IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ORIGINAL APPLICATION NO. 280/2002 AND
MISC. APPLICATION No. 131/2002 IN OA 280/2002
DATE OF DECISION : THIS THE 16TH DAY OF April, 2004

Hon'ble Mr. M. L. Chauhan, Judicial Member
Hon'ble Mr. G.R. Patwardhan, Administrative Member

Chhotey Lal S/o Shri Hari Ram aged about 49 years, Resident of Masooriya Colony, Harijan Basti,Jodhpur, Last employed on the post of Fitter Khallasi, in the Office of Carriage and Wagon Office,Jodhpur Railway Station, Northern Railway.

...Applicant.

[By Mr. J.K.Misra, Advocate for applicant]

vs.

1. Union of India through the General Manager Northern Western Railway (Erstwhile Northern Railway), Jaipur.

2. Additional Divisional Railway Manager, Jodhpur Division, Jodhpur, Northern Western Railway.

3. Divisional Mechanical Engineer (C&W), Jodhpur Division, Jodhpur, Northern Western Railway.

.....Respondents.

[By Mr. Manoj Bhandari Advocatefor respondents]

...

ORDER
[BY M.L.CHAUHAN]

The applicant has filed this O.A. thereby praying for the following reliefs :-

"(i) that the impugned order dated 24.12.1997 Annexure A/1, imposing the penalty of dismissal from service and appellate order dated 28.3.2001, Annexure A/2, rejecting appeal, may be declared illegal and the same may be quashed and the applicant allowed all consequential benefits;

(ii) that any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice;

(iii) that the costs of this application may be awarded".

2. The facts of the case are that the applicant was initially appointed as Khalasi on 16.2.1978 in C&W Depot, Jodhpur. First Information Report under Section 302, 302/43 and 454 of Indian Penal Code was registered against the applicant and after trial, he was convicted by the District and Sessions Judge,

Jodhpur vide order dated 4.4.1987. He was sentenced to life imprisonment and a fine of Rs. 500/- for aforesaid offences. The Hon'ble has confirmed the order of conviction passed by the Trial Court High Court vide its judgement dated 19.8.1994 and conviction was maintained. However, the applicant has not placed copy of these judgements on record in order to appreciate under what circumstances, the offence was committed. It is further averred that the applicant remained in judicial custody/jail from 10.5.1985 till he was finally released from Jail on 22.1.2001. Though, the applicant in the O.A. has stated that he was served with order dated 16.12.1997 imposing penalty of dismissal from service Annex. A/1 but, he is categorical in stating that notice dated 24.10.1997 referred to and annexed with the penalty order Annex.A/3 whereby giving an opportunity to him to make representation prior to imposition of penalty on the basis of conviction, was not served upon him. Thus, according to applicant he did not get any opportunity to give reply of the notice dated 24.10.1997. It is stated further stated that an appeal was made against the impugned order passed by the disciplinary authority but, the same was also rejected vide order dated 5.3.2001 without passing a speaking order. It is on the basis of these averments that the applicant has filed this O.A. praying for the aforesaid reliefs.

3. The applicant has also filed M.A. for condonation of delay which was registered as M.A. No. 131/2002 wherein, the only ground taken by him is that he was facing acute financial hardship and has been leading a life below subsistence level, as such, he could not file O.A. in time.

4. Notices of the O.A. and M.A. were given to the respondents and they have filed their reply wherein, by way of preliminary objection it has been stated that the O.A. is not maintainable before this Tribunal on the ground that the same is barred by limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985 (for short 'the Act') as the applicant has not challenged the order of the appellate authority whereby he was dismissed

from service vide order dated 28.3.2001 within prescribed time. Hence, the O.A. filed by the applicant is liable to be dismissed. It is further stated in the reply that the O.A. filed by the applicant is liable to be dismissed on the ground that applicant has made a false averment inasmuch as no show cause notice was served upon him before passing the impugned order by the disciplinary authority. It is stated in the reply that all the documents were served to the applicant through the Superintendent of Jail and he was given an opportunity to submit his defence and representation in reference to the show cause notice which was served to him under the Railway Servants (Discipline and Appeal) Rules, 1968 (for short 'the Rules]). It is further stated that the notice dated 24.10.1997 was very much served upon him. In this regard, the respondents have placed on record the notice dated 24.10.1997 along with communication of the Superintendent of Jail dated 21.11.1997 and the A.D. received showing service as Annex. R/1.

