CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.277 / 2005

Thursday, this the 21st day of July, 2005.

CORAM :

HON'BLE Mr.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE Mr. N. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.Lingom
Junior Engineer 1/Works
Southern Railway
Construction/Calicut
Permanent address :No.5/63 North Ganapathi Puram
Ganapathi Puram Post, Kanyakumari District : Applicant

(By Advocate Mr. T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager
Southern Railway
Headquarters Office, Park Town P.O
Chennai – 3

2. Chief Personnel Officer, Southern Railway
Headquarters Office, Park Town P.O
Chennai

3. The Chief Engineer & Principal Head of the Department
Southern Railway
Headquarters Office, Park Town P.O
Chennai – 3

4. Chief Administrative Officer
Southern Railway/Construction
Egmore, Chennai – 8

5. Chief Engineer, Construction/North
Southern Railway
Egmore, Chennai – 8 : Respondents

(By Advocate Mrs. Sumathi Dandapani)

The application having been heard on 06.06.2005, the Tribunal on 21.07.2005 delivered the following :

ORDER

HON'BLE Mr. N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant in this O.A., seeks to quash A-1 document which seeks to secure representation from him against a proposed penalty of removal from service.

2. The applicant is working as ad hoc Junior Engineer Grade-I/Works at Calicut. The 5th respondent, Chief Engineer/CN/North/MS in the office of the Chief Administrative Officer, Construction Branch, Egmore, Chennai has issued A-1 memorandum dated 7.4.2005 asking for representation, if any, from the applicant against the proposed penalty of removal from service in exercise of power conferred by Rule 14 (i) of the Railway Servants (Discipline & Appeal) Rules, 1968 (Rules for short) According to the memorandum, on a careful consideration of the circumstances in which the applicant was convicted on 9.11.2004 on a criminal charge, the signatory of the memorandum considers that his conduct leading to such conviction is such as to render his retention in public service undesirable and that he is not a fit person to be retained in service and hence the proposed penalty. The applicant was required by the memorandum to make a representation on the proposed penalty within 15 days of the date of receipt thereof, whereupon the signatory would consider the same before passing final orders.

3. According to the applicant, the said memorandum is liable to be quashed on the following grounds:

i) The impugned order is without jurisdiction and is violative of Article 311(1) of the Constitution.

ii) A-1 impugned order has been issued by an officer who is incompetent to issue the same for various reasons put forth and argued upon.

4. The respondents have countered by saying that

i) The O.A. is premature.

ii)The impugned document does not determine or adjudicate any of the applicant's right, such adjudication would be done only on receipt of his explanation. Besides the A-1 document cannot be construed as an order under Section 19 of the A.T. Act. Hence the same cannot be challenged under Section 19 of the A.T. Act.

iii)It is the settled position that courts and Tribunals shall not interfere in the matters of disciplinary proceedings at interlocutory stage of notice issue.

iv) The applicant while working as Junior Engineer ad hoc was convicted under Section 7 and 13(2) read with section 13(1)(b) of the Prevention of Corruption Act, 1988 and was sentenced to undergo Rigorous Imprisonment for 3 years with a fine of Rs.45,000/-. In view of such conviction, proceedings under Rule 14(1) of the Rules were initiated.

v) The applicant is in the scale of Rs.5500-9000. The lowest appointing authority for officers like the applicant is an officer in the Junior Administrative Grade. The Chief Engineer (R-5) who issued the A-1 memorandum is of the rank of Head of the Department and is of a higher rank than an officer of the Junior Administrative Grade. Hence, the issuance of the memorandum is in order.

5. We have heard the learned counsel for both parties and carefully perused the documents.

6. The following points arise for consideration

A) Whether the impugned order is without jurisdiction and hence violative of art.311 (1) of the constitution?
B) Whether interference at this stage by the tribunal is warranted?
C) Whether the impugned memo has been issued by a competent authority?

7. On the question whether the impugned order is without jurisdiction and hence violative of art.311 (1) of the constitution, it is seen that the A1 is memo issued under rule 14(1) of the Rules, which lays down special procedure in certain cases. This rule is based on second proviso to clause (2) of Article 311 and clause (3) thereof as reproduced below:

> *"No such person aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.*
> *[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to given such person to opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply]*
> *(a) 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; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."

8. Under these circumstances, no jurisdictional violation can be found to have taken place in the issuance of A-1 memorandum. Rule 14(i) of the Rules contemplates conviction in a criminal charge as condition precedente for initiation of further action. The applicant has been convicted u/s 7 and 13(2)read with sec 13(1)(d) of the Prevention of Corruption Act 1988 by Special Judge /SPE/CBI Ernakulam and sentenced to undergo rigorous imprisonment for 3 years with a fine of Rs 45,000/-. On the applicant moving the Hon.High Court, the sentence and not the conviction (emphasis added) was suspended. Hence, the rule 14(1) squarely applies in this case. It may be seen that a conviction does not cease to exist as a result of appeal filed, it ceases only on the conviction being set aside(Jarnail Singh vs state of Punjab 1981(2) SLJ 247) In a similar if not identical case, (Deputy Director of Collegiate Education (Administration) Madras vs. S.Nagoor Meeran (1995)29 ATC 574)(p857) the Apex Court observed as follows:

"..That taking proceedings for and passing orders of dismissal, removal or reduction in rank of a Government servant who has been convicted by a Criminal Court is not barred merely because the sentence on order is suspended by the appellate Court or on the ground that the Government servant accused has been released on bail pending the appeal."

"..The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a Government servant is convicted of a criminal charge and not wait for the appeal or revision, as the case may be."

