

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 543/2011

Jodhpur, this the 23rd day of February, 2015

CORAM

**Hon'ble Justice Mr K.C. Joshi, Judicial Member
Hon'ble Ms. Meenakshi Hooja, Administrative Member**

Vasu Dev Regar S/o Shri Narain Prasad, aged about 52 years, R/o 10 J-18, Tilak Nagar, Bhilwara (Raj). Ex. Mail Man in the office of Railway Mail Service (RMS) Bhilwara, Rajasthan.

.....Applicant
By Advocate: Mr. S.K. Malik.

Versus

1. The Union of India through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. Director Postal Services, Rajasthan Southern Region, Ajmer (Raj).
3. Superintendent of Railway Mail Service 'J' Division, Ajmer (Raj).

.....Respondents

By Advocates : Ms K. Parveen.

ORDER (ORAL)

Per Justice K.C. Joshi

By way of this application, the applicant has challenged the Memo dated 12.04.2010 (Annex. A/1), order dated 03.11.2010 (Annex. A/2) and order dated 10.01.2011 (Annex. A/3) wherein punishment of compulsory retirement has been imposed upon the applicant.

2. The brief facts relevant to adjudicate the matter, as averred by the applicant are that one four wheeler Tempo Truck Toofan bearing

chased by the NDPS people and the driver of the vehicle left the vehicle on road and fled towards forest. The vehicle was searched and 25 bags of poppy straw & poppy husks were seized from the said vehicle. Since, the driver and cleaner were absconding; the challan was filed against the owner of the vehicle i.e. the applicant. Accordingly, the applicant was called on telephone by the Neemach police and after reporting there, he was straight away taken in custody on 09.06.2005. Therefore, respondents placed the applicant under deemed suspension w.e.f. 09.06.2005 vide Memo dated 18.01.2006. A special case No. 47/05 was registered against the applicant and after investigation and filing of challan in Special Court NDPS Neemach, the applicant was sentenced to undergo rigorous imprisonment of 10 years with fine of Rs 1,00,000/- and in default of payment of fine to undergo further rigorous imprisonment for one year. The applicant was informed, vide letter dated 14.05.2008 (Annex. A/4) by the respondents, regarding proposed award of an appropriate penalty under Rule 19 of CCS (CCA) Rules, 1965 (hereinafter Rules of 1965) i.e. compulsory retirement on account of the conviction of the applicant under Section 8/15 (c) readwith Section 25 & 29 of NDPS Act and award of aforesaid sentence by the NDPS Court and asked the applicant to submit representation, if any, with a period of 15 days. The applicant submitted reply dated 11.06.2008(Annex A/5) stating that he has not committed any civil or criminal offence and he has filed an appeal before the competent court of law at Indore against the order of NDPS Court and requested to consider his case on humanitarian ground. Thereafter the respondent No. 3 compulsorily retired the applicant from service

applicant was allowed by Hon'ble High Court of Madhya Pradesh at Indore vide order dated 20.01.2010 wherein conviction and sentence under Section 8/15 (c) readwith Section 25 & 29 of NDPS Act was set aside and the applicant was acquitted from the said charges. After the acquittal from the Madhya Pradesh High Court, the applicant submitted an application dated 08.02.2010 alongwith copy of the aforesaid order passed by Madhya Pradesh High Court Bench at Indore to the respondents and requested them to take him back on duty. However, the respondent No. 3 vide order dated 12.04.2010 (Annex. A/1) set aside the order of compulsory retirement but placed the applicant under deemed suspension w.e.f. 16.06.2008 until further orders. Thereafter a charge sheet dated 21.04.2014 (Annex. A/8) under Rule 14 of rules of 1965 has been issued to the applicant wherein three charges have been levelled against the applicant which have got no connection with the criminal case in which the applicant was acquitted honourably. The applicant filed reply vide letter dated 28.04.2010 to the charge sheet wherein the applicant categorically stated that he has already started paying the installment of loan taken from the bank and co-operative society but unfortunately as he was arrested on 07.06.2005 and remained under custody for more than 4 years and also he is yet to get the entire amount of subsistence allowance for the period he remained under custody and did not get salary for the said period, therefore, installments could not be paid. But, now he wants to repay the loan and he has never been declared bankrupt from any court of law. Thus, he explained the entire position and requested the respondents to drop the charges framed against him.

letter dated 24.09.2010 (Annex. A/14). The applicant submitted detailed representation dated 10.10.2011 (Annex. A/15) stating that all the charges are baseless and documents at S.No. 5,6,7,8 were not available for inspection as they had been destroyed being time barred. The applicant's application dated 08.02.2005 by which he sought permission to purchase vehicle, has not been taken in inquiry. The respondent No. 3 without considering the points raised by the applicant in his representation imposed the penalty of compulsory retirement upon the applicant vide order dated 03.11.2010 (Annex. A/2). Thereafter the applicant filed an appeal dated 13.12.2010 (Annex. A/16) which has also been rejected by the respondent No. 2 without considering the points raised vide order dated 10.01.2011 (Annex. A/3). Therefore, the applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking following relief(s) :

