IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 22.02.2002

O.A. No. 350/1995

Jugal Kishore Panwar son of Shri Gopilal Panwar aged about 48 years resident of 36, Jaishree Colony, Parda Udaipur, last employed on the post of Passenger Guard Grade 'A', Western Railway, Udaipur.

... Applicant.

versus

1. Union of India through General Manager, Western Railway, Church Gate, Bombay.
2. Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.
3. Senior Divisional Operating Manager, Western Ralway, Ajmer Division, Ajmer.

... Respondents.

Mr. K.K. Shah, Counsel for the applicant.
Mr. S.S. Vyas, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice OP. Garg, Vice Chairman
Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice O.P. Garg)

The applicant, who was a Passenger Guard posted at Udaipur City, was removed from service by order dated 25th October, 1994 (Annexure A/1) passed by the Senior Divisional Operating Manager, Western Railway, Ajmer, who admittedly was the disciplinary authority by invoking the provisions of Rule 14(i) of the Railway Servants (Discipline & Appeal) Rules, 1968 "the Rules of 1968" - for short, on account of his conviction on a criminal charge under Section 138 of the Negotiable Instruments Act. The appeal filed by the applicant failed as it was dismissed on 08.05.95 (Annexure A/2).

2. By means of the present O.A. under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the orders of removal as well as that of dismissal of appeal. It is prayed that by quashing of the illegal orders aforesaid, he may be ordered to be reinstated in service with all consequential benefits.

3. According to the applicant, he has committed no offence, but a false charge was foisted upon him; that in any case, the offence for which he has been convicted does not involve moral turpitude and, therefore, the order of removal cannot be passed. The plea that the impugned orders are illegal, arbitrary and violative of Article 311(2) of the Constitution of India and Rule 14 of the Rules of 1968, has also been taken.

4. The respondents have filed a detailed reply and have maintained that the order of punishment has been passed in accordance with the provision of Rule 14(i) of the Rules, 1968, after giving a notice to the applicant; that since the applicant has been convicted on a criminal charge, the disciplinary authority was within its competence to invoke the powers to remove him from service under Rule 14 (i) of the Rules of 1968.

5. We have heard Shri Kiran K. Shah, learned counsel for the applicant as well as Shri S.S. Vyas appearing on behalf of the respondents at considerable length and have given thoughtful consideration to their respective submissions.

6. It is an indubitable fact that the applicant was prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act and tried in criminal Case No. 248/91 before the Court of the Additional Chief Judicial Magistrate (2), Udaipur. He was convicted of the offence charged against him as it was found that the cheque issued by the applicant for a sum of Rs. 71,000/- in favour of Shri Roshan Lal, complainant, had bounced on account of

insufficient balance in the account of the applicant. Accordingly, the applicant was sentenced to six months simple imprisonment and payment of fine of Rs. 71,000/- and in default thereof to undergo imprisonment for a further term of two months. The order of conviction and sentence was challenged in appeal by the applicant, but he did not meet with any better luck, it was dismissed by the learned District and Sessions Judge, Udaipur. It is common case of the parties that a criminal revision application has been filed by the applicant against the order of conviction before Hon'ble High Court of Rajasthan, Jodhpur, which is still pending. On 29.06.2001, the learned counsel for the applicant took adjournment to advise the applicant to move application for early hearing of the revision application pending before Hon'ble High Court. The revision application against the order of conviction has not yet been decided. This fact, therefore, is not in dispute that as on date the applicant stands convicted of the criminal charge under Section 138 of the Negotiable Instruments Act. Shri Shah, learned counsel for the applicant, however, urged that this O.A. may be decided independent of the fact that the applicant has challenged the order of conviction as affirmed in appeal before Hon'ble the High Court by means of revision application as even if it is dismissed by the High Court, the applicant cannot be termed to have committed crime involving moral turpitude and, therefore, the order of removal without due enquiry would be bad in law.

