

Reserved

**Central Administrative Tribunal, Allahabad Bench,
Allahabad**

Original Application No.330/00174/2008

This the 31st day of October, 2018

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

Hon'ble Mr. Gokul Chandra Pati, Member (A)

Phekoo Ram s/o late Ganga Ram r/o Village Bhogwary, Post
Mugal Sarai, District- Chandauli.

..... Applicant

By Advocate: Sri S.K. Mishra

Versus

1. Union of India through General Manager, East-Central Railway, Mugal Sarai, Varanasi, U.P.
2. Divisional Electricity Engineer (T.R.S.) East Central Railway, Mugal Sarai, Varanasi, U.P.
3. Divisional Railway Manager, East Central Railway, Mugal Sarai, Varanasi, U.P.

..... Respondents.

By Advocate:-Sri Amit Kumar Rai

ORDER

HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J)

By this Original Application (O.A.), the applicant has challenged the order dated 27.12.2007 (Annexure-1) and order dated 31.12.2007 (Annexure -2) whereby he was removed from service with immediate effect in exercise of power conferred under Section 14(1) of Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as Railway Rules) and payment of retiral dues barring payment of amount of Provident Fund and Group Insurance was stopped.

2. The brief facts of the case are that applicant was appointed on 31.1.1992 on the post of Khalasi as a permanent employee. On 9.11.1997, a First Information Report (F.I.R.) was lodged against him under Crime No. 351 of 1997, punishable under Section 308,323 of Indian Penal Code(I.P.C.), Police Station (P.S.) Mugal Sarai, District- Chandauli.

3. This F.I.R. subsequently resulted in a Sessions Trial No. 224/2002 (State Vs. Phekoo Ram), wherein he was convicted and sentenced to 3 years rigorous imprisonment and a fine of Rs. 5000/-. The applicant filed a Criminal Appeal No. 6134/2003 (Phekoo Ram Vs. State) wherein, he was enlarged on bail and execution of sentence was suspended.

4. The respondent No. 1 gave a notice to the applicant on 29.7.2004 vide letter No.T.R.S./E/D.A./10/04 Mughalsarai proposing to take action against him under Rule 14(1) of Railway Rules.

5. The applicant submitted reply before the disciplinary authority. He subsequently, submitted another reply vide letter dated 15.11.2004.

6. On 27.12.2007, competent authority passed the order of removing the applicant from the service. Order is reproduced as under:-

"No. TRS/E/DA/10/07 Mughalsarai, dt. 27.12.2007

WHEREAS A Memorandum/show cause notice was served on dt. 30.7.04 to Shri Pheku Ram, Tech.I/TRS.MGS. T.No. 431 under Sr. SE(M)/TRS/MGS for processing of DA under section 14(1) as he was convicted on a crime charges vide No. 224/2002, u/s 08 IPC , U/s 323 IPC dated 28.11.03 by Hon'ble Upper Dist. & Session Judge, Varanasi.

AND WHEREAS, in response to the above notice Shri Pheku Ram, Tech.I/TRS.MGS has submitted the documents of stay order as execution of sentence during pendency of appeal, issued by Hon'ble High Court, Allahabad vide No. 171301 of 2004 dt. 23.9.04.

Further, till date no information was given to his office regarding the decision of Hon'ble High Court, Allahabad on his first appeal.

Although, Hon'ble High Court Allahabad has stayed the execution of sentence but the conviction has not yet been stayed.

NOW, THEREFORE, in terms of the CPO/KKK's circular No. 61/95 & in exercise of the power conferred by Rule 149(1) of the Railway Servants (Discipline & Appeal) Rules, 1968, the undersigned hereby removes the said Shri Pheku Ram, Tech.I/TRS.MGS, T.No. 431 from service with immediate effect.

Station- Mughalsarai
Dated- 27.12.2007"

7. On 31.12.2007, payment of retiral dues barring Provident Fund and Group Insurance were stopped. Order is reproduced below:-

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- 1 ojh; eMy for icdkd]
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- 2 eMy [ktkph
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fo'k; %& Jh Qcdw jkew Vd&1 v/khu vu0vfHk0@Vhvkj, I @ exy0 ds
fui Vkj k Hkqrku ds I Ecd/k eA

I nHk% eMy fo|r vfHk0@dpLVk@exy0 dk nM I 0&
Vhvkj, I @bz@Mh, -@10@07 fn0 27-12-07