"..What is really relevant thus is the conduct of the Government servant which has led to his conviction on a criminal charge. Now in this case, the respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice."

9. In another case(UOI v. Ramesh Kumar 1998 (1) SLJ 241), the Apex court has laid down that the suspension of the sentence in consequence of appeal in the higher court does not preclude exercise of powers available under Rule 19 of the CCS(CCA) Rules 1965 which is similar to Rule 14 under reference.

10. The applicant would also contend that if A1 is enforced it would have adverse consequences to him and his family. It is seen that A1 is just a memorandum. It calls upon the applicant to furnish representation, if any, against the proposed penalty. The competent authority is expected to exercise its power after due caution and considerable application of mind and for such application, the representation by the applicant is an important input. Such authority can pass orders as it deems fit which may comprise of any penalty: it may even pass an order imposing no penalty, if the offense is trivial. There is no mandatory duty cast upon the authority to pass an order only of removal from service etc, the moment an employee is convicted by a competent criminal court. The point for consideration is the impugned conduct of the employee and not the conviction itself. Each case is to be decided on merits.

11. Apart from such due application of mind being an important safeguard against arbitrary action, further remedies too are available to the applicant in case of an ultimate adverse verdict -departmental remedies like appeal, revision and review and failing, which judicial reviews (Shankar deo v. Union of India 1985 2 SCC p 358)

12. Hence the conclusion so far is that the A1 document is not without jurisdiction, it is not violative of art.311 and in fact it is consistent with art. 311(2) of the Constitution and the A1 document has not become final at this stage and the applicant is not left without remedy.

13 .On the question of whether interference at this stage by the Tribunal is warranted, the learned Counsel for the respondent argued that the impugned document is not an order within the meaning of Sec 19 of the AT Act. That itself would make it premature

for this Tribunal to take cognizance of. It is readily seen that the A-1 document is entitled as a memo. Besides, by this memo the applicant is given an opportunity to make a representation against the proposed penalty. For reasons referred to above in the previous paragraphs, the authority concerned would take a decision on the penalty to be imposed after factoring the representation if any to be received and other facts and circumstances of the case. At this stage, no civil consequences abridging any rights of the applicant have taken place as yet. As such, the A1 memo does not seem to be in the nature of an order. The learned counsel would again argue that the Apex Court has laid down that the judicial review is ruled out in disciplinary cases at the interlocutory stages.(1996 (1)SCC 338). In another case, (1996) 1 SCC 338, " ... *no interference was called for at an interlocutory stage of the disciplinary proceedings..*" Hence, it does not appear to be case necessitating the intervention of this Tribunal.

14. The next question is whether the impugned memo has been issued by a competent authority. At the outset, the cases referred to by the Counsel by the respondent in this regard are worth reference. In (1993) 23 Administrative Tribunals Cases 645, the Apex Court has laid down that an order to initiate departmental enquiry made by an authority, lower than appointing authority but superior to the delinquent is not violative of Art.311 (1) of the Constitution of India. In the case, (1995) SCC 332 the Apex court has held

" *In so far as initiation of enquiry by an officer subordinate to the appointing authority is concerned it is well settled now that it is unobjectionable.*

15.In (1996)2 SCC, the Hon. Supreme Court referred to another case (1970) 1SCC 108, and quoted the following

" *...this (art 311) article does not in terms require that the authority empowered under that provision to dismiss or remove an official should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer or even that the enquiry should be done at its instance. The only right guaranteed to a civil servant is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed*" In the case (1996) 1 SCC referred to above the Apex Court has ruled "*....at this stage of proceedings, it was wholly unnecessary to go into the question as to who is competent to impose which punishment upon the respondents..*"

15. In 1970(1) SCC 108, the apex court expressed their inability to agree with the views of the High Court that the guarantee given under art 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a

civil servants should also be initiated and conducted by the authorities mentioned in that article.

16. It may also be noted that the Rule 8 of the Rules envisages differentiation of appointing authority and disciplinary authority. That rule lays down ,

"A Disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of Rule 6 may, subject to the provisions of clause © of Subrule (1) of Rule 2 institute disciplinary proceedings against any Railway servant for the imposition of any of the penalties specified in clauses (v) to (ix) of Rule 6 notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties. This is an important factor while considering the argument regarding who would be the appropriate appointing authority.

17. In his arguments, the learned Counsel for the applicant tried to establish how the A-1 memo was by an officer who is not appointing authority of the applicant and hence was ineligible to initiate the dismissal proceedings. In his reply, the learned Counsel for the respondent had produced Annexure R-1 document (which is issued by the southern Railway Head quarters in their reference dated 31-8-2004) which lays down inter alia the list of lowest of the authorities, empowered to make appointments etc .For the applicant in the pay scale of 5500-9000, which the applicant is drawing, such officer is one in the Junior Administrative Grade Officer(JAG) (Rs12000-16500). The impugned memo has been by the Chief Engineer who is in the rank of Head of the Department and hence is higher than that of the JAG officer.

18. It therefore transpires that in this case,

- A-1 document cannot be considered an order,
- no evil consequences are to follow from such document as such against which the applicant can represent,
- after such representations it is not a matter of certainty that he will be removed from service,
- this tribunal need not intervene at this stage of interlocutory order
- there does not appear to be any procedural deviations

19. Under these circumstances, we hold that there is no need to interfere with the A-1 memorandum and the application fails. O.A. is dismissed. No order as to costs.

Dated, the 21st July, 2005.

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

K.V.SACHIDANANDAN
JUDICIAL MEMBER