

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Order dated 5.2.2001

Shri S.K.Panda, on behalf of Shri D.N. Mishra, learned Standing Counsel wanted a passover for filing counter. It was then submitted by Shri D.P.Dhal, learned counsel for the petitioner that he is prepared to argue the matter even after receipt of counter to-day. In view of this after a passover the matter was taken up.

We have heard Shri D.P.Dhal, learned counsel for the petitioner and Shri S.K.Panda, on behalf of Shri D.N.Mishra, the learned Standing Counsel and perused the records.

In this case, during the period of abstention of learned counsels from Court work, the petitioner on several occasions appeared in person and filed a petition for amendment, which was allowed. Copy of the amended petition was also served on the learned Standing Counsel. In order dated 23.1.2001 Shri D.N.Mishra was given 10 days time to file additional counter, after serving copy thereof on the other side and the matter was fixed to this day for final disposal at the admission stage peremptorily.

To-day when the matter was taken up it was submitted by Shri Panda that copy of amended petition has not been served on the respondents. As in order dated 23.1.2001 Shri Mishra was given 10 days time to file additional counter and he did not make any submission on that day with regard to ~~non~~ service of amended petition, it is not possible to accept the above submission, ~~that the copy of amended petition has not been served on the respondents.~~ ~~Shri Panda did not file the counter himself.~~ *Jm*

Jm
In this Application the petitioner has prayed for quashing the order dated 22.1.1999 (Annexure -7), removing him from service. He has also prayed for direction to respondents to take him back in service immediately along with backwages and consequential service benefits.

Respondents have filed counter opposing the prayer of the applicant. As the counter has been filed to-day in Court, and the learned counsel for the petitioner wanted the matter to be disposed of to-day, he indicated that he did not intend to file any rejoinder.

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For the purpose of considering this petition it is not necessary to go into too many facts of this case. The admitted position is that petitioner was working as Goods Driver. A departmental proceeding was initiated against him in order dated 1.7.1992 (Annexure-2) for unlawful possession of Railway property, i.e. 150 litres of high speed diesel oil, valued at Rs.681.00, after pilfering the same, from the engine. The departmental proceedings continued for a number of years without any conclusion. The Inquiring Officer's order dated 29.5.1995 (Annexure-5) has not been dealt by the Respondents in their counter. From this order it appears that from the year 1992 to 1995, till the date of issue of this order, only three sittings of the disciplinary enquiry had been held and the Inquiring Officer ordered holding of the 4th sitting on 12.6.1995. He also noted that, ~~the~~ earlier notices were given, but no prosecution witnesses from R.P.F. side have been attending the enquiry. He, therefore, decided and noted that on the next day, ex parte decision would be taken if the prosecution witnesses failed to attending the enquiry. After this, on the next day, i.e. 12.6.1995, the petitioner appeared and as no prosecution witnesses attended, the petitioner filed a representation addressed ~~to~~ to the I.O. which is at Annexure-6 praying that enquiry should be finalised even in the absence of the prosecution witnesses. While the departmental proceedings stood at this stage, in order dated 22.1.1999 (Annexure-7) the applicant was removed from service because of his conviction in the Criminal Case by the Judicial Magistrate First Class in order dated 28.7.1998 in T.R. Case No.159/95. In this case the applicant was convicted of pilfering and unlawful possession of high speed diesel oil in the same incident, which was the subject matter of the departmental proceedings. ~~As~~ The applicant was convicted in the above case by the learned Judicial Magistrate First Class and sentenced to undergo one year R.I. with a fine of Rs.1000/-, in default, R.I. for another two months. The applicant's case is that against this order he filed Criminal Appeal

J.M.

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No.90/98, which was finally disposed by the learned Addl. 1st Class Sessions Judge in Criminal Appeal No.73/99, wherein the conviction and sentence were set aside and the applicant was acquitted on merits in order dated 6.1.2000. The grievance of the applicant is that in spite of his acquittal, the departmental authorities ~~the departmental authorities~~ have taken no steps to reinstate him in service ~~with~~ when the impugned order of punishment was entirely based on his conviction in the Criminal Case by the learned Judicial Magistrate(1st Class). Respondents in their counter have taken the plea and it was also so submitted in course of hearing by Shri S.K.Panda, on behalf of D.N.Mishra, learned Standing Counsel for the Respondents that a copy of the order passed by the Appellate Court acquitting the applicant has not been served on the Respondents. Along with amended petition the applicant has enclosed certified xerox copy of acquittal order of the learned Addl. 1st Class Sessions Judge and copy thereof has been served on the Respondents. As the impugned order at Annexure-7 is entirely based on the conviction of the applicant in the Criminal Case before the learned Judicial Magistrate (1st Class) and as the order of the J.M.F.C. has been set aside by the Appellate Court, the order of removal from service at Annexure-7 is no longer legally sustainable and the same is therefore, quashed. In view of this, the applicant is entitled to reinstate in service with all consequential service benefits, as directed in our order dated 24.2.1999.

The above direction shall be carried out within a period of 15(Fifteen) days from the date of receipt of copy of this order. In the result, O.A. is allowed as per directions made above, but without any order as to costs.

Registry to communicate forthwith copies of this order to the parties.

MEMBER (JUDICIAL)

Pam Nath Singh
VICE-CHAIRMAN
5-2-2001

Free copies of
final order
dt. 5.2.01 given
to both sides.

S.O.D.

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