

(2018) 04 CAT CK 0036

In the Central Administrative Tribunal

Case No : Original Application No. 3043 Of 2014, Miscellaneous Application No. 2612 Of 2014, 3275 Of 2017

Ram Ashish Singh

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 27-04-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 357, 360
Indian Penal Code, 1860 — Section 354, 452
Probation Of Offenders Act 1907 — Section 4
Administrative Tribunals Act, 1985 — Section 21
Railway Servants (Discipline And Appeal) Rules, 1968 — Rule 14(1), 25, 25A

Citation : (2018) 04 CAT CK 0036

Hon'ble Judges : Jasmine Ahmed, J;P.Gopinath, Member (A)

Bench : Single Bench

Advocate : S.P. Sethi, V.S.R. Krishna

Final Decision : Dismissed

Judgement

P. Gopinath, Member (A)

1. Applicant is working as Senior Pharmacist in Railway Health Unit (RHU), Anand Vihar. Applicant submits that he was involved in a false and fabricated case with the intention to oust him from Anand Vihar Health Unit. Applicant was convicted by the Criminal Trial Court and imposed a fine of Rs.5000/- or imprisonment for 6 months if fine was not paid. Applicant paid the compensatory fine. The Magistrate while ordering the compensatory fine had made the following observations:

" The accused Ram Ashish is convicted u/s 354 I.P.C. by this Court. Thereafter, an application under section 360 Cr.P.C. read with Sections 4 of the Probation of Offenders Act is moved wherein it is stated that the accused is a Govt. employee and this is the first offence which he has committed. It is further submitted that the convict is a family man and have three children, all school going.

Some authorities on this aspect have also been cited for example (1981) 1 SCR 1279 Crime IV-1993 (1) Page 1029, 1987 (2) CLR 379 I have considered the arguments on behalf of the convict.

The object of punishment is two folds firstly, the prevention of offence and secondly, the reformation of the offender. The provisions for releasing the convict on probation are with intention to enable the court to deal leniently with the first offender and to carry out the object of reformation. Thus, after considering the age, character and antecedents of the person and also if the offence is committed under some extenuating circumstances the convict can be released on probation.

In the present case, the convict is stated to have clean antecedents. He is possessed with a wife and three small children (school going) and he himself is a Government Servant.

Any punishment for his imprisonment will adversely effect his family and more particularly his children and their career. It would in fact, be their punishment and moreover the same may also effect his service prospects.

He, therefore, in my view should not be punished so heavily for a single passionate act.

On the other hand, in the present modern welfare state, there is also emergence of compensatory theory, in addition to retributive and reformatory theories. Provision for this compensation is provided under Section 357 CrPC.

Convict Ram Ashish is a matured man and is also well aware of the consequences for his acts. The offence committed by him, cannot be stated to be trivial, nor are there are extenuating circumstances.

In fact, he had committed an act to outrage the modesty of a woman, which is the most valuable thing, which a woman possesses.

Although the injury caused to the Complainant cannot be equated in terms of money but on the other hand releasing the convict without any pinch, will also have the effect of adding insult to it. With such an approach in my mind, I think it appropriate to at least penalize the convict. I, therefore, decline him the benefit of Section 360 Cr.P.C. or of Probation of Offender Act and impose a maximum fine of Rs.5000/-ID he shall undergo SI for 8 months. The whole of this fine if recovered be payable to the Complainant Smt. Kamla, in lieu of injury and agony caused to her, by the act of the convict."

The Court took a compassionate view while awarding the punishment but holding the applicant guilty did award a punishment.

2. The applicant also argued that he was under trial for the offences under section 354IPC and 452 IPC. Whereas, the applicant was convicted under section 354, the offence under section 452 IPC was not proved and he was acquitted. Applicant submitted that the Magistrate while passing the judgment had stated

that the applicant had not entered the premises with intention or preparation to cause hurt or assault to any person. Applicant was, therefore, acquitted from this charge. Thus, the conviction was not such which could be considered under Rule 14(1) of Railway Rules by dispensing with the inquiry. Therefore, without application of mind, the Senior Divisional Medical Officer (Sr.DMO), Northern Railway Health Unit, Anand Vihar exercised the power of the disciplinary authority by imposing the penalty of removal from service, despite the fact that he was not the appointing authority of the applicant. The Appointing Authority of the applicant was General Manager, Northern Railway. This order of removal from service was issued as early as 18.07.1995 (Annexure A-1) and was to be resiled on a near date thereafter argues the respondent, which was not done so.