5. On merit, it has been contended that applicant was convicted for the ~~charge~~ offence under ~~Article~~ section 302 of the IPC and under Rule 14 of the Rules, it is required that the conduct which is led to his conviction on criminal charge shall be enough ground for imposing the penalty against the employee. The applicant cannot be permitted to state that the charge of Murder is not a moral turpitude. It is further stated that the applicant has been dismissed from service in pursuance of Rule 14 of the Rules and the disciplinary authority after careful consideration of the circumstances of the case in which he was convicted on 12.5.1985 on a criminal charge, decided that his conduct which was lead to his conviction, is as to render his further retention in public service undesirable, therefore, he was dismissed from service as per the extent norms and rules. Regarding antedating the order of conviction, it has been stated that it was the duty of the applicant to inform the administration, if he is convicted for criminal charge but, he did not inform the administration till 1997 about the conviction which is in violation of Railway Servants (Conduct) Rules and he

was, therefore, rightly dismissed w.e.f. 4.4.1987 vide the impugned order dated 16.12.1997 Annex.A/1.

6. The applicant has not filed any rejoinder.

7. We have heard the learned counsel for the parties and gone through the material placed on record.

8. The learned counsel for the applicant contended that since applicant has not committed any offence causing moral turpitude, therefore, there was no justification for passing the order of dismissal. He has also argued that he was not paid subsistence allowance as per rules, as such, he has been denied reasonable opportunity to defend his case. Further contention raised by the learned counsel for applicant was that he was not given reasonable opportunity to submit his defence as he was not given any opportunity to submit his explanation to the show cause notice. It was also contended that the penalty has been imposed on the ground of conviction itself and not the conduct which led to his conviction and the punishment imposed is ex facie excessive and dis- proportionate to the alleged mis conduct. Lastly, the learned counsel for the applicant argued that order of dismissal could not have been passed with retrospective effect that too as late as in the year 1997 whereas, he stood convicted on 4.4.1987.

9. On the contrary, the learned counsel for the respondents argued that applicant has not come with clean hands before this Tribunal as such, O.A. is liable to be dismissed on that ground alone. Further, he has argued that application is time barred, hence, it cannot be entertained and the explanation given by the applicant that on account of financial constraints he could not file application within the time prescribed under the Act, cannot be accepted, in view of the fact that applicant has mis lead this Tribunal by making mis statement of material fact that he was not served with show cause notice.

Therefore, the conduct of the applicant dis-entitles him to claim any relief for condonation of delay in the facts and circumstances of this case. This is also the stand taken by the respondents in the reply to the M.A. for condonation of delay. On merit, it has been argued by the respondents that the disciplinary authority has not passed the order of dismissal solely on the ground that the applicant has been convicted for an offence under Section 302 of IPC but, the impugned order has been passed after considering the entire case and also taking note of a fact that applicant has not offered any defence despite the show cause notice. As such, finding was recorded that "in the absence of defence submitted by you, I the undersigned gone through the whole case and on careful consideration, I find that there is no such reason which can defend you for such conduct which has lead the conviction." Regarding passing of dismissal order retrospectively w.e.f. the date of conviction i.e. from 4.4.1987, it has been argued that since the applicant has incurred dis-qualification on that date and was liable for action under Rule 14 of the Rules w.e.f. that date, as such, there is no infirmity in giving the order dated 16.12.1997 as retrospective effect.

10. We have considered the submissions made by learned counsel for the parties and we are of the view that no interference in the matter is called for. Admittedly, the order was confirmed by the appellate authority thereby rejecting the appeal of the applicant vide its order dated 27/28.3.2001 (Annex.A/2) and the present O.A. was filed by the applicant on 24.10.2002 admittedly after the statutory period prescribed under Section 21 of the Act. The reason of financial constrain given by the applicant for condonation of delay cannot be accepted in view of the conduct of the applicant and false averment made in this O.A. thereby stating that even show cause notice against the proposed penalty was not served upon him. The respondents have placed on record a copy of the show cause notice dated 24.10.1997/5.11.1997 addressed to the applicant and copy of same was also endorsed to the Superintendent of Jail with the request that one copy may be handed over to

the applicant. The respondents have placed on record a letter written by the Superintendent of Jail, Jodhpur dated 21.7.1997 whereby intimating the fact that copy of the show cause notice has been served on the applicant and the acknowledgement receipt is also being enclosed with this letter. The respondents have also annexed a copy of the registered Ads. All these three documents forms part of Annex. R/1 filed with the reply. The applicant has not controverted these facts. In view of this, we are not prepared to accept the explanation of applicant given for condonation of delay especially when the conduct of the applicant is such which disentitle him for hearing further in view of fact that he has made a false averment in para 3 of the O.A. that though in the impugned order Annex. A/1 reference has been made to the Memo dated 24.10.1997/5.11.1997 but it was never served upon him which version is contrary to the documentary proof submitted by the respondents in the reply (Annex.R/1). Thus, we are of the view that the present application deserves to be dismissed on the ground of delay and laches as the applicant has not shown sufficient cause for condonation of delay.

