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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 157 OF 1988
T.A. No. ~~XXXXXX~~

DATE OF DECISION 29.7.1991

Mahadev Amarsi, Petitioner

Mr. B.I. Mehta, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent(s)

Mr. B.R. Kyada, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. S. Santhana Krishnan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. Whether it needs to be circulated to other Benches of the Tribunal. N

(X)

Mahadev Amarsi,
At & Post Thangadh,
Asandas & shop,
Taluka Chotila,
Dist: Surendranagar.

..... Applicant.

(Advocate: Mr. B.I. Mehta)

Versus.

1. The Union of India,
Notice to be served through
the General Manager,
Western Railway, Churchgate,
Bombay - 1.
2. The Chief Engineer(Construction),
Western Railway,
Ahmedabad.
3. The Executive Engineer(Construction),
Western Railway,
Rajkot.

..... Respondents.

(Advocate: Mr. B.R. Kyada)

J U D G M E N T

O.A.No. 157 OF 1988

Date: 29.7.1991

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

The applicant ex-Railway employee was coaccused of another in criminal treat in case No. 422 of 1979 under section 3 of the Indian Railways Property (Unlawful possession) Act, 1966 for removing one brick of railway coal for which offence he was convicted and fined Rs. 25 by judgment dated 18.9.1988 on pleading guilty during the trial. He says that he pleaded guilty under the understanding given to him that pleading guilty would result in lesser punishment. The other accused who did not plead guilty was acquitted. The respondents, after three years of the conviction of the applicant during which period he was retained on duty, issued memo dated 8.3.83 to show cause why, in view of his conviction, he should not be removed/dismissed from service. The applicant made the representation. However, the Executive Engineer

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(Construction) by order dated 2.6.1983 imposed on him penalty of removal from service on the sole ground of court conviction. His disciplinary appeal against the order was rejected and so was SCA No. 1166 of 1984 in the High Court of Gujarat. The applicant preferred LPA No. 163 of 1985 which was ultimately not pressed on the assurance of the Railway advocate that if the applicant makes a representation to the authority, the same would be considered sympathetically. It is seen from the oral order dated 8.7.1985 of the High Court learned that applicant's advocate Mr. Mehta had submitted that the coal the applicant is alleged to have stolen was therefore only handful and the punishment of removal disproportionate to the offence. The applicant then submitted his representation dated 15.7.1985 to the Chief Engineer (Construction). But the same was rejected. The applicant then preferred ^a delayed appeal (SIC) dated 27.6.1987 to the General Manager and also requested for condonation of delay. The applicant alleges that he received no decision on this appeal. He therefore filed this application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant's material contentions in this application are that he would not have confessed in the Court had he known that he would be removed from service after his conviction and that the LPA was not pressed because of the Railway advocate's assurance figuring in the oral order in the LPA because of both of which his representation was required to be considered sympathetically. Learned counsel Mr. Mehta relied upon this Bench judgment in *Foola Bapu V/s. Union of India (Western Railway)* 1987 (4) SLR 190. In para 9 of this judgment relied upon the ratio thought is that along with the nature of the offence for which

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an employee has been convicted should be considered mitigating factors for deciding the quantum of punishment and that not shown to be done the punishment awarded would be a case of nonapplication of mind. Further case law on the disproportionateness of punishment is also relied upon.

3. The disciplinary authority's order (Ann. A-3) is oneline order showing Court conviction as the sole ground for the punishment of removal. The appellate order (Annexure A-6) refers to the facts that the applicant had filed no appeal against court conviction and that theft is a serious misconduct of a Government servant and therefore no grounds for sympathetic consideration made out. The appeal was rejected. We also notice from Annexure A-7, applicant's departmental appeal addressed to the General Manager, that the applicant was employed as a Watchman. If a Government Watchman is convicted of theft, his misconduct will naturally be more aggravated than of any other Govt. servant for the Watchman is himself indulging in what he is paid - and therefore duty bound - to protect. That may provide the why of the applicant's confessing during the court trial.

4. The case law relied upon by Mr. Mehta is of times before the Supreme Court judgment in Parma Nanda's case (AIR 1989 SC 1185) laying down the ratio that this Tribunal is not to act as a departmental appellate authority to interfere with punishment awarded by the departmental authority. Of course, some exceptions to the ratio are there in this judgment. But we are of the view that for a Government Watchman convicted of theft, the punishment of removal from service is not disproportionate as he himself

Date	Office Report	Orders
18-3-91		<p>Present: Mr. B.I. Mehta, learned counsel for the applicant.</p> <p>Mr. B.R. Kyada, learned counsel for the respondents.</p> <p style="text-align: center;"><u>O R D E R</u></p> <p>Heard learned counsel for both the parties. Hearing completed. Judgment reserved.</p> <p style="text-align: right;">M.M.S (M.M. Singh) Admn. Member</p> <p>ttc.</p> <p>29-3-91 Present: None present for applicant & Respondent</p> <p>Judgement pronounced to day</p> <p style="text-align: right;">M.M.S 28(7)(c) (M.M. Singh) Admn. Member.</p>