

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Date of decision: 2-11-1995

OA No. 495/95

Bishan Lal

.. Applicant

VERSUS

Union of India and others

.. Respondents

CORAM:

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

HON'BLE MR. RATIAN PRAKASH, MEMBER (J)

For the Applicant

.. Mr. N.K. Gautam

ORDER

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

In this application under section 19 of the Administrative Tribunals Act, 1985, Shri Bishan Lal has prayed that the respondents may be directed to take the applicant back on duty and to make payment to him of the arrears of pay etc. w.e.f. 3-7-91, the date of the judgement to the date of taking him on duty. His alternative prayer is that the retirement benefits such as Pension, Gratuity etc. may be paid to the applicant.

2. The facts of the case as stated by the applicant are that he was appointed in the Railway Workshop, Ajmer on 26-5-55 and was last working as Helper Fitter, when he was convicted by order dated 11-3-86 by Judicial Magistrate (Railway), Ajmer for an incident of theft of railway property which occurred in the railway workshop premises on 8-2-77. As a consequence of the conviction, he was removed from service. On his filing appeal, the Special Judge SC&ST Prevention of Atrocities, Ajmer, vide order dated 3-7-91 released the applicant on probation of

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3 years declared that the charges proved against the applicant would not operate as a disqualification. After the above decision, the applicant was advised by respondent No.2, Chief Works Manager, Western Railway, Ajmer, to contact him after completion of the aforesaid period of 2 years' probation. On completion of the aforesaid period, the applicant requested Respondent No.2 to take him back on duty but his request was not considered by the respondents. His alternative prayer for grant of retirement benefits, such as pension, gratuity etc. was also rejected vide letter dated 29-5-95 (Ann.A1). The applicants' case is that since the appellate court had ordered that the charges proved against him would not operate as a disqualification against him, the applicant ought to have been taken back on duty w.e.f. 3-7-91, the date of which the order in appeal, Annexure-A2, was passed. There was only a theft case against him and there were no disciplinary proceedings against him. Alternatively, according to him, he is entitled to retirement benefits accruing to him under service rules.

3. During the arguments, the learned counsel for the applicant drew our attention to Annexure-A2 dated 3-7-91, which is the order of the appellate court. By this order, according to the learned counsel for the applicant, the Special Judge set-aside the order relating to the sentence imposed on the applicant. Since the benefits of section 5 of the Probation of Offenders Act had been granted to the applicant, the disqualification, if, any, attaching to his conviction would stand removed. Therefore, since nothing remains against applicant, he ought to have been taken back on duty by the respondents. The applicant's alternative claim for payment of pensionary benefits rests on the ground

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that he is entitled to these on account of completion of a particular number of years of service. (6)

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

5. By the order dated 11-3-86 passed by the Judicial Magistrate (Railway), the applicant was convicted for theft of railway property and sentenced to rigorous imprisonment for one year and a fine of Rs. 1000/- was also imposed on him. It was on the basis of this order, according to the applicant, that the Disciplinary Authority removed the applicant from service. We have gone through the order at Annexure A-2 dated 3-7-91 passed by the Special Judge, in appeal. It is clear from the said order that the conviction of the applicant has not been set-aside and in fact it has been maintained. Only the sentence imposed on the applicant has been set-aside and the benefit of Probation of Offenders Act has been given to the applicant. The question whether in view of the benefit given under the Probation of Offenders Act to a person convicted by a Court of Law, any departmental penalty can be imposed has been considered by the Hon'ble Supreme Court in a number of cases. In Union of India and others Vs Bakshi Ram, AIR 1990, SC 987, after noticing several of their earlier judgements on the subject, the Hon'ble Supreme Court held that the release of the offender on probation does not obliterate the stigma of conviction. The order to release on probation comes into existence only after the accused is found guilty and convicted of the offence. The order of release on probation is merely in substitution of the sentence imposed by the court. The Hon'ble Supreme Court further held that in criminal trial, conviction is one thing and sentence is another. The departmental punishment is yet a third one. In the departmental

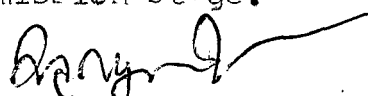
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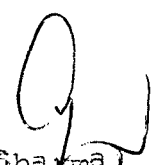
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proceedings the delinquent can be dismissed or removed or reduced in rank on account of his conviction on a criminal charge. Further according to the Hon'ble Supreme Court, Section 12 of the Probation of Offenders Act does not preclude the department from taking action for misconduct which led to conviction. This section was not intended to exonerate a person from departmental punishment.

6. Although the applicant has not presented the order by which he was removed from service, apparently the order had been passed under Rule 14(i) of the Railway Servants (Discipline and Appeal) Rules, 1968 which provides, in substance, that where a person is convicted on a criminal charge, an appropriate departmental penalty may be imposed on him on the ground which led to his conviction on the criminal charge. Hence no interference is called for in the matter of removal of the applicant from service. We see no justification for the claim for grant of pensionary benefits to the applicant, because as per Rule 41(1) of the CCS (Pension) Rules, a government servant who is dismissed or removed from service forfeits his pension and gratuity.

7. In the above circumstances, we find no merit in this application and it is, therefore, dismissed at the admission stage.


(Rattan Prakash)
Member(J)


(O.P. Sharma)
Member(A)