Rule 14(i) or 14(ii) or 14(iii). But in the present case, the Railway Administration has acted combining both Rules 14(i) and 14(ii) which is not permitted under the said rules. The action initiated under Rule 14(i) cannot end under Rule 14(ii) as both are totally different from each other and cannot be clubbed and acted in one go. Ministry of Railways vide RBE No.133/2017 has issued a circular dtd.18.9.2017 advising all the General Managers that 'whenever it is proposed to invoke action under the aforesaid Rule 14(ii), it is imperative that all the instructions mentioned above in this regard are followed scrupulously so as to ensure that action is not found wanting in compliance of (i) the mandate under the clause (b) of second proviso to the Article 311(2) of the Constitution of India (ii) of the provisions contained in the aforesaid Rule 14(ii) and (iii) of the related subsidiary instructions/clarifications'. In the present case, the Railway administration has not granted any opportunity to the applicant before taking action under Rule 14(ii). The applicant has relied on the decisions of the Hon'ble Apex Court in the case of *Risal Singh vs. State of Haryana & others in Civil Appeal No.2839/2011* and *Jagtar Singh vs. State of Punjab 1989(5) SLR 109* wherein it was stated that 'appeal against conviction pending in the High Court where sentence is

suspended and petitioner released on bail'. The applicant submits that since the conviction by Addl.Sessions Judge was not final, order of dismissal cannot be sustained and hence quashed. The procedure adopted by the Railway administration has taken away the constitutional rights of the applicant.

3. The respondents, on the other hand, have submitted in their reply statement that the applicant who was employed in the post of Office Superintendent in the office of Principal Chief Operations Manager, South Western Railway, Hubballi, has remained continuously absent from duties from 26.7.2018 without sanction of any leave or sick certificate from Railway hospital. He has submitted representation dtd.18.10.2018 and informed the Railway Administration that his absence from duty was because of his detention in custody at Central Prison Dharwad on Criminal charges under Section 498 A and Section 304 B of IPC. On examination of the applicant's case in detail, it was concluded that he was a trouble creator and convicted person in a murder case as per orders dtd.30.7.2018 in S.C.No.39/2012 issued by the Hon'ble V Addl.District and Sessions Judge, Dharwad sitting at Hubballi and it was not possible to conduct departmental proceedings in the case as per laid down procedure. Accordingly, the Railway Administration issued show cause notice dtd.30.11.2018. However, no reply was received from the applicant. In view of the above, since the continuance of the applicant in Railway service was against public interest, the General Manager, SW Railway, Hubballi exercised the powers conferred by Rule 14(ii) of Railway Servant (Discipline & Appeal) Rules 1968 and issued order of dismissal from service vide order dtd.20.12.2018 since the situation of holding inquiry contemplated by Article 311(2) was not reasonably practicable. The Rules 14(i), 14(ii) and 14(iii) of Railway Servants (D&A) Rules 1968 could not be clubbed.

However, when the applicant who was served with show cause notice under 14(i) for explanation for further departmental process, has not turned up with his explanation to administration, the General Manager, SWR imposed the penalty of dismissal from service under Rule 14(ii) of Railway Servants (D&A) Rules 1968.

4. The respondents submit that without exhausting the departmental remedies i.e. submission of explanation to the show cause notice, the applicant has approached this Tribunal by filing OA.No.1840/2018 which was dismissed by not granting any stay on disciplinary procedure. Hence, the decision was taken and penalty was imposed on 20.12.2018 by the General Manager, SW Railway, Hubballi under Rule 14(ii) of Railway Servants (D&A) Rules 1968 after lapse of stipulated time given in the show cause notice. The decisions of the Hon'ble Apex Court relied upon by the applicant are not applicable to the present case because the General Manager, SWR came to the solid conclusion that the applicant was a trouble creator and convicted person in a heinous crime intentionally committed against his wife as per orders dtd.30.7.2018 in S.C.No.39/2012 issued by the Hon'ble V Addl.District and Sessions Judge, Dharwad sitting at Hubballi. Thus the applicant was not a fit person to be in Railway service. The respondents have produced the RBE letter No.65/2013, Railway Board letter dtd.6.6.1994(Annexure-R1) and the Hon'ble High Court of Delhi's order in the case of *Vinesh Chandra Saxena vs. UOI & others in WP(C).No.480/2011(Annexure-R2)* in support of their contentions. Therefore, the OA is liable to be dismissed.

5. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that if the Railway Administration needs to take up the applicant under Rule 14(i) of Railway Services(D&A) Rules 1968, they need to see the

entire conduct which has led to conviction but the applicant's conduct was declared as excellent by Hon'ble Addl.District Sessions Judge, Dharwad sitting at Hubballi and opined that conviction in the case cannot come in the way of applicant's employment if it is found proper. Hence, the Railway administration has intentionally jumped to another Rule 14(ii) which is not correct. In the penalty order the applicant was advised to prefer an appeal against the orders to Railway Board within 45 days of receipt of the order of penalty. But whenever the Railway Administration takes action under Rule 14(ii) of the Railway Services(D&A) Rules 1968, it is well known fact that applicant is left with no option to appeal, as provision relating to such advice does not exist. Whenever, the Railway takes up an employee under Rule 14(ii) of Railway Services(D&A) Rules 1968 or Article 311(2) of the Constitution of India, the applicant is protected by Article 311(3) of the Constitution of India. Therefore, the impugned order issued advising employee to follow unconstitutional provisions which do not exist is not correct and judicious and such arbitrary orders will not attract true spirit of Rule 14(ii) of the Railway Services(D&A) Rules 1968. The Annexure-R1 & R2 quoted by the respondents is not applicable to the present case. The Hon'ble High Court of Punjab & Haryana has passed an order in August 2019 in WP.No.17044/2019 in the case of *Harpreet Kaur vs. State of Punjab* holding that employee cannot be dismissed on conviction on matrimonial case. Therefore, the impugned order issued by Railway administration is to be quashed.

6. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. In this case, after starting proceedings under Rule-14(i) vide Annexure-A2 dtd.30.11.2018 wherein the applicant was directed to show cause within 14 days failing which exparte decision on the case would be

taken by the competent authority, the respondents vide Annexure-A1 order dtd.20.12.2018 have taken action under Rule 14(ii) considering that the continuation of the applicant is against the public interest since they have considered him to be a trouble creator and a convicted person in a murder case and passed an order of dismissal from service. The respondents themselves have admitted in their reply at para-12 that the action under the Rules 14(i), 14(ii) & 14(iii) of Railway Servants(D&A) Rules could not be clubbed. But they claim that since the applicant had not turned up with the explanation for the notice under Rule 14(i), they were forced to take action against him under Rule 14(ii). It is therefore, clear that the procedure followed by the respondents is clearly not legal in the sense of not giving him an adequate opportunity after issuing notice under Rule 14(i). Even though apparently they have considered the effect of the conviction of the applicant and decided that his continuation in Railway service is against public interest, we would not like to get into the particular nature of this decision except to state that since an opportunity has been given to the applicant to prefer an appeal against the orders impugned at Annexure-A1 within 45 days, we direct that the applicant may file an appeal to the Railway Board and the Railway Board shall admit the appeal and take an objective decision with regard to the facts of the case. Dismissal without an inquiry is not an accepted norm except in the circumstances as made out in the relevant rules which may or may not be applicable in this case. The respondents should not indulge in taking action in this manner without an adequate appreciation of the facts of the case and the responsibility that is invested in them in terms of providing an opportunity to the applicant to explain his position.

7. The OA is disposed of as above. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00426/2019

Annexure-A1: Dismissal order dtd.20.12.2018

Annexure-A2: Show Cause notice dtd.30.11.2018

Annexures with reply statement:

Annexure-R1: The copy Railway Board letter No.E(D&A)93 RG 65 dtd.6.6.1994

Annexure-R2: The copy of case law of Vinesh Chandra Saxena Vs. UOI and others Writ Petition (C) 480 of 2011 High Court of Delhi

Annexures with rejoinder:

-NIL-
