

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR  
BENCH, JAIPUR.

T.A.No.1573/86

Dt.of order: 13.4.'93

Ram Gopal

: Applicant

Vs.

Union of India & Ors. : Respondents

Mr.P.V.Calla

: Counsel for applicant

Mr.K.N.Shrimal

: Counsel for respondents

CORAM

Hon'ble Mr.Justice D.L.Mehta, Vice Chairman

Hon'ble Mr.B.B.Mahajan, Member (Adm).

PER HON'BLE MR.JUSTICE D.L.MEHTA, VICE CHAIRMAN.

Applicant plaintiff filed a suit in the Court of learned Munsif Magistrate (West) Jaipur City, Jaipur on 7.10.85. The same has been transferred to this Tribunal under Sec.29 of A.Ts Act and registered as T.A. The applicant was a Railway employee and there is an allegation that in a case of theft the applicant was convicted on 25.2.77 under Sec.411 IPC i.e. for an offence of receiving stolen property knowing that it is a stolen one. However, the learned Munsif was of the view that it is a fit case looking to the circumstances of the case for the benefit of Sec.4 of the Probation of Offenders Act to be extended in favour of the applicant plaintiff.

2. The applicant continued in service upto 24.5.84 and no action was taken by the respondents. For the first time on 25.5.84, a notice was issued by the respondents to show cause why he should not be removed from service on the ground that on 25.2.77 he has been convicted under Sec.411 I.P.C.

3. The applicant was thereafter removed from service on 18.8.84. He submitted an appeal/review petition. The same was, however rejected. Defendants have filed their reply and they have admitted that the applicant was convicted under Sec. 411 I.P.C and for the first time notice was served to him on 25.5.84, to show cause why he should not be removed from services.

4. Both the parties have not produced any documents in the Court. The learned counsel for the applicant submits that he has filed an M.P. which remained in defect and he removed the defects today and submits that he wanted to produce the copy of the impugned order on record, as the opposite party has taken the objection that the order has not produced. He has further submitted that the suit was pending in the Trial Court and as per the practice the documents are filed at the time of framing of the issues. It seems that the plea is based on ignorance of the practice of the Trial Court. In trial Court the documents which are the foundation of the suit are filed with the plaint and other documents are filed at the time of framing of the issues. In any case, a copy of the impugned order could have been filed during the last 7 years after the transfer of the case before the Tribunal.

5. It is an admitted position that the applicant was convicted under Sec.411 IPC for receiving stolen property from an accused who had committed theft in a private house. This may be sufficient ground for not keeping the applicant in employment even though the benefit of Probation of Offenders Act has been extended by the Trial Court. Looking to the facts and the circumstances of the case

the order cannot be held to be arbitrary or unjust but the conduct which led to convict has to be considered by the Disciplinary Authority. It is immoral to receive stolen property is an admitted position but for every immoral act the punishment of removal from service is not given. It depends upon the nature of the offence whether the punishment should be awarded or not.

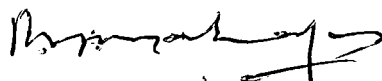
6. Mr. Calla has cited AIR 1985 SC 772, Shankar Dass Vs. Union of India and invited our attention of para 7 of the judgment. Shri K.N. Shrimal has submitted that the impugned order has not been filed in the Court and he has referred to the case of AIR 1986 SC 2166 Surinder Singh Vs. Central Government and drawn our attention to para 9 of the judgment in which it was held that normally when an order of Govt. or some authority is impugned before the High Court under Art. 226 of the Constitution, the copy of the order must be produced before it. In the absence of the impugned order, it would not be possible to ascertain the reasons which may have impelled the authority to pass the order. It is, therefore, improper to quash an order which is not produced before the High Court in a proceeding under Art. 226 of the Constitution.

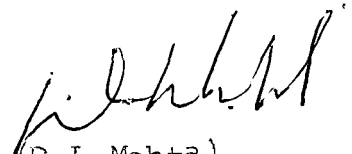
7. We have allowed the parties to read the order and both the parties read the impugned order before us. The basis of the order is a conviction under Sec. 411 IPC and the disciplinary authority has held that it is an immoral act. As such the non-production which may ordinarily be fatal may not be fatal in the instant case as we have taken into consideration the order passed and Mr. Calla has submitted the copy

of the order today with the M.P. before the Tribunal. Mr. Shrimal also cited before us the case of AIR 1988 SC 285 Trikha Ram Vs. V.K. Seth and he has also cited the case of Union of India Vs. Bakshi Ram reported in 1990 Labour Industrial Cases 806. The proposition laid down in both the cases are not disputed. The respondents have a power to impose penalty on a person who has been convicted even if the benefit of the Probation of Offenders Act has been extended. The important factor in this case is that the applicant plaintiff was convicted on 25.2.77 and the benefit of Sec.4 of the Probation of Offenders Act was extended to his favour and notice for imposing punishment was served on 25.5.84. The respondents have not said in the reply that during the intervening period of over 7 years any misconduct was further committed by the plaintiff applicant. When the respondents have failed to take any action for 7 years and no adverse conduct had been noticed within the period of 7 years after the conviction and he continued to be in employment, this is a ground for taking a liberal view in favour of the plaintiff applicant.

8. In the result, we are of the view that the order of removal dated 18.8.84 and the subsequent order passed by the appellate authority on 13.12.84 be set aside. We direct that he should be taken back in service within a period of 3 months from today but in the facts and circumstances of the case he shall not be paid back wages of the period during which he remained out of employment because of the order dated 18.8.84 till today. This period

shall be considered for other purposes as period spent on duty. However, it will not adversely affect the persons who may have been promoted during the intervening period and the applicant will have no claim against those promotions. For future promotions, this period may be considered as continuous service and this period may also be treated as qualifying service for pension and other benefits. The T.A. is disposed of accordingly with no order as to costs.

  
(B.B. Mahajan)  
Member (A)

  
(D.L. Mehta)  
Vice Chairman.