

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, RANCHI
OA/051/00213/2019

Date of Order: 22.08.2019

CORAM

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Harendra Kumar Ekka, aged about 42 years, son of Dilip Ekka, resident of Villager + P.S.- Barhi, District- Hazaribagh, Jharkhand.

..... Applicant.

- By Advocate: Mr. Abhishek Kumar

-Versus-

1. Union of India, through its Secretary, Ministry of Railway, New Delhi.
2. The Senior Divisional Personnel Officer, East Central Railway, Dhanbad, PO & PS and District- Dhanbad.
3. The Assistant (Operation) Manager, East Central Railway, Dhanbad, P.O. and P.S. and District- Dhanbad.
4. The Senior Divisional (Operational) Manager, East Central Railway, Dhanbad, P.O. and P.S. and District- Dhanbad.
5. The Addl. Divisional Railway Manager cum-Appellate Authority, East Central Railway, Dhanbad, PO and PS and District- Dhanbad.

..... Respondents.

- By Advocate: Mr. P.D. Singh

O R D E R
[ORAL]

Per Dinesh Sharma, A.M: The case of the applicant is that he has been removed from service, by order passed by respondent no. 5 dated 17.05.2018, on ground of his having been convicted by Additional Sessions Judge-IX-Cum F.T.C. for rape cases. His appeal against this order has also

been left undecided, by order dated 05.02.2019, on ground that the criminal appeal filed by the petitioner is still pending before the Hon'ble High Court. The applicant has prayed for quashing of these orders and also for payment of entire salary and, previous to that, the subsistence allowance, in view of the order of suspension during judicial custody.

2. The respondents have denied the claim of the applicant in their written statement. They have stated that the applicant was suspended when the fact of the applicant's arrest on 19.04.2017 came to their knowledge. It was further revealed that he was involved in a criminal case under Section 376, 417 under IPC and was convicted and sentenced for 10 years rigorous imprisonment and a fine of Rs. 20,000/-. On account of this, a show cause notice was issued on 10.01.2018 giving him an opportunity to make his representation. The applicant stated in his representation that he had filed criminal appeal before the Hon'ble High Court, Ranchi and the Hon'ble High Court, Ranchi had by order dated 12.03.2018 stayed the operation of the impugned judgment of conviction during the pendency of this appeal. The Disciplinary Authority has taken a decision in terms of Railway Board's letter No. E(D&A) 2013 RG6-1, dated 08.07.2013 (RBE No. 65/2013), according to which mere filing of appeal or stay of execution do not take away the effect of conviction. Therefore, the Disciplinary Authority, after proper evaluation of the case file and the judgment of the Hon'ble Court, in exercise of power conferred by Rule 14(1) of Railway Servants (D&A) Rules, 1968, imposed the penalty of removal from service w.e.f. 18.05.2018. His appeal has also been disposed of by a speaking order dated

05.02.2019 where, after carefully considering all the relevant matters, the Appellate Authority has found it not correct to take any decision on his appeal during the pendency of the criminal appeal filed by the applicant before Hon'ble High Court, Ranchi.

3. We have gone through the pleadings and heard the arguments of learned counsels of both the parties. As is clear from the summary of pleadings mentioned above, there is no dispute on facts in this matter. The only issue that needs to be decided is whether the respondents were right in removing the applicant from service on ground of his conviction by a criminal court that was stayed in appeal by the Hon'ble High Court. The learned counsel for the applicant cited a decision of Hon'ble Apex Court in **Lok Prahari Vs. The Election Commission of India & Ors.** decided on 26.09.2018 in WP (C) No. 330 of 2016 wherein the Hon'ble Apex Court has held that *"once the conviction has been stayed during the pendency of an appeal, the disqualification which operates as a consequence of the conviction cannot take or remain in effect."* (para 14 of the judgment). It was also argued that in the present case the Hon'ble High Court had suspended the sentence while granting bail and on further request by the applicant, in the context of the impending disciplinary action, the Hon'ble High Court have specifically stayed the conviction by their order dated 12.03.2019 (Annexure-8).

4. The learned counsel for the respondents argued that the rules and guidelines, specifically those circulated through RBE No. 65/2013 dated 08.07.2013, have clarified the procedure to be followed in cases where

railway servants are convicted in a criminal case. These guidelines prescribe taking further action without waiting for a decision by a higher court in appeal against such conviction (Annexure R/4). According to the learned counsel, these guidelines justify taking action even when the conviction of a public servant is stayed in appeal though the appeal against conviction may be pending. On careful reading of RBE 65/2013, it is clear that the Board's Letter No. E(D&A) 93 RG 6-65, dated 6.6.94 (Attached with RBE 65/2013) mentions both the situations (stay of sentence as well as conviction) in paragraph-2. However, in paragraph-3 of this letter, further proceeding with Institution/completion of disciplinary proceeding is recommended only in a situation where the sentence is suspended and not the conviction itself. We find that in the present case, the Hon'ble High Court has not only suspended the sentence but have also stayed the conviction. Therefore, following the Railway Department's own rules and also the ratio laid down by the Hon'ble Apex Court in the case of Lok Prahari (supra), the action by the respondents to issue final punishment on the applicant, on the basis of a conviction that was later stayed by the Hon'ble High Court, is not correct. We, therefore, set aside the order dated 17.05.2018 passed by the respondents by which the penalty of removal from service was imposed on the applicant solely on ground of his conviction by the criminal court. On setting aside of this order, the decision in appeal dated 05.02.2019 becomes infructuous.

5. Regarding the prayer of the applicant about payment of salary/subsistence allowance during the period of his termination/

suspension. It is logical to conclude that on quashing the termination order, the status of the applicant reverts to what it was before the termination, i.e. under suspension. We direct the respondent authorities to take appropriate decision, after considering all the relevant facts, about whether they consider it appropriate to keep the applicant under suspension during the period for which the disciplinary action against him remains/has remained pending. The payment of salary/subsistence allowance may be made accordingly, within two months from the date of receipt of this order. The OA is disposed of accordingly. No order as to costs.

[Dinesh Sharma]/M[A]

[J.V. Bhairavia]/M[J]

Srk.