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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH
Lucknow this the 4th day of Oct 96.
O.A. No. 330/92

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. V.K. SETH, MEMBER (A)

Sunil Massy, son of Shri Jeevan Massy,
working in Locl Workshop, Northern Railway,
Faizabad resident of Lakri Moha, Sadar Bazar
P.S. Cantt, Lucknow.

applicant.

By Advocate Shri Ganga Singh.

versus

1. Assistant Mechanical Engineer, D.R.M. Office, Northern Railway, Hazratganj, Lucknow.
2. Divisional Mechanical Engineer, Northern Railway Hazratganj, Lucknow.
3. Uion of India, through the Secretary for Railwasy, New Delhi.

Respondents.

O R D E R

HON. MR. JUSTICE B.C. SAKSENA, V.C.

The applicant, feeling aggrieved by order dated 4.5.92, removing him from service, has filed this O.A. The applicant was working as a casual labourer. A case under section 3 of Railway Property Unlawful Possession Act was instituted against him. The Additional Chief Judicial Magistrate, Varanasi by his order dated 22.6.90 passed in case No. 383/89, while convicting the applicant of the offences, in view of certain facts, ordered release of the applicant on probation on executing a bond for Rs2000/- Copy of the order and the judgment

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passed by the learned Additional Chief Judicial Magistrate, Varanasi, is Annexure RA-1 to the Rejoinder Affidavit.

2. The Assistant Mechanical Engineer(I), Northern Railway, Lucknow issued memo dated 2.4.92 calling upon the applicant to show cause as to why the penalty of removal of service be not imposed upon him. Copy of the said Memo is Annexure-1 to the O.A. The applicant showed cause and therein indicated that he had pleaded guilty and the court was pleased to release him on probation under section 4 of the Probation of Ist Offenders Act. Since the court was satisfied from his character, he was ordered to be released on probation.

3. However, the A.M.E.(I) Lucknow by order dated 4.5.92 came to the conclusion that the representation was not satisfactory for the reason "defence in reply to memo under rule 14(1) of D & R. Rule or Rules, 1968 is nothing new which the employee mentioned, hence rejected. Shri Sunil Massy, Substitute is removed from service with immediate effect." The applicant preferred appeal against the said order, but the same was not considered on the ground that it had not been submitted through proper channel.

4. We have heard the learned counsel for the parties and have been taken through the pleadings on record.

5. The learned counsel for the applicant submitted that in view of provisions of section 12 of the Probation of Ist offenders Act 1958 since the applicant had been ordered to be released on probation under sections 3 and 4 of

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the said Act, his conviction would not be a disqualification for retention in service. Secondly, the learned counsel for the applicant submitted that the order of removal from service has been passed solely on account of conviction and the conduct leading to the conviction has not been considered, therefore, the impugned order is illegal.

6. The learned counsel for the applicant, in support of his submissions noted hereinabove cited the decision in the case of Dunnalal vs. State of U.P. reported in 1990(27) ACC, page 505. This decision ^{was} rendered by the learned Single Judge of Allahabad High Court. It was held therein that once a convict is placed on probation for good conduct under Probation of Ist Offenders Act, the employer shall not terminate his service by virtue of his conviction. It was further held that if the services of the convict has been terminated by the authorities concerned, during the pendency of his appeal in the High Court as was the case therein, it was incumbent on the authorities to review the order of termination, if any review application or appeal against the termination is filed against the convict.

The learned single judge took note of a few decisions to support the conclusions like Raghbir Singh vs. State of Haryana reported in AIR 1985, S.C. 1278. In the said case the appellant had been convicted by the Sessions Judge for offences under section 304, Part II and section 323 both read with section 34 IPC. On appeal to the High Court, the conviction in respect of appellant under section 304 Part II was set aside but his conviction under section

323 with sentence was maintained. The appellant filed application seeking extension of the benefit of probation of Offenders Act. The Hon'ble Supreme Court, in the facts of the case came to the conclusion that the appellant was entitled to be admitted to the benefits of probation under section 3 of the Probation of Offenders Act, taking into consideration the circumstances of the case, nature of the offence and the character of appellant, the appellant was directed to be released on probation of good conduct under section 4 of the Act. The Hon'ble Supreme Court also expressed the view that "in the peculiar facts of the case, the conviction should not affect his service."

7. The learned Single Judge in Dunnalal vs. State of U.P. (supra) also considered two other decisions (i) Chandra Rao vs. State of Andhra Pradesh wherein the accused was convicted under section 304 Part I but was released on probation for good conduct. The Hon'ble Supreme Court held that the service career of the appellant shall not be affected on account of his conviction.

8. A perusal of judgment in Dunnalal's case shows that one of the pleas advanced therein was that the probation of First Offenders Act is reformatory in nature. The object and purpose of the probation of first offenders Act is to provide opportunity to the convict to reform himself to become a worthy citizen and if a convict who is placed on probation for good conduct, is deprived of his livelihood by terminating his service, by virtue of his conviction, he shall never be able to reform himself and thus the very object and purpose of

the probation of first offenders Act shall be defeated. This submission prevailed with the learned Single Judge and he ruled that once a convict is placed on probation for a conduct under the provisions of Probation of Ist Offenders Act, the employer shall not terminate his service by virtue of his conviction.

