

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No. 290/00154/14

Jodhpur, July the 1st, 2014.

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

Pemaram S/o Shri Bhomaram aged 51 years, by caste Jat, resident of village Khabda Khurd, Tehsil Osian, District Jodhpur (applicant was working on the post of Gangman and posted a Jaisalmer Division).

.....Applicant

Mr R.N. Choudhary, counsel for applicant

Vs.

1. The Union of India through the General Manager, North Western Railway, Head Quarter Building, Jawahar Circle, Jaipur.
2. The Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur.
3. The Assistant Divisional Engineer, North Western Railway, Jaisalmer Division, Jaisalmer.

...Respondents

Mr B.P. Mathur, counsel for respondents

ORDER (oral)

Per Justice K.C.Joshi, Member (J)

The present application has been filed by the applicant for revocation of his suspension order Annex. A/2 dated 16.03.2013 passed by the respondent-department whereby he has been put under suspension pursuant to punishment order passed by Judicial

Magistrate, Osian in a criminal case filed against him. Therefore, he has prayed for the following reliefs:-

- (i) The original application may kindly be allowed.
- (ii) By appropriate writ, order or direction; respondent department be directed to pass appropriate order in respect to revocation of suspension order dated 16.03.2013.
- (iii) Any other appropriate direction or order which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case may kindly be granted.
- (iv) Cost of this application may kindly be awarded.

2. The brief facts to adjudicate the case, as averred by the applicant, are that the applicant is working on the post of Gangman in the respondent-department and is presently posted at Jaisalmer. A criminal case was registered vide FIR No. 198/2011 against the applicant and other persons for offence under Section 341, 323, 325/34 IPC on the complaint of Shri Papuram. The Police filed a challan against the applicant and other persons and finally the Judicial Magistrate, Osian passed a punishment order dated 18.02.2013 by which punishment was imposed against the applicant. The applicant filed criminal appeal before the Session Judge, Jodhpur District against the order of Judicial Magistrate dated 18.02.2013 and the Session Judge, Jodhpur District vide his order dated 24.10.2013 (Annex. A/1) quashed the punishment order of the Trial Court and further ordered that the accused has to

submit the bond for maintaining good conduct for one year and during this period if Court issues a summon then he has to remain present for punishment and further benefit of Section 4 of probation was granted and further compensation under Section 5 of the Probation Act was passed. The respondent department while exercising the power under Rule 5 (1) of the Railway Services (Discipline and Appeal) Rules, 1968 suspended the applicant vide order dated 16.03.2013 (Annex. A/2) on the basis of order dated 18.02.2013 passed by Judicial Magistrate, Osian. It has been averred in the OA that suspension order was passed only on the basis of punishment order dated 18.02.2013 and after suspension charge sheet for holding enquiry against the applicant has not been issued. The Trial Court vide its order dated 18.02.2013 imposed punishment of imprisonment but now the Appellate Court has quashed the punishment order and further granted the probation by order dated 24.10.2013, therefore, suspension of the applicant should be revoked and he should be taken back on duty. The respondent-department has neither passed the revocation order nor any charge-sheet has been issued, therefore, the applicant has filed this OA seeking reliefs mentioned in para No. 1.

3. By way of reply, the respondents have averred that the applicant was arrested in the criminal case and remained in custody for 48 hrs., therefore, he was suspended under Rule 5 (1) of the Railway Service (Discipline & Appeal) Rules, 1968.

Subsequently, after filing challan by the Police against the applicant, the Judicial Magistrate, Osian passed punishment order dated 18.02.2013. Against the order of the learned Trial Court, the applicant preferred an appeal before the Sessions Judge, Jodhpur district and the same was dismissed while maintaining the order dated 18.02.2013 passed by Judicial Magistrate, Osian, although, benefit under Section 4 and Section 5 of the Probation Act was granted to the applicant. The respondent-department recommended the case of the applicant for departmental enquiry under Rule 14 of the Railway Servant (Discipline & Appeal) Rules, 1968, which was pending before the competent authority. It has also been averred in the reply that release on probation does not amounts to acquittal and disciplinary authority has the power to conduct departmental enquiry and impose the appropriate penalty for this conduct.

4. Heard both the parties. Counsel for the applicant contended that the suspension order and the charge-sheet was issued on the basis of punishment order passed against the applicant by the Trial Court but the Appellate Court while quashing the punishment order granted the benefit of probation under Section 4 and Section 5 of Probation Act to the applicant but the suspension order has not been withdrawn by the respondent-department. Counsel for the applicant further submits that the charge-sheet has not been issued to the applicant, therefore, suspension is bad in the eyes of law.

5. Per contra, counsel for the respondents contended that the charge sheet is under contemplation and the District Session Judge while dismissing the appeal filed by the applicant maintained the punishment order dated 18.02.2013 of the conviction, although benefit under Section 4 and 5 of Probation Act was granted to the applicant. The applicant was arrested in the criminal case and remained under custody for 48 hours, therefore, the respondent-department rightly suspended him under Rule 5 (1) of the Railway Service (Discipline & Appeal) Rules, 1968. He further contended that the release on probation does not amount to acquittal and disciplinary authority has the power to conduct departmental enquiry and impose the appropriate penalty for any misconduct.

6. We have considered the rival contentions. Looking to the submissions made by both the counsels we propose to dispose of this OA with certain directions:

7. Accordingly, OA is disposed of with the direction that the applicant shall make a representation to the competent authority in the respondent-department against the suspension order within 2 weeks from receipt of this order. Thereafter, competent authority of the respondent-department shall decide the same within 3 months from the date of receipt of representation.

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8. In terms of the above direction, OA is disposed of with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

SS/

Gary [Signature]
2/7/14

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10/10/13