

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/20/1372/2014

CAV on : 26.11.2020

Pronounced on : 09.12.2020



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Yamala Rajaiah @ Salla Chenchaiiah,
S/o. Yamala Peddaiah @ Salla Chenchu Ramaiah,
Aged about 54 years,
R/o. Kovurugunta Village,
Dagadarthi Mandal, SPSR Nellore District.

...Applicant

(By Advocate : Sri J.M. Naidu)

Vs.

1. Union of India rep. by its
Addl. Divisional Railway Manager,
South Central Railway,
Vijayawada Division,
Vijayawada, Krishna District.
2. Senior Divisional Engineer (South),
South Central Railway,
Vijayawada Division,
Vijayawada, Krishna District.
3. Assistant Divisional Engineer,
South Central Railway,
Vijayawada Division,
Nellore, SPSR Nellore District.

....Respondents

(By Advocate : Sri M. Brahma Reddy, SC for Railways)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

2. The OA has been filed in regard to dismissal of the applicant from service w.e.f. 22.03.2013 vide order dt.21.03.2013 by the respondents.



3. Brief facts of the case are that the applicant joined the respondent organization as casual labour in 1980 and his services were regularized in 1984. Thereafter, he was promoted as Senior Trackman / Senior Gangman in 2002. The applicant states that he has two names viz., Yamala Rajaiah and Salla Chenchiah and his father has two names i.e. Yamala Peddaiah and Salla Chenchu Ramaiah. A criminal case has been filed on the file of the Addl. Judicial First Class Magistrate, Kavali vide CC No. 353/2005 against the applicant on the ground that he secured employment through impersonation and in connection with the said case, he was kept in Police custody for more than 48 hours. Therefore, he was suspended by the respondents. The applicant states that he was convicted in the criminal case and sentenced to undergo rigorous imprisonment for 2 years along with a fine of Rs.10,000/- vide judgment dt. 21.03.2011. Upon conviction of the applicant, the 3rd respondent issued show cause notice dt.27.02.2013 proposing removal/ dismissal of the applicant from service. The applicant could not submit any reply since he was under police custody. Consequently, the applicant was dismissed from service vide order dt.21.03.2013. The applicant submits that he filed a criminal appeal against the judgment of the Addl. Judicial First Class Magistrate, Kavali in CC No. 353/2005, which was referred to the Lok Adalat, Nellore wherein an Award has been passed acquitting the applicant of all the charges. Further, against

the order of dismissal from service, the applicant filed an appeal on 09.12.2013 before the 2nd respondent, who confirmed the dismissal order of the 3rd respondent on 07.03.2014. The applicant also filed a revision petition before the 1st respondent on 01.04.2014 and the said petition was dismissed on 18.09.2014 confirming the punishment of dismissal from service imposed on the applicant. Aggrieved over the same, the OA has been filed.



4. The contentions of the applicant are that the 3rd respondent is not the competent authority to issue the show cause notice to him. He has been acquitted in the criminal case by the learned Lok Adalat. The punishment imposed is disproportionate. The appellate and the revision authorities did not consider the plea of incompetency of the 3rd respondent. The applicant cited the judgment reported in 1992 (3) ALT 490 and the verdict in OA 194/2015, dt.4.9.2015 in support of his contentions.

5. The respondents filed a reply wherein they have confirmed the career particulars of the applicant and that they have received a complaint against the applicant on 21.12.2003 from Sri Salla Chenchiah stating that the applicant by name Yamala Rajaiah secured job as Gang Man in the respondents organization by impersonating as Salla Chenchiah. The Welfare Inspector investigated the matter and found merit in the complaint and recorded accordingly on 24.03.2004. Police complaint was filed by Salla Chenchiah vide FIR No.56 dt.21.06.2004 registered at Dagadarthi Police Station. Later, on the point of jurisdiction, the case was transferred to Bitragunta Police Station on 20.10.2004 and re-registered as Cr.No.

147/2004 under Sections 419 and 420 IPC. The applicant was arrested and kept in detention from 21.12.2004 to 27.12.2004. As the applicant was kept in police custody exceeding 48 years, he was placed under deemed suspension w.e.f. 21.12.2004. The criminal court convicted and sentenced the applicant to 2 years rigorous imprisonment and imposed a fine of Rs.10000/- each for the offences U/s. 419 & 420 IPC, vide Judgment dt. 21.03.2011. On conviction, a show cause notice was issued to the applicant under Rule 14(i) of RS (D&A) Rules, 1968. There was no reply from the applicant and hence, a major penalty of dismissal was imposed w.e.f. 21.03.2013. The appeal and review petitions filed by the applicant were rejected by the competent authority. Even though in the service register, the name of the employee is shown as S. Chenchayya, who has joined as casual labour and his services were regularized in 1994, it was Yamala Rajaiah who worked. Therefore, S. Chenchayya and Y.Rajaiah are different names as per the enquiry report (Annexure R-1). The identity card issued by the Election Commission of India, the name of the applicant is shown as Yamala Rajaiah, not Salla Chenchayya. Lok Adalat has compromised the issue between appellant and complainant on payment of certain amount and passed an Award No. 284/2013, dt. 27.11.2013 and the signature on the compromise deed was obtained as Salla Chenchayya. The respondents were not made parties to the Lok Adalat proceedings. Respondents contended that the disciplinary and criminal cases are totally different. The Photo affixed in the Election Commission of India identity card and the photo in the casual labour card are tallying but they belong to Yamala Rajaiah only. The applicant has got employment through fraud. The judgment cited by



the applicant relates to Railway Protection Force staff for whom the D& A Rules 1968 are not applicable. The OA is barred by limitation.

