CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH
OA No. 787 of 2006

Date of Reserve:14.02.2019
Date of Order:20.02.2019

Present: Hon'ble Mr.Gokul Chandra Pati, Member(A)
Hon'ble Mr.Swarup Kumar Mishra, Member(J)

Dr.Antaryami, S/o.Shrinivas Nanda, aged about 50 years, Occ-Service r/o.Quarter No.155, South Eastern Railway Colony, Mount Road, Nagpur.

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant
P.K.Behera

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Railways, Rail Bhavan, New Delhi.

2. Railway Board, through its Secretary, Rail Bhavan, New Delhi.

3. South East Central Railway through its' Divisional Railway Manager, Kings Way, Nagpur.

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

i) Quash and set aside the memorandum dated 19.10.2004 as has been passed without application of mind and violative of rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968;

ii) quash and set aside the impugned order of dismissal of the applicant passed by the respondents as been violative of rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968;

iii) Hold and declare that the impugned order passed by the respondents is bad in law and violative of principles of natural justice and passed without application of mind.

iv) direct the respondents, particularly the respondent no.2 Board to place the entire record of the applicants case and to show where it has recorded its reasons for not conducting the enquiry;

v) direct the respondent to conduct a inquiry in the matter of applicant.

vi) grant any other relief/reliefs which this Hon'ble Court deems fit and proper in the facts and circumstances of the case;

vii) saddle the cost of this application on the respondents.

2. The applicant was appointed as a Medical Officer under the respondents in the year 1986. Before his joining in the service, the applicant, while pursuing his Post Graduate course in the Medical College, Cuttack under his guide Dr. Senapati, got involved in a criminal case after investigation by the C.B.I. relating to a firm set up by the son of Dr. Senapati, since he was one of the proprietor in one of the firm floated by Dr. Senapati's son. The applicant, after trial in the C.B.I. court, was convicted vide judgment dated 16.10.2001 for offence under section 120-B and 420 of the Indian Penal Code. Criminal appeal was filed before the District Judge and the said appeal was dismissed. The applicant has moved Hon'ble High Court in Criminal Revision. All along the applicant was on bail.

3. When the matter was sub-judice, the Railway Board vide order dated 19.10.2004 (Annexure-VII) issued a show cause notice to the applicant under the rule 14(i) of the Railway Servants (Discipline and Appeal) Rules, 1968 (in short DAR) and this order was forwarded through the zonal/divisional authorities. On 7.12.2004 (Annexure-VIII), he submitted his representation for extension of time for about 6 months on medical ground for replying to the show cause. He submitted a detailed reply to the Railway Board on 31.1.2005 (Annexure-X) mainly highlighting his good service record. Then the respondents passed the impugned order dated 31.8.2005 (Annexure-I) dismissing the applicant from service.

4. The grounds taken by the applicant for this OA are that the applicant was not given opportunity of hearing, which is against the principles of natural justice. The disciplinary authority before taking any action should have recorded the reasons in writing. It is further stated that the reason why the

inquiry was dispensed with has not been mentioned by the respondents as required under the rule 14(ii) of the DAR and hence, there is violation of the principles of natural justice. The criminal case for which the impugned order has been passed, is sub-judice before Hon'ble High Court in criminal revision. It is also stated in the OA that there is no instance of any past misconduct against the applicant whose service has been meritorious.

5. The respondents have filed their Written Submissions (in short WS), stating therein that the procedure laid down under the rules have been followed while issuing the order of dismissal under the rule 14 of the DAR, 1968. Regarding the averment that the disciplinary authority has not mentioned any reason for dispensing with the inquiry as required under the rule 14(ii), it is stated in the WS as under:-