- (i) By an appropriate writ order or direction Para (ii) and (iii) of impugned orders dated 12.04.2010 at Annex. A/1, impugned order dated 03.11.2010 at Annex. A/2 and impugned order dated 10.01.2011 at Annex. A/3 be declared illegal and be quashed and set aside as if they were never issued again the applicant.
- (ii) By an order or direction the respondents may be directed to reinstate the applicant in service with all consequential benefits alongwith arrears of pay and allowances.
- (iii) In the alternative by an order or direction respondents may be directed to treat the applicant on duty from the date of suspension till the date of compulsory retirement with all consequential benefits along with arrears of full pay and allowances.
- (iv) By an order or direction respondents may further be directed

to the applicant on the basis of 6th pay commission and issue revised PPO to this effect.

(v) By an order or direction respondents may be directed to produce the entire record pertaining to the inquiry in the interest of justice.

(vi) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice by the Hon'ble Tribunal.

3. By way of reply, the respondents have averred that respondent-department got knowledge of the fact of the imprisonment of the applicant through the SRO Bhilwara vide letter dated 10.11.2005 and received Inspector District Narcotics Officer, Neemach letter dated 11.06.2005 in which the apprehension under NDPS Act was described. On receipt of this information the applicant was placed under deemed suspension w.e.f. 09.06.2005 vide memo dated 13.01.2006 and after serving a notice under the rules the applicant was awarded punishment of compulsory retirement with immediate effect vide letter dated 16.06.2008 and this punishment was awarded after receipt of decision of Special Court NDPS Neemach dated 06.05.2008. After receipt of the order dated 15.02.2010 passed by the Hon'ble High Court of M.P. at Indore whereby the applicant was acquitted, the decision of the case was thoroughly considered and it was decided to proceed against the applicant under Rule 14 of the Rules of 1965, therefore, the applicant was placed under deemed suspension w.e.f. 16.06.2008 i.e. the date of acquittal from criminal charges. The respondent-department found the following three charges against the applicant:

taken loan of Rs 40000/- from Oriental Bank of Commerce Bhilwara but the same has not been repaid, therefore, the respondent-department have to face court case No. 41/2008.

- (ii) That the applicant has taken loan from the Bank without permissions of the competent authority and also procured toofan trax vehicle no. RJ-06 TC-0035 which was purchased without prior permission, of acquiring movable property from the competent authority.
- (iii) That the applicant has used the toofan trax vehicle no. RJ-06 TC-0035 by changing the number plate as RJ-06-TC-0126 and vehicle was trapped with poppy husk by the Inspector Narcotics Neemach under NDPS Act and thus the applicant has engaged himself/his vehicle in private business.

Thus, the applicant was served a charge sheet under Rule 14 of Rules of 1965 and on completion of the inquiry and after considering all the relevant facts, the disciplinary authority awarded the punishment of compulsory retirement to the applicant. The applicant preferred an appeal before the appellate authority and the appellate authority after considering all the points raised in the appeal has confirmed the penalty imposed by disciplinary authority without any intervention. It has also been averred by the respondents that in the hearing of special case No. 47/05 (Annex. B-1) decided on 06.05.2008, new facts of purchasing of vehicle tempo trax toofan No. Rj 06-TC-0035 purchased by the applicant without prior approval of the competent authority and said vehicle was engaged by him in private business and also while the applicant was in detention under police custody, the fact of taking loan from Oriental Bank of Commerce Bhopal Ganj Branch of Bhilwara came to the knowledge of the disciplinary authority. Therefore, charges levelled

appeal No. 647/08 in the Madhya Pradesh High Court Bench at Indore came to the knowledge of the respondents owing to criminal case. Thus, it cannot be said that charges levelled against the applicant in the charge sheet had no connection with criminal case filed against the applicant. Therefore, the respondents have prayed to dismiss the OA.

4. Heard both the parties. Counsel for applicant contended that the applicant was originally suspended vide order dated 18.01.2006 w.e.f. 09.06.2005 on the ground that the applicant was arrested in the criminal case under NDPS Act and he remained in police and judicial custody for a long period. Thereafter, a charge sheet was filed against the applicant in the court and the applicant was convicted and sentenced for the offence under NDPS Act by Special Court NDPS, Neemach in criminal case no. 47/05 vide order dated 06.05.2008 against which the applicant filed a Criminal Appeal No. 647/2008 before the Hon'ble Madhya Pradesh High Court and the same was heard by the Bench at Indore. The M.P. High Court while deciding the aforesaid appeal, acquitted the applicant vide order dated 20.01.2010. Thereafter, the respondent-department passed an order Annex. A/1 dated 12.04.2010 by which while setting aside the earlier order Annex. A/6 dated 06.06.2008, by which the applicant was compulsorily retired from service on account of award of sentence by Special Court NDPS, Neemach, decided to hold further inquiry against the applicant under the provisions of sub rule (4) of Rule 10 of the Rules of 1965 and by virtue of this order the applicant was placed under deemed suspension w.e.f. 16.06.2008 until further order. Thereafter the charge

Disciplinary Authority awarded the punishment of compulsory retirement from service to the applicant vide Annex. A/2 dated 03.11.2010 against which the applicant filed an appeal before the Appellate Authority which has also been rejected vide order Annex. A/3 dated 10.01.2011. Counsel for applicant contended that the provisions of sub rule (4) of Rule 10 of the Rules of 1965 prescribe certain procedure for such delinquent employees whose punishment order has been set aside on account of honourable acquittal by the competent court and he drew our attention to sub rule 4 of Rule 10 of Rules of 1965 which is as under :

“(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the Disciplinary Authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders;

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation the Court has passed an order purely on technical grounds without going into the merits of the case.”

