

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BAENCH
ALLAHABAD

Dated: This the 05th day of May 2005.

Original Application No. 304 of 2001.

Hon'ble Mr. S.C. Chaube , Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

Panna Lal Chakravarti,
S/o Sri Halku Ram,
R/o R.B. II/632 D, Rani Laxmibai Nagar,
Railway Colony,
Sipri Bazar,
Jhansi.

...Applicant

By Adv : Sri M.P. Gupta.

V E R S U S

1. Union of India through General Manager,
Central Railway, Mumbai
(Maharashtra).
2. Divisional Railway Manager,
Central Railway,
Jhansi.
3. The Divisional Commercial Manager,
Central Railway,
Jhansi.
4. The Divisional Railway Manager, Central
Railway, Bhusawal (Maharashtra)

...Respondents.

By Adv : Sri D.C. Saxena.

O R D E R

By K.B.S. Rajan, J.M.

The question is short, the precedent relied upon by the counsel for the respondent is pregnant and thus, by the conduct of the applicant under the

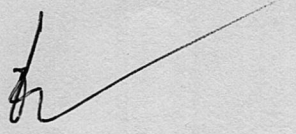


principle of acquiescence, the O.A. has to be dismissed.

2. Facts capsule: On certain charges, the applicant was issued with a charge sheet vide order dated 04-01-1996. The I.O. who had conducted the inquiry had rendered his finding against the applicant and the D.A. on the basis of the I.O.'s report, inflicted upon the applicant the penalty of removal from service, vide order dated 04-08-1999. Against the same the applicant preferred an appeal and the appellate authority which had held that the I.O. was not right in giving a finding against the applicant, on the basis of the past records upheld the order of penalty imposed by the Disciplinary authority and thus, which was dismissed the appeal, vide order dated 12-10-1999. Undaunted by the dismissal of the appeal, the applicant moved a Revision Petition, which was considered and the Revisional authority had passed the following order vide order dated 15-03-2000:-


"I have gone through the entire case, enquiry proceeding, D.A.'s orders, A.A.'s orders and your revision petition dt. 25.10.99. Considering all the facts of the case, I decide to reduce the punishment of "Removal from service" to that of "Reduction in rank" to the initial grade of T.C. i.e. Gr. Rs. 3050-4590 (RSRP) fixing pay at the minimum of Rs. 3050/- for a period of five years with cumulative effect."

3. The applicant, who had resumed duties on the basis of the order of the Revisional Authority, has come against the orders of the



Disciplinary and the Appellate Authority as also of the Revisional Authority.

4. The Appellate Authority held that the applicant was not guilty of the offences alleged in the charge sheet but due to his being a habitual offender, the order of the Disciplinary Authority was upheld. This is of course deviating from the normal procedure, inasmuch as the appellate authority is precluded from taking into account those aspects which did not form part of the charge sheet. However, the applicant has not challenged the mere operative portion of the appellate authority but the entire appellate order as illegal, which would mean that the findings in favour have also to go. Apart from the same, the Revisional authority has upheld the decision of the Disciplinary Authority, as could be seen from the penultimate paragraph of the Revision Order dated 15-03-2000. Thus, by the order of the Revisional authority, the finding and the operative portion of the appellate authority gets modified and the applicant had, in accordance with the order of the Revisional Authority, had also resumed duties. It is under these circumstances that the applicant had agitated against the orders of the D.A., the A.A. and the Revisional Authority.



5. The counsel for the applicant had submitted that when the findings of the appellate authority have been thoroughly in favour of the applicant, there is no question of extraneous things having been taken into account. This submission was rebutted by the counsel for the respondents who has vehemently argued that the Revision Authority had clearly held the D.A's order as thoroughly legal and appealing and at the same time reduced the penalty of order of removal to one of reduction in the lowest stage of the scale of pay and for a period of five years, with cumulative effect. This order has been pressed into service by the applicant without any murmur and the applicant had resumed duties. It is thereafter the applicant has challenged the impugned orders. The counsel for the respondents had invited our attention to the following cases:-

(a) Order dated 7th October, 2003 in OA No. 883/12998 of this Bench.