> "As to Para 4(15): It is submitted that the contents of this para are specifically denied. It is submitted that on 19.10.2004 the Railway Board vide its order No.E(O)-2002/PU-2/SE 87, issued a memorandum/show cause notice to the applicant. It is however submitted that the applicant is deliberately and intentionally confusing the provisions of rule 14(1) and 14(2) of the Railway Servant (D&A) Rules, 1968. It is submitted that 14(2) authorities dispensing with enquiry in certain circumstances for reasons to be recorded in writing, the 14(1) former exclusive deals with proceedings with regard to conduct leading to conviction by a Court of Law. Conduct of an enquiry is not envisaged under Rule 14(1) of the Railway Servants' (Disciplinary & Appeal) Rules as conviction by Court of law is after the accused failed to provide his innocence in the criminal proceedings wherein he gets opportunities to defend himself. It was neither implicit nor explicit in the said memorandum issued to the applicant. Rule 14(2) applies only to those cases where for reasons other than those specified in Rule 14(1) or 14(3), the disciplinary authority is satisfied that it is not reasonably practicable to hold an inquiry and has to record such reasons in writing. As such, it was clear from the memorandum issued to the applicant that action was proposed against him in connection with his conduct which led to his conviction, and no other reasons for not holding an inquiry against him were enquired to be recorded.
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> As to Para – 4(16-17): It is submitted that the contents of this para are matter of record hence needs no reply.
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> As to Para-4(18-19): It is submitted that the contents of this para are specifically denied. It is submitted the past record of applicant service did not have any direct hearing on the grounds on which the applicant has been taken up under

disciplinary proceedings. The applicant had been taken up under Disciplinary Rules for his conduct which leads to his conviction by the Hon'ble Court after following statutory Rules. It is submitted that the applicant was given adequate opportunity to represent against the proposed punishment and it was only after considering his representation, and the Union Public Service Commission advice, the penalty of "Dismissal from Service" was imposed by the President after due application of mind".

6. We have heard learned counsel for the applicant. He also filed the copy of the judgment dated 16.10.2001 at the time of hearing and argued that the circumstances leading to the applicant's conviction are not serious enough to warrant the punishment of dismissal. He also reiterated the grounds mentioned in the OA. Learned counsel also cited copy of the following judgments & documents in support of the applicant's case:-

(i) Judgment dated 16.10.2001 of the criminal court convicting the applicant; (ii) Railway Board executive instructions on the scope of Rule 14(i); (iii) Judgment of Hon'ble Apex Court in the case of State of Madhya Pradesh and others vs. Hazari Lal, reported in (2008) 1 SCC (L&S) 611.

7. Learned counsel for the respondents drew our attention to the advice of the UPSC at Annexure-I of the OA, which analyses the facts with reference to the observations made by the criminal court about the applicant's conduct to cheat O.S.F.C. Cuttack which led to his conviction. Learned counsel also filed a copy of the judgment of Hon'ble Apex Court in the case of The Divisional Personnel Officer, Southern Railway and Ors. vs. T.R. Chellappan and Ors. reported in AIR 1975 Supreme Court 2216

8. The Rule 14 of the Railway Servants (D & A) Rules, 1968 states as under:-

"14. **Special procedure in certain cases** –
Notwithstanding anything contained in Rules 9 to 13 -
(i) where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules;

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Railway servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case falling under clause (i) above:

Provided further that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule."

9. The implications of the rule 14 have been considered in the judgment of T.R. Chellappan (supra), cited by learned counsel for the respondents in the case, in which it is held as under:-

> "9. In the instant case we are concerned only with clause (i) of Rule 14 of the Rules of 1968 which runs thus:
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> > Notwithstanding anything contained in Rules 9 to 13:
> > (1) where any penalty is imposed on a railway servant on the ground of conduct which has led to his conviction on a criminal charge, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.
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> The word 'penalty' imposed on a railway servant, in our opinion, does not refer to a sentence awarded by the court to the accused on his conviction, but though not happily worded it merely indicates the nature of the penalty imposable by the disciplinary authority if the delinquent employee has been found guilty of conduct which has led to his conviction on a criminal charge. Rule 14 of the Rules of 1968 appears in Part IV which expressly contains the procedure for imposing penalties.
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> Furthermore, Rule 14 itself refers to Rules 9 to 13 which contain the entire procedure for holding a departmental inquiry. Rule 6 of Part III gives the details regarding the major and minor penalties. Finally Rule 14(i) merely seeks to incorporate the principle contained in proviso (a) to Article 311(2) of the Constitution which runs thus:
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> > (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inqury in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry:
> >
> > Provided that this clause shall not apply--
> >
> > (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;
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> .....
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> 21 ..... The word "consider" merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words, the term "consider" postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employee. It is not at all necessary for the disciplinary authority to order a fresh departmental inquiry which is dispensed with under Rule 14 of the Rules of 1968 which incorporates the principle contained in Article 311(2) proviso (a). This provision confers power on the disciplinary authority to decide whether in the facts and circumstances of a particular case what penalty, if at all, should be imposed on the delinquent employee. It is obvious that in considering this matter the disciplinary authority will have to take into account the entire conduct of the delinquent 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 or redeeming features if any present in the case and so on and so forth. It may be that the conviction of an accused may be for a trivial offence as in the case of the respondent T.R. Chellappan in Civil Appeal No. 1664 of 1974 where a stern warning or a fine would have been sufficient to meet the exigencies of service. It is possible that the delinquent employee may be found guilty of some technical offence, for instance, violation of the transport rules or the rules under the Motor Vehicles Act and so on, where no major penalty may be attracted. It is difficult to lay down any hard and fast rules as to the factors which the disciplinary authority would have to consider, but I have mentioned some of these factors by way of instances which are merely illustrative and not exhaustive. In other words, the position is

