Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING:BILASPUR

Original Application No.203/00297/2017

Jabalpur, this Wednesday, the 25th day of July, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

L. Nag Bhushan
S/o Narsimham,
aged about 58 years,
presently ex-peon under
Sr DEE/TRD/BSP
R/o Qr. No. 1452/2
Construction Colony
Bilaspur (C.G.) 495004 **-Applicant**

(By Advocate **–Shri A.V. Shridhar**)

V e r s u s

1. Union of India,
Through the General Manager,
South East Central Railway,
New GM Building Bilaspur
Chhattisgarh 495004

2. ADRM DRM,
Office South East Central,
Railway
Bilaspur (C.G.) 495004

3. Divisional Electrical Engineer
TRD South East Central
Railway Bilaspur (C.G.) 495004 - **Respondents**

(By Advocate **–Shri R.N. Pusty**)
(Date of reserving the order:-18.04.2018)

O R D E R

By Ramesh Singh Thakur, JM:-

The applicant by way of this Original Application is seeking quashment of the order dated 19.04.2016 whereby the appeal filed against imposition of punishment of dismissal from service without any compassionate allowance has been partly allowed and the punishment of compulsory retirement from Railway Service with 2/3rd pensionary benefits has been imposed.

2. The brief facts of the case are that the applicant convicted for the offence under Section 138 NI Act on 20.01.2015. A criminal revision No.52/2015 was filed on 21.01.2015 before the Hon'ble High Court of Chhattisgarh. The Hon'ble High Court suspended the sentence in Criminal Revision No.52/2015 on 23.01.2015. The applicant suspended for having detained in custody for more than 48 hours on 19.02.2015. A show cause notice was issued to the applicant on 11.03.2015 (Annexure A/3). The applicant submitted his reply to the said notice on 19.03.2015 (Annexure A-4). The disciplinary authority imposed with punishment of dismissal from Railway Service as a measure of penalty upon the applicant with immediate effect without sanction of compassionate allowance vide order dated 30.03.2015 (Annexure A/5). Thereafter the applicant preferred an appeal dated 16.04.2015 (Annexure A-6)

before the appellate authority. The appellate authority vide order dated 19.04.2016 (Annexure A-1) has reduced the punishment from dismissal from service to compulsory retirement with 2/3rd pensionary benefits.

3. The applicant in this Original Application has prayed for the following reliefs:-

> "*8.1 That the learned Tribunal may kindly be pleased to call the entire records pertaining to the case of the applicants.*
>
> *8.2 That, the Hon'ble Tribunal may kindly be pleased to quash the impugned order dated 19.04.2016 (Annexure A-1) and order dated 30.03.2015 (Annexure A/5).*
>
> *8.3 That, the Hon'ble Tribunal may kindly be pleased to direct the respondents to grant consequential benefits flowing from quashing of Annexure A/1 and Annexure A/5.*
>
> *8.4 Cost of the petition be awarded to the applicant.*
>
> *8.5 Any other relief which the learned Tribunal deems fit and proper may be proper may be awarded."*

4. The respondents in their reply have submitted that the applicant was working as Peon in the office of Sr. DEE/TRD/BSP and during his service period a complaint under the provision of Negotiable Instrument Act was filed against the applicant before Chief Judicial Magistrate Bilaspur for alleged act of dishonor of cheque and the Chief Judicial Magistrate vide order dated 21.05.2010, found him guilty under Section 138-A of the Act and convicted him with the sentence of simple imprisonment of three

months and penalty of Rs.20,000/- and in case of default of payment of penalty another three month imprisonment was passed by the Judicial Magistrate.

4.1 Being aggrieved by this punishment order the applicant has preferred a criminal appeal under Section 374 Cr. P.C. before the Additional Session Judge, Bilaspur whereby the Additional Session Judge confirmed the punishment order of CJM/Bilaspur and rejected the criminal appeal vide order dated 20.01.2015.

4.2 A show cause notice was issued to the applicant on 11.03.2015 (Annexure A/3). The applicant submitted his reply to the said notice on 19.03.2015 (Annexure A-4). The disciplinary authority imposed with punishment of dismissal from Railway Service as a measure of penalty upon the applicant with immediate effect without sanction of compassionate allowance vide order dated 30.03.2015 (Annexure A/5). Thereafter the applicant preferred an appeal dated 16.04.2015 (Annexure A-6) before the appellate authority. The appellate authority vide order dated 19.04.2016 (Annexure A-1) has reduced the punishment from dismissal from service to compulsory retirement with 2/3rd pensionary benefits. The order passed by the appellate authority is as per extant rules as the offences for which the applicant stands convicted involves moral turpitude. Therefore, the applicant is not

entitled to any relief and the Original Application is liable to be dismissed.

5. We have heard the learned counsel for the applicant as well as respondents and also carefully gone through the pleadings and documents annexed therewith.

6. In the instant case it is not disputed by both the parties that the applicant was working as Peon and during his service period a complaint under the provision of Negotiable Instrument Act was filed against the applicant. It is also not disputed that the applicant was convicted by the Chief Judicial Magistrate Bilaspur vide order dated 21.05.2010, found him guilty under Section 138-A of the Act and was convicted him with the sentence of simple imprisonment of three months and penalty of Rs.20,000/-. It is also not disputed that the applicant preferred a criminal appeal under Section 374 Cr. P.C. before the Additional Session Judge, Bilaspur and the Additional Session Judge confirmed the punishment order of CJM/Bilaspur and rejected the criminal appeal vide order dated 20.01.2015. It is also not disputed that the show cause notice was issued to the applicant on 11.03.2015 (Annexure A/3) and reply was submitted by the applicant on 19.03.2015 (Annexure A-4). The disciplinary authority imposed with punishment of dismissal from Railway Service as a measure of penalty upon the applicant

with immediate effect without sanction of compassionate allowance vide order dated 30.03.2015 (Annexure A/5). Further, the applicant preferred an appeal dated 16.04.2015 (Annexure A-6) before the appellate authority and the appellate authority vide order dated 19.04.2016 (Annexure A-1) has reduced the punishment from dismissal from service to compulsory retirement with 2/3rd pensionary benefits. The order passed by the appellate authority is as per extant rules as the offences for which the applicant stands convicted involves moral turpitude.

7. In the present case, the applicant has raised the question that whether the conviction under Section 138 of the Negotiable Instrument Act amounts to moral turpitude. Learned counsel for the applicant has placed reliance on the judgment passed by Hon'ble High Court of Kerala in the matter of ***M.A. Ibrahim Kannu*** vs. ***State of Kerala*** in W.P. (C) No.3368/2005 which was decided on 28.10.2005. The Hon'ble High Court of Kerala while dealing with the similar case has held that the act of issuing a cheque without sufficient funds is not generally regarded as morally wrong or corrupt and that the office under Section 138 will not normally involve moral turpitude. While relying on the judgment by Hon'ble High Court of Kerala has observed as under:-

"7. The Supreme Court in Union of India v. Tulsiram Patel, and in Deputy Director of Collegiate Education (Admn.), Madras, has taken the view that the charge in the criminal case must relate to a misconduct of such magnitude as would have deserved the penalty of dismissal, removal or reduction in rank. Apex Court in Sankar Dass v. Union of India, and in Divisional Personal Officer, Southern Railway v. Challappan T.R. held that the proviso to Article 311 is merely an enabling provision and does not enjoin the disciplinary authority to impose the extreme penalty of dismissal in every case of conviction for trivial offences or technical offences involving 'moral turpitude'. Since punishment is grave the authority must consider whether, in view of the conviction, what penalty, if at all, should be imposed on the delinquent employee. Authority, evidently, will have to take into account the entire conduct of the employee, the gravity of the misconduct committed by him; the impact which his misconduct is likely to have on the administration, and other extenuating circumstances. Rule 18 of the Kerala Civil Services (Classification, Control and Appeal) Rules 1960 provides that where a penalty is imposed on a government servant on the ground of conduct which had led to his conviction on a criminal charge, the procedure prescribed in Rule 15, 16 and 17 of the aforesaid Rules need not be followed. Rule 18 further says that the disciplinary authority may consider the circumstances of the case and pass such orders thereon as he deems fit. Rule 18 of the Kerala Civil Services (C.C. & A) Rules, 1960 provides that before imposing penalty, the disciplinary authority has to consider the circumstances of the case. Neither Article 311 of the Constitution of India nor Rule 18 of the K.C.S. (CC & A) Rules speaks about "moral turpitude". Article 311 and Rule 18 would not confer any arbitrary power on the disciplinary authority, but before imposing punishment necessarily they have to take into consideration all relevant circumstances.

8. Division Bench of this Court in Saseendran 's case (supra) has only stated that the act of issuing a cheque without sufficient funds is not generally regarded as morally wrong or corrupt and that the offence under Section 133 will not normally involve moral turpitude. Holding so, the court held as follows:.

> *"We approve the said principle and hold that the question whether an offence would involve moral turpitude has to be decided on the facts of each case. All offences do not necessarily involve moral turpitude. Section 138 of the Act is no exception to the said principle. On the facts of the case, we find no scope for holding that the offence found against the appellant has any reflection of moral turpitude."*

We also notice that while affirming the judgment in OP. 10336 of 2002 the Division Bench in K.S.R.T.C. v. Abdul Latheef, 2005 (3) KLT 955 held as follows:

> *"Even if there was conviction, under Rule 18 of the Rules, it was incumbent on the appointing authority to consider the circumstances as to the misconduct which lead to the conviction and to pass appropriate orders. Every cases of conviction shall not result in dismissal.*
>
> *When the requirement in Section 138 of the Negotiable Instruments Act is satisfied, one will be deemed to have committed offence. It is only a deeming provision. Offence under Section 138 of the Act being an offence in the commercial practice cannot be taken as one involving moral turpitude, in the absence of any other cogent material to discern moral turpitude. No such special-circumstance is pointed out by the appellant. In such circumstances also the direction to reinstate the first respondent cannot be said to be unjustified."*

8. In the instant case, as per reply of the respondents the applicant has been given a show cause notice and punishment has been awarded. But in the impugned orders the respondent-department has not applied their mind as to whether this is a fit case warranting dismissal of the applicant from service for the sole reason that the applicant has been found guilty under Section 138

of the Act is an over statement of law. In our view it would depend upon several factors including conduct of the employee, gravity of the misconduct, the impact of the misconduct on the administration and other extenuating circumstances. As held by Hon'ble High Court of Kerala (supra) the offences under Section 138 cannot be treated as moral turpitude or as a blot on the character of the employee or conduct of an employee disentitling him to continue in the service of the Government is not a correct proposition of law.

9. In the impugned order the respondent-department has not reflected any such condition and circumstance before passing the impugned order as discussed above. The applicant has also relied upon the judgment passed by Hon'ble Apex Court in the case titled as ***Avtar Singh*** vs. ***Union of India and others*** (2016) 8 SCC 471. The principles have been laid down in Para 38 of the judgment which is as under:-

> *"38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:*
>
> *38.1 Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.*
>
> *38.2 While passing order of termination of services or cancellation of candidature for giving false information, the*

employer may take notice of special circumstances of the case, if any, while giving such information.

38.3 The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4 In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted : -

38.4.1 In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2 Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6 In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

38.7 In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8 If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9 In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10 For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11 Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

10. The case of the applicant is under 38.4.1 which is as under:-

"38.4.1 In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse."

11. In the present case the offence under Section 138 is a trivial offence and is compoundable offence. Moreover, the offence under Section 138 of Negotiable Instrument Act is an offence in the commercial practice and cannot be taken as one involving moral turpitude in the absence of any other cogent material to discern moral turpitude. In the impugned order no such circumstances is been mentioned by the replying respondents. In such circumstances the action of the respondents cannot be said to be justified. In the matters of ***Avtar Singh*** (supra) the Hon'ble Apex Court has held as under:-

> *"The employer is given 'discretion' to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various*

aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service."

12. In view of the above we are of the opinion that the action under Section 138 of Negotiable Instrument Act is a trivial offence and is not an offence which amounts to moral turpitude. Moreover, the respondents has not given special circumstances as the principles laid down as discussed above by the Hon'ble Apex Court.

13. Resultantly, the Original Application is allowed. Impugned order dated 19.04.2016 (Annexure A-1) and order dated 30.03.2015 (Annexure A-5) are quashed and set aside. Respondents are directed to grant the applicant all consequential benefits. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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