

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 29th day of August, 2003.

QUORUM : HON. MR. JUSTICE R.R.K. TRIVEDI, V.C.

HON. MR. D. R. TIWARI, A.M.

O.A. No. 906 of 2003.

Jhiloo S/O Sarju R/O Village Jhotna, Post Office Jhotna,  
Ghazipur.....

..... Applicant.

Counsel for applicant : Sri J.K. Chakravarty.

Versus

1. Union of India through General Manager, N.E. Railways,  
Gorakhpur.

2. Assistant Divisional Engineer, North Eastern Railway,  
Varanasi.

3. Senior Divisional Engineer-Ist North Eastern Railways,  
Varanasi.....

..... Respondents.

Counsel for respondents : Sri K.P. Singh.

O R D E R (ORAL)

BY HON.MR. JUSTICE R.R.K. TRIVEDI, V.C.

By this O.A. filed under section 19 of A.T. Act, 1985, applicant has challenged the order dated 14.5.2001 (Annexure-1) by which applicant has been removed from service on the basis of his conviction under section 304 IPC in Session Trial No.85/1978 of District Ghazipur. The applicant was convicted and se-ntenced <sup>for</sup> imprisonment for four years. He served out the sentence by remaining in jail from 5.7.96 to 26.1.99. After applicant was released from jail, he gave application for permission to join the duty. He also annexed therewith a certificated 7.2.1999 issued by Jail authority. Respondent No.2, Assistant Divisional Engineer, however, by order dated 14.5.01 passed the order of removal against the applicant under Rule 14(1) of Railway Servant (Discipline & Appeal) Rules 1968.

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2. Aggrieved by the aforesaid order, applicant filed appeal which has been dismissed by one line order on 26.9.01 (Annexure-2). Sri K.P. Singh, counsel for respondents raised the preliminary objection that there is delay in filing the O.A. and the applicant is not entitled for any relief from this Tribunal. We have examined this aspect. It appears that the applicant had filed appeal on 30.5.01 against the order dated 14.5.01. As his appeal was not decided, he filed writ petition No.17694/02 before Hon'ble High Court. The writ petition was decided finally on 1.5.02 directing the Senior Divisional Engineer, the Appellate Authority Respondent No.3 to dispose of the appeal within two months. The applicant when filed the order of Hon'ble High Court before the Appellate Authority, he was informed that appeal has already been dismissed on 26.9.01.

3. The case of the applicant is that the order of the Appellate Authority was never communicated to him and he remained ignorant of the same. Thus, the applicant could have no knowledge of the appellate order <sup>before the order</sup> of Hon'ble High Court dated 1.5.02. This O.A. has been filed on 1.8.03. There is sufficient explanation for the delay in filing the O.A. and the delay is accordingly condoned.

4. Learned counsel for applicant has submitted that appeal of the applicant has been dismissed by one line order which is cryptic and ~~there~~ <sup>which</sup> does not disclose any reason for not accepting the case of the applicant. The Disciplinary Authority in its order dated 14.5.01, only said that applicant is not a fit person to be retained in service and, therefore, he is being removed. He also did not recorded any reason as to why he could not be retained in service. The applicant has already served <sup>at</sup> ~~of~~ the sentence awarded by the Criminal Court and during that period, no disciplinary proceedings were initiated against him. The order of removal was passed only when he came for permission to join. Rule 14, under which

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order has been passed, reads as under :-

"14. Special procedure in certain cases

Notwithstanding anything contained in Rules 9 to 13 :

- (i) Where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge; or
- (ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or
- (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules;

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit :

Provided that the Railway servant may be given an opportunity of making representation on the penalty proposed to be imposed before only an order is made in a case falling under Clause (i).

Provided that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule."

From the perusal of the Rule, it is clear that the Disciplinary Authority <sup>has</sup> been given <sup>a</sup> discretion to consider the facts and circumstances of the case and then pass an order which <sup>he</sup> deems fit. In the present case, the applicant has stated that he served as temporary Gangman for about 10 years and then he was confirmed on 1.1.1974 as permanent Gangman and served the department about 22 years without any break. The performance of the applicant was excellent and there was no complaint. He was falsely implicated in a criminal case in which he was convicted. The disciplinary Authority as well as the Appellate Authority, thus, were under obligation to take into account <sup>all</sup> such facts which may be necessary for determining as to whether the applicant was fit to be retained in service or not. The conviction and sentence by itself could not be a determining factor for passing order of removal against the applicant/employee. The Disciplinary Authority and Appellate Authority were also required to consider the case whether the applicant <sup>had</sup> served Railways for long time with satisfactory

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record and he may be retired compulsorily instead of removal or dismissal. In the present case, the offence was not of that serious. <sup>u</sup>For determining the role of the applicant in criminal case, <sup>u</sup>The authorities could peruse the record of the criminal case. In our opinion, both the authorities have committed error in passing order of removal without applying mind to necessary facts. The matter requires to be remitted back for fresh orders in the light of the observations made above.

5. For the reasons stated above, this O.A. is allowed. The orders of the Disciplinary Authority dated 14.5.01 (Annexure-1) as well as the Appellate Authority dated 26.9.01 (Annexure-2) are quashed. The case is remitted to the Disciplinary Authority for passing a fresh order in accordance with law in the light of observations made above and in light of the judgments passed by Hon<sup>ble</sup> <sup>Supreme Court and</sup> High Court which may be filed by the applicant.

6. As the case is old, the Disciplinary Authority will pass the order within three months from the date of receipt of a copy of this order.

No order as to costs.

*D. A. M.*  
A.M.

*V. C.*  
V.C.

Asthana/