

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A.NO. 179/93
T.A.NO.

DATE OF DECISION 29.07.1998

Mr. V.B. Galoliya

Petitioner

Mr. Xavier M.M.

Advocate for the Petitioner [s]

Versus

Union of India and Others

Respondent

Mr. R.M. Vin

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. P.C. Kannan, Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? *ne*
- 2, To be referred to the Reporter or not ? *no*
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? *ne*

Vithalbhai Bavabhai Galolia,
Junichavand, Via. Sarsai,
Taluka - Visavadar,
District JUNAGADH.

...Applicant

(Advocate: Mr. Xavier M.M.)

VERSUS

1. The Union of India,
Owning & Representing
Western Railway through its
General Manager, Western Railway,
Churchgate, Bombay - 20.
2. The Divisional Railway Manager,
(Notice to be served to:-)
The Additional Divisional Rly. Manager,
Western Railway, Bhavnagar Division,
Bhavnagar Para - 364 003.
3. The Divisional Signal & Telecommunication
Engineer, Western Railway,
Bhavnagar Division,
Bhavnagar Para - 364 003.

... Respondents

(Advocate: Mr. R.M. Vin)

ORAL ORDER

O.A./179/93

Dated: 29.07.1998

Per: Hon'ble Mr. V. Ramakrishnan, Vice Chairman

We have heard Mr. Xavier for the applicant and have gone through the materials on record.

2. The applicant is aggrieved by the order of the disciplinary authority dt. 17.8.88 as at Annexure A-3, removing him from service and also the orders of the Appellate Authority dated 6.2.89 which confirms the punishment. He has also said that the Railway Administration had not yet forwarded his Revision Application to the Revision Authority.
3. The applicant, a railway servant, was criminally prosecuted.

Contd..3/-

ted for certain offences. We find that he was tried by the competent court for the offences punishable under Section 323, 504, 506(2), 353 and 333 read with Section 114 of the Indian Penal Code. The lower court held him guilty of the offences and convicted him and the Sessions Court also upheld the conviction. However ~~it~~ reduced the sentence from two years RI to three months RI for the offence punishable u/s 333 I.P.C. and reduced the sentence of six months' R.I. to fifteen days' R.I. for the offence u/s 506(2) I.P.C. by maintaining the order of fine of Rs. 500/- in default R.I. for three months for the offence u/s 333 I.P.C. as imposed by the Trial Court. The criminal Revision Application filed before the Hon'ble High Court was also dismissed by the High Court by its order dated 26th March, 91 as is seen at Annexure A-6. On conviction of the applicant in the criminal court, the disciplinary authorities issued ^{an} ~~an~~ impugned order dt. 17.8.88 and the Appellate Authority had confirmed this order. The applicant also filed a Revision Application dt. 10.10.91 addressed to the ~~DRM~~ against the orders of the Appellate Authority which is stated to be the ADRM. However the reply was sent dated 31.3.92 as at Annexure A-1 from the office of the ADRM saying that the above quoted representation was given due consideration but was not found fit for revision and the same was filed. It is also found from Para 5(1) of the reply statement of the respondents of August, 94 that the Railway Administration thought it was not a fit case to be forwarded to the Revision Authority and filed the same. These orders are ^{impugned} ~~impleaded~~ in the present OA.

4. Mr. Xavier for the applicant contends that even though the applicant was convicted in a criminal court, removal from service

is not automatic and that it is incumbent on the part of the authorities concerned to apply their mind and come to a conclusion keeping in view the conduct of the Government servant. According to Mr. Xavier, the orders of the disciplinary authority have been passed in a mechanical manner and seems to have been done solely because the applicant was convicted. He also says that along with the applicant, some others were involved in the criminal prosecution and this aspect has not been gone into by the disciplinary authority. There is also a reference in the OA that the order of conviction was passed before the appeal filed before the Honourable High Court was disposed of.

Mr. Xavier goes on to submit that the action of the Railway administration in refusing to forward his Revision Petition to the competent authority is totally unsustainable in the context of the relevant rules. Mr. Xavier also says that the applicant is having serious ailment and he could have been given a lesser punishment.