3. In 2013, the applicant filed a revision to the President of India against the order of removal from service. Reply to the Revision Petition has not been communicated as yet. The main argument of the applicant for condoning the delay in filing the revision application is that he was unaware of the fact that he could submit a revision application and he came to know of the same when he learnt of the same. The prayer of the applicant is for setting aside the penalty order of removal from service.

4. The respondents in their first reply statement bring to notice in argument that the application is barred under the doctrine of res judicata and constructive res judicata. Earlier also applicant had filed two OAs challenging the very same order being challenged in the present application. Repeated applications challenging the same order is not maintainable. In OA 2739/1999, the Tribunal vide judgment dated 30.10.2000 dismissed the OA on the ground of delay and limitation. The Tribunal in its judgment held as follows:

"2. The learned counsel for the respondents raises a preliminary objection as to the maintainability of the OA on the ground of limitation. The applicant was convicted by the Criminal Court and on that basis he was removed from service under Rule 14 (1) of the Railway Servants (Discipline and Appeal) Rules, 1968 by order dated 18.7.1995. The said order was challenged by the applicant, earlier, in OA No. 1302/95 which was however dismissed as withdrawn by order dated 6.11.1995, with liberty to file a fresh petition. The order which was challenged in the above OA was again challenged in the present OA, i.e. the order of removal. The only relief that was pressed for in this OA is to quash to contemplated decision of punishment based on conviction.

3. The impugned order of removal was passed on 18.7.1995 and the Tribunal dismissed the OA permitting the applicant to withdraw the OA filed against the said order by order dated 6.11.1995. It is not shown that the applicant has filed any appeal against the order of the removal on 18.7.1995. There can be no other order under contemplation as there is already an order of punishment. More than four years expired since the order of punishment as well as that of withdrawal. We are of the view that this OA is not filed within the period of one year from the date of withdrawal of the OA as stipulated under Section 21 of the Administrative

Tribunal Act, 1985. The applicant appeared in person at the fag end of the Judgment. We also heard him. The OA is therefore dismissed on the ground of limitation."

What has been hit by limitation in year 2000, cannot be revived by another OA filed in 2014.

5. The main contention of the applicant at the time of argument was that his review petition submitted under the provisions of Rule 25-A be considered by the President. The applicant based this relief, which has not been cited in his prayer in the OA, on Rule 25 revision provision of the Railway Servants (Discipline and Appeal) Rules, 1968. Under this provision, revision undertaken by the Railway Board or the General Manager of a Zonal Railway or the President when he is the appellate authority can be done without restriction of time. The note under this provision reads as follows:-

"Note:- Time limit for revision petition is 45 days from the date of delivery of the order sought to be revised. Where no appeal has been preferred against the order of the disciplinary authority the time limit of 45 days will be reckoned from the date of expiry of the period of limitation for submission of appeal[E(D&A)84 RG 6-44 of 2.12.86 W.R.No.188/86], the authority may entertain petition after expiry of period if it is satisfied that the petitioner had sufficient cause for delay (ibid)."

The punishment order was delivered to him on 18.07.1995. The applicant submitted his revision petition on 08.02.2013 (Annexure A-2) well past the time limit of 45 days for filing revision petition. The counsel for respondents argue that the revision petition did not merit being entertained in view of sufficient cause not being furnished for covering the above stipulated expiry period.

6. Counsel for applicant also argues that Section 25-A of Railway Servants (Discipline and Appeal) Rules was also applicable to the applicant. This Rule reads as follows:-

"25-A. Review

The President may at any time either on his own motion or otherwise review any order passed under these rules when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case has come or has been brought to his notice."

On a plain reading of this rule, it is observed that this rule does not have any provision for applicant to submit review petition to the President. On the other hand, the Rule states that the President may at any time either on his own motion or otherwise review any order passed under these rules when any new material or evidence becomes available, which was not available at the time of passing the order under review. The annexure A-2 revision petition was

submitted by the applicant addressed to the President of India. This was not a revision petition moved by the President on his own motion and it is also not argued that the revision is necessitated on account of any new material or evidence which could not be produced at the time of passing the review order. Hence, this argument of the applicant also fails. Even the punishment order not being passed by the appointing authority does not hold good in view of the fact that the applicant slept over the matter and approached the Tribunal after 18 years.

7. The applicant was visited with the punishment of removal from service on 18.07.1995. Applicant slept over the matter and submitted revision petition on 08.02.2013, after a passage of 18 years. Applicant filed OA 2739/ 1999 for the same prayer as in this OA i.e. setting aside the order of removal which is similar to the prayer in this OA, and hence is hit by res judicata. Being so, the same prayer cannot be revived by another OA in the year 2014. OA is dismissed both on merit and on account of delay.