

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

O.A. No. 1716 /1988  
T.A. No.

199

DATE OF DECISION 28.11.1990.

<u>Shri Chandra Bhan</u>	Petitioner
<u>Shri Ashek Agarwal,</u>	Advocate for the Petitioner(s)
Versus	
<u>The General Manager, Western Rail</u> -Respondent	
way.	
<u>None.</u>	Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

*AB*  
 (AMITAV BANERJI)  
 CHAIRMAN  
 28.11.1990.

6

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
DELHI.**

**O.A. No. 1716/1988.**      Date of decision: November 28, 1990.

Shri Chandra Bhan      ...      Applicant.

vs.

The General Manager,  
Western Railway.      ...      Respondent.

**CORAM**

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. I.K.Rasgotra, Member (A).

For the applicant.      ...      Shri Ashok Agarwal,  
counsel.

For the respondent      ...      None.

(Judgment of the Bench delivered by Hon'ble  
Mr. Justice Amitav Banerji, Chairman).

This is a short matter. We have heard learned  
counsel for the applicant Shri Ashok Agarwal but none  
has entered appearance on behalf of the respondent although  
a reply to the O.A. has been filed.

The applicant, Chander Bhan was a peon in  
Foreign Traffic Accounts Office, Western Railway,  
Kishan Ganj, Delhi. He was involved in some incident on  
a public way and held up traffic, as a result of which  
he was chargesheeted and tried before the Court of  
Metropolitan Magistrate who convicted him under Sections  
92,93 and 97 of the Delhi Police Act. The applicant  
pleaded guilty and was fined Rs.50/- (Rupees fifty).

After the conviction by the Criminal Court, the  
Foreign Traffic Accounts Office, Western Railway, issued  
an order dated 29.10.1986 (Annexure 'C' to the OA) indicating

that disciplinary proceedings against the applicant were contemplated and he was placed under suspension with immediate effect. On 12th December, 1986, the Dy.CAO(TA) Ajmer (Annexure 'E') issued a memorandum to the effect that in view of his conviction and the conduct which has led to his conviction, his further retention in public service was undesirable and as such proposed to impose on him the penalty of removal from service. He was given an opportunity of making a representation against the aforesaid penalty. A representation was made by the applicant which was termed by the applicant to be extremely harsh and has placed his poor family on the verge of starvation. He stated that the whole incident on 29.10.1986 happened on account of his misunderstanding for which he expressed sincere apology and regret. He was not given an opportunity to be heard in person nor was reasonable opportunity granted for submission of his explanation for the incident to clarify his position. He, therefore, prayed to have mercy on him and revoke the penalty of removal from service imposed on him.

Thereupon, he was given a further opportunity of making a representation on the penalty proposed.

Ultimately, by an Office Order No. FTA/Adm/DAR/CB/86 dated 25.2.87 issued by the Dy.C.A.O.(TA) Ajmer (Annexure 'I'), the applicant was removed from service. The said officer had also opined that he had gone through the representations dated 19.1.1987 and 5.2.1987 of the applicant about the

incident which had happened on 29.10.1986 in the office but he had not made any reference to the conviction by the Criminal Court on 30.10.1986 on a charge under Section 92,93 and 97 of the Delhi Police Act. Rest of the reasoning given by the said Officer contained in paragraph 2 of the aforesaid order which reads as follows:

"2. The circumstances of conviction of Shri Chandra Bhan, Peon, FTA Office DKZ are unruly behaviour and committing nuisance in a public place, which is not in keeping with the sobriety required of a Govt. Servant. On a careful consideration of the circumstances of the case in which he has been convicted on 30.10.86 by the court on a criminal charge, I consider that his conduct which has led to his conviction is such as to render his further retention in Railway service undesirable. I, therefore, impose on Shri Chandra Bhan, Peon FTA Office, DKZ punishment of removal from service."

An appeal was filed by the applicant against the aforesaid order dated 25.2.1987. The appeal was rejected and upheld the penalty of removal from Railway service. Thereafter the applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act,1985 for quashing the penalty imposed on him.

In the normal course of events, when a person has been convicted in a criminal court, it is open to the Railway authority under Rule 14(i) of the Railway Servants (Discipline and Appeal) Rules,1968 (for short, Rules,1968) to pass appropriate punishment if a case is

made out. The disciplinary authority in the present case considered the conviction under Section 92,93 and 97 of the Delhi Police Act to be a justified ground for ordering the removal from service of the applicant.

It is true that it was not a regular disciplinary proceeding, for Rule 14(i) of the Rules, 1968 provide for a procedure in which the conviction in a criminal court is the basis to proceed against a railway employee.

It is clear that in a case like this, the only question involved is the quantum of punishment. It is not open to the applicant to question the correctness of the order of the learned Magistrate which has become final. There is a provision for an appeal against the order of the learned Magistrate convicting him and awarding a punishment. But he had pleaded guilty and as such, it was no longer open to him to go to the Appellate Court. The order of the learned Magistrate became final. The only thing that remained for consideration is the quantum of punishment as regards the railway servant. It is also clear that it was open to the Railway authorities to pass an order for removal from service. This power is there in Rule 14(i) of the Rules, 1968.

Learned counsel for the applicant argued that this was a case where he had created a nuisance in a public place and had abused the people. This was his first offence and conviction and for this, the punishment

of removal from service was not only drastic but was in the nature of capital punishment for he was being removed from service.

Normally, this Tribunal does not interfere with the quantum of punishment awarded to a delinquent government servant. The only point to be considered in this case is whether it is open to the Tribunal to go into the question of quantum of punishment or modify it. It is well settled that the Tribunal does not interfere on the question of punishment awarded sitting as a Court of appeal. If the procedure followed was in accordance with rule, the punishment is seldom interfered with. However, in the present case, we may refer to the clarifications/Railway Board's decisions circulated vide Railway Board's letters No. E50RG6-6 dated 4th February, 1950 and E56RG6-6 dated 31st May, 1956 which read as follows:

"1. Dismissal, removal etc., is not to be automatic in cases of conviction in a criminal court.- Where action to impose a departmental penalty on a Railway servant is taken on the basis of facts which led to his conviction in a criminal court; dismissal, etc. is not to be automatic and each case should be examined on its merits and orders imposing the penalty passed if the charges against the Government servant on which his conviction is based, show that he was guilty of moral turpitude or of grave misconduct which is likely to render his further retention in service undesirable or contrary to public interest. While action to dismiss, remove or reduce an employee or impose on him any penalty on the basis of conviction on a criminal charge, is to be taken on the merits of the case, it is not necessary to

observe the usual disciplinary procedure before taking action to dismiss, remove etc. In such cases, it is not even necessary to serve a charge-sheet on any employee and the departmental penalty may be imposed straightforwardly on the ground of conduct which has led to his conviction on a criminal charge."

The point is that if he was guilty of moral turpitude or of grave misconduct and which was likely to render his further retention in service undesirable or contrary to public interest. It is significant to note that <sup>in</sup> none of the orders passed by the Disciplinary Authority or the Appellate Authority these terms are used anywhere. The Police report of the incident indicated that he was fully drunk. He was abusing people and disturbed the peace as a result of which traffic was blocked on the road. If this act is to be held to be tainted with the vice of moral turpitude or is held to be a grave misconduct, then in that event the orders passed by the Disciplinary Authority and the Appellate Authority are justified. Otherwise it would be just and proper to interfere with the order. Drinking in the public place is certainly tainted with the vice of moral turpitude. Drinking itself on a public street, abusing others and holding up traffic would be a discreditable act altogether. On the question: whether it was a grave misconduct or not, there could be two opinions depending on the act. However, it is not necessary for the purpose of inflicting punishment that he must be

guilty of both moral turpitude and grave misconduct.

Any one of them is bad enough for a Railway servant.

The further question : whether the act of the applicant renders him fit for further retention in the Railway service undesirable or contrary to public interest?

The Disciplinary Authority has held that his retention in Railway service was not desirable.

In view of the above and taking into consideration all these facts, we come to the conclusion that this is not a case where we may interfere. The facts of the case indicate that the applicant had behaved in an abnormal manner, drunk, holding up traffic in the street and abusing others. Disciplinary proceedings were taken under Rule 14(i) of the Rules, 1968. He had been given two opportunities to make representations which he did and a speaking order has been passed by the Disciplinary Authority.

In view of the concurring nature of the order passed by the Appellate Authority, it was not necessary for him to give a detailed or reasoned order. In the result, the O.A. fails and is dismissed. There will be no order as to costs.

*S. K. Rastogi*  
(I.K. RASTOGI)  
MEMBER (A)  
28.11.1990.

*Amitav Banerji*  
(AMITAV BANERJI)  
CHAIRMAN  
28.11.1990.