

**Central Administrative Tribunal
Lucknow Bench, Lucknow.**

Original Application No.136/2005
This the 18th day of March, 2009

HON'BLE SHRI M. KANTHAIAH, MEMBER (J)
HON'BLE DR. A.K. MISHRA, MEMBER (A)

Shahid Khan, aged about 44 years S/o Late Sri Shabbir Khan , R/O Sharwali Kothi Bagh Aine Bibi, Hussainganj, Lucknow.

... Applicant.

By Advocate: Shri S. Misra.

Versus.

1. U.O.I. through G.MN.N. Rly. Hq. Baroda House, New Delhi.
2. Chief Works Manager C&W Workshop N.R. Alambagh, Lucknow.
3. Dy. Chief Mechanical Engineer (Work) C&W Alambagh, Lucknow.

... Respondents.

By Advocate: Shri M.K. Singh.

ORDER

HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

The applicant has filed the OA with a prayer to set-aside the impugned punishment order dt.27.5.2004 (Ann-A-1) and 4.9.2004 (Ann-A-2) passed by Respondent No. 3 and 2 respectively and for reinstatement of the applicant with all consequential benefits on the following grounds:

- (i). The dismissal of the applicant was mainly based on his conviction in the criminal case.
- (ii). There was no departmental enquiry and no opportunity to show cause notice before proposing penalty of dismissal of service given to the applicant.
- (iii). The Disciplinary authority failed to take account the entire facts and circumstances of the case.

2. The respondents have filed Counter Affidavit, denying the claim of the applicant stating that the applicant is not entitled for any relief

3. Heard.

4. The point for consideration is whether the applicant is entitled for the relief as prayed for.

5. The admitted facts of the case are that the applicant while working in the office of Respondent No. 2, a case was regd. against him on 23.9.1994 in Crime No.410/1994 under Section 307 read with 34 IPC and subsequently the same was converted in to Section 302 IPC. After full-fledged trial, the applicant was found guilty and he was convicted with punishment of life imprisonment and with fine of Rs. 5000/-. Ann-A-3 dt. 15.12.2003 is the copy of the judgment in Session Case No.51.1996 on the file of 5th Additional Fast Track Session Judge, Lucknow. Against the said conviction the applicant preferred appeal Criminal Appeal No. 203 of 2003 on the file of Hon'ble High Court in which the sentence of imprisonment was suspended and also granted bail during the pendency of the appeal. AnnA-4 dt.22.1.2004 is the copy of said order. Basing on conviction of the applicant by the Session judge, the respondent authorities have issued show cause notice to the applicant on 23.3.2004 proposing to impose punishment from dismissal from service by invoking the provision of Rule 14 (1) of Railway Servant (Discipline & Appeal) Rules, 1968 and sought his explanation. For which, the applicant submitted his explanation and thereafter, the respondent authorities have taken decision, imposing punishment of removal from service vide order dt.27.5.2005 (Ann-A-1) which is under challenge in this OA. When the applicant made representation against such punishment the authorities have rejected

the same and informed to the applicant vide order dt.04.09.2004 (Ann-A-2), which is also under challenge.

6. The short and limited questions involved in this case is

(i). Whether the respondent authorities are justified in imposing the punishment of dismissal from service upon the applicant under Rule 14 (1) of Railway Servants (Discipline & Appeal) Rules, 1968.

(ii). Whether applicant, who was convicted in a murder case with punishment of life imprisonment is entitled to seek his reinstatement on the ground that his criminal appeal is pending on the file of Hon'ble High Court .

7. Rule 14 (1) of Railway Servants (Discipline and Appeal) Rules, 1968 clearly empowering the disciplinary authority for imposing penalty against the Railway Servant, who was convicted on criminal charges after given an opportunity of making his representation on the penalty proposed to be imposed against him. In the instant case also, the disciplinary authority issued show cause notice after conviction of the applicant in a murder case with punishment of life imprisonment and after considering the representation of the applicant on such show cause notice, he imposed such penalty of dismissal from service of the applicant. Thus, the action taken against the applicant by the disciplinary authority is in accordance with rules and there are no violations.

8. It is the case of the applicant that he preferred criminal appeal against the punishment of life imprisonment and also was released on bail and on such grounds he relied for his reinstatement. Mere filing of an appeal against the punishment of conviction and life imprisonment, the applicant is not at all justified in questioning the action taken by the disciplinary authority under the provisions of the railway Servants

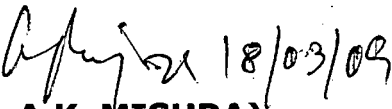
(Discipline & Appeal) Rules, 1968. It is open to the applicant to make such request only after disposal of the said criminal appeal on setting aside the conviction and punishment awarded in the session's case.

9. It is the case of the respondents that mere filing of an appeal and suspension of sentence and grant of bail during the pendency of criminal appeal does not bar the disciplinary authority for taking action or for imposing penalty basing on the judgment of conviction and in support of it he relied on the following decision, which also clearly supports his stand.

AIR 1995 SC 1364
Deputy Director of Collegiate Education (Administration)
Madras Vs. S. Nagoor Mera.

10. In view of the above circumstances, the applicant is not justified in questioning the punishment of dismissal of the applicant from service vide impugned order dt.27.05.2004 (Ann-A-1) and also rejection of request of the applicant vide order dt.04.09.2004 (Ann-A-2) and thus, there are no merits in the claim of the applicant and as such the same is liable for dismissal.

In the result, OA is dismissed. No costs.


(DR. A.K. MISHRA)
MEMBER (A)


(M. KANTHAIAH)
MEMBER (J)

16.03.2009