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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR  
O.A.No.678/92

Dt. of order: 25-7-93

Hanuman

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.N.K.Vyas

: Counsel for applicant

Mr.K.N.Shrinani

: Counsel for respondents

CORAM:

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

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

Applicant Hanuman in this application under Sec.19 of the Administrative Tribunals Act, 1985, has prayed that he should be reinstated in service with immediate effect from the date of his removal as on 10.8.78 and that the respondents may be directed to pay all back wages and consequential benefits with interest at 18% per annum. He has also sought compensation of Rs.15,000/- from the respondents. He is also aggrieved that certain other benefits due to him such as P.F. balance in his name have not been paid to him.

2. The applicant was appointed as Khalasi on 4.8.61 in the Office of the Deputy Chief Electric Engineer(Workshop), Ajmer. On 25.6.74 when he was returning from the Workshop he was apprehended by the Security Personnel at the Main gate<sup>as</sup> being in unlawful possession of Railway Property worth Rs.80/-. He was prosecuted and convicted on the said charge under Railway Property (Unlawful Possession) Act, 1966 and was sentenced to one year's simple imprisonment from 26.4.77 (Annex.A-3). He preferred an appeal against the said conviction and sentence in the Court of Additional Sessions Judge No.1 Ajmer. Meanwhile due to conviction the applicant was removed from railway service vide order dated 10.8.78 passed by the Divisional Electric Engineer(Workshop) Ajmer (Annex.A4). By way of decision in his appeal, the Additional Sessions Judge, Ajmer remanded the case of the applicant to the Trial Court to decide it under Sec.360 Cr.P.C. The learned

Judicial Magistrate (Railway) Ajmer thereupon passed an order releasing the applicant on probation for one year from 30.8.85. He again preferred an appeal seeking a decision on merits regarding his conviction. After he was released on probation he approached the Departmental Authorities for reconsideration of his case with regard to the penalty of removal from service imposed on him. His appeal against the order of the Trial Court against his conviction was decided by judgment dated 3.8.1988 by which the learned Additional Sessions Judge Ajmer, held that the applicant could not be removed from service on the basis of the conviction which was under the consideration of the Appellate Court and which had not yet become final. However, his conviction was up-held by the learned Sessions Judge. The applicant again approached the Departmental Authorities for reinstatement but his request was rejected, on the basis of the advice given by the Law Officer of the Western Railway at Church Gate, Bombay.

3. According to the applicant, he was convicted for a minor offence of theft of an amount of Rs. 80/- and was given benefit of probation. Unfortunately the respondents have not reconsidered his case in the context of his release on probation, solely on the basis of a suggestion made by the Law Officer of the Western Railway. Although his removal from Railway service was ordered under Sub-rule (i) of Rule 14 of the Railway Servants (Discipline & Appeal) Rules and according to clause (a) of the Second Proviso to Article 311<sup>(2)</sup> of the Constitution, but the power conferred on the authorities under these provisions has to be exercised fairly, justly and reasonably.

4. The respondents in their reply have stated that release of a person on probation does not provide immunity to him against departmental penalty for misconduct for which the employee has been convicted. A criminal court had no jurisdiction to make any observation regarding service matter. The learned Judicial Magistrate (Railway) Ajmer has not exonerated the applicant on the charge of unlawful possession of Railway property.

5. During the arguments, the learned counsel for the applicant

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states that since the applicant had been released on probation of good conduct, no departmental penalty could be imposed on him in view of provisions of Sec.12 of the Probation of Offenders Act, 1958 which reads as under:

12. Removal of disqualification attaching to conviction - Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Sec.3 or Sec.4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release under Sec.4, is subsequently sentenced for the original offence.

He further argued that even otherwise the penalty imposed on the applicant was disproportionate to the ~~conduct~~ which lead to his conviction and which formed the basis of the imposition of penalty.

To support his case, he cited the following judgments:

- i) Shankar Das Vs. Union of India & Anr. 1985(2) SLJ 454 - Decided by the Hon'ble Supreme Court.
- ii) Trikha Ram Vs. V.K.Sath & Anr. AIR 1988 SC 285 - Decided by the Hon'ble Supreme Court.
- iii) Lachman Singh Vs. UOI & Ors. 1988(4) SLJ(CAT) 906 - Decided by the Chandigarh Bench of the Tribunal.
- iv) Dambarudhar Mahant Vs. UOI & Ors. 1988(4) SLJ (CAT) 1015 - Decided by the Cuttack Bench of the Tribunal.
- v) A.Kadashidhashwar Vs. UOI 1993(1) SLJ (CAT) 305 - Decided by the Bombay Bench of the Tribunal.
- vi) R.C.Tiwari Vs. The Chairman, Delhi Milk Scheme & Ors. 1987(2) SLJ (CAT) 57 - Decided by the Principal Bench of the Tribunal.
- vii) Union of India Vs. Farma Nanda AIR 1989 SC 1185 - Decided by the Hon'ble Supreme Court.