7. Shri S.S. Vyas appearing on behalf of the respondents urged that undoubtedly the applicant is covered by the Rules of 1968 with regard to the disciplinay matter. The procedure for imposing major penalties is contained in Part IV - Rules 9 to 13. Notwithstanding anything contained in Rules 9 to 13, a special procedure for imposing penalty on the Railway servant has been prescribed in

certain cases in Rule 14 and since the provision of Rules 14(i) of the Rules, 1968, has been invoked in the case of the applicant, a detailed enquiry as contemplated in Rules 9 to 13 was not called for. The relevant provisions of Rule 14 read as follows:-

> **14. Special procedure in certain cases -**
>
> Notwitstanding anything contained in Rules 9 to 13:
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> (i) where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge; or
>
> (ii) ....
>
> (iii) ....
>
> The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit :
>
> Provided that .... "

The simple stand taken by the respondents is that since the applicant admittedly stands convicted on a criminal charge, the penalty of removal from service was considered appropriate by the disciplinary authority and after affording a reasonable opportunity to the applicant to make a representation with regard to the proposed penalty, the impugned order dated 25.10.94 was passed under Rule 14(i) of the Rules of 1968. Shri Vyas further dwelt over the point asserting that the concept of "moral turpitude" cannot be read in clause (i) of Rule 14. According to him, the plain reading of the said provision indicates that if the Railway servant has been convicted on a criminal charge, whether it involves moral turpitude or not, the disciplinary authority taking into consideration the circumstances of the case, shall be entitled to impose any penalty which it deems fit.

8. Shri Shah, learned counsel for the applicant repelled the above submissions and placed emphatic reliance on the decisions of a

Division Bench of the Kerala High Court in the case of **C. Saseendran Nair vs. General Manager, State Bank of Travancore,** 1996 (8) SLR page 794, in which the question involved was whether conviction under Section 138 of the Negotiable Instruments Act would involve moral turpitude? In that case, the appellant Shri C.S. Nair was discharged employee of State Bank of Travancore. His prosecution under Section 138 of the Negotiable Instruments Act ended in conviction. He suffered the prison term. Ultimately, he was also discharged from service holding that his act in issuing a cheque without sufficient funds was an offence involving moral turpitude warranting termination of his services in terms of Section 10(b)(i) of the Banking Regulation Act. The discharge order was challenged by the appellant before the High Court by filing the Original Petititon which was dismissed by the learned Single Judge. The Division Bench hearing the writ appeal took the view that the offence under Section 138 of the Negotiable Instruments Act need not necessarily take within its wings of offence of cheating as defined in Section 415 of the Indian Penal Code. A cause of action for a criminal prosecution under Section 138 of the Act will arise, not on the date of issuance of the cheque, but only when the drawer of the cheque fails to pay the amount within the statutory period after he is called upon by the payee through a notice. A person sometimes may issue a cheque knowing that there is no sufficient fund in his account but still with a hope that he would be able to make arrangements with his bankers to honour the cheque as and when it is presented by the drawee. Section 138 is in fact incorporated by the Negotiable Instruments Act only to give more credibility for cheques and not to cover the areas which are already within the jurisdiction of Criminal Court for the offence of cheating. So the question whether the act of issuing a cheque without sufficient funds involve moral turpitude has to be considered de hors the

element of cheating. After recording the finding that the appellant has not committed an offence which involves moral turpitude, the discharge order (say termination of service) was quashed and he was directed to be reinstated in service with all consequential benefits. The observations made in the aforesaid decision are to be confined to the particular set of facts of that case. Clause 19.2 of the Bipartite agreement which covered the service conditions of the appellant, Shri C.S. Nair, runs as follows:-

> " "By the expression offence shall be meant any offence involving moral turpitude for which an employee is liable to conviction and sentence under any provision of law."
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> Section 10(1)(b)(i) of the Banking Regulation Act reads thus:
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> "No banking company shall employ or continue the employment of any person (i) who is, or at any time has been adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a Criminal Court of an offence involving moral turpitude; or" "

