Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

Original Application No.362/2010
This the 4th day of December, 2012

Hon'ble Sri Justice Alok Kumar Singh, Member (J)
Hon'ble Sri D.C. Lakha, Member (A)

Onkar Nath Mishra, Son of Shiv Kumar Mishra, Cabin Man, Sultanpur, Residetn of Village Mishrapur Puraina, Post Hanumanganj, District Sultanpur.

...Applicant.

By Advocate: Sri O.N. Pandey.

Versus

1. Union of India, through Divisional Railway Manager, Northern Railway, Lucknow.
2. Mandal Parichalan Prabandhak, Northern Railway, Lucknow.
3. Sahayak Parichalan Prabandhak, Northern Railway, Lucknow.

... Respondents.

By advocate: Sri Rajendra Singh.

(Reserved on 10.11.2012)

ORDER

By Hon'ble Sri Justice Alok Kumar Singh, Member (J)

In this O.A. following reliefs have been sought:-

> "(i). This Hon'ble Tribunal may kindly be pleased to quash the impugned orders dated 30.11.2009 and 28.04.2010 passed by the respondent No.3 and order dated 5.8.2010 passed by the respondent no.2 being illegal and unconstitutional as contained in Annexure Nos. 1,2 & 3 respectively to the original application.

(ii). This Hon'ble Tribunal may kindly be pleased to pass an order directing the respondents to reinstate the applicant in service without any break and to pay al consequential benefits and salary.

(iii). Any other relief which this Hon'ble Tribunal deems fit and proper in the interest of justice, may also kindly be passed in favour of the applicant."

2. Briefly stated, the case of the applicant is that a false FIR against the applicant under Case Crime No.118/2001 under Section 304-B, 498-A IPC read with ¾ Dowry Prohibition Act was lodged at Police Station Kotwali Sultanpur. The contention is that on account of being father-in-law, he has been falsely implicated in the Dowry Death case and the Session Court has convicted him on 17.09.2002. Thereafter, a Criminal Appeal No.2281 of 2009 has been filed before the Hon'ble High Court. While admitting the appeal the applicant has been bailed out and the sentence of imprisonment has been suspended. But, the respondents have illegally placed the applicant under suspension vide order dated 30.11.2009 and issued a show cause notice. After considering his written reply, the respondents have also passed the impugned order dated 28.04.2010 removing him from service. He preferred an appeal, which too has been rejected in an arbitrary manner on 05.08.2010. Hence this O.A.

3. From the side of the respondents a detailed Counter Affidavit has been filed justifying the impugned order passed by them.

4. The applicant has also filed a Rejoinder Affidavit reiterating his pleadings.

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5. We have heard the learned counsel for the parties at length and carefully perused the entire material on record.

6. From the side of the applicant an emphasis has been laid only on the point that the impugned dismissal orders as well as order of appellate authority are solely based on the conviction of the applicant in the above case. But, in entire dismissal/appellate order the conduct of the applicant leading to his conviction has not been discussed or considered which is mandatory under Article 311 (2) of the Constitution of India.

7. Before proceedings further, Article 311 (2) and its second proviso of Constitution of India are required to be perused, which are quoted as under:-

> "311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State
> (1) .....
> (2) No such person as 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.....
> 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) and (c).....

8. In the leading case of ***Union of India v. Tulsi Ram Patel 1985 (3) SCC-398*** the Hon'ble Apex Curt has held as under:-

> "Not much remains to be said about Clause (a) of the Second Proviso to Article 311(2). To recapitulate briefly, where a disciplinary authority comes to know that a Government servant has been convicted on a criminal charge, it must consider whether his conduct which has 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 judgment of the criminal court and

consider all the facts and circumstances of the case and the various factors set out in Challappan case. This, however, has to be done by it ex parte and by itself. Once the disciplinary authority reached to conclusion that the Government servant's conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned Government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned Government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offences committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service the court will also strike down the impugned order. Thus, in *Shankar Das v. Union of India,* this Court set aside the impugned order of penalty on the ground the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the court should always order reinstatement. The court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case."

9. The preposition of law laid down in ***Tulsi Ram Patel's*** case has been constantly followed by our Hon'ble High Court of Judicature at Allahabad. The learned

counsel for the applicant has placed reliance on the following two such cases;-

(1). ***Krishna Gopal Sharma V. State of U.P. and Others 2004 Alld. L.J. 4240.***
(2). ***Sada Nand Mishra v. State of U.O.I. & Another L.C.D.-1993 (11)-70.***

10. In the above backdrop, we have thoroughly examined the impugned order and we find that it's solely based on the ground of conviction of the applicant. Nowhere in the entire order the conduct of the applicant has been considered, which has led to his conviction, which may warrant the imposition of penalty. After considering the above point, the disciplinary authority was also supposed to consider as to what penalty should be given. For this purpose, the disciplinary authority was required to peruse the judgment of criminal court and then consider all the facts and circumstances of the case and the various factors set out therein. Off course, it was to be done ex-parte and by itself as laid down in the case of Tulsi Ram Patel's case (Supra). Then if the disciplinary authority reaches the conclusion that the conduct of the government servant was such as to require dismissal or removal from service or reduction in rank, he must decide which of these three penalties should be imposed on him. But, in the present case, we find that the disciplinary authority passed the impugned order believing that conviction of the applicant automatically entails major punishment of removal from service and accordingly, it passed the impugned order. Similarly, when the applicant submitted an appeal against this order on the administrative side that too was rejected by means of a non-speaking order. It merely mentions that

adhering to the instructions contained in PS-10889 dated 14.07.1994 and after taking opinion of Chief Legal Advisor the appeal is rejected which only shows his non-application of mind.

11. Finally, therefore, in view of the above, we have no other alternative but to allow the O.A. and quash both the impugned orders relegating the matter back to the respondents to pass an appropriate order afresh in accordance with law as discussed hereinabove and accordingly, it is so ordered. Further, it is directed that the Disciplinary authority may complete the exercise expeditiously say within 4 months from the date of this order. No order as to costs.

(D.C. Lakha)
Member (A)

Alok Kumar Singh 6.12.12

(Justice Alok Kumar Singh)
Member (J)

Amit/-