

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 28.2.95.

OA 3/93

BHANWAR LAL

... APPLICANT .

V/s.

UNION OF INDIA & ANR.

... RESPONDENTS .

CORAM:

HON'BLE MR. GOPAL KRISHNA, MEMBER (J).

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

For the Applicant

... SHRI R.N. MATHUR.

For the Respondents

... SHRI S.S. HASAN.

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

In this application u/s 19 of the Administrative Tribunals Act, 1985. Shri Bhanwar Lal has prayed that the order dated 7.4.92 (Annexure A-1), by which penalty of removal from service was imposed on him, may be quashed and that he may be ordered to be taken back in service.

2. The facts, as stated by the applicant, are that when he was holding the post of Khalasi in Loco Workshop, Western Railway, Ajmer, a criminal case was instituted against him on 12.5.90 u/s 3 of the Railway Property (Unlawful Possession) Act, on the ground that a piece of brass costing Rs.60/- was recovered from him when he was coming out of the Workshop. The Additional Chief Judicial Magistrate (Railways), Ajmer, vide his judgement dated 16.12.91 held the applicant guilty of the charge framed against him but granted him benefit of probation. The applicant filed an appeal against the aforesaid judgement, in the Sessions Court, Ajmer, which is still pending. After the judgement of the learned Additional Chief Judicial Magistrate, as aforesaid, the Assistant Production Engineer (Loco), Western Railway, Ajmer, issued a charge-sheet (Annexure A-2) to the applicant on 9.3.92 and thereafter imposed upon him the penalty of removal from service under Rule 14(i) of the Railway Servants (Discipline & Appeal) Rules (for short the Rules) vide order dated 7.4.92

(Annexure A-1). The applicant submitted an appeal against the penalty imposed, which is still pending. The applicant has stated that the penalty has been imposed on him merely on the basis of his conviction in the criminal case, whereas penalty u/r 14(i) of the Rules can be imposed on a Railway servant only on the ground of ^{the} conduct which led to his conviction on a criminal charge. Therefore, the penalty imposed on him is not on the basis of the provisions in the rule. No reasons have been given by the disciplinary authority for imposing the penalty, but the disciplinary authority has merely stated that having regard to the gravity of the case and the judgement of the court, the applicant must be removed from service. The disciplinary authority also failed to appreciate that the applicant was granted the benefit of Probation of Offenders Act. The penalty imposed is grossly disproportionate to the misconduct alleged on his part.

3. The respondents, in their reply, have stated that the value of the brass stolen by the applicant was more than Rs.60/-. The disciplinary authority has lawfully imposed the penalty of removal from service on the applicant. The appeal filed by the applicant has since been decided by the appellate authority vide communication dated 18.4.91. This communication is stated to have been annexed to the reply of the respondents as Annexure R-1. There is, however, no such annexure to the reply. The respondents have reiterated that penalty can be imposed merely on the basis of conviction on a criminal charge. Grant of benefit under the Probation of Offenders Act does not make any difference to the case, since the applicant has, admitted ^{on} been convicted of the charge framed against him.

4. We have heard the learned counsel for the parties and have gone through the records.

5. Rule 14(i) of the Rules provides that an appropriate penalty can be imposed on a Railway servant on the ground of conduct which led to his conviction on a criminal charge. Thus,

the disciplinary authority was required to take into account not merely the fact that the applicant had been convicted by a court of law on a criminal charge but had also to consider the ground which led to his conviction on the said criminal charge. In imposing the penalty on the basis of conviction alone, the disciplinary authority has not taken into account the precise nature of the charge against the applicant and other attendant circumstances ^{also} as the fact that he had been released under the Probation of Offenders Act. It is not that a penalty cannot be imposed where a Railway servant after conviction has been released under the Probation of Offenders Act but certainly this is a relevant fact for deciding the quantum of penalty to be imposed on the Railway servant who has been convicted of a particular offence. Annexure R-1 by which, according to the respondents, the appellate authority has decided/considered the appeal of the applicant, is not before us and therefore we do not know whether the appellate authority considered the gravity of the misconduct of the applicant and the ground which led to his conviction in the light of the judgement of the learned Additional Chief Judicial Magistrate and thereafter passed the appellate order.

6. In these circumstances, we direct the appellate authority to pass a fresh speaking order after taking into consideration the grounds which led to his conviction and the gravity of the misconduct of the applicant and other attendant circumstances such as the fact that he has been released under the Probation of Offenders Act. The fresh order shall be passed by the appellate authority within a period of four months from the date of receipt of a copy of this order. We make it clear here that we have not interfered with the order of the disciplinary authority at this stage.

7. The OA stands disposed of accordingly, with no order as to costs.

(O.F. SHARMA)
MEMBER (A)

(GOPAL KRISHNA)
MEMBER (J)