9. A reading of the above clause and the provisions of Section 10(1)(b)(i) of the Banking Regulation Act, leaves no doubt that if an employee is convicted of an offence involving moral turpitude, then he is liable to be discharged from service. If the offence is such which does not involve moral turpitude , the employee cannot be discharged from service. In the instant case in hand, as said above, there is no mention of the fact that the offence for which Railway employee has been convicted should involve moral turpitude. In an umpteen of statutory provisions, the expression offence "involving moral turpitude" has been specifically mentioned. There is a deliberate omission of the said expression in the provision of Rule 14(i) of the Rules of 1968. The decision in the case of **C.S. Nair** (supra) relied upon by the learned counsel for the applicant does not improve the case of the applicant. As a matter of fact, **C.S. Nair's** case (supra), is not an authority on the point that the criminal charge under Section 138 of the Negotiable Instruments Act

does not involve moral turpitude. In para 12 of the said decision the principle as laid down in the case of **Joy vs. State of Kerala**, 1991 (1) Ker LT page 153 founded on the decision of the Apex Court in **re "P" and Advocate**, AIR 1963 SC page 1313, has been approved. The legal position as stated in **Joy's case** (supra) is this:

> "The position seems to be this: The question whether a particular offence involves moral turpitude or moral delinquency has to be examined on the facts of each case. It is not merely the section of offence which matter much. Facts on which the offence is made out have also some bearing on the answer to the question."

Relying the above observations, it was held that all offences do not necessarily involve moral turpitude. Section 138 of the Act is no exception to the said principle. On the facts of the case the Court found no scope for holding that the offence found against the appellants has any reflection of moral turpitude.

10. Further, reliance was also placed by the learned counsel for the applicant on the decision of the Apex Court in the case of **Pawan Kumar vs. State of Haryana and Another**, (1996) 4 SCC page 17 in which the expression "moral turpitude" came to be convassed with reference to the ingredients of Section 294 of the Indian Penal Code. The facts of the said case are altogether different. "Moral turpitude", it was held, as an expression which is used in legal as also societal parlance to describe which is inherently base, vile, depraved or having any connection showing depravity. It was also urged on behalf of the applicant that in the case of **R. Janardhana Rao vs. G. Lingappa**, (1999) 2 SCC page 186, an advocate who had issued a cheque which ultimately bounced and refused to repay the amount despite repeated requests, was not found to have committed professional misconduct. In the case aforesaid, the Bar Council had

found the appellant-advocate as guilty of misconduct. It was held that the loan taken by the advocate from the complainant was not in professional capacity as an advocate and, therefore, he could not be treated to have committed any professional misconduct within the meaning of the provisions of Sections 35 and 38 of the Advocates Act, 1961. The Apex Court had clearly mentioned that if the cheque had bounced after the coming into force of Section 138 of the Negotiable Instruments Act, it might have resulted in criminal litigation, but, it does not make out any professional misconduct. Since there is no similarity of facts, reliance on **R. Janardhana Rao's** case (supra) is wholly misplaced. It has no bearing on the controversy in hand.

11. In the plain expression "conviction on a criminal charge" used in Rule 14(i), the element of 'moral turpitude' cannot be introduced. If it was intended to introduce the concept of moral turpitude, there was nothing to prevent the Rule making authority to specifically qualify the term 'conviction' on a criminal charge as involving moral turpitude. The omission of the expression "moral turpitude" is deliberate and for conviction on a criminal charge of any type, the disciplinary authority is empowered to invoke the provisions of Rule 14(i) of the Rules of 1968. In this connection, inspiration may be drawn from the provisions of clause (a) of the 2nd proviso to Article 311(2) of the Constitution of India, which deal with a case where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. Same language has been incorporated in Rule 14(i) of the Rules of 1968. In a catena of decisions, the Apex Court has taken the view that under clause (a) of 2nd proviso to Article 311(2), an emplopyee who has been convicted on a criminal charge is liable to be dismissed, removed or reduced in rank without

any further proceedings under Article 311(2), **Tirka vs. Seth,** AIR 1998 SC page 285. This clause includes conviction under any law which provides for punishment for a criminal offence - whether by fine or imprisonment. In **Sunil vs. State of West Bengal,** AIR 1970 Calcuta Page 384, it was held that no distinction is made between crimes involving moral turpitude and other crimes or statutory offences. The conviction for drunkennes would attract the proviso; similarly the convition under Sections 29 or 34 of the Police Act. The disciplinary authority, however, is enjoined to take into consideration the misconduct with reference to its magnitude and gravity. Therefore, this position cannot be accepted that a Railway employee is to be punished under Rule 14(i) only when criminal charge for which he has been convicted should be such as involve moral turpitude. We cannot read the provisions of 14(i) as suggested and qualified by the learned counsel for the applicant.

