

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 1470 of 2013

Date of order: / / .08.2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Abinash Gorain,
Son of Late Guiram Gorain,
Of Vill. & P.O. : Karkara,
P.S. Joypur, Dist. : Purulia,
Pin :

.. Applicant

- V E R S U S -

1. Union of India services
Through Secretary,
Ministry of Post,
Dak Bhawan,
Sangsad Marg,
New Delhi - 110 001
2. The Chief Post Master General (Region),
Yogayog Bhawan,
Kolkata - 700 012.
3. The Superintendent of Post Offices,
Purulia Division,
Purulia,
Pin - 723 121.

.. Respondents

For the Applicant : Ms. B. Ghoshal, Counsel

For the Respondents : Mr. L.K. Chatterjee, Counsel
Mr. M.K. Ghara, CounselO R D E RPer Dr. Nandita Chatterjee, Administrative Member:

Aggrieved by the order of dismissal, the applicant has filed this O.A. under Section 19 of the Administrative Tribunal Act, 1985 seeking the following relief:-

"(a) To direct the concerned respondents, more particularly the respondent No. 3 to cancel, rescind and/or withdraw the speaking order dated 4th September, 2013, issued to the applicant, forthwith;

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(b) To direct the concerned respondents to transmit and authenticate and produce all the records in connection with the aforesaid matter before this Hon'ble Tribunal, so that consonable justice may be done to the applicant upon hearing the parties.

(c) To direct the respondents concerned to allow your applicant to join and resume his duty in his respective post with retrospective effect, on withdrawal of the order of dismissal dated 30.4.1994;

(d) And to pass such other or further order or orders and/or direction or directions as to this Hon'ble Tribunal may deem fit and proper."

2. Heard Ld. Counsel, examined pleadings and documents on record.

Ld. Counsel for the applicant has filed written notes of arguments citing judicial pronouncements in support.

3. The case of the applicant, as canvassed by his Ld. Counsel, is as follows:-

That, the applicant was an Extra Departmental Delivery Agent (EDDA) under concerned authorities being posted at Karkara Post Office, Purulia, when he had been implicated in criminal proceedings and as he was taken under custody and detained for more than 48 hrs. he had been put-off duty w.e.f. 8.6.1988.

That, the said criminal matter had been tried and he had been sentenced for life under Sections 302/149/148 of IPC. Immediately thereafter, the petitioner had been dismissed from service vide an order dated 30.4.1994.

That, an appeal had been preferred by the applicant along with other co-accused against the order of life sentence and ultimately the Hon'ble High Court, vide order dated 1.9.1997, acquitted the petitioner from the charges under Section 302/149 and charged him under Section 323 read with Section 149 which was a much lesser charge being a non-cognizable offence.

That, the applicant, immediately thereafter, preferred an appeal before the concerned respondent authority praying for re-instatement but his prayer was turned down on vague grounds.

That, the applicant moved an Original Application before this Tribunal being O.A. No. 1213 of 1998, which had been dismissed on 29.2.2000 and

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against which the applicant preferred a Writ Application before the Hon'ble High Court being WPCT No. 1223 of 2002. The WPCT No. 1223 of 2002 was disposed on 7.2.2013 directing the applicant to file an appeal before the Post Master General (Region) or to any other concerned authorities as envisaged under Rule 16 of the Posts & Telegraphs Extra – Departmental Agents (Conduct & Service) Rules, 1964 within a specified time period and also directed the said concerned authority to dispose of the said appeal, if preferred, within a stipulated time keeping in view the observations of the Court. The said authority, however, without going into the gravity of the matter, without realising the actual facts and situation and also not keeping in mind the observations made by the Hon'ble High Court, passed an order on 4.9.2013 dismissing the entire appeal, save and except modifying the date of effect of dismissal from service from the date of communication of the said order, that is, 30.4.94 instead of 4.12.93.

That, the said authorities did not apply their judicious mind at all by going through the judgments referred to by the applicant at the time of hearing which was put on the point and discussed by the Hon'ble High Court while passing the said judgment dated 7.2.2013. Finding no other alternative, the applicant has filed and moved this instant original application.