that the conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction. This is a very salutary provision which has been enshrined in these Rules and one of the purposes for conferring this power is that in cases where the disciplinary authority is satisfied that the delinquent employee is a youthful offender who is not convicted of any serious offence and shows poignant penitence or real repentance he may be dealt with as lightly as possible. This appears to us to be the scope and ambit of this provision. We must, however, hasten to add that we should not be understood as laying down that the last part of Rule 14 of the Rules of 1968 contains a licence to employees convicted of serious offences to insist on reinstatement....."

Hon'ble Apex Court, after examining the constitutional provisions and the law on the subject, finally observed in the T.R. Chellappan case as under:-

"22..... We however refrain from expressing any opinion on this aspect of the matter because the cases of all three respondents before us are cases which clearly fall within Rule 14 of the Rules of 1968 where they have been removed from service without complying with the last part of Rule 14 of the Rules of 1968 as indicated above. In none of the cases has the disciplinary authority either considered the circumstances or heard the delinquent employees on the limited point as to the nature and extent of the penalty to be imposed if at all. On the other hand in all three cases the disciplinary authority has proceeded to pass the Order of removal from service straightaway on the basis of the conviction of the delinquent employees by the criminal Courts."

10. In the case of **State Of M.P. And Others vs Hazari Lal, reported in (2008)3 SCC 273**, cited by the applicant's counsel, it was held by Hon'ble Apex Court in that case as under:-

"7. By reason of the said provision, thus, "the disciplinary authority has been empowered to consider the circumstances of the case where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge", but the same would not mean that irrespective of the nature of the case in which he was involved or the punishment which has been imposed upon him, an order of dismissal must be passed. Such a construction, in our opinion, is not warranted.

8. An authority which is conferred with a statutory discretionary power is bound to take into consideration all the attending facts and circumstances of the case before imposing an order of punishment. While exercising such power, the disciplinary authority must act reasonably and fairly. Respondent occupied the lowest rank of the cadre. He was merely a contingency peon. Continuation of his service in the department would not bring a bad name to the State. He was not convicted for any act involving moral turpitude. He was not punished for any heinous offence.

9. The Tribunal, in our opinion, rightly placed reliance upon the decision of this Court in Shankar Dass vs. Union of India : (1985) 2 SCC 358 wherein this Court commended the judgment of a Magistrate of Delhi as he had let off the appellant therein under Section 12 of the Probation of Offenders Act stating: (SCC p.361, para 6)

> "Misfortune dogged the accused for about a year.and it seems that it was under the force of adverse circumstances that he held back the money in question. Shankar Dass is a middle-aged man and it is obvious that it was under compelling circumstances that he could not deposit the money in question in time. He is not a previous convict. Having regard to the circumstances of the case, I am of the opinion that he should be dealt with under the Probation of Offenders Act, 1958."

10. Despite the said observation Shankar Dass was dismissed from service. This Court held: (SCC p. 362, para 7)

> "7. It is to be lamented that despite these observations of the learned Magistrate, the Government chose to dismiss the appellant in a huff, without applying its mind to the penalty which could appropriately be imposed upon him insofar as his service career was concerned. Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But, that power, like every other power, has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a

government servant who is convicted for parking his scooter in a no- parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical."

We express similar dissatisfaction in this case."