5. We have considered the contentions of Mr. Xavier. We find that the offences for which the applicant was charged were quite grave as the charge against him was that he caused hurt and assaulted the Signal Inspector in a Railway Station when the latter was on duty as a public servant. It is not necessary to go into the contention that a number of others were supposed to have been involved in the case. All that we find is that the criminal court had held him guilty of the offences charged and convicted him. The sentence was, no doubt, reduced by the Sessions Judge and but the conviction remained ~~and~~ the Hon'ble High Court did not set aside the conviction. Rule 19 of the CCS (COA) Rules states that when any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction of a criminal charge

the disciplinary authority may consider the circumstances of the case and pass such orders as it deems fit after giving only a show-cause notice to the Government servant but without having to hold an enquiry. We find that the disciplinary authority while passing the order has given the reasons as follows:-

"After going through the judgment of Sessions Court convicting the accused, I consider that the further retention in service of Mr. Vithal Bava is undesirable. His appeal which is rejected by CAT, Ahmedabad is also not convincing. Regarding his request for personal hearing with his defense counsel, I feel that it is not necessary as the case is very clear and he has actually committed a serious offence which is proved in court of law vide judgment dated 30.3.83 given by the Sessions Court, Junagadh under criminal case No.70/82. Hence, it is concluded that he should be removed from service."

Keeping in view the nature of the offence and also the reference to the judgment of the Court, it cannot be said that there has not been due application of mind on the part of the disciplinary authority.

6. It is no doubt true that the penalty was imposed even before the High Court had disposed of the appeal. We may refer in this connection to the relevant instructions dated 29.11.66 under Rule 19 of the CCS (COA) Rules which reads as: Govt. of India Instruction No.2 below Rule 19 in Swamy's Compilation 19th Edition. It is clear from this instruction that in a case where the Government servant has been convicted in a court of law for an offence which is such as to render further retention in public service of a Govt. servant prima facie undesirable, the discipli-

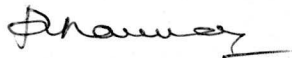
nary authority may, if it comes to the conclusion that an order with a view to imposing penalty on the Govt. servant on the ground of conduct which has led to his conviction in a criminal charge should be issued, pass such an order without waiting for the period of filing an appeal or if an appeal has been filed without waiting for the decision in the court of appeal. As such the fact that the disciplinary authority issued the order before the dismissal of the appeal before the High Court cannot vitiate this proceeding.

7. However we take note of Mr. Xavier's submissions that the applicant was deprived of the opportunity of approaching the Revision Authority as the ADRM had refused to forward such Revision Petition. This position has been confirmed by the respondents in their reply as at Para 5.1 referred to earlier where they have quoted some circular dated 31.11.83. The respondents have taken the line that there has to be a preliminary screening as to whether the case is fit for a Revision Petition and only if they are satisfied, on this point they would forward the Revision Petition to the competent Revision Authority. This is not in consonance with Rule 25 of the Railway Servants (D&A) Rules 1968. Rule 25(3) states that an application for revision shall be dealt in the same manner as if it were an appeal under these rules. Once a Revision Petition is filed, the authorities have to accord it the same treatment as they would give to an appeal. It is, of course, open to the Revision Authority to come to an appropriate finding and give its decision and hold that it may not be a fit case for interference but it is not open to a lower authority to refuse to forward the Revision Petition to the concerned Revision Authority. We accordingly quash the order of the ADRM dated

31.3.92 as at Annexure A-1 and direct the Railway administration to forward the Revision Petition of 10.10.91 as at Annexure A-7 to the DRM who is stated to be the Revision Authority. The Revision Authority shall dispose of the revision petition in accordance with law and through a Speaking Order within three months from the date of receipt of a copy of this order. While disposing of the Revision Petition the point submitted at present that the applicant is suffering from Cancer may also be kept in view by the concerned authority.

8. The applicant is not entitled to any other relief than what has been stated above as we see no reason to interfere with the orders of the disciplinary authority and Appellate Authority at our level.

9. With the above directions/observations, the OA is finally disposed of. No costs.



(P.C. Kannan)
Member (J)



(V. Ramakrishnan)
Vice Chairman

hki

CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No.

02/179/93

of 19

Transfer Application No.

Old Writ. Pet. No.

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided)

Dated:

21/8/98

Countersigned.

22444v

Signature of the Dealing
Assistant

Section Officer/Court Officer.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CAUSE TITLE

08/179/93

NAME OF PRITIES

Mr. V. B. Gallegos

VERSUS

U. S. F. 2 a

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