

6 A2
2

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH AT ALLAHABAD

DATED : ALLAHABAD THE 31st July
JUNE, 1995

Original Application No. 1296 of 1993

Subhash Chandra Rai, son of
Shri Bhagauti Prasad Rai, Resident
of Village Barehta, Post Pharsar
(Barhalganj), District Gorakhpur.

..... Applicant.

(By Advocate Shri Bashistha Tewari).

Versus

1. Union of India through the General Manager,
N. E. Railway, Gorakhpur.
2. Chief Personnel Officer, N. E. Railway,
Gorakhpur.

..... Respondents.

(By Advocate Shri Lalji Sinha)

CORAM :-

Hon'ble Mr. S. Das Gupta (A.M.)
Hon'ble Mr. T. L. Verma (J.M.)

(By Hon'ble Mr. T. L. Verma)

- L
1. The applicant was selected and empanelled
for appointment as Assistant Station Master.
Accordingly, intimation was given to the
applicant vide letter dated 17.8.1992 (Annexure-A-1).
Before issuing formal ^{letter of} appointment, the
applicant was called upon to furnish information
in prescribed proforma with respect to his character

2-

and antecedents. In that form, the applicant disclosed that he was convicted for offences under sections 147, 323/149, 307/149, 148, I.P.C. in Sessions Trial No. 379 of 1984, and that Criminal Appeal No. 313 of 1988 has been preferred in the High Court against the aforesaid judgment and order of conviction. The High Court has admitted the appeal and issued notices to the respondents, and the applicant has been enlarged on bail on his executing personal bond and furnishing two securities. The operation of the impugned order has been suspended. In view of the said conviction, the applicant has not been appointed and deputed for training while other juniors to him in panel have been so appointed and deputed. The applicant before filing this application submitted a representation against his non-appointment. According to the applicant, the respondents have not disposed of the said representation filed, hence this application, for issuing a direction to the respondents to depute the applicant for training for the post of Assistant Station Master and provide a job to the applicant for which he has been selected after completion of the training.

2. It has been stated that the offences for which the applicant has been convicted are not of moral turpitude and as such withholding of the appointment is arbitrary and unconstitutional. Apart from that, according to the applicant, the conviction of the applicant in the said case cannot be a ground for denying employment to him because the High Court has suspended the

operation of conviction. Further case of the applicant is that denial of the appointment on the ground of conviction, without giving an opportunity to him to show ~~that~~ ^{such as would} the conduct leading to his conviction is not, ~~justified~~ denial of the appointment, is against the principle of natural justice.

3. The respondents have resisted the claim of the applicant. In the counter-affidavit it has been admitted that the applicant has not been appointed because of his conviction in the Sessions Trial for offences under Sections 147, 323/149, 307/149, 148, I. P. C. It is also not in dispute that criminal appeal filed against the said order of conviction, has been admitted by the High Court and operation of the conviction has been suspended. The short question, therefore, that arises for our consideration is whether denial of appointment to the applicant on the ground of his conviction in the Sessions case mentioned above, is justified.

4. We have heard the learned counsels for the parties and perused the record. So far ^{as} the question of denial of appointment on the ground of political conviction or affiliation is concerned, the law is settled that a citizen at the stage of seeking employment cannot be thrown out of employment because of his political conviction or affiliation. After entering into service, he is, however, bound by code of conduct. The ratio of decision in Kalluri Vassayya Vs. Superintendent of Post Offices, Khammam Division Khammam ; reported in Services Law Reporter (24)

9

A2
5

4-

1980(2) page 433 relied upon by the learned counsel for the applicant is to the same effect as mentioned above. Since the applicant has not been denied employment because of his political conviction or affiliation, this decision is of no avail so far as the question in issue before us is concerned.

5. It may not be out of place to mention here that according to sub-Rule (1) of Rule 40 of the Railway Servants Discipline and Appeal Rules, 1968, services of a railway servant can be terminated for a conduct which has ~~led~~ ^{led} to his conviction on a criminal charge. Under the provisions of the aforesaid Rule, services of the applicant would have been terminated for his conduct leading to his conviction on criminal charge, had he been in the Railway Service.

The question is whether a conduct, ^{which} ~~which~~ would have been sufficient justification for terminating the services of a Railway Employee, is not good enough for denying employment or not. We are unable to agree with the contention of the learned counsel for the applicant that ^{when} ~~that~~ execution of trial Court's judgment is stayed ~~on~~ ^{order of} appeal ~~order~~ ^{not} removal from service on the ground of conviction can be passed. The settled view, however, is that the appropriate authority can proceed to act under Sub-Rule (1) of Rule 14 of the Discipline and Appeal Rules immediately after the order of conviction is passed without waiting for the appeal being filed or if an appeal has been filed, without waiting for the result of the appeal. That being ~~xx~~, the position of law, it may not be appropriate for the

LH

Tribunal to issue a direction to the respondents to issue appointment order to the applicant without waiting for the result of the appeal.

