

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 53 of 2006

Monday this the 12th day of May, 2008

**Hon'ble Mr. Justice A.K. Yog, Member (J)
Hon'ble Mr. K.S. Menon, Member (A)**

Munshi Prasad S/o Late Sri Suraj Narain, R/o Abdul Chak, P.O.
Dandupur, District Kushi Nagar.

Applicant

By Advocate Sri B. Tiwari.

Versus

1. Union of India through the General Manager, N.E. Railway,
Gorakhpur.
2. E.M.E. Field & Headquarter, Mechanical Workshop, N.E.
Railway, Gorakhpur.

Respondents

By Advocate Smt. Shikha Singh.

ORDER

By Justice A.K. Yog, Member (J)

The controversy raised in this O.A. is in a short compass.

2. ⁹Munshi Prasad, the applicant, was appointed as Khalasi in the year 1976 in the Railways. He was charge sheeted on July 8th, 1991 (according to the applicant on false and concocted facts in a frivolous incident at the instance of one Tej Bahadur Singh, R.P.F. Constable. The applicant was promoted in due course to the post of Carpenter Grade II, the said order could not be given effect and meanwhile against the applicant a complaint u/R.P. Act was lodged before Additional Chief Judicial Magistrate (Railway), Gorakhpur which; it was rejected on the ground that no witness was shown in the complaint; the prosecution filed another complaint before the Additional Chief Judicial Magistrate (Railway), Gorakhpur; the said complaint was registered under Section 34 of R.P. (U.P.) Act-being Case No. 664 of 1991, on the ground that name of witness appeared on the back of the complaint; the Additional Chief Judicial Magistrate (Railway), Gorakhpur finally,

vide Judgment and Order dated 17.02.2004/annexure-2 to the counter affidavit found the applicant guilty of the offence under Section 3 R.P. (U.P.) Act and convicted for two years imprisonment (simple) and to pay Rs.2000/- as fine, learned Magistrate also provided that in case fine is paid, imprisonment period shall be reduced by 15 days; feeling aggrieved, the applicant filed Appeal No. 20 of 2004 M.P. Gupta Vs. State of U.P and T.B. Singh (annexure A-2) before District and Sessions Judge who granted bail; the applicant was set free during pendency of Appeal which is pending; the applicant claims that he was falsely implicated by one Tej Bahadur Singh R.P.F. personnel; in support of his plea of 'false implication' and 'malafide' action and that the Applicant was later acquitted, filed copy of Judgment and Order dated 08.11.2000 passed by District and Sessions Judge, in Criminal Appeal No. 25 of 2000 (with reference to another incident of March 10, 1992 on a complaint filed before ACJM by one Sri Ghanshyam Meena, S.I., RPF Post Karkhana, Gorakhpur; the respondents' authorities did not chose to initiate an independent-Departmental disciplinary proceedings into alleged 'charge'; he continued in service from 1991 to 2004 (for 13 years approx) i.e. from the date of order of conviction passed by ACJM [Railway] till impugned show cause Notice was passed (i.e. 05.11.2005 annexure A-1 to the O.A.) and the order of removal dated 18.01.2006-Annexure A-7 (filed with the Rejoinder) and being aggrieved the present O.A.-for quashing of these orders-being, primarily on the ground of violative of relevant statutory rule.

3. We find no explanation on record as to why the department did not initiate Disciplinary Proceedings promptly. For convenience, we reproduced the relevant portion of the impugned show cause Notice dated 05.11.2005/Annexure A-1 to the O.A., which reads: -

"MEMORANDUM

(1) Shri Munshi Prasad Gupta, T.No. 8676, Designation S.K. Molder Gr.-III, Furnishing-I is informed that on a careful consideration of the circumstances of the crime no. 1/91 under 3 RP(U.P.) Act, case No. 664/91 in which he was convicted on 17.02.2004 by ACJM (Railway) Gorakhpur on a criminal charge, the undersigned considers that his conduct which has led to his conviction, is such as to render his further retention in public

service, undesirable. The undersigned has, therefore, provisionally come to the conclusion that:

Shri Munshi Prasad Gupta is not a fit person to be retained in service and so the undersigned, in exercise of power conferred by Rule 14 (i) of the Railway Servants (Discipline and Appeal) Rules, 1968, proposes to impose on him the penalty of removal from service.

(2) Shri Munshi Prasad Gupta is hereby given opportunity of making representation on the proposed penalty. Any representation which he may wish to make on the penalty proposed will be considered by the undersigned before passing final orders. Such representation, if any, should be made in writing and submitted so as to reach the undersigned not later than 15 days from the date of receipt of this memorandum by Shri Munshi Prasad. If no representation is received from him within the stipulated time, it will be presumed that he has no representation to make and final orders will be liable to be passed against him ex-parte.

The receipt of this memorandum should be acknowledge by Shri Munshi Prasad Gupta."

4. For convenience we may reproduce Rule 14 (reproduced in Para 14 of the Counter-Reply), reads: -

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 the 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 any order is made in a case falling under Clause (i):

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

Any

The aforesaid Rule is being reproduced in paragraph No. 14 of the counter affidavit of the respondents.

