IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.566/99   Date of order: 6/11/2001

Poonam Chand, S/o Sh.Budha Ram, R/o Nayapura, Kota.

...Applicant.

Vs.

1.   Union of India through Secretary, Ministry of
      Defence, New Delhi.

2.   Chief Engineer, Head Quarter, Commander Works
      Engineer, Jaipur Zone, Jaipur Cant, Jaipur.

3.   Supdt.Engineer, Head Quarter, Commander Works
      Engineer, Jaipur Cant, Jaipur.

...Respondents.

Mr.S.P.Tyagi   : Counsel for applicant

Mr.S.M.Khan   : for respondents.
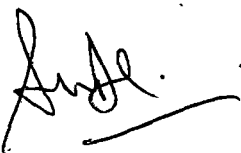
CORAM:

        Hon'ble Mr.S.K.Agarwal, Judicial Member.

        Hon'ble Mr.A.F.Nagrath, Administrative Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

        In this O.A filed under Sec.19 of the ATs Act, 1985,
the relief sought by the applicant is to quash and set aside
the order dated 23.7.99 (Annx.A2) by which the services of
the applicant have been terminated. Further directions are
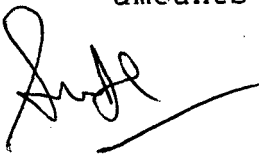also sought to take the applicant back in service from the
date of his termination.

2.   The case of the applicant in brief is that the
applicant was prosecuted in Criminal Case No.27/94. In that
case; after compromise between the parties, the applicant
was given benefit of Sec.4 of Probation of Offenders Act,
1958 and was released on probation of good conduct after
executing a bond of 2 years for maintaining good behaviour.
Thereafter, the competent authority/respondents' department

has also condoned the applicant and passed an order dated 12.6.98. Thereafter, the department issued another order terminating the services of the applicant on 23.7.99 on the same ground which according to the applicant is double jeopardy and such an order being in violation of Article 20 of the Constitution of India, is not sustainable in law.

3.   Reply was filed. In the reply it is stated that the applicant was engaged as Safaiwala vide letter dated 18.9.97 It is stated that the applicant was required to submit attestation from for verification of his character which the applicant submitted but during the course of verification, it was found that the applicant was involved in a criminal case registered for the offence under Sec.147, 148, 341, 323 & 324 IPC. Thereafter, a show cause notice was given to the applicant and the applicant replied to the said show cause notice stating that the criminal case has already been decided on the basis of compromise on 13.1.98 and the applicant was given benefit u/s 4 of Probation of Offenders Act, 1958 and was released on probation of good conduct for 2 years. Thereafter, the matter was reviewed by the competent authority and terminated the services of the applicant. Therefore, the impugned order of termination of the services of the applicant is perfectly legal and valid.

4.   . The learned counsel for the applicant vehmently argued that after the applicant was given the benefit of Sec.4 of Probation of Offenders Act, 1958, by the Criminal Court, the respondent department has proceeded to take disciplinary action against the applicant and took a lenient view as per order dated 12.6.98, therefore, terminating the services of the applicant on the same ground after one year amounts to double jeopardy and in violation of Article 20 of

the Constitution of India, hence, the impugned order of termination is not sustainable in law.

5.   Heard the learned counsel for the parties and also perused the whole record.

6.   On a perusal of the pleadings of the parties, it appears that after the decision of the criminal case, the department has reviewed the whole situation. and after application of mind, took the decision vide order dated 12.6.98 as under:

"Verification of character anticedents Shri Punam Chand, Safaiwala.

Reference GE Kota letter No.C-103/Discp/209/ E1C dt.05 Jun 98.

You have render an undertaking that you will keep good conduct and character for the period of parole and in future.

Please note that failure on your part to keep good conduct and character for the period of parole and in future will render you disqualified from Govt service and your service will be terminated.
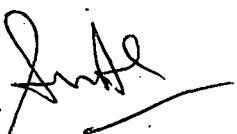
Sd/

Mewa Ram

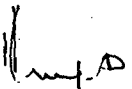SE,

Commander Works Engineer

6.   Thereafter, after lapse of more than one year, again on the same ground, the services of the applicant were terminated vide impugned order dated 23.7.99. In our considered view, this amounts to double jeopardy and the impugned order being in violation of Article 20 of the Constitution of India, is not sustainable in law.
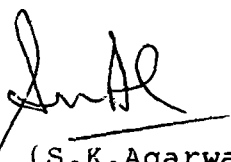
7.   Similar controversy has also come up for adjudication before the Gauhati High Court in <u>Zohmingliana Vs. State of Mizoram</u>, 2000(2) ATJ 684. In this case, a departmental enquiry was initiated against the applicant on the charge of lack of integrity and devotion to duty. On completion of enquiry penalty was imposed and fine so imposed was recovered from the salary of the applicant in instalments. Thereafter, the Govt passed the impugned order of termination of the applicant from service. It was held by the High Court that the said order amounts to double jeopardy and is not sustainable in law, therefore quashed.

8.   In the instant case, the applicant was given benefit of Sec.4 in the criminal case and was released on probation of good conduct after executing a bond for 2 years for keeping good behaviour. Thereafter, the department, after application of mind, passed the order dated 12.6.98 by taking a lenient view against the applicant. But, after lapse of one year, the respondents' department again passed the impugned order terminating the services of the applicant on the same ground which in our considered view amounts to double jeopardy and is in violation of Article 20 of the Constitution of India, therefore, such order of termination is not sustainable in law.

9.   We, therefore, allow this O.A and quash the impugned order of termination dated 23.7.99 (Annx.A2) and direct the respondents to take back the applicant in service forthwith. Looking to the facts and circumstances of this case, the applicant shall not be entitled to any back wages. No order as to costs.

(A.P.Nagrath)   (S.K.Agarwal)

Member (A).   Member (J).