6. Heard both the counsel and perused the pleadings on record.

7. I. The applicant was involved in a criminal case on the ground that he has obtained employment in the respondents organization through impersonation. The charge against the applicant is that he has been working in the respondent organization in the name of Salla Chenchaiyah though actually his name is Yamala Rajaiah. The applicant contends that he has two names S. Chenchaiyah and Y. Rajaiah and his father got two names Yamala Peddaiah and Salla Chenchu Ramaiah. However, an FIR No. 147/2004 was registered and the applicant was proceeded vide CC 353/2005 wherein he has been convicted and sentenced to 2 years rigorous imprisonment coupled with fine of Rs.10,000/- each for the offences U/s.419 & 420 IPC, vide judgment dt. 21.03.2011. The applicant was kept in Police custody from 21.12.2004 to 27.12.2004 and therefore, he was kept under deemed suspension w.e.f. 21.12.2004.

II. After conviction by the competent court, applicant approached the Lok Adalat and an award was passed acquitting him of all the charges. The observation of the Award of the Lok Adalat is herein reproduced as under:

“..... At this stage, the appellant and the defacto complainant who was examined as PW.1 in the Lower Court (being aggrieved persons) intended to compound the above said offences and thereby both of them present before the appellate court. They filed an application under Section 320(2) Cr.P.C for the permission before the appellate court so as to compound the above said offences. On verification of record the appellate court accorded permission and thereby the appellant and PW1 are directed to appear before the Lok Adalat on the ground that they wish to record their compromise before Lok Adalat.

When I questioned PW.1 about the compromise, for which he replied that he was given Rs.50,000/- by the appellant and so he came voluntarily forward to compound the above said offences. Since the appellant and PW.1 entered into compromise with free consent and so the same is hereby recorded. Consequently the appellant/ accused was acquitted under section 320(8) Cr.PC for the charges under Sections 419 and 420 of IPC. Thus the appeal is disposed of before Lok Adalat today.”

As can be seen from the Lok Adalat Award, the applicant compromised with the complainant by paying a sum of Rs.50,000/- and the applicant was acquitted under Section 320(8) of Cr.P.C. Therefore, it cannot be said that the acquittal of the applicant was honourable acquittal.



III. Besides, respondents issued a show cause notice under Rule 14(i) of RS (D & A) Rules, 1968, allowing 15 days time to submit his explanation.

Rule 14(i) is extracted hereunder:

“14. Special procedure in certain cases:- Notwithstanding anything contained in Rules 9 to 13 –

(i) where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) xxxx

(iii) xxxx

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Railway Servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case falling under clause (i) above:

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this Rule.”

The show cause notice was issued as per rule cited and since the applicant did not submit any reply, respondents proceeded and took action as deemed fit under the rules. The applicant was convicted in the criminal case and later Ld. Lok Adalat acquitted him but not honorably. Further as held by the Hon’ble Supreme Court in ***Commissioner of Police, New Delhi v Narender Singh (2006) 4 SCC 265***, acquittal in a criminal case shall not by itself be a ground to drop any disciplinary action against the employee, as under:

“It is now well settled by reason of a catena of decisions of this Court that if an employee has been acquitted of a criminal charge, the same by itself would not be a ground not to initiate a departmental proceeding against him or to drop the same in the event an order of acquittal is passed.”

IV. Another contention made by the applicant was that the penalty was imposed by an incompetent authority. As per disciplinary rules of the respondents organization, appointing authority has the power to impose the penalty under Rule 6 of Railway Servants (D&A) Rules 1968. Therefore, the 3rd respondent, who is the appointing authority for the relevant grade of the applicant, is the competent authority to impose major penalty. Hence, the contention of the applicant that the 3rd respondent is not the competent authority does not hold good.



V. The charges are grave and considering the fact that they have been proved in the criminal case, respondents issued the show cause notice in question. Applicant claims that he could not submit the reply as he was under detention. Learned counsel for the applicant submitted that the respondents have not issued any charge memo in order to give an opportunity to the applicant to defend his case. Therefore, the action of the respondents is illegal. However, the respondents invoked Rule 14(i) of RS (D & A) Rules 1968, which is appropriate keeping in view the criminal case in which the applicant was involved. Nevertheless, applicant's appeal and revisions petition were duly considered by the competent authorities and rejected. Therefore, it cannot be gainsaid that the applicant was denied reasonable opportunities to defend his case and present his point of view.

VI. The applicant claims that the punishment is disproportionate. We do not agree with the same since he obtained employment through impersonation and by playing fraud, which was proved in the criminal trial.

The details furnished in the identity cards issued by the Election Commission of India and the respondents support the contentions of the respondents. The acquittal in the Local Adalat was by a compromise and it was not a honourable acquittal. If people are allowed to be inducted by fraudulent means and continued in public institution like the respondents organisation, the very image of the institution would be dented. The applicant did state that he rendered 23 years of service and this aspect requires due consideration before imposing a harsh penalty. With 23 years of experience, it was all the more necessary that he should at least inform the respondents that he had two names. During his 23 years of service, he has not done so and the actual fact came to light only on 21.12.2003 when Sri S. Chenchiah complained. Therefore, the conduct of the applicant is questionable and hence, irrespective of the number of years of service rendered, the very act of obtaining job through dubious means cannot be upheld. The judgment cited by the applicant would not therefore come to his assistance.



VII. In view of the aforesaid circumstances, we find that the respondents have taken action against the applicant as per rules and law. There is no scope for the Tribunal to intervene on behalf of the applicant. We do not find any merit in the OA and hence, is dismissed accordingly. No order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVEMEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/al/evr/