Jh Qcdw jkew Vduhf"kfu; u&1 v/khu ojh; vuHkx
vfHk0@dpLVk@exy0 tks fnukd 31-12-2007 dks jsy lok Is lok
fuorR gkus okys Fk dks vijDr I nfhkz i= ds jkj blga rRdky
iHkko Is fjeu dj fn; k x; k gA

mDr ds I Ecd/k eA I fpr fd; k tkrk gSfd budk Hkfo'; fuf/k
, oa I kefgd thou chek dks jkf" k dks NkMoj vU; I Hk I eki d
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8. However, the respondents filed counter reply denying all allegations of applicant. They have submitted that

applicant was also arrested on 27.9.1996 in another Case No. 1726/1997 Crime No. 274/96 under 302 read with Section 34 IPC and thus remained under judicial custody from 28.9.1996 to 17.10.1996. It is alleged that Phekoo Ram deliberately withheld this information from the department. Subsequently, he was removed from service on account of his conviction under Section 308 IPC etc., as stated earlier.

9. Respondents have also submitted that the conduct of applicant which led to the conviction of applicant in aforesaid Sessions Trial involving Section 308 IPC (supra) has been taken into consideration for his removal from the service.

10. Applicant has filed Rejoinder reply reiterating his claims.

11. Heard Sri S.K. Mishra, learned counsel for applicant and Sri Amit Kumar Rai, learned counsel for respondents.

12. The facts are not disputed in this case. The applicant was convicted by Sessions Court in Sessions Trial No. 224/2002 vide judgment on 28.11.2003. **The primary argument of learned counsel for applicant is that applicant has filed Criminal Appeal against the aforesaid order wherein he has been enlarged on bail vide order dated 5.12.2003. The applicant has however, deposited half of the fine i.e. Rs. 2500/-. Realization of remaining half amount was stayed vide order dated 5.12.2003.**

13. Initially, the execution of sentence imposed on applicant was not stayed. Therefore, a criminal Misc. Modification/ Correction Application No. 171301 of 2004 was moved and Hon'ble High Court of Allahabad vide order dated 23.9.2004 suspended the execution of sentence imposed upon the applicant.

14. The counsel for applicant claims that on account of suspension of execution of sentence, the respondents could not have taken any action against him under Rule 14(1) of Railway Rules. We do not approve of this argument. Suspension of sentence imposed does not obliterate the conviction of applicant. The Hon'ble Apex Court in **Union of India Vs. Ramesh Kumar (1997) 7 Supreme Court Cases 514** has held that "Under Section 389 of the Code of Civil Procedure (Cr.PC), an accused merely avoids undergoing sentence during the pendency of criminal appeal. However, conviction continues and is not effaced." The relevant portion of the said judgment reads as under:-

"A bare reading of Rule 19 shows that the Disciplinary Authority is empowered to take action against a Govt. servant on the ground of misconduct which has led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of execution of sentences by the Appellate Court the order of dismissal based on conviction stands obliterated and dismissed Govt. servant has to be treated under suspension till disposal of the appeal by the Appellate Court filed by Govt. servant for talking action against him on the ground of misconduct which has led to his conviction by competent Court of law. Having regard to the provisions of the rules, the order dismissing the respondent from service on the ground of misconduct leading to his conviction by a component Court of law has not lost its string merely. Because a criminal appeal was filled by the respondent against his conviction and the Appellant Court has suspended the execution of sentence and enlarged the respondent on bail. This matter may be examined from another angles. Under [Section 389](#) of the code of Criminal Procedure, the appellant Court has power to suspend the of sentence and to release an accused on bail. When the appellant Court suspends the execution of sentences, and grants bail to an accused the effect of the order is that sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence under [section 389Cr.P.C.](#) an accused avoids undergoing sentences pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken

against a Govt. servant on a misconduct which led to his conviction by the Court of law does not lose its efficacy merely because Appellant Court has suspended the execution of sentence. Such being the position of law, the Administrative Tribunal fell in error in holding that by suspension of execution of sentence by the appellate Court, the order of dismissal passed against the respondent was liable to be quashed and the respondent is to be treated under suspension till the disposal of Criminal Appeal by the High Court."

15. In the light of the aforesaid judgment, it is evident that sentence imposed upon the applicant has not been obliterated by the subsequent order of High Court granting him bail or suspension of execution of sentence.

