

(2)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 322 of 1988
~~XXXXXX~~

DATE OF DECISION 22-06-1988

Shri Vithal Bava Petitioner

Shri D. M. Patel Advocate for the Petitioner(s)

Versus

Divisional Signal & Tele Respondent

Communicating Engrs., & Ors.

Shri R. M. Vin 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 ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *No*

3

Shri Vithal Bava,
Railway Quarters,
Visavadar,
Taluka-Visavadar,
Dist-Junagadh

..... Applicant

(Adv. : Shri D. M. Patel)

Versus

1. The Divisional Signal &
Telecommunicating Engineers,
Western Railway,
D.R.M. Office,
Dist-Bhavnagar(Saurashtra).

2. The General Manager,
Western Railway,
Churchgate,
Bombay.

..... Respondents

(Adv. : Shri R. M. Vin)

O R A L . O R D E R

O.A./322/88

22-06-1988

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

In this application, the petitioner Shri Vithal Bava of Visavadar (Junagadh District), serving as a Khalasi in the office of the Divisional Signal and Tele-Communication Engineer, Western Railway, has filed the application under Section 19 of the Administrative Tribunals Act, 1985, on 5-5-1988. He has challenged the validity of the show cause notice No.E/Sog/308/83/11 dated 13-4-1988 (served on 22-4-1988) issued by the Divisional Signal and Tele Communication Engineer whereby the petitioner has been called upon to explain why the penalty of removal from service should not be imposed on him on the basis of the order of conviction in a criminal charge. The petitioner has prayed that the impugned show cause notice be quashed and set aside and in the meantime further proceedings based on the show cause notice be stayed.

2. Relying on the case of R. S. Das S/o Kamtaprasad, Applicant v/s. Divisional Supdt. Allahabad (AIR 1960 Allahabad 538), it was strenuously urged by Mr. D. M. Patel the learned counsel for the applicant that the disciplinary authority is not competent to impose penalty on the basis of conviction as the order of conviction passed by the Trial Court and the appellate court is under challenge in the criminal Revision Application, which is pending before the High Court. According to him when the order of conviction is under challenge and criminal revision is pending before the High Court it cannot be said that a proceedings have led to his conviction. In his submission, the impugned order is accordingly bad in law.

3. Mr. R. M. Vin the learned counsel appearing for the respondents Railway Administration has opposed the application on the ground that Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968 does not say that in passing an order of removal the disciplinary authority shall have to wait till the disposal of the appeal is preferred by the convicted railway employee.

4. The fact that the petitioner and two others were tried for the offences punishable under Section 323, 504, 506(ii), 352 and 333 with Section 114 of Indian Penal Code by the learned Assistant Sessions Judge and the petitioner was accordingly convicted under Section 333 of the I.P.C. and sentenced to suffer two years R.I. and a fine of Rs.500/- ^{admittedly} is not in dispute. More over the petitioner and two others filed Criminal Appeal No.41/83 in the Court of Sessions Judge, Junagadh who was pleased to allow the appeal so far as other two accused were concerned and they were acquitted, but the order of conviction of the petitioner was confirmed. However, the learned Sessions Judge reduced sentence from two years R.I. to 3 months R.I. etc. etc. Being aggrieved by the judgment

and the order ~~xx~~ of conviction and sentence passed by the Sessions Judge, Junagadh in Criminal Appeal No.41/83, the petitioner has preferred a criminal revision application No.297/84 in the High Court of Gujarat and the same is still pending for final decision. It is, therefore, prayed that the respondents should be restrained from taking any disciplinary action in pursuance of the impugned show cause notice.

5. A short point raised in this application is whether on the basis of an order of conviction and sentence passed by the Trial Court and confirmed by the Appellate Court, against which Criminal Revision Application is pending, the present petitioner can be removed from his service by the respondents or is there any bar against the Department from taking disciplinary action.

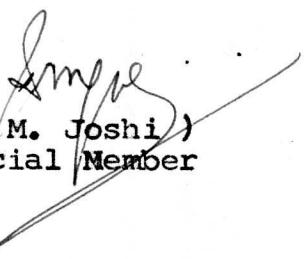
6. Under Rule 14 of the Railway Servants (D&A) Rules, 1968 the disciplinary authority after considering the circumstances of the case may pass an order of removal of railway servant from his service if he has been convicted on a criminal charge. In the instant case, the petitioner has been convicted and sentenced for the offence punishable under Section 333 of the Indian Penal Code. Section 333, speaks of voluntarily causing grevious hurt to deter public servant from his duty. Obviously, therefore, the petitioner has been convicted, as he is found guilty of moral turpitude. It is in this context, the respondent authorities have proceeded to impose the order of penalty on the basis of the order of conviction for which the petitioner has been served with a Show Cause Notice No.E/Sog/308/83/11 dated 13-4-1988.

7. In case of T. R. Subraman and Ors. v/s. State of Madras (1970 Lab. I.C. 1246), it has been held by the Madras High Court that conviction begins to operate as soon as it is recorded. In an appeal against the conviction, the conviction is not suspended and it remains pending and does not cease to

exist. It has been further observed by his Lordship that once the conviction is recorded by a competent court of law on a criminal charge and so long such conviction is not set aside either on an appeal or revision it remains effective and can be made the basis of dismissal or removal of a public servant.

8. In the case of R. S. Das (Supra) the order of dismissal was passed on the strength of the finding reached by the Magistrate, who had convicted the accused for offence under Section 409 and 477A of the Indian Penal Code. After appeals had succeeded the petitioners approached the respondents to reinstate them and this request of the petitioners was not accepted. Evidently, therefore, the said case is not at all applicable in the present case. In Arjunprasad v/s. Union of India (C.A.T. Calcutta Bench(1988) 6 A.T. case 546) relying on the instructions contained in the department of Personnel, O.M. No.37/3/74-AVD.III dated 19-9-1975 and Rule 14(I) of R.S.(D&A) Rules, 1968, it was held that the removal is permissible even during the pendency of appeal.

9. In this view of the matter, the petitioner's plea that the respondents should be restrained from taking any disciplinary action in pursuance of the impugned show cause notice during the pendency of the criminal revision application before the High Court, cannot be accepted. Accordingly the application fails. We however, observe that the petitioner would not be without remedy for ever. If he, ultimately, succeeds in the Hon'ble High Court and if order of conviction and sentence passed against him is set aside, he will be reinstated to his former post as a consequence thereof. Hence, the application is rejected at the stage of admission.


(P. M. Joshi)
Judicial Member


(P. H. Trivedi)
Vice Chairman