

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR**

Original Application No. 59 of 2004

Gwalior, this the 21st day of November, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Radhakishan, S/o. Parmanand,
Aged 53 yrs., Occupation-Nil,
R/o. 179-B, Vivekanand Colony,
Ujjain (MP). Applicant

(By Advocate – Smt. Anjali Jamkhedkar)

V e r s u s

1. Union of India, through General Manager,
Western Railway, Church Gate, Mumbai.
2. Divisional Railway Manager (E),
Western Railway,
Ratlam.
3. Senior Divisional Electrical Engineer
(KP), Ratlam. Respondents

(By Advocate – Shri Y.I. Mehta)

O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application the applicant has claimed the following main reliefs :

- “1. the termination order dated 21.10.2002 as well as the order of compulsory retirement dated 11.2.2003 be quashed,
2. the respondents be directed to reinstate the applicant alongwith all back wages.”
2. The brief facts of the case are that the applicant was initially appointed as Cleaner by order dated 15.5.1970. Subsequently he was



promoted as Driver and while working as such, on 20.3.1993 when he was driving Goods train No. 1 Jhansi, he met with an accident. The said accident has occurred due to failure of breaks. An enquiry was held against him and he was found guilty. On the basis of the enquiry report the disciplinary authority had imposed the punishment of reduction of his pay vide order dated 26.8.1994 (Annexure A-2). On 15.11.1994 the respondents had issued show cause notice to the applicant for enhancing the punishment from 2 years to 5 years and for reduction of pay from Rs. 1200-2010/- at Rs. 1200/-. The respondents vide order dated 13.2.1995 has reduced the punishment from five years to three years. The applicant preferred an appeal on 15.3.1995. The appellate authority rejected the appeal vide order dated 2.6.1995. A criminal case was also registered against the applicant and other two persons on the basis of the same charges before the Additional Chief Judicial Magistrate, Railway, Indore. The ACGM vide order dated 22.9.1999 has convicted the applicant with a fine of Rs. 1,000/- and imprisonment for a period of two years. The applicant filed a criminal revision No. 347/2000 before the Hon'ble High Court of MP, Indore Bench. The sentence imposed on the applicant was suspended vide order dated 8.9.2000. But the applicant was not permitted to join his duties. The respondents have issued letter dated 16.11.2000 permitting the applicant to join the duties. Again a show cause notice dated 27.6.2002 was issued to the applicant proposing punishment of termination of service under Section 14(1) of the Railway Servant's Discipline and Appeal rules 1968. The applicant submitted his reply on 11.7.2002 stating that he has already undergone the penalty of reversion. However, without considering the reply the disciplinary authority passed the order dated 21.10.2002 terminating the services of the applicant. The applicant filed an appeal before the appellate authority and the appellate authority vide order dated 11.2.2003 reduced the penalty of dismissal from service to that of compulsory retirement. The whole action of the respondents is against the rules and law. Hence, this Original Application is filed.



3. Heard the learned counsel for the parties and carefully perused the pleadings and records.

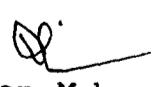
4. It is argued on behalf of the applicant that he was already punished in the earlier departmental enquiry proceedings by the disciplinary authority and the appellate authority but subsequently after his conviction in the criminal case the alleged notice of termination of service was issued by the respondents on 27.6.2002 under Section 14(1) of the Railway Servants Discipline and Appeal Rules, 1968. He submitted reply against it but the order of termination was passed by the disciplinary authority vide order dated 21.10.2002. On appeal the punishment was reduced to compulsory retirement vide order dated 11.2.2003 by the appellate authority. The criminal revision against the judgment of the session judge of conviction is still pending before the Hon'ble High Court of MP at Indore Bench. As the applicant was already punished earlier by the respondents he should not have been punished again. Thus, the reliefs claimed by the applicant are liable to be granted.

5. In reply the learned counsel for the respondents argued that only jail sentence is suspended by the Hon'ble High Court and not the conviction. The matter was properly considered and decided by the order dated 11.2.2003 (Annexure R-1). The punishment of reversion was awarded to the employee due to the departmental enquiry proceeding, whereas the show cause notice dated 27.6.2002 was issued because of his conviction on his being found guilty of the criminal charges leveled against him. If the employee is found involved in the criminal case followed by conviction and sentence of imprisonment then action as per Rule 14(1) is initiated and therefore no fault is to be found with it nor it can be termed as a double jeopardy. The punishment of dismissal was reduced by the appellate authority as compulsory retirement. The orders of the respondents are perfectly legal and justified. Hence, this Original Application is liable to be dismissed.



6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records we find that earlier, punishment of reversion was awarded to the applicant on the basis of the departmental enquiry initiated against him. But when his appeal was dismissed by the Session Judge vide judgment dated 10.7.2000 and maintained the conviction and sentence awarded by the ACJM, the show cause notice dated 27.6.2002 under rule 14(1) of the Railway Servants Discipline and Appeal Rules, 1968 was issued to the applicant. The argument advanced on behalf of the respondents that the respondents are legally authorised and competent to take action after conviction under the aforesaid rule of Railway Servants Discipline and Appeal Rules, 1968, seems to be legally correct. The disciplinary authority had passed the order of termination vide order dated 21.10.2002 (Annexure A-14) but on filing the appeal by the applicant the appellate authority reduced the punishment of termination from service to compulsory retirement vide order dated 11.2.2003 (Annexure A-17). The Criminal Revision No. 347 of 2000 is pending before the Hon'ble High Court of MP at Indore Bench. The Hon'ble High Court has suspended the sentence only and not the conviction.

7. In view of the above facts and circumstances of the case, we are of the considered view that the Tribunal cannot interfere at this stage in the matter when it is pending before the Hon'ble High Court. Thus, we do not find any merit in this Original Application and accordingly, this OA is liable to be dismissed. Hence, it is dismissed. No costs


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman