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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH
JODHPUR

Date of decision: 25.4.88

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Gopal Singh
Mr.M.S. Singhvi

Petitioner
Counsel for petitioner

VERSUS

Union of India & others
Mr. R.N. Mathur

Respondents
Counsel for respondents.

CORAM:

THE HON'BLE MR. B.S. SEKHON
THE HON'BLE MR. G.C. SINGHVI

VICE CHAIRMAN
ADMN. MEMBER.

B.S. SEKHON

Aggrieved by the penalty of removal from service, the petitioner filed the instant writ petition in the High Court of Rajasthan, Jaipur Bench. While working as an Artisan Khallasi the petitioner was apprehended by Shri Prabhatilal Rakshak CIB, Ajmer. He was prosecuted for the offence punishable under section 3 of the Railway Property (Unlawful Possession) Act, 1966 (for short the Act) on the allegation of being found in possession of some quantity of grease in one container of his tiffin carrier. He was convicted by the Railway Magistrate, Jaipur and sentenced to a fine of Rs.25/- vide his order dated January 12, 1977. The petitioner preferred a revision petition in the High Court against the aforesaid order passed by the learned Magistrate. The High Court maintained the conviction but directed the petitioner to be released on probation of good conduct on his entering into a personal bond in the sum of Rs.1000/- to appear and receive the sentence of fine of Rs.25/- whenever called upon to do so during the period of one year. After issuing a show cause notice, the disciplinary authority imposed a penalty of removal from service on the petitioner

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by his order No.E/4/308/B/77/33 dated December 9, 1977 (copy Annexure-III). The departmental appeal filed by the petitioner was rejected by the appellate authority. His representation also met the same fate on February 15, 1979.

2. The petitioner has challenged the order made by the disciplinary authority on the ground of violation of principles of Natural Justice as also of Articles 14 & 16 of the Constitution. Another plea raised by the petitioner is that the aforesaid order falls foul of the decision of the Supreme Court in Divisional Personnel Officer, Southern Railway Vs. T.R. Challappan and others (1). The petitioner has also impugned the order made by the appellate authority and the order of rejection of his representation (copies Annexures- 5 & 7 respectively).

3. After the writ petition was received by us on transfer, the respondents were given opportunity to file counter. Both the parties were also given opportunity to file written representations and additional documents.

4. We have heard the arguments advanced by the learned counsel for the parties and have also perused the records.

5. Since Challappan's case (supra) has been over-ruled by the Cause Celebre Union of India and another Vs. Tulsi Ram Patel (2), the same is of little avail to the petitioner. The Supreme Court also held in this authority that the disciplinary authority is not absolved of the duty to consider the ^{which} conduct in the light of facts and circumstances/led to the conviction of the delinquent public servant but that this task has to be performed by the disciplinary authority by itself and ex-parte. The ground based on Challappan (supra) is thus not available to the petitioner. None-the-less, the disciplinary authority is obliged to pass a reasoned order. The order made by the disciplinary authority also seems to have been passed

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without proper application of mind (Annexure-5). The order passed by the appellate authority has been made in disregard of the provisions of rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968. This order is also hit by the dictum of the Supreme Court in Ramchander Vs. Union of India & others (3). The impugned orders passed by the disciplinary authority and the appellate authority are thus unsustainable.

During the course of arguments, the learned counsel for the petitioner stressed that the extreme penalty of removal from service is much too harsh and is out of all proportion to the conduct of the petitioner leading to his conviction. A perusal of the High Court judgment goes to show that the grease which the petitioner was carrying in the tiffin carrier was worth hardly Rs. 6/- only. The High Court released the petitioner on probation on the grounds, that the property was of negligible value and this was his first offence. We are of the view that the offence committed by the petitioner was of a trivial nature and that the extreme penalty of removal from service is grossly disproportionate to the conduct leading to his conviction. It is also pertinent to notice that this was first offence of a minor nature committed by the petitioner. To our mind, it is an eminently fit case for substituting the extreme penalty of removal from service by that of stoppage of 3 increments with cumulative effect for a period of three years.

6. Consequently, we hereby set aside the impugned orders (Annexures-3, 5 & 7) and substitute the penalty of removal from service by the penalty of stoppage of 3 increments with ~~the~~ cumulative effect for a period of 3 years. The respondents are directed to reinstate the petitioner without any back wages and allowances from the date of removal till today. There would

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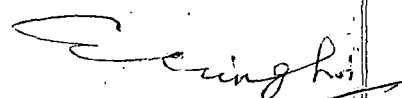
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be no break in continuation of petitioner's service for all purposes except loss of seniority for the said period of three years. The respondents are directed to comply with the directions contained herein within a period of three months from today.

The Transferred Application is disposed of accordingly with no order as to costs.



(G.C. Singhvi)
Admn. Member

25-4-88.


(B.S. Sekhon)
Vice Chairman

25-4-88

Received by

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Received by
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