

**Central Administrative Tribunal  
Jaipur Bench, Jaipur**

**O.A. No.637/2013**

Reserved on:04.08.2021  
Pronounced on:11.08.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)  
Hon'ble Mrs. Hina P. Shah, Member (J)**

Manohar Singh Gaur S/o Shri Suraj Karan Gaur, a/a 54 years,  
R/o 545/52 Date Nagar, Jatiya Hills Shashtri Nagar Road,  
Ajmer. Presently posted as Clerk under Dy C.M.E., Loco,  
Ajmer. ...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through General Manager, North Western Railway, H.Q. Office, Jagatpura, Jaipur.
2. Chief Workshop Manager Engg. (Workshop), Ajmer, North Western Railway, Ajmer.
3. Deputy Chief Mechanical (Loco)/Ajmer, North Western Railway, Ajmer.
4. Principal Supervisor Training Centre, Ajmer/Production Engineer (Loco), Ajmer, North Western Railway, Ajmer.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

**ORDER**

**Per: Dinesh Sharma, Member (A):**

In this OA, the applicant has prayed for quashing and setting aside the punishment order dated 04.10.2012, the order in appeal dated 17.11.2012 and the order in revision dated 09.02.2013 (Annexures A/1, A/2 and A/3

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respectively). He has also prayed for his reinstatement with consequential benefits. His argument is that this order of termination (Annexure A/1) was on ground of his conviction by a criminal court for offence under Section 420 of the IPC, imposing a punishment of 3 years imprisonment and fine of Rs.50,000. The order was kept as such by the appellate authority (Annexure A/2). The applicant filed a review petition against this order, informing that the Additional District and Sessions judge has set aside his punishment based on a compromise and he has been exonerated from offence u/s 420 of the IPC. The reviewing authority has still not set aside the applicant's punishment and kept it as such (Annexure A/3). The applicant has challenged these decisions as violative of Articles 14 and 16 of the Constitution, illegal, arbitrary, unjust, unfair, without hearing the petitioner, based on surmises and conjectures. An acquittal is an acquittal even by a compromise and the removal which was on ground of his earlier conviction should be set aside when he has been acquitted.

2. The respondents have filed a reply stating that the applicant was removed exercising powers under Rule 14 (1) on being found guilty of serious misconduct. The action has been taken after serving the applicant a show cause notice and after considering his reply in which the applicant had admitted the pendency of the criminal case against him. The

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order has been maintained in the review petition by a reasoned and speaking order. The complaint against applicant was regarding payment of Rs.80,000 by one Shri Dharmendra Teji to another person Babu Lal, upon assurance (in collusion with the applicant), to get Shri Teji appointed in Railway Service. The applicant cannot allege anything contrary to the findings of facts recorded by the trial court. The court found the applicant guilty and punished with three years simple imprisonment and fine for Rs 50,000. The applicant had suppressed the fact of pending criminal action against him. It was on receipt of a complaint by Dharmendra Teji (Annexure R/1) that the applicant's explanation was sought vide letter dated 14.08.2012. The applicant informed about his punishment and the appeal pending against such punishment in his reply to this show cause notice. The decision to punish him, based on the findings of a criminal court, cannot be said to be illegal, unlawful or without application of mind. The applicant submitted his review petition based on the order of the appellate court which exonerated him on the basis of a compromise between the parties (involved in the act of fraud). Since the applicant was found by a competent court to have indulged in a misconduct involving moral turpitude, he cannot be absolved (in a disciplinary action) on the basis of such compromise.

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3. No rejoinder has been filed.

4. The case was heard through video conferencing on 04.08.2012. The learned counsel for the applicant argued that an acquittal following a compromise has the same effect as acquittal in a normal trial. After the conclusion of arguments, he also cited a judgment of the Principal Bench, dated 18.08.1993, in **Shamsher Singh vs Union of India & Others**, in OA No. 532/88. In this decision, the Tribunal has held that denial of appointment (for a constable's job), on ground of acquittal following a compromise between the parties in a criminal case u/s 323, 324, 147, 148 and 149 IPC, is wrong. The learned counsel for the respondents argued that this is not a simple case of compromise for a compoundable offence. The applicant was found guilty, by a competent court, of cheating (u/s 420, IPC) a person who paid money to another person on a false assurance (in collusion with the applicant) of employment with the Railways. Just because the cheated person has compromised, perhaps on getting his money back, it does not reduce the gravity of the applicant's role in cheating with respect to assuring employment with the Railways. The applicant's conviction by the trial court is a conclusive proof of his involvement in the crime. His subsequent acquittal, on a compromise and not on merits, does not absolve him of his liability for disciplinary action, where the culpability and

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the standards of proof are not as strict as those required for punishment under the IPC. The prior acts of misdemeanour by the applicant, quoted in the review order, also support the imposition of stricter punishment. The learned counsel for the applicant, in his rebuttal, argued against using an earlier act of misconduct for justifying punishment, when such act was not mentioned in the charges.

5. After going through the pleadings and hearing the arguments, we find that the main issue is whether the applicant, who was punished on ground of his conviction by a criminal court, can be exonerated and reinstated in service when an appellate court sets aside that conviction on reaching a compromise. There is no denying that an acquittal is an acquittal whether it is based on lack of evidence or because of a compromise. However, there has been a number of judicial pronouncements supporting sustainability of departmental action in cases of acquittal by criminal courts. It is mainly when the acquittal is based on insufficiency of evidence to convict a person on a criminal charge where the standards of proof are much stricter than those required for a disciplinary action. It is also when the action for which a person is charged in a criminal court does not amount to a criminal offence but may amount to a serious misconduct under the conduct rules. An act of cheating may be a compoundable criminal offence, and can

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be closed by the criminal court on reaching a compromise. However, the same cannot be said for a disciplinary action based on an act of cheating, causing wrongful loss to a person by falsely assuring him a Government job, when such cheated person later compromises for any reason. These are not mere surmises or conjectures, but facts proven in a court of law resulting in the applicant's conviction by the trial court. His later acquittal is admittedly based on a compromise between the parties, and such compromise cannot be a ground for diluting the disciplinary action taken against him. In such a situation, the disciplinary action, based on a proved serious misconduct before a court of law, cannot be found fault with. The OA, therefore, fails and is dismissed. No costs.

(Hina P. Shah)  
Member (J)

(Dinesh Sharma)  
Member (A)

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