9. The learned counsel for the applicant next cited a Division bench decision of Allahabad High Court(Lucknow Bench) reported in 1988 (6) Lucknow Civil Decisions 530 'Shyam Narain Shukla vs.State of U.P. and others''. This decision was cited in support of the second submission noted hereinabove that by the impugned order the applicant has been removed from service merely on the ground of conviction. His conduct leading to conviction has not been considered. In the said decision it was laid down that whenever a government servant is convicted of an offence, he cannot be dismissed from service merely on the ground of conviction but the authority has to consider the conduct of such employee leading to his conviction and then to decide what punishment is to be inflicted upon him.

10. ^{same} The/situation obtains in the present case. The show cause notice undr rule 14(i) of Railway Servants (D.&R.)Rules stated:"on a careful consideration of the circumstances of the case in which he was convicted on 22.6.90, on a criminal charge by the Additional Chief Judicial Magistrate, Northern Railway, Banaras in case No. 383/89 , the undersigned considers that his conviction is such as to render his further retention in railway service undesirable." The order of punishment was passed merely on the basis of the conviction of the applicant.

10. The learned counsel for the applicant next cited a Division Bench Decision reported in 1993 (2) LCD, 70 'Sadanand Mishra vs. State of U.P. and others'. In this decision it was laid down that on the basis of various Supreme Court decisions that no order of punishment under Article 311(2) second proviso, clause (a) can be passed unless the conduct which has led to conviction is also considered. It was also laid down that the scrutiny of conduct leading to conviction is to be done *ex parte*. No opportunity was required to be provided to the employee." The Division bench took note of the decision of the Hon'ble Supreme Court in Union of India vs. Tulsiram Patel reported in 1985(3) SCC 398 where it was observed:

"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 that, 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 serious factors set out in Chellapan case."....."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."

11. The next decision on which reliance has been placed on the second submission noted hereinabove, is the decision of learned Single Judge in Girja Shankar vs. State of U.P. and others (Writ Petition No. 2448/89 decided on 24.2.95 by Hon'ble S.C.Mathur J). The Supreme Court decision in Tulsiram Patel's case was also taken note of, besides other decision, and since the impugned order was passed merely by reason of order of conviction and did not contain any discussion on the conduct of petitioner which had led to his conviction, the order was held to be violative of clause (a) of 2nd proviso to Article 311(2) of the Constitution of India. The said decision supports the submission made by the learned counsel for the applicant.

12. The first submission of the learned counsel for the applicant however, cannot be accepted. The Hon'ble Supreme Court in a decision reported in 1992 SCC 426 Union of India vs. Bakshi Ram had occasion to consider the scope of section 12-14 of the Probation of Offenders Act and in that context referred to the observations made by Fazal Ali, J. in Personnel Officer, Southern Railway vs. T.R. Chellapan and the following observation was made:

"In criminal trial the conviction is one thing and sentence is another. The departmental punishment for misconduct is yet a third one. The court while invoking the provisions of section 3 or 4 of the Probation of Offenders Act does not deal

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with the conviction, it only deals with the sentence which the offender has to undergo."

Instead of sentencing him the court released him on probation of good conduct. The conviction however, remains untouched and the stigma of conviction is not obliterated. In the departmental proceedings a delinquent will be dismissed or reduced or removed on the ground of conduct which has led ~~to~~ his conduct of " criminal charge.

13. In Chellapan's case as also in Tulsiram's case it has been laid down that section 12 of the Offenders Act does not contemplate automatic disqualification of a person released on probation. It was also laid down that conviction of a delinquent employee simpliciter without anything more will not ~~be the~~ result ⁱⁿ of his automatic dismissal or removal from service.

His conduct leading to the conviction will have to be considered by the disciplinary authority even under rule 14(i) of the Railway Servants (Discipline and Appeal) Rules or Article 311(2) proviso (a). Thus, it is difficult to hold that merely because the applicant was released on probation in view of section 12 of the Probation of Offenders Act, would apply and he cannot be dealt with by the Departmental Authorities.

14. A perusal of the order passed by the Additional Chief Judicial Magistrate would show that though the applicant had pleaded guilty and for that reason he had been ^{found} guilty, his further plea that on 29.8.90 he had taken the driver's luggage and after leaving it when he was returning he was accounted by one Ibrahim, a notorious person, who threatened the applicant

to carry his cycle. Besides this circumstance, the learned Magistrate appears to have also taken note that the applicant was the sole bread winner for his old father and mother. There are several decisions which have laid down that if working employee is convicted, likelihood of his service being put in a jeopardy is valid consideration for purposes of section 4 of Offenders Act. The applicant was also apparently released on probation on same consideration though not spelled out in so many words.

15. In view of the fact that the order of punishment was passed merely by virtue of applicant's conviction, but his conduct leading to conviction has not been taken into consideration, the order of removal dated 4.5.92 deserves to be quashed and is hereby quashed. It will be open to the disciplinary authority to pass fresh order in accordance with law indicated hereinabove, within 2 months of the service of this order upon him. On failure to pass any order the applicant will be entitled to be reinstated forthwith but without back wages.

MEMBER(A)

Lucknow: Dated: 4/10/96

Shakeel/

VICE CHAIRMAN

