

(A2)
3

Court No. 1.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 150 of 1987.

(O.S. No. 119/85 of the court of Munsif Sadar, Pratapgarh.)

Plaintiff-Applicant.

Lal Bihari

Versus

Union of India & others

Defendant-Respondents.

Hon'ble Justice K. Nath, V.C.
Hon'ble K.J. Raman, A.M.

(By Hon. Justice K. Nath, V.C.)

The regular Civil Suit, described above, is before us under Section 29 of the Administrative Tribunals Act, 1985 for a declaration that the order dated 27.8.1982 (erroneously mentioned as 21.6.1982), paper no. 6-Ga, and its confirmation by the appellate order dated 20.2.1984 (erroneously mentioned as 27.8.1982), paper no. 7-Ga, are without jurisdiction and illegal. There is also a prayer for payment of dues on the basis that the plaintiff-applicant continued to be in service.

2. The plaintiff-applicant was a Porter at Railway Station Fursatganj when he was involved in a criminal case under Sections 302/149, 148, and 324 of the Indian Penal Code. It appears that in Sessions Trial No. 138 of 1978 the applicant was convicted for the offence punishable under Sections 302 and 324, I.P.C. on 30.4.82. On 3.5.1982 the plaintiff-applicant preferred a Criminal Appeal No. 372 of 1982, which is still pending. The applicant was awarded some interim relief by the admission/order, which runs as follows:-

"Admit. Issue notice. Appellants were on bail in the court below. They did not abuse. Appellants no. 1 to 9 will be released on bail subject to their each furnishing adequate bail bond and sureties to the satisfaction of C.J.M., Pratapgarh.

Realisation of fine from appellants no. 10 to 12 shall remain stayed pending disposal of appeal."

9

-: 2 :-

The plaintiff-applicant was appellant no.1.

3. On 27.8.1982 the Assistant Operating Superintendent passed the impugned order of dismissal of the plaintiff-applicant from railway employment on a consideration of the plaintiff-applicant's explanation dated 26.6.1982 to the show-cause memorandum No.170E, and it was said that on a consideration of the case in which the plaintiff-applicant was convicted it was decided to impose the penalty of the plaintiff-applicant's dismissal and, therefore, he was dismissed with immediate effect. An appeal to the Senior DSO, the appellate authority, was dismissed and the dismissal was communicated by letter dated 20.2.1984, paper no.7-Ga1, containing the observations of the appellate authority. It was mentioned in the order that on a careful consideration of the appeal the appellate authority concluded that the plaintiff-applicant was not a fit person to be retained in railway service and hence his appeal was rejected.

4. The learned counsel for the plaintiff-applicant places reliance upon the admission/bail orders of the Hon'ble High Court, reproduced above, and says that in view of those orders of the High Court the conviction of the applicant itself is in abeyance. He says that the applicant having been granted bail, the sentence following the order of conviction is not capable of being executed and since the sentence cannot be enforced the conviction itself must be held to be in abeyance. The learned counsel says that the punishment for the criminal offence has not yet become final on account of the pendency of the criminal appeal and the order of dismissal from service constitutes a second penalty, which cannot be validly done.

5. We have carefully considered the contentions of the learned counsel for the plaintiff-applicant and we are unable to

(A2
3)

-: 3 :-

find any merit therein. When a criminal trial ends in punishment, the operative portion of the decision consists of two distinct parts:

- (i) Conviction for the offence, and
- (ii) Punishment for the offence.

The order of bail only sets the convict at liberty; it does not result in suspending conviction. The best that can be said is that by virtue of the order of bail the operation of the sentence gets suspended. In other words, the only benefit which the admission and bail order granted by the Hon'ble High Court can bring to the applicant is to save him from judicial custody and it is only in that sense that the order of sentence cannot be executed. It may be said that a part of the decision of the criminal court remains in suspense. The most important part with which proviso (a) to Article 311 of the Constitution of India or Rule 14(1) of the Railway Servants (Discipline and Appeal) Rules, 1968 are concerned, are the "conviction" and not the sentence. We are unable to hold, therefore, that by the mere pendency of an appeal against the judgment of conviction, the order of conviction itself goes in abeyance.

6. No other point has been urged before us. The application (O.S. No. 119 of 1985) is, therefore, dismissed. Parties shall bear their own costs.

W.M. Cowan
MEMBER (A.)

Y.H.
VICE-CHAIRMAN.

Dated: April 18, 1990.

PG.