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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 29 OF 1986.
~~XXX~~

DATE OF DECISION 16-10-1986

CHANDRABHANSIH M. THAKUR Petitioner

MISS. J.C. BHATT Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents

K.K. SHAH Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No.*

(85)

JUDGMENT

O.A.No.29 OF 1986

Date: 16-10-1986.

Per: Hon'ble Mr.P.M. Joshi, Judicial Member.

The petitioner, Mr.Chandrabhansingh M. Thakur, in this application, has challenged the order dated 20.10.1983; whereby the Disciplinary Authority (Deputy Chief Mech. Engineer, Dahod) has removed the petitioner from his service, holding that his conduct which had led to his conviction is such as to render his further retention in the public service undesirable. The petitioner has claimed reinstatement and back wages from the date of his removal.

Miss. J.C. Bhatt, the learned counsel for the petitioner has raised two-fold contentions. Firstly, the impugned order is bad in law as no departmental inquiry was held by the disciplinary authority before passing the impugned order. Secondly, having regard to the length of the services and the nature of the theft alleged to have been committed by the petitioner, the order of penalty of removal from services is unduly harsh and disproportionate and deserves to be quashed. In support of her submission she has relied on the case of R.M. Parmar Vs. Guj.Electricity Board, Baroda (23 G.L.R. p. 352).

It is pertinent to note that the disciplinary authority had proceeded against the petitioner on the basis of the order of conviction dated 27th September, 1983 passed by the learned Judicial Magistrate, First Class, (Railway) Godhra, in Criminal Case No. 463/82, whereby he was convicted and sentenced to suffer 15 days S.I. and fine of Rs.100/- for the offence punishable under

section 3 of RP(UP) Act. The present petitioner, however, when preferred an appeal No. 49/84 which came up for hearing before the learned Additional Session Judge, Panchmahals, Dist: Godhra, who partly allowed the appeal, was granted the benefit of the provisions of the Probation of Offenders Act and while confirming the order of conviction, released him on his entering into a bond in the sum of Rs. 1000/- and a surety for a like amount.

When the Railway servant is convicted by a Court of law on Criminal charge and action to dismiss, remove or reduce him is to be taken on the basis of his conduct leading to conviction, it is not necessary to observe the usual disciplinary procedure. In such a case even the issue of charge-sheet is not necessary and the penalty may be imposed straight way. However it is necessary to serve a show cause notice before imposing a penalty. (See Rule 14 of the Railway Servants Discipline & Appeal Rules, 1968).

In the instant case the petitioner has been served with the notice dated 30th September, 1983. The impugned order dated 20.10.1983 has been passed after affording the petitioner with an opportunity of making representation on the question of penalty. The petitioner has not been able to establish that there is any infirmity or irregularity in passing the impugned order of removal.

With regard to the second contention, it may be stated here that the petitioner after being promoted as a Foundry Attendant with effect from 4.1.1974, he was placed under suspension, for a criminal offence i.e., theft of Railway material, with effect from

19.6.1975 and was removed from Railway service with effect from 4.5.1977. He was convicted under RP(UP) Act of 1966. The petitioner was not on duty from 19.6.1975 to 7.2.1980. However he had been reinstated in the service from 8.2.1980. The petitioner was again under suspension with effect from 23.9.1982 to 1.11.1982 on criminal charge and thereafter he was removed from Railway service with effect from 20.10.1983. In view of this it is straneously urged by Mr. K.K. Shah, the learned counsel for the respondents that when the charge of the theft of brass ~~ingot~~ valuing Rs. 250/- from the Foundry, where he was serving as an attendant ~~has been established~~ in a criminal case/and confirm in appeal, the order of removal was quite justified. In his submission, the same can not be interferred by the Tribunal in this application. Ordinarily, the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself unfair.

The disciplinary authority has the undoubted power after hearing the delinquent employee and considering the circumstances of the case of inflict any major penalty on the delinquent employee. If the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude and therefore it is not desirable or conducive in the interest of administration to retain such a person in service the authority will be competent to pass an order of removal.

Several important factors required to be considered in the matter of sufficiency or adequacy of the punishment in disciplinary proceedings, are aptly laid down in the case of T.R. Chellapan Vs. Union of India (A.I.R. 1975 S.C. p. 2216) and also in the case of R.M. Parmar (Supra). They are certainly very much instructive and can not be overlooked. Bearing in mind the circumstances of the case in which the petitioner was convicted on 27.9.1983 on a criminal charge and especially when the petitioner was indicated earlier for the misconduct, eventhough reinstated subsequently, it can not be said that the Tribunal should interfere with the discretion exercised by the disciplinary authority in passing the order of removal in the case of the petitioner. Both the contentions fail, as they are devoid of merits. As a matter of fact, there are no valid ground to interfere with the impugned order of removal passed by the disciplinary authority.

In the result, the application, therefore, fails and stands dismissed with no order as to cost.

R. Trivedi
(P.H. TRIVEDI)
VICE CHAIRMAN

S. Joshi
(P.M. JOSHI)
JUDICIAL MEMBER