CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW

Original Application No. 214 of 2009

ORDER RESERVED ON 4.4.2016

ORDER PRONOUNCED ON 11/4/16.

HON'BLE MR. NAVNEET KUMAR, MEMBER(J)
HON'BLE MS. JAYATI CHANDRA, MEMBER(A)

Jeet Lal Yadav,
aged about 51 years,
son of Sri Chingi Prasad,
resident of Village Harraya,
Post office Itiathok,
District Gond.

Applicant

By Advocate: Sri R. K. Dubey

VERSUS

1. Union of India through Secretary,
Ministry of Railway,
Rail Bhawan,
New Delhi.

2. Senior Manager Railway (Parimandal),
North East Railway,
Ashok Marg, Lucknow.

3. Assistant Operating Manager (Coaching),
North East Railway, Lucknow.

Respondents

By Advocate: Sri B. B. Tripathi.

ORDER

HON'BLE MR. NAVNEET KUMAR, MEMBER(J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

(I) Issue an order or direction, whereby quashing the order dated 11.7.2007 passed by the opposite party No. 3 as well as orders dated 9.10.2007 and 3.10.2008 passed by the opposite party No. 2 (Annexures No. 1, 2 and 3 to the Original application respectively) and further opposite parties be directed to allow the petitioner to resume his duties on his respective post as he was performing earlier, with all service benefits.

(ii) Any other order which this Hon'ble Tribunal may deem just and proper in favour of the petitioner may also kindly be passed.

(iii) Allow this application with costs.

2. The brief facts of the case are that the applicant was initially appointed on the post of L.C. Porter in North East Railway. While he was working with the respondents organization, an FIR was lodged against him under Section 147, 148, 149, 307 and 325 IPC. The applicant was convicted and in pursuance of the conviction order, he was arrested and remained in Jail from 2.12.2005 to 17.2.2006. On the basis of the said conviction order, the respondents placed the applicant under suspension. Subsequently, the applicant preferred an appeal before Hon'ble High Court and he was released on bail. Subsequently, the respondents vide order dated 6/11.7.2007 passed an order of removal from service upon the applicant on the basis of his alleged conviction in the criminal case.

3. The applicant preferred an appeal and the appeal so preferred by the applicant was also rejected by the Appellate Authority.

4. The applicant also preferred the revision and the said revision petition was also rejected by the Revisional Authority vide order dated 3.10.2008.

5. The applicant feeling aggrieved by the aforesaid orders, preferred the present O.A. The applicant has also taken a ground that the removal as well as appellate and rejection of revision is illegal, arbitrary, malafide, unjustified and unwarranted and the same has been passed in a mechanical manner and the orders in question are perverse without application of mind and based on conjecture and surmise.

6. Apart from this, it is also indicated by the applicant that the impugned orders are non-speaking orders and the same has been passed without affording any opportunity of hearing and neither any inquiry officer was appointed nor the charge sheet is served upon the applicant. The learned counsel for the applicant also argued that the respondents have not followed the provision of Rule 14 (1) of Disciplinary and Appeals Rules, as such, the impugned orders are grossly violated and they are not legally sustainable in the eyes of law. Apart from this, the learned counsel for the applicant has also indicated that neither the appellate authority nor the revisional authority has considered the appeal of the applicant, as such, it requires interference by this Tribunal.

7. On behalf of the respondents, detailed reply is filed and through reply, it is indicated that the applicant was convicted in a criminal case and after due opportunity of hearing given to the applicant, the respondents have passed the impugned orders, as such, there is no illegality in the orders so passed by the respondents. Apart from this, the respondents have also indicated that the Railway Servants (Discipline and Appeal) Rule 1968 also provides that the disciplinary inquiry is not necessary where the railway servant is convicted by a court of Law on criminal charge and as per the Railway Board circular dated 6.6.1994, the orders so passed by the respondents is legally sustainable.

8. On behalf of the respondents, supplementary counter reply is also filed and in which, it is indicated by the respondents that after the conviction order so passed by

the Criminal Court, a show cause notice dated 12/21.2.2007 is given to the applicant through which, the applicant submitted the reply on 14.3.2007 and the disciplinary authority after considering the reply so submitted by the applicant passed the order of removal.

9. On behalf of the applicant, rejoinder is filed and through rejoinder mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied.

10. Heard the learned counsel for the parties and perused the record.

11. The applicant, who was working with the respondents organization was implicated in a criminal case under Section 147,148,149, 307 and 325 IPC. After the implication, a trial was conducted and the learned Trial Court convicted the applicant. The applicant preferred an appeal before the Hon'ble High Court and the Hon'ble High Court released the applicant on bail and also suspended the sentence so awarded to the applicant.

12. The respondents issued a show cause notice to the applicant vide show cause notice dated 14.2.2007 indicating there in that in exercise of power conferred by Rule 14 (i) of the Railway Servants (Discipline and Appeal) Rules, 1968, proposes to impose penalty of removal, dismissal from service and the applicant was also asked to submit his reply within a period of 15 days from the date of receipt of the memorandum.

13. In response to this, the applicant submitted the reply on 14.3.2007 and after considering the reply so submitted

by the applicant, the disciplinary authority passed the orders on 6/11/7/2007 whereby the applicant was removed from service.