11. Similar views have been expressed by Hon'ble Allahabad High Court in the case of Mahendra Kumar vs. Union Of India and others vide judgment dated 12 September, 2018 in the Writ A No.-27271 of 2014, by observing as under:-

"37. For the foregoing reasons, it is held that:
(i) The departmental punishment of removal or dismissal from Government service is not an essential and automatic consequence of conviction on a criminal charge.
(ii) The authority competent to take disciplinary action as per Rules against a government servant convicted on a criminal charge has to consider all the circumstances of the case and then to decide (a) whether the conduct of the delinquent official which led to his conviction is such as to render his further retention in public service undesirable; (b) if so, whether to dismiss him or to remove him from service or to compulsorily retire him; and (c) if the said conduct of the official is not such which render his further retention in service undesirable, whether the minor punishment, if any, should be inflicted on him."

12. as per the ratio of the judgments discussed above, the settled law in this regard requires the disciplinary authority to consider the circumstances of the case and conduct of the delinquent employee leading to his conviction in criminal offence including gravity of misconduct and hear the delinquent employee on the limited point as to the penalty to be imposed, before passing any order under the rule 14(i) of the DAR, 1968. In the present OA before us, the show cause notice dated 19.10.2004 (Annexure VII) issued by the disciplinary authority under the rule 14(i) reads as under:-

"Whereas Dr.Antaryami Nanda, presently working as Sr.DMO/S.E.C. Railway/Nagpur was prosecuted in the Special Court of Judicial Magistrate/CBI/Bhubaneswar, u/s. 120-b/420 IPC for entering into a criminal conspiracy in collusion with a few other co-accused persons, in opening a current account with the Syndicate Bank, Cuttack Bench in the name of a non-existent firm, M/s.Motison Industries, thereby encashing two cheques worth Rs.2,15,560.82/- issued by the Orissa State Finance Corporation in favour of the above firm.

2.AND WHEREAS the said Dr.Antaryami Nanda was convicted and sentenced by the Ld.Spl.CJM/CBI/Bhubaneswar vide their judgment dated 16.10.2001/in Case No.SPE No. 19 of 1991 for undergoing a rigorous imprisonment for a period of 3 years with a fine of Rs.5000/- only and in default to undergo rigorous imprisonment for 6 months on each count.

3.NOW, with regard to the aforesaid conduct of Dr.Antaryami Nanda which has led to his conviction, the President in exercise of powers conferred by Rule 14(i) of Railway Servants (Discipline and Appeal) Rules, 1968 proposes to take action against him for imposing the penalty of 'Dismissal from Service' considering the misconduct as grave, rendering him unsuitable for continuing in Railway service".

13. The applicant replied to the show cause notice vide letter dated 31.1.05 by stating as under:-

> "In 1991, I came to know that a criminal case SPE. 19/1991 had been registered against me & my the then Professor Dr.G.C.Senapati along with another person in a matter pertaining to the period prior to joining IRMS.
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> That prior to joining to Railway service, while pursing the Post Graduate Course in Paediatrics under Utkal University, Orissa during the period 1984-85, my Professor & guide Dr.Gobind Chandra Senapati had made me to sign in some blank papers & forms etc. in good faith which were later used by him to commit certain frauds. Which were not known to me and which subsequently form an FIR against me in which I was convicted and sentenced by judgment dated 16.10.2001 in SPE 1991".

14. The disciplinary authority has passed the penalty order under the rule 14(i) of the DAR, 1968 stating as under: (impugned Order dated 31.8.2005).

> WHEREAS Dr.Antaryami Nanda, SG/IRMS, the then Sr.DMO/S.E.R/Rly./Nagpur, presently working as Sr.DMO/S.E.C. Railway/Nagpur was convicted and sentenced by the Ld.Spl.CJM/CBI/Bhubaneswar vide their judgment dated 16.10.2001 in case No.SPE No.19 of 1991 for entering into a criminal conspiracy in opening of a current account with the Syndicate Bank, Cuttack Branch in the name of a non-existent firm M/s.Motison Industries thereby encashing two cheques worth Rs.2,15,560.82 issued by the Orissa State Financial Corporation, in favour of the this firm.
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> AND WHEREAS with regard to the aforesaid misconducts of the said Dr.Nanda which also led to his conviction, it was decided by the President to exercise powers conferred by Rule 14 (i) of RS(D&A) Rules, 1968. A Memorandum of even number dated 19.10.2004 was issued accordingly to the said Dr.Nanda giving him an opportunity to make submissions as to why the penalty of 'Dismissal from service' should not be imposed on him.
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> AND WHEREAS the said Dr.Nanda in response to the aforesaid Memorandum submitted his representation dated 31.1.2005, mainly relying on the argument that his appeal is still pending with the Hon'ble Court and a man is innocent till he is held guilty by the last forum.
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> Now, therefore, the Disciplinary Authority, i.e., the President after carefully considering the submission made by the said Dr.Nanda in his aforesaid representation and also keeping in view all other facts/aspects relevant to the case has decided in due consultation with the Union Public Service Commission (UPSC) that ends of justice would be met in the case, if a penalty of dismissal from service is imposed on the said Dr.Nanda for the detailed reasons

