

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

original Application No.601/2002

Jabalpur, this the 25th day of June, 2004

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

Jaggil Prasad, Aged 41 years,
S/o Shri Dwarka Prasad,
Ex-Head Courier Clerk,
R/o 753, Choti Omti,
Jabalpur (Madhya Pradesh)

...Applicant

(By Advocate: Shri B.Da.Silwa)

-versus-

1. Union of India through
Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. Divisional Commercial Manager,
Central Railway,
Jabalpur.

...Respondents

(BY Advocate: Shri M.N. Banerjee)

O R D E R

By Madan Mohan, Judicial Member -

By filing the present original application, the applicant has sought the following main reliefs:

- i) to quash the impugned order dated 15/16.7.2002 issued by the respondent no. 2.
- ii) to direct the respondents to re-instate the applicant on his original post i.e. Head Courier Clerk with back wages and all other consequential benefits arising thereof.

2. The brief facts of the case are that the applicant was posted as Commercial Inspector vide order dated 12.3.1992. On 12.9.1997, the applicant was posted in Gadarwara and a fake trap case was made out against him while he was working as Chief Booking and Parcel Supervisor. It was alleged that over and above the prescribed rates, the applicant demanded and accepted Rs. 300/- from one Rajendra Kumar Jaiswal. A criminal case under Section 7 and 13(1)(d)

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read with Section 13(2) of the Prevention of Corruption Act, 1988 was registered against the applicant. Unfortunately, the applicant was not able to defend himself properly during the trial which resulted in his conviction vide order dated 17.11.1999(A/4). Against the order of conviction the applicant moved before the Hon'ble High Court of Madhya Pradesh at Jabalpur in appeal and his case was registered as Criminal Appeal No. 3286/99. The Hon'ble High Court was pleased to suspend the sentence and to enlarge the applicant on bail vide its order dated 9.12.1999. The criminal trial being in progress, the respondent continued the applicant in service and to the complete surprise, he was issued with a show cause notice dated 1.3.2000 under Rule 14 (i) of the Railway Services (Discipline and Appeal) Rules, 1968. It is specifically submitted that the respondents were fully conversant about the conviction of the applicant, yet they issued the aforesaid show cause notice, calling upon him to show cause as to why he should not be removed from service. Against it, the applicant submitted his representation dated 15.3.2002 stating that he has preferred an appeal and he is very confident of being acquitted. It was requested that he may be allowed to continue till his appeal is decided by the Hon'ble High Court. The respondents without proper consideration of the representation of the applicant, passed the impugned penalty of removal vide their order dated 15.16/7/2002(A/7).

3. Heard the learned counsel for both the parties.
4. It is argued on behalf of the applicant that since the appeal against the conviction is pending in the Hon'ble High Court and the applicant is very confident of being acquitted, the action taken by the respondents by passing the order of removal from service is against law and deserves to be quashed and set aside.
5. In reply, the learned counsel for the respondents argued that the Govt. of India, Ministry of Railways vide its

Circular dated 6.6.1994 had issued instructions for dealing with cases involving Govt. servants who are convicted by criminal courts. In para 3 of the Circular it has been stated that when a person is convicted by a criminal court the same shall remain in force until and unless it is reversed or set aside by a competent court in appeal. Mere filing of appeal and or stay of execution of the sentence do not take away the effect of conviction. The circular also referred to a judgement of Full Bench of the C.A.T. The circular directed that the competent disciplinary authority may proceed with the disciplinary proceedings. In accordance with the above circular, show cause notice was issued to the applicant giving opportunity of hearing. The applicant submitted his representation. The disciplinary authority after considering all aspects of the matter, passed the impugned order of punishment imposing the penalty of removal from service on the applicant. The applicant has not filed any appeal against the punishment order.

6. After hearing the learned counsel for both the parties and careful perusal of the material available on record, we find that though the applicant has preferred an appeal before the Hon'ble High Court against the judgement in criminal case No. 16/98 dated 17.11.1999 and the Hon'ble High Court has been pleased to suspend the conviction but the said appeal is still pending for final adjudication. In view of the Govt. circular, as referred to above, we are of the considered opinion that till the appeal is decided by the Hon'ble High Court the effect of conviction is not taken away and the same shall remain in force. It is seen that opportunity of hearing was granted to the applicant before passing the impugned punishment order, hence we do not find any infirmity in passing the impugned order by the respondents.

7. In the facts and circumstances of the case, we are of the considered opinion that the Tribunal cannot interfere



with the impugned order of punishment because of the fact that the appeal preferred by the applicant before the Hon'ble High Court is still pending for final adjudication. Hence, the O.A. is devoid of merit and deserves to be dismissed. The O.A. is accordingly dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

/na/

पृष्ठांकन सं ओ/न्या.....जखलपुर, दि.....
प्रतिलिपि द्वारा दिला:-

- (1) सविता, उठा अवार्ड ए वार प्राइवेट लिमिटेड, जखलपुर
- (2) श्रीकेशव श्री, विनोद, द्वारा काउंसल T.S. das/ver
- (3) प्रत्यक्षी श्री/श्रीजनती/धु..... द्वारा काउंसल M.N. Banjaree
- (4) चौथपाल, द्वारा, जखलपुर ज्यायसीट

सूचना एवं आदरणक कार्यवाही हेतु

रामनाथ
5-7-04

TS das/ver
5-7-04