16. Learned counsel for applicant has also drawn the attention of this Tribunal towards the judgment of Allahabad High Court in **Brahma Dev Versus Life Insurance Corporation of India and others 2008 (5) ESC 3329**, wherein it has been held that *"It is incumbent upon the applicant to discuss the conduct of applicant which led to his conviction before imposing punishment of removal by means of impugned order."*

17. Similarly, the counsel for applicant has also drawn the attention of this Tribunal towards the judgment in the case of **Rudal Prasad Tyagi Vs. State of U.P. and 3 others Writ Petition No. 44270 of 2013** decided on 3.10.2013, wherein similar observations have been made. Of course, these cases are of different department and for different rules but careful perusal would disclose that they are similar and pari materia with Rule 14(1) of Railway Rules.

18. The counsel for respondents on the other hand has argued that the applicant was convicted in a very serious offence of Attempt to Commit Culpable Homicide enshrined in Section 308 of IPC. They have argued that cases under Section 308 IPC are tried by Court of Sessions and are

punishable upto sentence of 3 years or 7years imprisonment as the case may be, along with fine.

19. A Division Bench of Allahabad High Court in the case of **State of U.P. through Secretary Home and 3 others Vs. Prem Milan Tiwari (Special Appeal Defective No. 219 of 2015 decided on 25.3.2015** has held that State cannot be compelled to take back in the service of such a person who had been convicted in a heinous crime. The relevant portion of this judgment is reproduced below:-

"We are of the view that the principle of law which has been laid down by the Supreme Court in the decision in S. Nagoor Meera and recently in B. Jagjeevan Rao's case (supra) must govern the facts of the present case. The respondent was a constable in the police and was convicted of a heinous crime punishable under Section 302 of the Penal Code read with Sections 120B and 149. Can the State be compelled or required to take back in service such a person, pending the disposal of the appeal? Plainly not. The learned counsel appearing on behalf of the respondent sought to distinguish those two decisions on the ground that the employee had been convicted of offences under the Prevention of Corruption Act, 1988 where the conduct had a direct bearing on the service of the employee as an officer of the State. In our view, this would not make any difference to the construction of clause (a) of the second proviso to Article 311. What clause (a) of the second proviso does is to stipulate that the requirement of clause (2) Of holding an inquiry consistent with the principles of natural justice would not apply where a person is dismissed, removed or reduced in rank on the ground of conduct which had led to his conviction on a criminal charge. In the present case, the respondent was a constable in the police. He was found guilty after a session's trial of an offence punishable under Section 302 read with Section 120B of the Penal Code. In such a case, clause (a) of the second proviso to Article 311(2) would clearly stand attracted."

20. The Apex Court in the case of **Divisional Personnel Officer, Southern Railway and another Vs. T.R. Chellappan and connected cases (1976) 3 SCC 190**, while

considering the provision of Rule 14(1) of Railway Rules held as under:-

"The disciplinary authority has the undoubted power after hearing the delinquent employee and considering the circumstances of the case to inflict any major penalty, on the delinquent employee without any further departmental inquiry if the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude and, therefore, it is not desirable or conducive in the interests of administration to retain such a person in service."

21. We have considered all the material available on record. It is apparent that applicant was convicted in heinous offence. The respondents were authorized to exercise power under Rule 14(1) of Railway Rules. It was not possible for respondents to retain such a person in the service. We do not believe that Railway can be compelled to retain such a convicted person in the job. If, ultimately the conviction is set-aside by an appellate or higher court, the matter can always be reviewed in such a manner that applicant would not suffer any prejudice, as held by Division Bench of Allahabad High Court in the case of **State of U.P. Vs. Prem Milan (supra)**.

22. The claim of applicant for retiral benefits is also not sustainable. Admittedly, amount of Provident Fund and Group Insurance has already been paid to the applicant. Payment of other retiral benefits have specifically stopped by the competent authority as visible from order dated 31.12.2007, available on record as Annexure -2. This order in Hindi has already been reproduced in earlier paragraph of this judgment.

23. Section 8(b) of Railway Servants (Pension) Rules, 1993 authorizes the appointing authority to withhold or withdraw a pension or a part thereof, whether permanently or for a

specified period, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct. The applicant was admittedly convicted in a serious crime. He was removed from service precisely for this reason. Therefore, Rule 8 of Railway Servants (Pension) Rules, 1993 comes into play. In such a situation, the impugned order dated 31.12.2007 cannot be faulted.

24. We believe that the present O.A. is not sustainable and is liable to be dismissed. This O.A. is accordingly, dismissed. No order as to costs.

(GOKUL CHANDRA PATI) (JUSTICE BHARAT BHUSHAN)
MEMBER (A) MEMBER (J)

HLS/-