

CENTRAL ADMINISTRATIVE TRIBUNAL

~~PRINCIPAL BENCH DELHI~~

AHMEDABAD BENCH

O.A No. 504/88

198

~~KA No.~~

DATE OF DECISION 1/4/1991

Shri Taruk Taiyabali PetitionerMr. U.M. Shastri Advocate for the Petitioner (s)

Versus

Union of India & Ors. RespondentMr. N.S. Shevde Advocate for the Respondent(s)

CORAM .

The Hon'ble Mr. P.H. Trivedi

: Vice Chairman

The Hon'ble Mr. R.C. Bhatt

: Judicial Member

JUDGMENT

(6)

Shri Taruk Taiyabali
Village Naded,
Rama Bharwad's Chawl,
Barejadi,
District Ahmedabad.
(Advocate: Mr.U.M.Shastri)

: Applicant

Versus

1. Union of India,
Through:
The General Manager,
Western Railway,
Churchgate, Bombay.
2. The Sr.Divisional Safety Officer,
Baroda Division, Western
Railway, Baroda.
3. The Divisional Railway Manager,
(Establishment) Western
Railway, Pratapnagar, Baroda. : Respondents.
(Advocate: Mr. N.S.Shevde)

O R D E R

OA/504/88

Date: 1/4/1991

Per: Hon'ble Mr. P.H.Trivedi

: Vice Chairman

In the absence of petitioner or his learned advocate we heard Mr.N.S.Shevde, learned advocate for the respondents to decide the case on merits.

2. In this application under Section 19 of the Administrative Tribunals Act, 1985 the petitioner is admittedly convicted under Section 5 of the Railway Properties Unlawful Possession Act for the Tiebar of value of Rs.1000 on which he was released on execution bond on probation for six months. On 23.3.1980 a show cause notice was issued under Rule 14(1) of the Railway Servants Discipline and Appeal Rules 1968 and was punished with removal from service. He appealed against this order and the appellate authority by its order dated 29.12.1987 after ascertaining that the order was passed with proper application of mind found as follows:-

"The employee has been convicted of criminal charge in the court. He has pleaded guilty of his offence. The case of theft is serious charge and unbecoming behaviour of moral turpitude. In such cases, the cost of property is immaterial. It is the crestfall demanour which has tarnished

the image of administration is important and paramount. Retaking such a fallen man in service testamounds to betrayed to our committments to the proplse of ensuring clean, honest, and dedicated service. The employee's appeal is not considered and removal fully justified".

3. The order of punishment of removal from service is not on record. We have therefore been unable to ascertain from its perusal whether the reasons show that at that stage the competent authority had given the circumstances of economic hardship as well as for harmonising the punishment in the departmental case with the sentence and objectives behind the conviction and the releasing the petitioner on probation in the criminal case.

4. Obviously the criminal court did not find the main *brunt* of the guilt to rest upon the petitioner in this case as another accused has been sentenced more heavily and the petitioner has been let off merely with the sentence of conviction until the rising the court and for executing bond under Section 452 of the Criminal Procedure Code. In terms in the judgment it is stated that the petitioner resorted to the criminal action on amount of his being unable to maintain his family which points to the economic hardship. It is not therefore clear how the punishment of removal from service is ordered without appreciating that the objectives of visiting the petitioner which so light a consequence would be frustrated by such disciplinary action. It is true that as decided by the Supreme Court, the Tribunals are required not to go into the question of harshness of disproportionalitiy of punishment but that does not mean that the gusion of application of mind by the competent authority at the stage of order of punishment and at the stage of the appellate authorities order should not be scrutinised so that Tribunal is satisfied that they have applied their mind. It appears to us, in view of the facts established that the petitioner has pleaded innocence in the departmental case and replied to

the show cause notice without ignoring or concealing the fact that he was convicted in the criminal case. This is a point on which the competent authorities were obliged to examine the matter on merits and to record why removal from service was necessary inspite of the economic hardship involved by such a decision which in terms persuaded the Court from refraining to impose a higher punishment. In view of the statement by the appellate authority that the petitioner has pleaded guilty to the offence and of his statement in reply to the show cause notice that he was innocent, it is a fair presumption that his plea of guilty was made before the criminal court. It is known that in such cases very often the accused are prevailed upon to plead guilty to avoid a severer punishment but if that is so it is all the greater reason that severer punishment in another forum is not visited upon them in disciplinary proceedings because of their plea of guilt. In these circumstance, we direct that the case be remitted to the appellate authority for a fuller and more adequate appreciation of the aspect of economic hardship and for application of mind in regard to punishment to be imposed upon the petitioner. The case is disposed of accordingly. There shall be no order as to costs.

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(R.C.Bhatt)
Judicial Member

Phir

(P.H.Trivedi)
Vice Chairman