12. It would be proper to refer to other decisions relied upon by the learned counsel for the applicant. One of the said cases is the decision of Full Bench of Rajasthan High Court Jodhpur, in the case of **Dharam Pal Singh and 4 Ors. vs. The State of Rajasthan and Ors,** 2000 (2) WLC (Raj) page 400. In the said case, the Division Bench made a reference for consideration and decision by the Larger Bench on the following questions, namely, (i) whether the fact that a candidate was prosecuted or subjected to investigation on a criminal charge is a material fact, suppression of which would entitle an employer to deny employment to a candidate on that ground? (ii) whether the ultimate acquittal of a candidate who was prosecuted on a criminal charge would condone or wash out the consequences of suppression of the fact that he was prosecuted? It was held by the Full Bench that "ultimate acquittal of a candidate who was prosecuted on a criminal charge, would not be sufficient to

condone or wash out the consequences of omission to respond to the questions put by the employer or the suppression of the material facts or making of false statement regarding any material fact. Normally suppression of material fact, would by itself be sufficient to disentitle a candidate from being appointed in the service, on the ground that such suppression of material fact, with or without making of a false statement about a material fact, is an index of such deficiency in character as disentitles him for appointment. A close reading of the above decision would make it clear that this decision of the Full Bench instead of helping the applicant goes against him as independent of the order of acquittal, an employee who suppressed the material fact, was found to be guilty of moral turpitude. The other decision is that of a learned Single Judge of Jaipur Bench of the Rajasthan High Court in the case of **Sunder Lal vs. State of Rajasthan and Anr.**, RLR 1991 (1) page 283. It was a case where by invoking the provisions of Rule 19 of CCA Rules on the ground of his conviction in a criminal case, the writ petitioner was dismissed from service. The dismissal order was set aside on the ground that the conviction was not in relation to discharge of his official duties, but the incident which resulted in his conviction under Section 325 read with Section 34 IPC, took place while he was on leave and had gone to his village. A finding was also recorded that the incident did not involve any moral turpitude. The decision in the aforesaid case is clearly distinguishable on its own facts as the order of dismissal was passed by the disciplinary authority without applying its mind to the facts and circumstances. A learned single Judge decision of the Allahabad High Court, Lucknow Bench, in the case of **State of U.P. vs. Sadanand Misra and Anr.**, 1984 (3) SLR page 01, was also relied upon. In that case, it was observed that the appointing authority was required to consider whether extreme penalty of removal from service for minor offence

under Section 323 IPC is called for or not. All these decisions are not on the point in issue before us.

13. It is true that the order of penalty is not supposed to be automatic on the conviction of an employee on a criminal charge. The disciplinary authority must consider whether the conduct of the concerned employee which had led to his conviction, was such as warrants the imposition of a penalty and if so, what that penalty should be. For that purpose, it will have to peruse the judgement of the criminal Court and consider all the facts and circumstances of the case. In considering the matter, the disciplinay authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the imapct which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features. Once the disciplinary authority reaches the conclusion that the Government servant's conduct was blameworthy and punishable, it must decide upon the penalty that should be imposed on the Government ~~servant~~ servant. The principle, however, to be kept in mind is that the penalty imposed upon the civil servant should not be grossly excessive or out of the proportion to the offence committed or one not warranted by the facts and circumstances of the case. The submission of the learned counsel for the applicant that the authority concerned did not apply his mind and has passed a stereo-type order of punishment on 25.10.94 (Annexure A/1), does not hold good. Before a memorandum dated 11.08.94 (Annexure A/5) was issued to the applicant, which indicates that the disciplinary authority after careful consideration of the circumstances of the case in which the applicant was convicted on a criminal charge, came to the conclusion that his conduct which has led to his conviction is such as to render his further retention in public service undesirable.