6. The learned counsel for the respondents relied upon the judgment of the Hon'ble Supreme Court in the case of Shankar Das (supra) and judgment of the Hon'ble Supreme Court in Union of India & Ors. Vs. Bakshi Ram, AIR 1990 SC 987 to oppose the contentions of the applicant.

7. We have heard the learned counsel for the parties and have perused the record and the judgments cited before us. The basic facts ~~are~~ that the applicant was convicted for unlawful possession of Railway property, was released under the Probation of Offenders Act, 1958 on probation of good conduct but before that he was removed from service under Rule 14(i) of the Railway Servants

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(Discipline & Appeal) Rules, are not in dispute. The observations of the learned Additional Sessions Judge on the question whether any departmental penalty could be imposed on the applicant when his appeal against his conviction was pending have to be ignored. Two questions arise for consideration in this case. First is whether the stigma attaching to a person who has been convicted of a criminal offence but has not been released on probation is wiped off and whether any departmental penalty can be imposed on him thereafter. The second question is whether, if a penalty can be imposed in spite of his being released on probation of good conduct after his conviction, whether the penalty has to be of dismissal or removal or it has to be a penalty having regard to the gravity of the misconduct revealed by the grounds which led to his conviction.

2. In Shankar Das's case, the Hon'ble Supreme Court while dealing with the question of the effect of Sec.12 of the Probation of Offenders Act, have observed in para 4 as follows:

"4. Section 12 of the Probation of Offenders Act must be placed out of way first. It provides that notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of S.3 or 4 "shall not suffer disqualification" attaching to a conviction for an offence under such law. The order of dismissal from service consequent upon a conviction is not a disqualification within the meaning of S.12. There are statutes which provide that persons who are convicted for certain offences shall incur certain disqualifications. For example, Chap.III of the Representation of the People Act, 1951, entitled Disqualifications for membership of Parliament and State Legislatures and Chap.IV entitled Disqualification for Voting contain provisions which disqualify persons convicted of certain charges from being members of legislatures or from voting at elections to legislatures. That is the sense in which the word disqualification is used in S.12 of the Probation of Offenders Act. Therefore, it is not possible to accept the reasoning of the learned single Judge of the Delhi High Court."

Thus the Hon'ble Supreme Court have held that the disqualifications referred to in Sec.12 of the Probation of Offenders Act are those which are mentioned in certain other statutes and the order of dismissal from service consequent upon a conviction is not a disqualification within the meaning of Sec.12. However, in this case the Hon'ble Supreme Court held that the power available to the Govt. under clause (a) of the Second Proviso to

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Article 311(2) has to be exercised fairly, justly and reasonably and that the penalty to be imposed has to be commensurate with the misconduct emerging from the conviction. In this particular case, the Hon'ble Supreme Court after considering all the facts and circumstances of the case ordered reinstatement of the applicant, who had been dismissed from service after his conviction on charge of misappropriation of public funds.

9. In the case of Trikha Ram, the Hon'ble Supreme Court modified the penalty of dismissal from service imposed upon the Govt. servant as a result of his conviction for a criminal offence to that of removal from service so that the order of punishment did not operate as a bar and disqualification for future employment with the Govt.

10. In Lachman Singh's case the Chandigarh Bench of the Tribunal held that Sec.12 of the Probation of Offenders Act, saved a person released under Sec.4 of the Probation of Offenders Act not only from a legal disability and that a person given the benefit of Sec.12 is not saved from a departmental penalty. However, the Tribunal held that in the circumstances of the case before them appropriate penalty commensurate with the misconduct should be imposed.

11. In Dambarudhar Mahant's case the Cuttack Bench of the Tribunal were dealing with a case wherein the applicant on being found guilty in departmental proceedings was removed from service. However, in the circumstances of the case before them the Tribunal held that the quantum of penalty imposed was excessive.

12. In A.Kadsidhashwar's case, the Tribunal were dealing with a case in which the applicant was found drunk on duty, was convicted by the Court was removed from service as a consequence but, on appeal against the conviction, was let off on execution of bond or good conduct. The department however did not even ~~then~~ reduce the penalty of removal from service imposed upon him earlier. The Tribunal held that the penalty imposed was harsh and they substituted it by the penalty of compulsory retirement.

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13. In R.C.Tiwari's case on conclusion of disciplinary proceedings the applicant was found guilty of the charge and was removed from service. The Tribunal noted that the applicant was removed from service on being found guilty of theft. Stolen property was fully recovered from him and the applicant had put 7 years service. The Tribunal directed the Appellate Authority to reconsider the penalty imposed.

14. In Parma Nanda's case, the Hon'ble Supreme Court dealt with the question whether in cases in which enquiry has been properly held and there is some evidence to support the finding of the disciplinary authority regarding misconduct of a Govt. servant as a result of which a penalty <sup>is</sup> imposed on him, the Court or the Tribunal can interfere with the quantum of the penalty imposed. The Hon'ble Supreme Court held that in such cases the Courts of the Tribunal have no authority to interfere with the quantum of penalty imposed. However, they held that in cases in which penalty is imposed under clause (a) of the Second Proviso to Article 311(2) of the Constitution the Tribunal may examine the adequacy of the penalty imposed in the light of the conviction and if the penalty imposed is apparently unreasonable or uncalled for, having regard to the nature of the criminal charge, the Tribunal may step in <sup>to</sup> render substantial justice and it may either remit the matter to the competent authority for reconsideration or by itself substitute one of the penalties provided under clause (a), supra.

15. In Pakshi Ram's case the Hon'ble Supreme Court have affirmed the principle which they had earlier laid down in Shankar Das's case. This is what the Hon'ble Supreme Court ~~is~~ observed in para 13 of their above judgment.

"13. Section 12 is thus clear and it only directs that the offender "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law." Such law in the context is other law providing for disqualification on account of conviction. For instance, if a law provides for disqualification of a person for being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of S.12 stands removed. That in effect is the scope and effect of S.12 of the Act. But that is not the same thing to state that the person who has been

dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation of good conduct. Apparently, such a view has no support by the terms of S.12 and the order of the High Court cannot, therefore, be sustained."

However, in this case, following their earlier judgment in Trikha Ram's case, they altered the penalty of dismissal from service to that of removal from service.

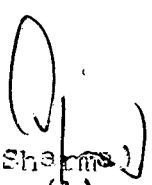
16. The position that emerges is that if a person is released under Sec.3 or Sec.4 of the Probation of Offenders Act, Section 12 of the said Act does not wipe out the stigma attaching to the conviction and consequently the ground or the misconduct which led to his conviction remains. On account of the ground which led to his conviction, the Disciplinary Authority is entitled to impose a suitable penalty on the Government servant so convicted. The disqualification which is removed by Sec.12 of the Probation of Offenders Act is not the one which a Govt. servant would suffer on account of imposition of a departmental penalty. A departmental penalty after the government servant is convicted of a criminal offence, is imposed on him not on account of his conviction but on account of the ground which led to his conviction which remains intact even after the benefit of Sec.12 of the Probation of Offenders Act is extended to him. The disqualifications removed by Sec.12 of the Offenders Act are different and these are those which are referred to in para 4 of the Hon'ble Supreme Court's judgment in Shankar Das's case and para 13 of the Hon'ble Supreme Court's judgment in Bakshi Ram's case. However, as regards the quantum of penalty, there can be no dispute that it has to be determined having regard to the facts and circumstances of the case and the gravity of the misconduct. In view of the judgment in Parmanand's case, the Tribunal is fully empowered to redetermine the quantum of penalty either by itself or it can remand the matter to the departmental authorities for redetermining it.

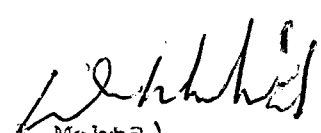
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17. In the result, we partly allow this petition and answer accordingly. Although Sec.12 of the Probation of Offenders Act removes the disqualification if any attaching to a conviction of an offence under the relevant laws, the Disciplinary Authority has the power to impose a suitable departmental penalty after taking into consideration the ground on which conviction has been ordered by a criminal court.

18. The Tribunal has the jurisdiction to revise or modify the penalty when it comes to the conclusion that the penalty so imposed is arbitrary or perverse. In the instant case we could ourselves have passed order regarding appropriate penalty, taking into consideration the observations made by the learned Magistrate in his judgment while releasing the applicant under Sec.12 of the Probation of Offenders Act. However we shall restrain ourself from passing order regarding penalty and shall leave it to the Disciplinary Authority to reconsider the penalty to be imposed on the applicant, having regard to the circumstances under which benefit of Sec.12 of the Probation of Offenders Act was granted to the applicant. It is the duty of the Disciplinary Authority to consider the matter afresh in the light of the benefit given to the applicant under Sec.12 of the Probation of Offenders Act and to pass the proper order in the disciplinary proceedings according to law. For this reason we are not passing any order relating to penalty and we keep the matter open to the Disciplinary Authority to pass an appropriate order in the matter of penalty, according to law.

19. In the result, the application is allowed in part with no order as to costs.

  
(O.P. Sharma)  
Member (A).

  
(D.L. Mehta)  
Vice Chairman.