

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 21.7.94.

OA 698/93

PHOOL CHAND

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

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

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

For the Applicant ... SHRI G.P. RAUSHIK.

For the Respondents ... SHRI K.N. SHRIMAL.

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

Applicant Phool Chand has filed this application u/s 19 of the Administrative Tribunals Act, 1995 (for short the Act), praying for quashing the orders dated 9.11.93 and 11.6.75, by which the penalty of removal from service was imposed upon him. He has also claimed back wages and other consequential benefits.

2. We have heard the learned counsel for the parties and have carefully perused the records.

3. The applicant was convicted by the Judicial Magistrate, 1st Class, Ajmer, u/s 324 read with Section 34 of the Indian Penal Code and he was sentenced to pay a fine of Rs.350/- and on his failure to deposit the fine he was sentenced to undergo rigorous imprisonment for one month. The applicant challenged the conviction and sentence before appropriate forums but the same were maintained. The applicant was served with a notice to show cause as to why disciplinary action should not be taken against him under rule 14(1) of the Railway Servants (Discipline & Appeal) Rules, 1968 (for short the Rules) on account of conduct which had led to his conviction on 31.7.65. The disciplinary authority vide order dated 11.6.75 imposed upon the applicant the penalty of removal from service. The applicant, aggrieved by the order in regard to the imposition of the penalty of removal, had filed a writ petition in the Jaipur Bench of the Rajasthan High Court which was transferred to this Bench of the Tribunal u/s 29 of the Act. Since the applicant's appeal was not decided by the appropriate appellate authority, a Bench of this Tribunal had issued a direction to the appellate authority to examine the appeal on merits and dispose of the same by a speaking order after affording an opportunity of hearing to the applicant. The appellate authority vide its order dated 9.11.93 (Annexure A-2) dismissed the appeal upholding the penalty of removal imposed upon the applicant by the disciplinary authority.

4. The respondents' contentions are that the applicant has not exhausted the remedy of revision available to him u/r 25 of the

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Rules and the penalty imposed is not disproportionate to the gravity of misconduct which had led to his conviction on a criminal charge. The remedy by way of revision, as provided u/r 25 of the Rules, in our opinion was not obligatory on the part of the applicant in the circumstances of the present case as the applicant had been agitating his grievance for a considerably long time. The punishment of removal inflicted upon the applicant by the disciplinary authority and maintained by the appellate authority appears to be disproportionate to the gravity of misconduct which had led to his conviction u/s 324 of the Indian Penal Code. Since extreme penalty of removal imposed upon the applicant does not appear to be commensurate with the gravity of his ^{mis}conduct, we consider it a fit case to interfere with the decision of the disciplinary authority as well as the appellate authority.

5. This application therefore succeeds to the extent that the penalty of removal from service is reduced to that of compulsory retirement w.e.f. 11.6.75. The applicant shall be entitled to all consequential benefits which shall be granted to him within a period of four months from the date of receipt of a copy of this order.

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

(O.P. SHARMA)
MEMBER (A)

Chakrabarti
(GOPAL KRISHNA)
MEMBER (J)