5. Para-3 of the impugned order dated 18.01.2006 refers to Para 3 of Board's letter dated 06.06.1994/annexure-3 to the counter affidavit and the same is, for convenience, reproduced below: -

"3. Legally speaking, when a person is convicted by a Criminal Court, the same shall remain in force until and unless it is reversed or set aside by a competent court to appeal. The mere filing of an appeal and/or stay of the execution of the sentence do not take away the effect of conviction, unless the appeal is allowed and the conviction is set aside by the appellate court. In the case of Om Prakash Narang Vs. Union of India and ors. (1990) 12 ATC 365, the full Bench of CAT held that during pendency of appeal in a criminal case, only the sentence is suspended and not the conviction itself. In view of this, the competent disciplinary authority may proceed with the institution/completion of disciplinary proceedings, including imposition of the penalty as prescribed in the relevant disciplinary rules on the basis of conviction imposed on a public servant by a criminal court, notwithstanding the fact that a higher court on an appeal filed by the public servant."

(Underlined to lay emphasis)

6. Learned counsel for the applicant has placed reliance upon following decision/s of: -

- (i) *Divisional Personnel Officer v. T.R. Chellappan (Fazal Ali, J)*
1976 (L&S) SCC 398.
- (ii) *Union of India v. Tulsiram Patel*
1985 (L&S) SCC 672;
- (iii) *Shyam Narain Shukla and another v. State of U.P. and others*
(1989) 2 UPLBEC 418;

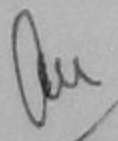
7. 'Ratio' laid down by the Apex Court in the case of Divisional Personnel Officer (supra), is in the words "it appears to us that proviso (a) to Article 311 (2) is merely an enabling provision and it does not enjoin or confer a mandatory duty on the disciplinary authority to pass an order of dismissal, removal or reduction in rank

the moment an employee is convicted.....In these circumstances, therefore, we think that Rule 14 (i) of the Rules of 1968 only incorporates the principles enshrined in proviso (a) to Article 311 (2) of the Constitution.

8. On behalf of the applicant it is argued that 'impugned order' suffers from manifest error in as much as Railway administration appears to be labouring under some mistaken belief that they can pass 'Order of Removal' (subject matter of challenge in this O.A.) on the ground of 'conviction in criminal case' even if the Order of Conviction is under challenge before Appellate Authority and that the applicant was released on Bail, the respondents did not invoke their jurisdiction to initiate Disciplinary Proceedings for about 13-14 years, hence it was not a fit case for passing of removal order mechanically on the ground that there is conviction without applying mind to the relevant facts/circumstances.

9. In the last, learned counsel for the applicant submitted that paragraph No. 3 of Board's letter dated 06.06.1994 (quoted above) has been misread and respondents have failed to appreciate it in correct perspective. It has been wrongly applied Rule 14 (i) (referred to above) and reference to Para 3 of said G.O. letter dated 06.06.1994 is also palpably misconceived. The respondents were free to initiate 'disciplinary proceedings' as per rule/s applicable to the instant case. Argument is that the department having chosen not to start 'disciplinary inquiry' on its own and on the other hand blindly relied upon the existence of order of conviction. In other words, the respondents' could not act mechanically and pass order of removal, law enjoins upon them to advert to relevant facts and circumstances of the case, which the respondents authorities have miserably failed to appreciate and take into account such relevant circumstance.

10. Be that as it may, we find that Board's letter dated 06.06.1994 (referred as above) has not been properly appreciated and wrongly referred.

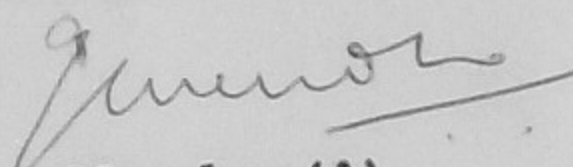


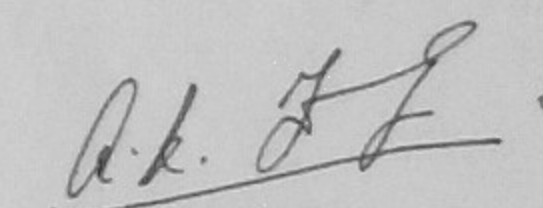
11. We are of the view that the impugned show cause notice/order dated 05.11.2005 (annexure A-1) and 18.01.2006 (annexure A-7) cannot be sustained and deserve to be set aside.

12. In the result, we set aside the impugned orders dated 05.11.2005 (annexure A-1) and 18.01.2006 (annexure A-7) with a direction to the respondents to pass a fresh order in accordance with law in the light of the decision referred to above and also take on account various citations highlighted by us, above in this order, as well as the fate of appeal, if it is decided in the meanwhile.

11. The O.A. stands disposed of with the above observations/directions.

12. No cost.


Member (A)


Member (J)

/M.M/