Central Administrative Tribunal
Jaipur Bench, Jaipur

O.A. No. 656/2016

Reserved on: 04.04.2019
Pronounced on:02.05.2019

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)

Murari Lal Sharma S/o Late Shri Radhey Shyam Sharma, aged about 58 years, R/o 113, Krishna Nagar, Bharatpur, Rajasthan earlier working as UDC in the respondent department posted at Bharatpur (Group C Services).

…Applicant.

(By Advocate: Shri Amit Mathur)

Versus

1. The Union of India through its Secretary, Ministry of Defence, South Block, New Delhi.

2. The Director General, Army Ordinance Service (OS-8C) Army Headquarter, Master General Ordinance Branch, DHQPO, New Delhi.

3. The OIC (Records), Army Ordinance Corps, Secundrabad, Andhra Pradesh.

4. The Major General, Army Ordinance Corps, South West Command, Jaipur, Rajasthan.

5. Headquarter 61(1), Sub Area C/o 56 APO.

6. The Commandant, 39 Field Ammunition Depot, PIN-900309 C/o 56 APO.

…Respondents.

(By Advocate: Shri D.C.Sharma)

ORDER

Per: A. Mukhopadhaya, Member (A):

The limited issue for determination in this Original Application, (OA), is whether the setting aside of a conviction order relating to a compoundable offence under the Negotiable Instruments Act, (NIA), 1881 and the resultant acquittal of the applicant entitled him for reinstatement in the services from which he was compulsorily retired on account of the said conviction.

2. Briefly, the facts of the case as stated are that the applicant was convicted of an offence under Section 138 of the NIA vide order of Hon'ble Additional Chief Judicial Magistrate No.2 Bharatpur dated 31.05.2004, (Annexure A/8), in Case No.19/2003. Thereafter, vide their order of 26.08.2006, (Annexure A/2), the respondents, invoking Rule 19 of the CCS (CCA) Rules, 1965, (hereafter called the **"Rules"**), after having given him an opportunity to represent against the proposed penalty and considering his representation, visited him with the penalty of **"compulsory retirement from service"**. This penalty was upheld by the Appellate Authority vide its order of 21.02.2007, (Annexure A/3), as well as by the Revisionary Authority vide its order dated 31.05.2008, (Annexure A/4). An OA No.94/2009 filed by the applicant in this regard before this

Bench of the Tribunal was disposed of vide order dated 25.03.2009, (Annexure A/5), stating that although the conviction in question had been stayed by the Hon'ble High Court on 06.01.2009, **"the applicant is not entitled to relief"** because he had been **"compulsorily retired from service on account of the conduct which has resulted into his conviction by a competent court and not on ground of his conviction".** This Tribunal further observed that **"it is open for the applicant to move the High Court for early hearing"**. This order of the Tribunal was challenged by the applicant vide D.B. Civil Writ Petition No.15926/2010 which was dismissed by the Hon'ble Rajasthan High Court vide its order dated 03.09.2012, (Annexure A/6), stating as follows:

> **"We find that once the petitioner stood convicted and departmental orders were passed by the disciplinary, appellate and revisional authorities, and thereafter, if his conviction has been stayed by the High Court on 6.1.2009 during the pendency of appeal, on that basis, he could not have prayed for reinstatement, until and unless he is acquitted. Subsequent stay of conviction after the departmental authorities have decided the matter, was of no avail as has been rightly held by the Tribunal. Thus, no case is made out so as to make interference with the impugned order".**

3. However, during the pendency of revision proceedings in the High Court on the conviction in question, a settlement was arrived at between the applicant and the complainant in the case and the parties thereafter pleaded that the offence under Section 138 of NIA be compounded. Accordingly, the Hon'ble Rajasthan High Court vide its order dated 01.05.2015, (Annexure A/7), observed and ruled as follows:

> **It is stated that a settlement has been arrived between the parties, thus offence under Section 138 of Negotiable Instruments Act, 1881 (for short "NI Act") be compounded. The parties are present in the Court and have no objection, if the impugned orders are set aside with compounding of offence in terms of the settlement.**
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> **.....**
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> **Learned counsel for the complainant has no objection, if the order passed by the trial Court and the order dismissing the appeal are set aside in view of the settlement between the parties.**
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> **Accordingly the impugned orders are set aside with the direction to compound the offence. The parties would be governed by the terms of the settlement.**

4. Thereafter, the applicant again approached the respondents for reinstatement in service but his request in this regard was rejected by the respondents vide their order of 04.02.2016; (Annexure A/1). Aggrieved by this action of the respondents, the applicant has approached this Tribunal seeking the following relief:

> That the present Original Application be allowed and the impugned orders dated 04.02.2016, 26.08.2006, 21.02.2007 and 31.05.2008, (Annexures - A/1 to A/4) be quashed and set aside. The applicant be reinstated in the service. After reinstating him in service, the respondents be directed to allow all the pay and salary with allowances, pay fixation, revision, promotion and seniority etc. with arrears. The respondents be further directed to make the payment of interest @ 18% p.a. over these benefits.
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> Any other relief or direction which is deemed fit in the facts and circumstances of the case be also passed in favour of the applicant.

5. The applicant contends that since the penalty of compulsory retirement from service was imposed upon him, (Annexure A/2 refers), solely on the basis of Rule 19 (1) of the **Rules**, it follows that such penalty cannot be sustained once the conviction is set aside as is undisputedly the case here. He states that where such a conviction is set aside, it is immaterial whether this happens as a result of settlement or otherwise. Further, since a case under Rule 19 of the **Rules** is one where an exception is made to the constitutional and statutory requirement of holding a detailed disciplinary inquiry before imposition of a major penalty, it is not

open to the respondents to invoke additional reasons as a basis for refusing him reinstatement in service once the conviction is set aside since the original order imposing the penalty did not refer to any such reasons.

6. With regard to the specific reasons stated in the impugned order of 04.02.2016, (Annexure A/1), rejecting the applicant's request for reinstatement in service the applicant pleads as follows:

a) That in his case the offence was not against the "State" and was essentially civil in nature between the parties, (i.e. the applicant and the complainant), and these are not issues where any question of moral turpitude arises.

b) As regards the question of alleged concealment of facts related to his arrest, the applicant points out that no inquiry establishing this was ever conducted and therefore it cannot become the basis for imposing and continuing with the penalty of compulsory retirement once the conviction itself is set aside.

c) The applicant states that the Hon'ble High Court in the revision proceedings in question, (Annexure A/7 reproduced in excerpt earlier refers), has very clearly observed that the setting aside of the conviction of the applicant and that too

on the basis of a specific expression of **"no objection"** by the respondent State, debars the respondents from questioning the nature of his acquittal which is absolute. Consequently, orders passed in disciplinary proceedings based solely on his conviction cannot be sustained after such acquittal.

d) As regards no specific direction from the High Court for reinstatement, the applicant states that this is to be done, not by the High Court but by the respondents in this case.

e) Finally, as regards the stated prerogative of the government to have such staff whose integrity is beyond doubt, the applicant again points out that while this reason was not invoked when passing the original penalty order, (Annexure A/2), it cannot be invoked now especially where the offence in question is actually a civil dispute which does not render him ineligible for performing his duties, (para 5A of OA refers), nor involves any kind of moral turpitude.

7. In reply, the respondents contend that the reasons for refusing the applicant reinstatement in service, as stated in the impugned order of 04.02.2016, (Annexure A/1), have been communicated to him only after a full consideration of the facts and circumstances of the case. They contend that the penalty visited upon the applicant was commensurate with the moral

turpitude and gravity of the offence committed by the petitioner; (reply to para 1 of OA read with Annexure A/3 refers). The respondents further contend that the case had been considered in detail yet again at both appellate and revisional levels when upholding the original order of the Disciplinary Authority; (Annexures A/3 and A/4 refer). The respondents point out that the penalty of compulsory retirement visited upon the applicant in 2006 was upheld by this Tribunal vide its order dated 25.03.2009 in OA No.94/2009, (Annexure A/5), and that the Writ preferred by the applicant against this was dismissed; (Annexure A/6 refers). Thus they contend that the OA is devoid of merit as the applicant's action which led to his compulsorily retirement clearly shows moral turpitude and concealment of the facts of his arrest and therefore it should be dismissed.

8. Learned counsels for the applicant and respondents were heard and the material available on record was examined.

9. Learned counsel for the applicant cites the case of **Damodar S. Prabhu** vs. **Sayed Babulal H.** [(2010) 5 SCC 663)] in which the provisions of Sections 138 and 147 of the NIA have been analysed by the Apex Court which observed as follows:

> **"....What must be remembered is that the dishonor of a cheque can be best described as a regulatory offence that**

has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions."

Citing the case of **Meters and Instruments Private Limited and Another** vs. **Kanchan Mehta** (2018) 1 SCC 560, learned counsel for the applicant refers to the following ruling of the Hon'ble Supreme Court, (para 18 of the judgment refers):-

"18.1 Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on the accused in view of presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C. will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

18.2 The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court."

10. Applicant's counsel argues that relying on the above mentioned rulings/observations of the Apex Court, the Rajasthan

High Court vide its order dated 16.05.2018 in the case of **Sunil** vs. **State & Another** relating to Section 138 of the NIA has also clearly stated as follows:

> "**Accordingly, I prefer to give priority to the compensatory aspect of remedy over the punitive aspect in the matter in the wake of settlement of dispute and compromise being arrived at between the rival parties.**
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> **In view of foregoing discussion, the instant revision petition is allowed, impugned judgment dated 02.07.2011 passed by learned appellate Court as well as judgment dated 26.03.2009 passed by the learned trial Court are set at naught as a consequence of compromise having been arrived at between the rival parties and while acknowledging their compromise offence under Sec. 138 of the Act is hereby compounded by resorting to Section 147 of the Act. Compounding of offence under Section 138 of the Act obviously entails acquittal of petitioner."**

11. Citing the judgment of the Kerala High Court vide its order dated 03.03.2015 in the case of **R.G. Vilas Kumar** vs. **The Food Corporation of India**, learned counsel for the applicant points out that in this case, which also relates to the imposition of a major penalty under the **Rules** for conviction under Section 138 of the NIA, the court has ruled as follows:

> **"8. The conviction for the offence under Section 138 of the Negotiable Instruments Act, has to be differentiated from the offences. The offence under Section 138 of the Negotiable Instruments Act is, in fact, a technical offence in the sense on account of certain contingency if the cheque has to be dishonoured, the drawer of the**

cheque is liable to be punished under law. If the conviction is for the sole reason that the cheque happened to be dishonoured for want of sufficient fund, it does not involve any moral turpitude, one may become poorer after issuance of the cheque. The offence under Section 138 of the Negotiable Instruments Act cannot be classified one coming under Annexure to Rule 14 as above. Annexure to Rule 14 in C.C.S.(C.C.A) Rules classify types of cases which may mean action for imposing major penalty.

9. Considering the facts and circumstances, it cannot be said that such a breach to honour cheque would entail in an offence of moral turpitude. The technical offence in law is understood on account of qualifying certain technical parameters as contemplated in law to attract the offence. Therefore, such offences are more of quasi penal offence and not in offences as understood in general law. The petitioner has been imposed with major penalty of reversion taking note of the conviction under Section 138 of the Negotiable Instruments Act as the retention of the petitioner in the public service found undesirable. In Kaushalya Devi Massand v. Roopkishore Khore [(2011) 4 SCC 593], the Hon'ble Supreme Court held that offence under Section 138 of the "Negotiable Instruments Act cannot be equated with offence under Indian Penal Code. It is almost in nature of civil wrong having criminal overtones."

Thus, he contends that in this case also, the major penalty of compulsory retirement imposed on the applicant is unsustainable, especially where the conviction has subsequently been set aside on the basis of compounding and the applicant stands fully acquitted thereafter.

12. Referring to the fact that the settlement arrived at between the applicant and the complainant in this case was reached at a later stage in the judicial proceedings and well after the imposition of the penalty of compulsory retirement, learned counsel for the applicant cites the case of **K.M. Ibrahim** vs. **K.P.Mohammed and Ors.** (Criminal Appeal No.2281 of 2009 (Arising out of S.L.P. (Crl.) No.9263/09 Crl.M.P.15423/2009) in which the Apex Court in its order dated 02.12.2009 ruled, (at paras 8 and 12), as follows:

> **"8. The golden thread in all these decisions is that once a person is allowed to compound a case as provided for under Section 147 of the Negotiable Instruments Act, the conviction under Section 138 of the said Act should also be set aside. In the case of Vinay Devanna Nayak (supra), the issue was raised and after taking note of the provisions of Section 320 Cr.P.C., this Court held that since the matter had been compromised between the parties and payments had been made in full and final settlement of the dues of the Bank, the appeal deserved to be allowed and the appellant was entitled to acquittal. Consequently, the order of conviction and sentence recorded by all the courts were set aside and the appellant was acquitted of the charge levelled against him.**
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> **.....**
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> **12. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Forum. However, Section 147 of the aforesaid Act does not bar the parties from compounding an offence under Section**

> **138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution**.

13. Learned counsel for the applicant thus contends that it is open to the applicant to reach a settlement with the complainant in this case even at the revisional stage of the proceedings and that his doing so at this stage does not in any way render him liable for any adverse consequences as regards his service with the respondents. Finally, learned counsel for the applicant cites a judgment dated 24.07.2014 passed by the Principal Bench of this Tribunal in **OA No.3093/2013**, (**Babu Lal** vs. **Union of India)**, in which an employee who had been removed from service under Rule 19(1) of the **Rules**, on the ground of his conduct which had led to his conviction and sentence for an offence under IPC, was found entitled for reinstatement with all consequential benefits where the offence had been compounded by a revisional Court under Section 320(8) of the Code of Civil Procedure 1973.

14. Learned counsel for the respondents, while reiterating the points made in the reply to the OA, argues that initial conviction of the applicant under Section 138 of the NIA was upheld at the appellate level and that his plea for reinstatement before this Tribunal earlier in OA No.94/2009, (Annexure A/5 refers),

followed by a Writ Petition No.15926/2010, (Annexure A/6 refers), both came to nought as the Rajasthan High Court held that the applicant **"could not have prayed for reinstatement, until and unless he is acquitted"**. Referring to the subsequent acquittal of the applicant in revision proceedings before the Rajasthan High Court, (Annexure A/7 refers), learned counsel for the respondents contends that the Hon'ble Supreme Court in its order dated 14.03.2019 in the case of **State of Madhya Pradesh & Ors.** vs. **Bunty**, (Civil Appeal No(s).3046/2019 arising from SLP (c) No.(s) 4964, ruled as follows:

> **"13. The law laid down in the aforesaid decisions makes it clear that in case of acquittal in a criminal case is based on the benefit of the doubt or any other technical reason. The employer can take into consideration all relevant facts to take an appropriate decision as to the fitness of an incumbent for appointment/continuance in service. The decision taken by the Screening Committee in the instant case could not have been faulted by the Division Bench."**

Since the aforementioned ruling embodies a principle which is applicable to the applicant's case for continuance in service and not just to appointment in service, learned counsel for the respondents further states that the acquittal of the applicant as a result of compounding cannot be termed an honourable acquittal.

For this, he places reliance on a judgment of the Division Bench of the Madras High Court in W.A.No.1287 of 2008, dated 02.09.2009 which relates to an acquittal based on the benefit of doubt. Learned counsel contends that the benefit of doubt as in that case qualifies as a stronger ground for honourable acquittal as compared to compounding as is the case here. In the present case, the offence committed by the applicant, resulting in his conviction under the NIA is nowhere in doubt. Thus he argues that the respondents have not erred in any manner in not reinstating the applicant in service.

15. We have considered the material on record as well as the arguments and citations referred to and relied upon by the counsels for the opposing parties. Since it is undisputed in this case that the judicial orders convicting the applicant were set aside on the basis of compounding and that the applicant was consequently acquitted, we find force in the contention of learned counsel for the applicant that the stage at which the compounding occurred is not relevant to the issue of reinstatement of the applicant in service. We also find force in the applicant's argument that the offence under Section 138 of the NIA for which he was convicted has been ruled by the Apex Court to be **"primarily a civil wrong"**; (the Apex Court's order in Meters and Instruments Private Limited, supra refers). Also,

since it is statutorily provided that the compounding of an offence shall have the effect of an acquittal, no action taken on the accused solely on the basis of a conviction imposed upon him can be sustained and continued once the offence stands compounded and the applicant acquitted as a result; (CAT Principal Bench order passed in **OA No.3093/2013** supra - Para 19 of judgment refers). Further, there appears to be force in the argument that once a person has been acquitted of the charges which led to his conviction in a criminal case and the conviction in question is set aside, it is not open to the respondents to try to draw some kind of distinction between honourable and less than honourable acquittal to deny him the consequent benefits of such a judicial order, especially where the original conviction is for an offence under the NIA which has been ruled to be primarily of a civil nature not involving any moral turpitude.

16. In the result, the OA is allowed and the impugned orders dated 26.08.2006, (Annexure A/2), 21.02.2007, (Annexure A/3), 31.05.2008, (Annexure A/4), and 04.02.2016, (Annexure - A/1), are quashed and set aside with the applicant being entitled to all consequential benefits as a result.

17. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

/kdr/