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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A.NO.2021/91

Hon'ble Shri J.P.Sharma, Member(J)
Hon'ble Shri K.Muthukumar, Member(A)

New Delhi, this 7th day of July, 1995

Shri Subhash Chander
s/o Shri Chander Bhan
r/o Village Bithwana
Distt. Rewari
Haryana.

... Applicant

(By Shri V.P.Sharma, Advocate)

Versus

Union of India: through
The General Manager
Northern Railway
Baroda House
New Delhi.

The Divisional Railway Manager
Northern Railway
Bikaner.

The Divisional Mechanical Engineer
Northern Railway Board
New Delhi.

The Assistant Personnel Officer
Northern Railway

... Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R (Oral)

Hon'ble Shri J.P.Sharma, Member(J)

The father of the applicant, Shri Chandra Bhan, died in harness and under the provisions and circular of the Railway Board, Respondents offered him a Group-D post w.e.f. 9.5.1982 but he was terminated w.e.f. 17.8.1982. Before appointing a person to the post as required under para 101 Indian Railway Establishment Manual (second edition), appointing authority is to satisfy himself about the character and antecedents of the person who is being appointed to the post.

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2. The respondents have given the appointment to ~~the~~ applicant but subsequently, when the verification report on his character was received from the concerned police station, it was found that the applicant earlier to such an appointment was convicted in a criminal case. The appointing authority, therefore, invoking the provisions of the rule 149 of the Indian Establishment Railway Code(Volume 1) terminated the service of the applicant after one month's salary in lieu of the notice, given to the applicant, by order dated 12/17.8.1982. This order was challenged by the applicant in a Civil Suit which was ultimately transferred to Central Administrative Tribunal and registered as Transfer Application No.59/87(suit No.276/1983. This TA was decided by the Principal Bench by the order dated 31.5.1989 and the impugned order was not considered on merit but a direction was given that the plaintiff will submit an appeal against the aforesaid order of termination dated 12/17.8.1982 and the delay for filing the appeal to be condoned and suitable order passed on that appeal. The respondents had disposed the appeal filed by the applicant by the order dated 15.2.1991 with the following remarks.

"I have carefully gone into the appeal of the employee. The ex-employee has not brought out any new facts worth consideration of his appeal against the orders of disciplinary authority. The Ex-employee has submitted a certificate from Village Sarpanch in support of his character, but as per service rules, such certificate is obtained from Police authorities and not from Civil bodies and the certificate issued by Policy authorities clearly speaks of his not being a good charactered person.

The Ex-employee in his appeal has stated that General Manager, Northern Railway is the appointing authority in his case which is not correct. The Ex-employee was appointed by Asstt. Personnel Officer and therefore, the argument is not sustained. The above arguments were discussed before Hon'ble CAT also who have also observed that the action of disciplinary authority in removing Shri Subhash Chander cannot be assailed.

Under the circumstances, and other relevant material on record, it is established beyond doubt that Shri Subhash Chander's removal was correct and the punishment imposed by disciplinary authority holds good." (emphasis supplied).

3. Aggrieved by the aforesaid order, the present application was filed on 3rd September, 1991, praying for the grant of the relief that the impugned order of 17.12.1982 and appellate order dated 15.2.1991 be quashed and the applicant reinstated with all consequential benefits etc.

4. A notice was issued to the respondents and in a detailed reply, the respondents have taken the stand that the impugned order was passed as the applicant convicted of an offence when the respondents got verified the character and antecedents of the applicant from the local police. In the counter reliance has been placed by the respondents in the case of Purchotam Lal Dhingra Vs. Union of India (1958 SCR 828); State of Orissa Vs. Ram Narayan Das (1961 (1) SCR 606); R.C.Laaj Vs. State of Bihar (C.A. No.590/62 decided on 23.10.1963); Champaklal Chimanlal Vs. Union of India (1964(5)SCR 190); Jagdish Mitter Vs. Union of India (AIR 1964 S.C.449); A.G.Benjamin Vs. Union of India (C.A.No.1341/66 decided on 13.12.1966); Shamsher Singh Vs. State of Punjab (1975 (1) SCR 814); State of Punjab Vs. Shri Sukh Raj Bahadur (1968(3) SCR 234); and State of Uttar Pradesh Vs. Kaushal Kishor Sjukla (1991(2) SLJ SC 96).

5. Law is well settled on the subject. The respondents have further stated in their reply that the order passed under Rule 149 of Indian Railway Establishment Code Volume I (1971 Edition) is not punitive in nature and the procedure laid down in the Railway Servants (Discipline and Appeal) Rules, 1968 was not required to be followed. No rejoinder has been filed.

6. During the course of hearing, the learned counsel for the applicant pointed out that no show-cause notice was given to the applicant when a report of conviction was received by the



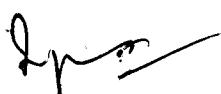
appointing authority. In fact, this fact is never challenged so no such notice was issued under the rules. Under para 101 of the Indian Railway establishment Manual (Volume 1), it is for the satisfaction of the appointing authority that the appointee has a good moral character. If the report is otherwise and if in anticipation of the receiving the report before appointment is given, resort can be made to Rule-149 of the Indian Railway Establishment Code (Volume - 1). The order therefore is not punitive in nature.

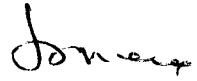
7. However, the applicant assailed the nature in the Civil Suit which was subsequently decided by the Principal Bench when the case was transferred under the provisions of Section 29 of the CAT 1985. The Tribunal directed the applicant to submit an appeal against the order of termination so that administration may also take into account whether there was any justification in invoking of the provisions of Rule 149(supra) in this OA. The law relating to termination either under CCS(I.S.) Rules, 1965 or under equivalent provisions under other service rules laid down that the order passed for terminating service of temporary employee do not attach any stigma and is an innocuous order. However, when we see the appellate order we find that there is an observation which has been underlined in the earlier part of this order. While considering, the appellate order observed that the punishment imposed is said to be adequately passed by the disciplinary authority. The learned counsel for the respondents pointed out that this is nothing but wrong loose expression of certain words however, when the words used in their proper meaning, we cannot give another interpretation to the words used by the concerned authority to reinterpret the same. We therefore, are inclined to refer again to the appellate authority.

8. In the course of the hearing the learned counsel for the applicant has also referred to certain facts that according to Section 12 of the Probation of Offenders Act, 1958 a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. Provided that nothing in this section shall apply to a person who, after his release under Section 4, is subsequently sentenced for the original offence.

9. We are afraid that neither in the OA nor in the appeal filed by the applicant any such ground has been taken. However, it is a legal point we have to consider this and since we are remanding the matter to the appellate authority; the appellate authority will also apply his mind to the provisions of law. We are not considering the rival contentions of the parties on merit at all.

10. Any observations made in this order, will not come in the way of appellate authority order. The application therefore, is allowed and the appellate order passed by the appellate authority (dated 15.2.2001) is quashed and set-aside and the appellate authority will reconsider the case of the applicant as per the observations made in the body of the judgment, referred to above. The parties will bear their own costs.


(K. MUTHUKUMAR)
MEMBER(A)


(J.P.SHARMA)
MEMBER(J)

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