(b) **State of Punjab v. Krishan Niwas, (1997) 9 SCC 31, at page 31 :**

In the case of Kishan Niwas, the Hon'ble Supreme Court has held as under:-

"3. The admitted facts are that the respondent was charged for an offence under Section 302 IPC. He was convicted and sentenced to undergo imprisonment for life. Thereafter, proceedings were initiated against him under Article 311(2) of the Constitution and he was removed from service. Appeal against his conviction under Section 302 IPC was allowed by the High Court. Punishment of conviction under Section 302 IPC was modified to one under Section 325 IPC and he was directed to undergo rigorous imprisonment for 1-1/2

years. After undergoing imprisonment, the respondent filed an appeal before the appellate authority. The appellate authority by order dated 1-3-1989 reduced the punishment of removal from service to lower scale of pay drawn by him and directed that he was not entitled to back wages. The respondent accepted it and joined duty on 5-6-1989. Subsequently, he filed a civil suit for declaration that his dismissal from the service and reduction of rank and also the direction that he is not entitled to pay the arrears of wages, were illegal. The trial court dismissed the suit. On appeal, the Additional District Judge reversed the judgment of the trial court and decreed the suit. In the second appeal, the High Court has confirmed the same. Thus this appeal, by special leave.

4. The learned counsel for the respondent contends that the offence with which he was sentenced under Section 325 IPC does not involve his moral turpitude and, therefore, the imposition of punishment of reduction of his scale of pay and also denial of back wages, is clearly illegal and that the appellants are not entitled to challenge the order. We find no force in the contention. The respondent having accepted the order of the appellate authority and joined the post on 5-6-1989, it was not open to him to challenge the order subsequently. By his conduct he has accepted the correctness of the order and then acted upon it. Under these circumstances, the civil court would not have gone into the merits and decided the matter against the appellants.

5. Accordingly, the appeal is allowed. The orders of the High Court and the appellate court stand set aside and that of the trial court stands confirmed. No costs"

The above case was followed in the case of **Sanat Kumar Dwivedi v. Dhar Jila Sahakari Bhoomi Vikas Bank Maryadit**, (2001) 9 SCC 402, where, at page 403 the apex Court has held:

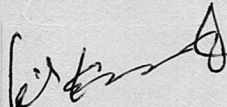
"2. The admitted facts are that the appellant was reinstated in service by order dated 12-5-1978 with a condition that he will not get any back wages. Obviously, earlier on 8-3-1976 his services were terminated but by the aforesaid order, he was reinstated without back wages. He accepted such reinstatement without back

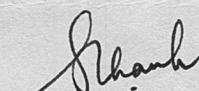
wages by his joining report, Annexure R-4 at p. 106 of the paper-book that he has joined his duty on 13-5-1978. By his own conduct, the appellant has accepted the correctness of the order of reinstatement without back wages. Under these circumstances, subsequent dispute raised by him regarding back wages was clearly not maintainable as held by this Court in *State of Punjab v. Krishan Niwas*¹. In view of the settled legal position, no interference is called for. The appeal is therefore, dismissed.

3. It is clarified that this order will not be treated to be resulting in any break in service of the appellant. He will be deprived of only the back wages. The continuity of service and all other notional benefits on that basis will be available to him. It appears that when the order of reinstatement was granted, except depriving him of back wages, it necessarily meant that the continuity of service was implicit in the reinstatement. Even Conditions 1 and 2 of the order of reinstatement clearly indicate that he is reinstated in service with continuity as pay scales and other benefits were also directed to be given.

6. The Apex Court having held the position as "settled position" there is absolutely no possibility of deviating from the decision of the Hon'ble Supreme Court. The applicant has not shown any document to the effect that he had joined back only under protest. Even if he had done so, the applicant cannot agitate against the reinstatement in view of the judgment in the case of *Kishan Niwas*, *Supra*.

7. In the end, the application fails and is rejected. No cost.


MEMBER-J


MEMBER-A

GIRISH/-