The reply submitted by the applicant was taken into consideration and a reasoned order dated 25.10.94 was passed and the disciplinary authority came to the conclusion that the applicant is not fit to be retained in service and consequently, the punishment of removal from service with immediate effect was awarded. The Annexure A/1 which has to be read alongwith the reasoned order, which was annexed therewith. This Tribunal would not interfere with the discretion of the disciplinary authority which awarded the punishment of removal from service for the given circumstances, particularly when the facts which culminated in conviction of the applicant on a criminal charge under Section 138 of the Negotiable Instruments Act, reflect his dishonest behaviour unbecoming of a Government servant.

14. The wood cut profile of the case is that the applicant has been convicted of a criminal charge and the order of conviction has been affirmed in appeal. The disciplinary authority was, therefore, justified in taking recourse to the provisions of Rule 14(i) of the Rules of 1968 to remove the applicant from service taking into consideration the gravity of the allegations. Admittedly, before passing the order of removal under Rule 14(i), reasonable opportunity was afforded to the applicant to make a representation against the proposed punishment. The order of removal cannot, therefore, be faulted on any ground whatsoever.

15. We may do well to make a passing reference to a somewhat strange argument advanced by Shri Shah on behalf of the applicant. It was urged by him that the applicant has been discriminated in the matter of punishment inasmuch as one Shri Shafi Ahmed, a Railway employee who had been convicted of the offence punishable under Section 323 of IPC and Section 3(I)(x) of the Scheduled Caste/ Scheduled Tribes Act, has not been punished under Rule 14(i) of the

Rules 1968. According to Shri Shah, the respondent-department cannot adopt the policy of pick and choose. The applicant cannot claim parity in the matter with reference to the case of Shafi Ahmed. Rule 14 of the Rules of 1968 clearly makes the provision that "the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit". If Shri Shafi Ahmed was not removed from service on account of his conviction for the offence mentioned above, the applicant cannot complain about it and in any case the plea of so called discrimination or pick and choose is not available to him. Reference to the case of Shri Shafi Ahmed is otiose.

16. A short and swift reference may also be made to another submission of the learned counsel for the respondents that the applicant has put in 31 years of service and since he has rendered 30 years qualifying full service, he could have been compulsorily retired instead of removing him from service and if the order of removal from service is maintained during the pendency of the criminal revision application before the High Court, he would be seriously prejudiced and visited with avoidable consequences. It was also urged that the respondents have not considered the past meritorious unblemished service and as a result of extreme penalty of removal, he and his family members are facing socio-economic death. What the learned counsel for the applicant intended to impress was that the removal of the applicant from service be set aside on compassionate grounds subject to the ultimate decision of the criminal revision application pending before the High Court. If the suggestion of the learned counsel for the applicant is accepted, it would not only lead to absurdity, but unsurmountable complications are likely to crop up. As on date, the applicant stands convicted on a criminal charge and the order of conviction,

as said above, has been affirmed in appeal. We cannot pre-empt the decision in the criminal revision application. We do not know which side the camel would sit. If ultimately the High Court sets aside the conviction and acquits the applicant of the criminal charge, the natural consequences of such an order would follow as the penalty of removal of the applicant from service is primarily founded on account of his conviction on a criminal charge. Certainly, at this stage we cannot tinker with the order of removal of the applicant from service, which has been passed in conformity with the procedure prescribed. In a recent decision, the Apex Court in the case of **Union of India and Others vs. R.K. Sharma**, 2001 AIR SCW page 4136, has held that while reviewng the matter judicially, the Court should not interfere merely on compassionate grounds.

17. In the result, we find that the applicant has been unsuccessful in challenging the order of removal from service. For the reasons stated above, the applicant has been rightly removed from service on the ground of his conduct, which has led to his conviction on a criminal charge. The O.A. turns out to be devoid of any merit and substance. It is accordingly dismissed with no order as to costs.

(Gopal Singh)
Adm. Member

(Justice O.P. Garg)
Vice Chairman

cvr.