

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of decision 12-1-1996 (3)

RA No.67/95 (OA No.495/95)

Bishan Lal

.. Applicant

VERSUS

Union of India and Others

.. Respondents

ORDER

Shri Bishan Lal has filed this application seeking review of the order of the Tribunal passed on 2-11-95 in OA No. 495/95, Bishan Lal Vs Union of India and Others.

2. The brief facts of this case were that the applicant, a railway servant, was convicted by the Judicial Magistrate (Railway) for theft of railway property and was sentenced to imprisonment and fine. On appeal, the Special Judge set aside the sentence imposed on the applicant and granted him benefit of Probation of Offenders Act. The respondents, however, dismissed the applicant from service on receipt of the judgement of the Judicial Magistrate (Railway) by which the applicant was convicted and sentenced to imprisonment and fine.

3. In the OA the applicant had taken ground that since he was released on probation by the competent court with the further stipulation that the charges against him on the basis on which he was convicted will not be a disqualification against him, he was to be taken back on duty but he was not taken back on duty. He had also stated that there was only one theft case against the applicant and there was no disciplinary proceedings and therefore, the description in the communication dated 29-5-95 (Ann.A1) of the OA that there were two different cases against him and that there was initiation of two disciplinary proceeding against him, was not correct. By this communication (Ann.A1) dated 29-5-95, the applicant had been

informed, in reply to his representation, that since he was found guilty in two cases relating to theft of railway property and he had been dismissed from service on the basis of disciplinary proceedings, he could not be granted any pensionary benefits. Another ground taken by the applicant was that he was granted probation and since the charges proved against him were not now a disqualification, he was entitled to retirement benefits under the service rules on account of his faithful service.

4. In ^h order dated 2-11-95, the Tribunal had noted that the applicant had not presented the order by which penalty of dismissal from service was imposed on him. The Tribunal had further noted that although the sentence and fine imposed on the applicant had been set aside and he had been released under the Probation of Offenders Act, his conviction has not been set aside in appeal. The departmental authorities were, therefore, competent to impose an appropriate penalty on the applicant on the grounds which led to his conviction in a court of law. Even though he had been released under the Probation of Offenders Act, this was not a bar to imposition of a departmental penalty on the applicant. Therefore, the applicant's OA was dismissed by the Tribunal, at the admission stage.

5. In the review application, the applicant has stated that the following facts were not properly considered by the Tribunal while deciding the case:

- (a) the respondents did not follow the procedure prescribed under Rule 14(i) of Rly Servants (D.A.) rules 1968 including issuance of show cause notice to the applicant before or after his conviction.
- (b) the respondents did not deal with the case of applicant in light of respondent No.2 letter No.EW/308/B/77-2

dated 3-2-92, according to which his case was to be considered by the respondents after completion of 2 years of probation period.

(c) the punishment of removal from service to the applicant is excessive and is not commensurate with the alleged misconduct. This principle was held by Hon'ble Supreme Court of India in their judgement of civil appeal No. 264 of 1980 announced on 23-2-1990, wherein the appellant was granted of his pension in a similar case.

6. We have carefully gone through the records of the OA and the grounds raised by the applicant in the Review Application. We are of the view that this Review Application can be disposed of by circulation and it is not necessary to post it for hearing.

7. The applicant had himself not presented the order by which penalty of dismissal from service was imposed on him, which would have shown what procedure was adopted by the respondents while imposing penalty of dismissal from service on the applicant. It was not the plea of the applicant in the OA that show-cause notice had not been issued to him and the procedure prescribed under rule 14(i) of the Railway Servants (Discipline and Appeal) Rules had not been followed while passing the penalty order. This ground cannot now be raised in the Review Application. Incidentally, the communication at Ann.Al dated 29-5-95 shows that disciplinary proceedings were taken against the applicant as a result of which penalty of dismissal from service was imposed on the applicant. Even if the mention of two theft cases against the applicant in this communication is wrong, it is undisputed that he was convicted in one case of theft and that is sufficient, under the law, to justify imposition of a departmental penalty on the grounds

(C)

which led to his conviction by a court of law. The Tribunal did not consider it necessary to deal with any assurance given by respondent No.2, according to which the applicant was to be considered for being taken back in service after completion of two years' probation period following the release of the applicant on probation by the Special Judge. It was not pleaded by the applicant in the OA that the penalty imposed on him was excessive. Therefore, this is also a new ground taken by the applicant in the Review Application.

7. In the circumstances, we see no merits in this Review Application. It is, therefore, dismissed.

By circulation.



(Rattan Prakash)

Member (Judl.)



(O.P. Sharma)

Member (Admv.)