Counsel for applicant contended that under the provisions of sub rule (4) of Rule 10 of the Rules of 1965 only further inquiry could only be proceeded against the applicant on the allegations on which penalty of compulsory retirement with immediate effect was originally imposed; whereas the respondent-department issued an entirely different charge sheet having different charges with no relevance with the original

Counsel for applicant contended that the Hon'ble Madhya Pradesh High Court in Criminal Appeal No. 647/08 honourably acquitted the applicant holding that the applicant had no knowledge of the transportation of the prohibited goods. Therefore, it cannot be said that the applicant was acquitted on technical grounds, thus, entire disciplinary proceedings is void and without jurisdiction. Counsel for applicant referred to para 8 of judgment dated 02.06.195 passed by Division Bench of CAT Patna Bench in Ramanuj Prasad vs. UOI & Ors reported in (1996) 32 Administrative Tribunal Cases 421 which is as under :

8. Before Jankiraman case the matter seems to have been very well settled. The question is whether any authority can get into the nature of acquittal of the accused, applicant, to decide his entitlement under FR 54-A. We have the judgment of the Full Bench of the Tribunal in S. Samson Martin v. Union of India. The Full Bench concluded at para 10 as under:

"So the law now is well crystallized to the effect that when the suspension is wholly due to a criminal proceeding, the acquittal at the end of such proceeding would render the suspension wholly unjustified and the disciplinary authority does not have to analyze the judgment of the criminal court to come to its own conclusion regarding the degree of proof in respect of the culpability."

The supreme Court also has laid down the same proposition of law in Brahma Chandra Gupta v. Union of India. The Supreme Court held that in case of acquittal the concerned persons should be given full pay and allowances and that the disciplinary authority does not have the power to compute the degree of culpability of the person upon its own appraisal of the judgment of the criminal court. FR 54-A gives power to the disciplinary authority to treat the period of suspension as not spent on duty and to restrict the salary to an amount which is less than the full pay on reinstatement. This is possible when the reinstatement is due to a technical non-observance of the provisions of Article 311. Technical infringement of Article 311 is confined largely to disciplinary inquiries. A disciplinary authority has a right to find out whether the proceedings have been set aside for a technical violation of Article 311 of Constitution. The view taken in earlier Tribunal cases is that (OA No. 24221 of 1988 R K Mehta v. Union of India New Delhi Bench I.M.

ground or otherwise for the simple reasons that no such power is now vested in him under FR 54-A. The very fact that the provisions of FR 54-A have been amended to omit the reference to honourable acquittal which existed earlier makes it clear that the President has felt it necessary to exclude such consideration by the disciplinary authority of this question. In other words, if there is an acquittal, the disciplinary authority cannot probe further to find out whether the acquittal was honourable or whether it was on a technical ground.

While referring to para 8 of above judgment, counsel for applicant contended that after acquittal from the High Court or any other court, the disciplinary authority has no powers to reappreciate the evidence on the same facts and in view of provisions of sub rule (4) of Rule 10 of the Rules of 1965, the inquiry held against the applicant is ab initio void and against the prescribed procedure under the Rules of 1965.

5. Per contra, counsel for respondents contended that the applicant is habitual to take loans from Bank and does not repay and in this way he purchased the tempo and did not repay the loan amount and in another case the civil suit was filed against the applicant, therefore, his conduct was not upto the mark. She further contended that the applicant was compulsorily retired by a separate inquiry which is within the jurisdiction of the respondents.

6. We have considered the argument advanced by both the parties and also perused the record. In our considered view, no such further inquiry under the provisions of sub rule 4 of Rule 10 of Rules of 1965 could be conducted by the respondents on a set of different facts and allegations which led to the punishment of compulsory retirement and

dated 14.05.2008 (Annex. A/4) and order dated 16.06.2008 imposing penalty of compulsory retirement (Annex. A/6). Therefore, in our considered view, para (ii) and (iii) of Annex. A/1, Annex. A/2 and Annex. A/3 are illegal and against the provisions of sub rule (4) of Rule 10 of the CCS (CCA) Rules of 1965 and the same are quashed.

7. Therefore, the respondents are directed to reinstate the applicant with immediate effect. The applicant is entitled for back wages from the date of his suspension to the date of his joining the duties as per law. However, respondents are free to proceed against the applicant as per law. Accordingly, OA is allowed in terms of these directions.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

Ss/