The applicant has advanced the following grounds in support of his contention:

(a) That, the concerned authorities did not consider the fact that although the applicant had been charged with only Sections 148 of the IPC along with Section 323 read with Section 149, for which they have imposed a punishment of dismissal which is a disproportionate punishment considering the offence committed by the applicant.

(b) That, in view of decisions rendered by various judicial fora, it has been laid down that the quantum of punishment should be commensurate with the gravity of misconduct, which is not so in the case of the present applicant.

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(c) That, the Hon'ble High Court has duly made observations based on the citations submitted on behalf of the applicant, but while passing the order of rejection of the appeal filed by the applicant, the concerned authorities did not take into consideration such citations which were specifically dealt with by the Hon'ble High Court in its judgment.

(d) That, it is a well settled principle of law that if the offence committed by an incumbent is not directly detrimental to the government, the competent authority is expected to exercise its powers under the proviso of Article 311 (2) of the Constitution of India and/or Rule 19(i) of the CCS (CCA) Rules, 1965 or any other service rules similar to it after considerable application of mind.

4. Per contra, the respondents have argued that the applicant, having been convicted on various criminal charges under Section 302/149/148 of IPC, was sentenced to life imprisonment by the Ld. Trial Court and, after being arrested by the police authorities, was put under custody for more than 48 hours.

Accordingly, he was put off duty and thereafter dismissed from service with effect from the date of conviction under Rule 8(A)(i) of EDA (Conduct & Service) Rules, 1964. The applicant, upon moving the Hon'ble High Court, Calcutta against the order passed by the Ld. Trial Court, the Hon'ble High Court acquitted the applicant from charges under Section 302 read with Section 149 of the IPC but retained conviction under Section 148 and 323 read with Section 149 of the IPC with a fine of Rs. 5000/- or further detention for one year in case of non-payment.

The applicant thereafter submitted a representation dated 11.11.1997 seeking reinstatement in service which was subsequently rejected and against the same, the applicant moved the Tribunal in O.A. 1213 of 1998, which dismissed the said O.A. Thereafter, the applicant moved the Hon'ble High Court, Calcutta in WPCT No. 1223 of 2002, which directed the respondent authorities to consider the representation of the applicant and also to bear in mind that the

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petitioner had been acquitted of the offence under Section 302 read with Section 149 and had been convicted with a lesser offence. The respondent authorities were also directed to consider whether retrospective dismissal from service was justified and, finally, the Post Master General, South Bengal Region, Kolkata, in compliance with the said order, issued a speaking order on 4.9.2013 revising the punishment of dismissal from service w.e.f. 4.12.93 to "removal from engagement which shall not be a disqualification for future employment under the Government with effect from the date of issue of the original order i.e. 30.4.1994." in accordance with sub Rule (v) of Rule 9 of GDS (Conduct & Employment) Rules, 2011. "Put off duty allowance" as due and admissible, was also directed to be released to the applicant and according to the respondents, as articulated both in their written statement as well as in their oral arguments, that, although the applicant was convicted of lesser charges, he was not exonerated of the charges levelled against him and, hence, having been convicted of criminal charges, even if of a lesser incidence, it was undesirable to allow him service in public interest and that the respondent authorities, while issuing the speaking order, did take all the submissions of the applicant into consideration and that the orders of the Hon'ble High Court, Calcutta were duly complied with.

ISSUES

5. The points for determination in this matter are:-
 - (i) Whether the speaking order was bad in law and whether the same deserves to be set aside.
 - (ii) Whether the penalty was disproportionate with respect to the applicant's offence and whether judicial review is invoked on the same.

FINDINGS

- 6.(i) The speaking order dated 4.9.2013 as annexed in Annexure "A-9" to the O.A. has been examined at the outset and the following is inferred therefrom:

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(a) The respondent authority, while issuing the speaking order, had stated that the order was being issued in compliance of orders of the Hon'ble High Court, Calcutta dated 7.12.2013 in WPCT No. 1223 of 2002.

(b) The brief history of the applicant's matter has thereafter been summarized in the said speaking order, deciphering therefrom that the applicant, having been convicted on criminal charges under Section 302 and sentenced to life imprisonment by the Ld. Trial Court, was dismissed forthwith by the respondent authorities w.e.f. the date of conviction after having been put off duty from his date of arrest. The Hon'ble High Court, while pronouncing their judgment in the Criminal Appeal No. 291 of 1993, acquitted the petitioner from the charges under Section 302 read with Section 149 of IPC but convicted the applicant under Section 148 and 323 read with Section 149 of IPC.

(c) The respondent authority thereafter proceeded to decide as to whether the gravity of the offence committed by the petitioner was commensurate with the quantum of punishment awarded to him for conviction U/S 323/149/148 of IPC. The implications of the nature of offence has been noted at length in the speaking order.

The respondent authority has interpreted integrity in a holistic perspective and had concluded that instead of confining the concept of integrity to financial propriety alone, the conduct of an employee who has been convicted of criminal charges, even of a lighter incidence, affects the image of the Respondents' institution adversely and hence it is detrimental to continue the services of a convicted employee in public interest in the Respondents' institution.

(d) In compliance with the directions of the Hon'ble High Court, however, the competent respondent authority modified the order of dismissal to that of removal post dating the date of effect of removal and clarifying that such removal should not be a disqualification for future employment. The authority changed the date of effect from the date of conviction to the date of issue of original order of dismissal. The competent respondent authority also directed that put off duty

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allowance as due to the applicant in the intervening period may be paid to the applicant after observing requisite departmental formalities in this regard.

Hence, the grounds advanced by the applicant, namely, that the authority did not consider the fact that the applicant have been charged with Section 323/149/148 of IPC against Section 302 read with Section 148 and 149 of IPC is not correct as because the speaking order has elaborately noted the varied incidence of criminal charges.

Regarding the contention of the applicant that since the offence committed by the applicant was not directly detrimental to the Government, and that the competent authority ought to have exercised powers under Rule 19(i) of CCS (CCA) Rules, 1965, the provision of rule 19(i) of CCS (CCA) Rules are referred to and quoted hereunder:-

"19. Special procedure in certain cases:-

Notwithstanding anything contained in Rule 14 to Rule 18-

(i) Where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

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the Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit."

It is noted that in the instant O.A., the orders of the disciplinary authority have not been challenged. Further the competent respondent authority, while passing his speaking order, has acknowledged the specific criminal charges with which the applicant has been convicted and has passed orders as he had deemed fit in the circumstances of the case.

Hence in our considered view, the speaking order, having been issued in compliance with the orders of the Hon'ble High Court does not merit judicial intervention.

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(ii) Regarding the disproportionality of the penalty imposed, we refer to the nature of penalties as provided for under GDS (Conduct & Engagement) Rules, 2011 (in place of Posts & Telegraph Extra Departmental Agents (Conduct & Service) Rules, 1964 and the same are reproduced below:-

"9. Nature of penalties:-

The following penalties may, for good and sufficient reasons and as herein after provided, be imposed on a Sevak by the Recruiting Authority, namely:-

- (i) Censure;
- (ii) Debarring of a Sevak from appearing in the recruitment examination for the post of Multi-Tasking Staff Group 'C' and/or Postman and / or from being considered for recruitment as Postal Assistants / Sorting Assistants for a period not exceeding three years;
- (iii) Debarring of a Sevak from being considered for recruitment to Multi-Tasking Staff, Group 'C' on the basis of selection-cum-seniority for a period not exceeding three years;
- (iv) Recovery from Time Related Continuity Allowance of the whole or part of any pecuniary loss caused to the Government by negligence or breach of orders;
- (v) Removal from engagement which shall not be a disqualification for future employment;
- (vi) Dismissal from engagement which shall ordinarily be a disqualification for future employment.

NOTE- Penalty of Recovery under Rule 9(iv) can be enforced fully without any restriction."

In this case, a person convicted with criminal charges cannot be let off lightly with a 'censure'. As the cause of action does not relate to recruitment/recruitment Examinations, the provisions of Rule 9(ii) and (iii) are not relevant for the applicant. Since the applicant has not been held guilty of any pecuniary loss caused to government on account of negligence or breach of orders, recovery from time related continuity allowance as provided in 9(iv) does not arise.

Hence, the only two penalties which could have been imposed on the applicant are as follows:-

- "(v) Removal from engagement which shall not be a disqualification for future employment;
- (vi) Dismissal from engagement which shall ordinarily be a disqualification for future employment."

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The competent respondent authority, while passing his speaking order and having regard to the orders of the Hon'ble High Court, Calcutta, did modify the "dismissal" to "removal which would not be a disqualification for future employment".

We find that the Conduct & Engagement Rules of GDS, 2011 do not provide for any other penalty that could have been imposed on the applicant in this regard.

The Hon'ble Apex Court has, in *Noharlal Verma N. v. District Cooperative Central Bank Ltd.*, (2008) 14 SCC 445, held that, while exercising powers of judicial review, the Court will not substitute its own judgment for the decisions of the disciplinary authority unless:

- (i) The order shocks the conscience of the Court;
- (ii) No reasonable man would impose such punishment;
- (iii) The decision-maker must have taken leave of his senses.

The Hon'ble Apex Court has also, in *Bhagat-Ram v. State of H.P.*, (1983) 2 SCC 442 held that, the punishment or penalty to be imposed must be commensurate with the gravity of the misconduct. A disproportionate penalty would be violative of Art. 14 of the Constitution.

While relying upon proportionality, the Courts have been inclined to equate the same with reasonableness. While observing on the principle of proportionality, in *Om Kumar v. Union of India* (2001) 2 SCC 386 in *State of Karnataka v. H. Nagaraj*, (1998) 9 SCC 671, the Hon'ble Apex Court has held that judicial review will be competent when the punishment was totally irrational.

In this case, we find that the respondent authorities were very much within their rights in imposing the Rules 9(vi) and later 9(v) penalties as because they were bound by the provisions of GDS (Conduct & Employment) Rules, 2011.

The Ld. Counsel for the applicant in support has referred to decisions in the following matters:-

(i) *Divl. Personnel Officer, Southern Railway & anr. v. T.R.*

Challappan AIR 1975 SC 2216

(ii) *Bhagat Ram v. State of Himachal Pradesh & ors. (1983) 2 SCC*

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(iii) *Dost Mohammad v. Union of India & ors. 1981 Lab IC 1210.*

Upon perusal of the *Divl. Personnel Officer, Southern Railway* (supra) the ratio held is that the disciplinary authority can only impose a penalty on the basis of conviction and sentence passed against the delinquent employee by the competent Court. Herein, the orders of dismissal and thereafter removal have been issued consequent to the convictions in the criminal Court as well as Criminal Appeal as filed in the Hon'ble High Court respectively.

In *Bhagat Ram* (supra), it has been held that punishment must be proportionate to the gravity of misconduct and that dismissal on a trivial charge of negligence which resulted in no loss to the department was held to be disproportionate and excessive.

The charges here against the applicant are not trivial in nature, the applicant having been convicted in a criminal Court. Since "dismissal" has been modified to "removal with no disqualification on future employment", we do not think there has been any violation of the ratio in *Bhagat Ram* (supra). In *Dost Mohd.* (supra) the Hon'ble Apex Court had dealt with hostile discrimination exercised when a government servant was treated differently vis-à-vis a non-government servant both of whom were convicted for the same offence. The ratio is not applicable in this case as discrimination has not been pressed as the cause of action in this matter.

Accordingly, in our considered view the penalty imposed by the Respondent authority in his speaking order is not disproportionate within the framework of the GDS (Conduct and Employment) Rules, 2011.

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7. At the same time, however, as the applicant has not been debarred from future employment in terms of speaking order, the applicant is given liberty to seek fresh employment with the respondent authorities and, if so, the respondent authorities are directed to consider the same in terms of extant rules of their Organisation untrammelled by the orders of removal imposed on the applicant by the respondent authorities.

8. With this, the O.A. is disposed of. There shall be no orders as to costs.

(Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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