11. Even on merit the applicant has not made out any case. Admittedly, the applicant has been dismissed from service in view of the provision contained in Rule 14 (1) of the Rules. The only requirement under Rule 14 (1) of the Rules is that before inflicting punishment, applicant was entitled for a show cause notice. Admittedly, show cause notice was given to him and despite service, applicant has not chosen to give any explanation. Under these circumstances, the disciplinary authority was within its right to impose appropriate punishment taking into consideration the conduct of the applicant which has led to his conviction. The contention of the applicant that the impugned order was passed by the disciplinary authority on the basis of the conviction cannot be accepted. As can be seen from Annex. A/1, in para 2, it has been specifically recorded by the disciplinary authority that he has gone through the whole case and in absence of any defence submitted by the applicant, he is of the view that there is no such reason which can defend the

applicant for such conduct which has led his conviction. At this stage, it is sufficient to state that in such a case where a person has been convicted by the competent court, the disciplinary authority has to take the conviction of the concerned civil servant as sufficient proof of misconduct on his part. It has, therefore, to decide whether the conduct which had led to a civil servant conviction on a criminal charge was such as to warrant imposition of the penalty and if so what that penalty should be. For this purpose it must peruse the judgement of criminal court and take into consideration, all the relevant facts and circumstances of the case as also the gravity of the offence committed by him and whether the offence for which he was convicted was a technical or trival nature and the extenuating circumstances if any present in the case. This, however, further has to be done by the disciplinary authority ex parte and without hearing the concerned civil servant. This is what the Apex Court has held in the case of Union of India and another Vs. Tulsiram Patel [(1985 (2) SLR 576] which judgement has been followed in the case of Satyavir Singha nd Ors. Vs. The Union of India and others reported in 1986 (1) SLR 255.

12. We have perused the material available on record. Since a copy of judgement of the Trial Court as well as of the appellate court has not been annexed with the O.A., as such, it could not definitely be concluded as to what was the facts and circumstances in a case which led to the conviction of the applicant for serious offences of murder. However, the facts remain that the applicant has been convicted for serious offences of murder and it cannot be said that the offence for which the applicant was convicted was of technical or trival in nature. The fact that the conviction awarded by the trial court has been affirmed by Hon'ble the High Court lend support to the version of the respondents that the applicant has been convicted for serious offences and his conviction was not on technical ground. However, the applicant has not placed on record any extenuating circumstances which may led to the conclusion that the conduct of the applicant was not such which warranted action under Rule

14 (1) of the Rules and imposition of major penalty of dismissal. We have also perused the appeal filed by the applicant before the appellate authority (Annex.A/4). The only ground taken by the applicant in that appeal is that he has not committed any offence involving moral turpitude and there is no justification for passing dismissal order after such a long time whereas, it was open for the applicant to plead before the appellate authority that the punishment imposed by the disciplinary authority is highly excessive and not commensurate with the offence committed by him. Further, the applicant has also not ~~placed~~ pleaded before the appellate authority any extenuating circumstances which warrants imposition of lesser penalty and also that the conduct of the applicant was not such which warrants the exercise of powers under Rule 14 (1) of the rules. Thus, in the absence of any such plea taken by the applicant, the decision of the appellate authority thereby confirming the order passed by the disciplinary authority, cannot be faulted.

13. At this stage, we may also note the contention of the learned counsel for the applicant that since he was not paid subsistence allowance as such he was precluded from pleading his case, cannot be accepted in view of the law laid down by the Apex Court in Union of India and another Vs. Tulsiram Patel. In that case it was held that the disciplinary authority can pass ex parte order and that too without hearing the concerned civil servant, though in the instant case opportunity was given to the applicant by giving a show cause notice, but he failed to avail this opportunity.