6. We may, however, like to point out that for terminating the services of a Railway employee under Sub -Rule (1) of Rule 14 of the Discipline and Appeal Rules, the appointing authority is required to record the finding that the conduct leading to the conviction of the delinquent employee was such that retaining him in service is not in the public interest. Before recording such finding, the employee has to be given an opportunity to show cause against such a course of action. From the averments made in the counter reply it is not clear whether the respondents issued a notice to the applicant to show cause as to why he should not be denied appointment for the reasons of his conviction. The respondents, may, however, consider the desirability of doing so before any decision on the representation filed by the applicant is taken. In any view of the matter the ultimate decision as to whether the applicant should be given appointment notwithstanding his conviction in the sessions case, will be that of the respondents.

7. The counsel for the applicant has also placed reliance on the decision of Andhra Pradesh High Court, in A Manik Rao, Vs. Director, Defence, Metallurgical Research Laboratory, Hyderabad and another, reported in Services Law Reporter 1985(1) Vol.38 page 165 and decision of the Supreme Court in

Jagtar singh vs. Director, Central Bureau of Investigation & others; reported in 1993 Supreme Court Cases (Labour & Services) page 922.

We have perused both the decisions (supra) and we find that neither of the decision is of any assistance to the applicant. In A. Manik Rao's case, the applicant was sponsored alongwith the names of some other to the Director, Defence, Metallurgical Research Laboratory, Hyderabad for being recruited to the post of Tradesman Turner in that Defence Organisation. He was selected provisionally for the said post. His selection was subject to verification of character and antecedents found by the police authorities and ~~xxx~~ being medically fit. The applicant disclosed in the attestation form that he was earlier convicted, ~~xxxxxxxxxxxxxxxxxxxx~~ ~~xxxxxxxxxxxxxxxxxxxx~~ for shouting political slogans in 1977. The appointment of the applicant to the post of Trades man (C) was cancelled on the ground of his conviction. Andhra Pradesh High Court while setting aside the order cancelling the appointment of the applicant observed that :-

"The petitioner's provisional appointment must have raised high hopes and great expectations in the young and energetic mind of the petitioner. Before dashing those high and legitimate hopes to the ground, the State ought to have followed the principles of natural justice and the petitioner ought to have been given an opportunity to show cause why his provisional appointment should not have been set-aside. Setting aside a provisional employment has as serious consequences as setting aside a provisional employment can operate

permanently. Before the State can be permitted to produce those catastrophic results, law would require the State to follow the principles of natural justice. The petitioner in the circumstances, ought to have been accorded a fair opportunity and hearing."


The facts of the case before the Andhra Pradesh High Court referred above and the case before us are all together different inasmuch as the respondents have not issued any appointment provisional or otherwise ^{in favour of the applicant}, hence this decision is of no help to the applicant.

8. In Jagtar Singh's case, the appellant was selected by the Union Public Service Commission for appointment to the post of Senior Public Prosecutor, Central Bureau of Investigation, Ministry of Home Affairs, Government of India. He was, however, denied the appointment on the ground that appellant was not suitable person for appointment for the reasons recorded in the sealed cover, produced before the Tribunal. The Tribunal did not open the sealed cover and relying on the averments made in the counter-affidavit, dismissed the application of the applicant after perusing the counter and sealed cover; held that denial was based on surmises and conjecture arising out of the single incident which remarked non-application of mind and was therefore, not justified. The facts of Jagtar Singh's case and the case on hand, not being identical, the ratio of the decision of

the Supreme Court in the said case has no application under the facts of the case as such we find that decision of the Supreme Court is no no assistance to the applicant.

9. For the above reasons, the denial of the appointment to the applicant on the ground of his conviction by Sessions Court for the offences under Sections 147, 323/149, 307/149 and 148, I. P. C. can^{not} be faulted and as such no direction as prayed for, can be issued. This order shall not however, **debar** the respondents to call upon the applicant to explain as to why **he** ~~xxxxxxxxxx~~ should not denied the appointment on account of his conviction on criminal charges and decide the question of the applicant's appointment after arriving at a decision whether the conduct of the applicant leading to his conviction is such that he should not be appointed. There would be no order as to costs.


J.M.


A.M.