

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O.A. NO. 888/96

THIS THE 4TH DAY OF APRIL, 2005

**HON'BLE MRS. MEERA CHHIBBER, MEMBER (JUDL.)
HON'BLE MR. K.V. PRAHALADAN, MEMBER (ADMN.)**

B. Sanmukh Rao,
Son of late B. Appala Swami,
Residing at Rly. Qtr. No. Block 4L/12-B-1,
Unit No. 15, Nimpura, Kharagpur-4
and working for gain as Rigger, Gr.II, T.No.10393,
in Mill Wright Workshop under Chief Workshop
Manager, South Eastern Railway,
Kharagpur.

... Applicant.

(By Advocate Mr. S.K. Dutta)

Versus

1. Union of India, service through
the General Manager, South Eastern Rly.,
Garden Reach, Calcutta-700 043.
2. General Manager, South Eastern Rly.,
Garden Reach, Calcutta-700 043.
3. Chief Mechanical Engineer, South
Eastern Railway, Garden Reach,
Calcutta 700 043.
4. Dy. Chief Mechanical Engineer (M&P),
South Eastern Railway, Kharagpur.

... Respondents.

(By Advocate Mr. S. Choudhury)



ORDER (ORAL)

Hon'ble Mrs. Meera Chhibber, Member (Judl.).

This O.A. has been filed by the applicant challenging show cause notice dated 6.7.1996 whereby he was called upon to give his representation within 15 days as to why his services should not be removed since he has been found guilty of the charge under Section 3 (a) of RP (UP) Act, 1966 even though he has been released on probation (page 17).

2. It is submitted by the applicant that since he has been released on probation, there is no justification to give him the show cause notice for removing him from service, especially when he has already filed appeal, which is still pending. It is submitted by the applicant that show cause notice is wholly bad in law and without jurisdiction being violative of the principles of natural justice.

3. Respondents on the other hand have opposed this O.A. They have submitted that as per Railway Board's letter dated 13.11.1964, there is no bar for the competent authority to impose punishment on the accused staff, who are released on probation under Section 4 of the Probation of Offenders Act, 1958 and in such case the normal disciplinary procedure need not be followed while imposing penalty on a Railway servant who is convicted on a criminal charge but is released under the Madras Probation of Offenders Act. In such cases, action can be taken straightway to impose penalty as considered appropriate, on the ground of conduct leading to the conviction, in terms of Rule 1719 (i)-RI. Therefore, the competent authority was well within its powers conferred by Rule 14 (i) of the Railway Servant (Discipline and Appeal) Rules, 1968, to



propose imposition of penalty of removal from service on the applicant. They have thus prayed that the O.A. may be dismissed.

4. Counsel for the respondents relied on the judgment given by the Hon'ble Supreme Court in the case of Union of India and Ors. Vs. Bakshi Ram, reported in 1990 (12) ATC 914.

5. We have heard both the counsel and perused the pleadings as well. It is an admitted position that applicant was found guilty of the charge under Section 3 (a) of RP (UP) Act, 1966. However, instead of sentencing the accused, applicant was released on probation for a period of one year. On the basis of this conviction, respondents gave show cause notice to the applicant holding therein that applicant is not a fit person to be retained in Railway service and in view of the fact that he has been found guilty in criminal case, the Department proposes to impose on him the penalty of removal from service. Applicant was, however, called upon to give his representation thereupon. He did not give any reply to the authorities but straightway filed the present O.A. in the Tribunal.

6. At this juncture, it would be relevant to refer to the judgment of Hon'ble Supreme Court in the case of State of U.P. Vs. Brahm Dutt Sharma, reported in 1987 (2) SCC 180, wherein it was held that Tribunal should not interfere at the stage of issuance of show cause notice as it is premature at that stage. The person who is given show cause notice should give reply to the authorities so that they may pass a final order and it is only after the final order is passed, that person can approach the Tribunal for seeking redressal of his grievance. At the stage of show cause notice courts can interfere only if it is shown to the court that the show cause notice has been



issued by any authority ^{who is} was not competent to issue the same or on the face of it the show cause notice is bad in law and not sustainable in law. In the instant case, it is not the case of applicant that show cause notice was issued by an authority who was not competent to issue the same nor has he been able to demonstrate that the show cause notice is ex facie bad in law because the only argument advanced by the applicant in this case is that since he was not given any punishment by the trial court and had been released on probation, it was not justifiable for the authorities to propose to remove him from service. In the case of Bakshi Ram (supra), Hon'ble Supreme Court held as follows:

"In criminal trial the conviction is one thing and sentence is another. The departmental punishment for misconduct is yet a third one. The court while invoking the provisions of Section 3 or 4 of the Probation of Offenders Act does not deal with the conviction; it only deals with the sentence which the offender has to undergo. Instead of sentencing the offender, the court releases him on probation of good conduct. The conviction, however, remains untouched and the stigma of conviction is not obliterated. Section 12 of the Act does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per law. The section was not intended to exonerate the person from departmental punishment. It only directs that the offender "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law". Such law in the context is other law providing for disqualification on account of conviction. For instance, if a law provides for disqualification of a person for being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of Section 12 stands removed. That in effect is the scope and effect of Section 12 of the Act".

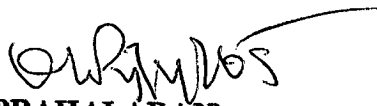
7. Perusal of the above judgment clearly shows that even if a person is released on probation, it does not wash out the conviction and so long the person is convicted in a criminal case, it is open to the authorities concerned to remove that person from service, or course, after giving show cause notice. Rule 14 (1) of Railway Servant (Discipline and Appeal) Rules, 1968 also gives power to the respondents for adopting such a course.

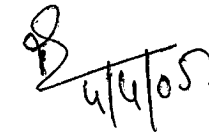


The show cause notice issued to the applicant was very much in accordance with the rules. Therefore, it cannot be said that the show cause notice was ex-facie bad in law. Final orders are yet to be passed by the respondents as applicant was called upon to give his representation. At this stage, it would not be proper for us to say any thing more than that because that would amount to pre-judging the issue. Since the applicant had approached this Tribunal at the stage of show cause notice itself and this Tribunal had granted an interim order on 15.1.1997 directing the respondents not to issue any penalty order pursuant to the show cause notice, respondents have not been able to pass the final order.

8. In view of the above discussion, we are satisfied that no interference is called for in this case at this stage. Since applicant was already given show cause notice to which applicant has not yet filed any reply, it would be in the interest of justice to give 15 days time to the applicant from the date of receipt of a copy of this order, to give his representation to the authorities concerned so that they may pass final orders thereon in accordance with rules and law on the subject. It is, however, made clear that ultimately if applicant succeeds in his appeal and his conviction itself is set aside by the higher court, it would be open to the applicant to give representation to the authorities at that time for appropriate orders in accordance with rules.

9. With the above directions, this O.A. is disposed of. No order as to costs.


(K.V. PRAHALADAN)
MEMBER (ADMN.)


(SMT. MEERA CHHIBBER)
MEMBER (JUDL.)

'SRD'