14. The learned counsel for the applicant has further contended that the appellate authority has passed the order in violation of Rule 22 (2) of the rules and the appeal has been rejected abruptly by passing a non speaking order. We are also not inclined to accept this contention of the learned counsel for the applicant. The provisions of Rule 22 (2) of the Rules of 1968 Rules are not attracted in the instant case as the same deals with the situation where a regular inquiry is held and the disciplinary authority passes order after taking into

consideration evidence during the course of inquiry. As already stated above, the order of dismissal has been passed by invoking provisions of Rule 14(1) of the Rules which prescribes special procedure where person has been convicted by the criminal court and the disciplinary authority can take action and pass appropriate punishment on the basis of the conduct which has led to the conviction of the accused and that too ex parte. It was open for the applicant to contend before the appellate authority that the disciplinary authority has not acted fairly or justly and penalty imposed is arbitrary, grossly unjust or out of proportion to the offences committed or not warranted by the facts and circumstances of this case. Having not done so, it is not legally permissible for us to set aside the order passed by the appellate authority confirming the decision taken by the disciplinary authority taking into account the conduct of the applicant which has led to his conviction for serious charge of murder so as to render his further retention in public service as undesirable.

15. As regards contention of the learned counsel that order of dismissal Annexure A/1 was passed on 16.12.1997 whereas he stood convicted by the trial court on 4.4.1987 as such impugned order is also vitiated on this count; we are not inclined to accept this submission. The respondents in para 5 of reply has categorically stated that information in this behalf was received from the Superintendent of Jail on 18.9.1997 and immediately thereafter show cause notice dated 24.10.1997 under Rule 14 of the Rules was issued to the applicant and finally penalty of dismissal was imposed vide Annex.A/1. It is further stated in para 7 of the reply that under the extent rules, it is the duty of every employee to inform the administration if he is convicted of criminal charge but the applicant did not inform the administration till 1997 about his conviction which act of the applicant is violative of Railway Servants Conduct Rules. According to us delay in taking action ipso facto will not vitiate the action taken especially when delay in taking such action has been satisfactorily explained.

16. As regards contention of the learned counsel for the applicant that order dated 16.12.1997 (Annex. A/1) having been passed with retrospective effect is illegal and inoperative, suffice it to say that matter is squarely covered by the decision of Apex Court in the case of R. Jeevaratnam Vs. State of Madras reported in AIR 1966 SC 951. In that case, disciplinary proceedings were started against the applicant therein. He was placed under suspension on May 20, 1949 and ultimately, he was dismissed from service vide order dated October 17, 1950 with effect from May 20, 1949. He instituted the suit asking for declaration that the order dated 17.10.1950 dismissing him from service, is illegal and void. The trial court dismissed the suit and this decree was affirmed in appeal by the Hon'ble High Court of Madras. The matter was carried to the Apex Court. Before the Apex Court one of the point raised by the learned counsel for the applicant was that the order of dismissal dated October 17, 1950 having been passed with retrospective effect, is illegal and inoperative. Counsel for the respondents submitted before the Apex Court that (i) the order of dismissal with retrospective effect as from the date of suspension is valid in its entirety and (ii) in any event the order is valid and effective as from October 17, 1950. The Hon'ble High Court accepted the first contention and declined to express any opinion on the second contention. The Apex Court opined that the second contention of the respondent is sound and in this view of the matter the Apex Court declined to express any opinion on the first contention. Ultimately, the Apex Court in Para 4 of the judgement gave the following finding :-

> "4. The order dated October 17, 1950 directed that the appellant be dismissed from service with effect from the date of his suspension, that is to say, from May 20, 1949. In substance, this order directed that (1) the appellant be dismissed, and (2) the dismissal do operate retrospectively as from May 20, 1949. The two parts of this composite order are separable. The first part of the order operates as a dismissal of the appellant as from October 17, 1950. The invalidity of the second part of the order, assuming this part to be invalid, does not affect the first part of the order. The order of dismissal as from October 17, 1950 is valid and effective. The appellant has been lawfully dismissed, and he is not entitled to claim that he is still in service."

In view of the ratio laid down by the Apex Court, we have no hesitation to hold that the applicant has been lawfully dismissed and he is not entitled for any relief and consequential benefits on account of his dismissal from service.

17. In view of what has been stated above, the O.A. is dismissed on both counts, on the ground of limitation as well as on merit. M.A. for condonation of delay also stand rejected. However, there will be no order as to costs.

[G.R.Patwardhan]
Administrative Member

[M.L.Chauhan]
Judicial Member

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23/04/14

Part II and III destroyed
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under the supervision of
section officer ( ) as per
order dated 18/10/13

Section officer (Record)

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