14. Against the said removal order, the applicant submitted an appeal and the appellate authority also confirms the order passed by the disciplinary authority. The applicant not feeling satisfied by the appellate order also preferred the revision and the revision so preferred by the applicant also standsrejected by the revisional authority after considering the material available on record.

15. The Railway Board Letter No. E (D&A) 93 RG6-65 dated 06.06.1994 provides as under:

> **"Legally speaking when a person is convicted by a criminal court the same shall remain in force unless and until it is reversed or set aside by the competent court of appeal. Mere filing of an appeal and for staying of the execution of the sentence does not take away the effect of conviction unless the appeal is allowed and the conviction is set aside by the appellate court. During the pendency of the appeal in criminal case only, the sentence is suspended and not the conviction itself."**

16. The disciplinary inquiry is not necessary in the following cases:-

> **(i) When the charge or charges are admitted by the Railway servant without any qualification.**
>
> **(ii) When the Railway servant is convicted by a court of law on criminal charge and action to dismiss, remove or demotion of an employee is to be taken for his conduct leading to such conviction. In such a case, even the issue of charge sheet is not necessary and the penalty may be imposed straightway but in view of Law laid down by Hon'ble Apex Court issue of show cause notice in such cases is necessary.**
>
> **(iii) .....**
>
> **(iv) .....**
>
> **Provided that the Railway servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in the case falling under clause (1)**

of Rule 14 of the Railway Servants (Discipline & Appeal) Rules 1968."

17. It is indicated in the counter reply that after the conviction order passed by the Criminal Court, the show cause noticed dated 14.2.2007 is given to the applicant to which the applicant submitted the reply on 14.3.2007 and the disciplinary authority after considering the reply so submitted by the applicant passed the orders of removal from service after considering the service rules on the subject.

18. In the instant case, the reasonable opportunity has been given to the applicant before passing the removal order and while passing the impugned order, the disciplinary authority has gone into the facts and the reasons stated in the criminal charge.

19. Now, the question which requires determination is whether a person /employee can be terminated or dismissed on the basis of conviction. The Hon'ble Apex Court in the case of **Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera reported in 1995(3) SCC 377** has observed as under:-

> **"It should be remembered that the action under clause (a) of the second proviso to Article 311(2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311(2)."**
>
> .....
>
> **What is really relevant thus is the conduct of the government servant , which has led to his conviction on a criminal charge."**

20. In the case of **Union of India Vs. Tulsi Ram Patel 1985(3) SCC-398**, it is observed by the Hon'ble Apex Court

that government servant who has been convicted in a criminal charge cannot be dismissed from service merely on the ground of conviction. Appropriate Authority has to consider the case of employee which is led to his conviction. In the instant case, it is explicitly clear that the applicant has been convicted in a criminal case U/s 147,148,149,307 and 325 IPC, as such, it cannot be said that the respondents has not considered the conduct of the applicant before passing the impugned order.

21. That the Hon'ble High Court, Lucknow Bench , Lucknow in the case of **Sadanand Mishra Vs.State of U.P. reported in (2000) (18) LCD 88** has held as under:-

> **"In view of the above mentioned facts and circumstances, it is now well-settled that a Government employee cannot be dismissed, removed or reduced in rank merely on the ground that he has been convicted by a Court of law. Thus, conviction alone is not enough to punish a Government employee, but it is the conduct of employee concerned which had led to his conviction on the basis of which a Government employee can be punished. Hence, it is necessary for the disciplinary authority to consider the conduct of convicted Government servant which had led to his conviction. In absence of the same, the order of punishment would be bad."**

22. 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).....
....."

23. Hon'ble High Court in the case **Ram Pratap Singh Vs. State of U.P. and others reported in (2009) 2 UPLBEC 121** has been observed as under:-

> **"11. There are various kind of offences for which a person, who is also a civil servant, may be convicted and punished. The civil servant may be punished for a wrongful parking or jumping a red light. He may be punished in a minor scuffle, or for an offence in which, he is gravely provoked. The appointing authority has to go through his conduct, which includes the evidence and findings of the criminal court and considered all the facts and circumstances of the case and the factors, which have led to the conviction and punishment of the person before deciding whether clause (a) of the second proviso of clause (2) of Article 311, will be attracted."**

24. After examining the impugned order, we can only find that the order of removal is passed on the basis of conviction. The applicant was given show cause notice to which he has submitted the reply and after considering the same as well as the judgment rendered by the Trial Court in a criminal case, the order of removal is passed. Since the charges so levelled in the criminal case are grave in nature as such, respondents passed the order of removal.

25. In the instant case, the punishment imposed upon the applicant by the Trial Court for criminal offence is very serious. The serious nature of charges and other attendant facts are weighed against the applicant. The disciplinary authority also gave an opportunity to the applicant to submit his representation. Thus, it is

established that the opportunity is provided to the applicant about the proposed action. The action taken by the Disciplinary authority is as per Rules.

26. In view of the facts and circumstances of the case and legal position, we are of the opinion that there is no infirmity in the order of disciplinary authority and the order of appellate authority rejecting the appeal of the applicant as well as revision by the revisional authority. We, therefore, find no reasons to interfere with the impugned orders. The O.A. deserves to be dismissed.

27. Accordingly, the O.A. is dismissed. No order as to costs.

J. Chandra

(Ms. Jayati Chandra)
Member (A)

V.K. Agrawal

(Navneet Kumar)
Member (J)

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