given in the enclosed Commissions' advice conveyed vide their letter No.F.3/644/2004/S-1 dated 11.7.2005".

15. From the facts of the case, the questions to be decided are (i) whether the requirements of the rule 14(i) have been fulfilled by the disciplinary authority; and (ii) whether good track record of the applicant in service and other grounds mentioned in the OA will be helpful for the applicant.

16. Under the rule 14(i) and the ratio of the judgments discussed above, the disciplinary authority has to hear the applicant in the matter and consider the circumstances of the case as well as the conduct of the applicant before passing the order of penalty. The respondents have given the opportunity of hearing by issuing show cause notice to the applicant and he has been allowed to present his case before the authority. The applicant has taken a plea that no opportunity was hearing was given to him and no reason was indicated for not conducting inquiry as required under the rule 14(ii). A plain reading of the rule 14 would reveal that under three circumstances, the disciplinary authority can take action under the said rule and these are mentioned in sub rule (i) or (ii) or (iii). In this case, the disciplinary authority has acted under the sub rule (i) of the rule 14 due to conviction of the applicant. Hence, sub rule (ii) of rule 14 is not applicable to the case of the applicant and no reason for not holding the inquiry is necessary. This is also clear from the ratio of the judgment of Hon'ble Apex Court in Chellappan case as discussed in paragraph 9 supra. Therefore, we are not convinced by the averment that no opportunity of hearing was given to the applicant.

17. The impugned order dated 31.8.2005 as extracted in para 14 above, it is clear that the conduct of the applicant and circumstances which led to his conviction has been considered by the disciplinary authority, although it is not mentioned very clearly. The advice of the UPSC has also analysed these aspects which have been considered by the disciplinary authority before passing the impugned order.

18. The plea of the applicant in this OA for the crime is that his guide late Dr. Senapati made him sign on blank paper and being obedient student he signed on it and he was made the proprietor of a non-existent firm by his guide. It is seen from the judgment dated 16.10.2001 of the criminal court that he had taken this plea in the court also. Learned Spl C.J.M. (C.B.I.) has considered this defence of the applicant and rejected it as would be clear from para 12 of the judgment dated 16.10.2001. From para 17 of the said judgment, it is mentioned that the applicant, as proprietor of the non-existent firm, had received the cheques in the name of the said non-existent firm from O.S.F.C.

and deposited the cheques in the bank and subsequently amount realized through the cheque was withdrawn by the applicant.

19. In view of the above, we are of the considered opinion that the disciplinary authority has duly considered the circumstances and conduct of the applicant which led to his conviction before passing the impugned order and hence, the answer to the question at para 15(i) is in favour of the respondents.

20. Regarding the question at para 15(ii), it is seen that other grounds in the OA include his good track record in service. But that will not nullify his conduct which has led to his conviction in criminal offence. No other grounds advanced in the OA is convincing enough to nullify the impugned order dated 31.8.2005.

21. Learned counsel for the applicant had argued at the time of hearing that as per the Railway Board guidelines (copy filed with his citations) and the judgment of Hon'ble Apex Court in the case of Hazari Lal (supra), the punishment of removal or dismissal in conviction cases is not automatic and his misconduct has to be grave so as to render his retention in service undesirable or contrary to public interest. The instructions of the Railway Board or the judgment in Hazari Lal case will not be helpful for the applicant since he is found guilty of the crime like cheating a public organization by creating a fake and non-existent firm and his defence that he was compelled for the offence by his guide was not acceptable to the trial court. We also consider the offence for which the applicant has been convicted, to be a grave offence with moral turpitude particularly for an officer holding a senior and responsible position in a public organization.

22. In the facts and circumstances as discussed above, we are unable to allow any relief to the applicant at this stage and the OA is devoid of merit. Accordingly, the OA is dismissed with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

BKS