

GAHC010210102015



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/928/2015

SACHIN DUTTA
S/O SHRI BIREN DUTTA R/O RAIDANG, KARMARGAON, DIST. JORHAT,
ASSAM.

VERSUS

THE UNION OF INDIA and 3 ORS
REP. BY ITS SECRETARY, MINISTRY OF COMMERCE AND INDUSTRY,
UDYOG BHAWAN, NEW DELHI- 110107.

2:TEA RESEARCH ASSOCIATION

HAVING ITS REGISTERED OFFICE AT 113 PARK STREET
9TH FLOOR
KOLKATA- 700016
AND REP. BY ITS CHAIRMAN
TEA RESEARCH ASSOCIATION
113 PARK STREET
9TH FLOOR
KOLKATA- 700016.

3:THE DIRECTOR

TEA RESEARCH ASSOCIATION
TOCKLAI TEA RESEARCH INSTITUTE
CINNAMARA
JORHAT- 785008.

4:THE ADMINISTRATIVE CONTROLLER

TEA RESEARCH ASSOCIATION
TOCKLAI TEA RESEARCH INSTITUTE

CINNAMARA
JORHAT-785008

Advocate for the Petitioner : MD.ASLAM, MR.A CHETIA,MR.K R BORA,MR.D SENAPATI

Advocate for the Respondent : MS.P BARMANR-2,3and4, MS.J SAIKIA(R-2,3&4),ASSTT.S.G.I.
(R-1),MR.P PATHAK(R-2,3&4),C.G.C.,MS.S T BOKTH(R-2,3,&4),MR.S S ROY,MR.A
NARZERY(R-2,3&4),MSS CHANGKAKATI(R-2,3&4)

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri YS Mannan

Advocate for the respondents : Ms. P. Barman, R-1, 2 and 3.

Date of hearing : **29.08.2024**

Date of Judgment : **02.09.2024**

JUDGMENT & ORDER

The instant petition under Article 226 of the Constitution of India has been filed challenging an order of dismissal from service dated 17.10.2014 which has also been upheld by the appellate authority vide order dated 08.12.2014. The subsequent representation of the petitioner not yielding any positive results, he has approached this Court for redressal of his grievance.

2. As per the facts projected in the writ petition, the petitioner was appointed, initially as a Cleaner Boy on 08.05.1986 in the Tea Research Association, Tocklai Tea Research Institute, Jorhat. Subsequently, vide order dated 01.04.2006, he was promoted to Grade Ad 1(3). While serving as such, a proceeding under Section 138 of the Negotiable Instruments Act was instituted against him by an individual which was registered as CR No.191/2009 in the

Court of the learned CJM, Jorhat. In the said case, a judgment was pronounced on 10.06.2014 whereby the petitioner was convicted and sentenced with 6 months of imprisonment and a penalty of Rs. 2(two) lakhs. Consequent thereto, on 04.09.2014, the petitioner was arrested and remanded to judicial custody as a result of which he could not attend his duties. The petitioner had preferred an appeal before the learned Sessions Court, Jorhat which was admitted on 15.10.2014 with a further order for enlarging the petitioner on bail. Subsequently, vide order dated 13.11.2014, the sentence was stayed. On 15.10.2014 itself, an order of suspension was issued by the respondent authorities. The said suspension was however with effect from 04.09.2014 i.e. the date when the petitioner was arrested. Immediately thereafter, on 17.10.2014, the order of dismissal from service was passed. The appeal preferred by the petitioner was also rejected on 08.12.2014 whereafter the petitioner had submitted further representations including legal notice in which he did not get any relief.

3. I have heard Shri Y.S. Mannan, learned counsel for the petitioner. Also heard Ms. P. Barman, learned counsel for the respondent nos. 1, 2 and 3.

4. Shri Mannan, the learned counsel for the petitioner has formulated the following grounds of challenge. Firstly, dismissal from service was done without any inquiry. Secondly, the Rules governing the services of the petitioners were not followed at all. Thirdly, a conviction under Section 138 of the Negotiable Instruments Act do not constitute a charge of moral turpitude, so as to attract any clause of the Rules.

5. Shri Mannan, learned counsel has submitted that a delinquent facing a proceeding is entitled to have the protection of law and a reasonable opportunity is to be afforded to him before any order of penalty is imposed

upon him. He further submits that there was no charge framed against the petitioner and only on 15.10.2014 an order of suspension from service was issued followed by the impugned order of dismissal just after two days i.e. 17.10.2014. It is submitted that though in an earlier disciplinary proceeding, the petitioner was inflicted the penalty of reduction in rank, the said penalty would not have any effect in the present impugned action. As regards the contention raised in the affidavit-in-opposition that no notice is required in case of conviction by a Court, the learned counsel has submitted that a conviction which is included in the Rules necessarily has to be a conviction which involves moral turpitude. He has relied upon a decision of the Hon'ble Kerala High Court in the case of ***Saseendran Nair Vs. General Manager, State Bank of Travancore and Ors.*** reported in ***MANU/KE/0323/1995*** wherein it has been laid down that an offence under Section 138 of the N.I. Act would not involve moral turpitude. A similar view has been expressed by the Hon'ble Rajasthan High Court in the case of ***Mangi Lal Vs. State of Rajasthan, through the Secretary, Secondary Education, Secretariat and Ors.*** [2023:RJ-JD:20694]. Reliance has also been placed upon the case of ***P. Mohanraj Vs. Shah Brothers Ispat Pvt. Ltd.*** reported in ***(2021) 6 SCC 258*** wherein the aspect of Article 311(2)(a) has been dealt with. The learned counsel has also relied upon the case of ***Shanker Dass Vs. Union of India and Anr.*** reported in ***(1985) 2 SCC 358*** wherein it has been laid down that though an offence under the N.I. Act may be a civil wrong, it would not amount to involve moral turpitude. Reliance has also been placed upon the decision of the Hon'ble Supreme Court in the case of ***Kaushalya Devi Massand Vs. Roopkishore Khore*** reported in ***(2011) 4 SCC 593***.

6. *Per contra*, Ms. Barman, learned counsel for the contesting respondent

nos. 2 to 5 has submitted that the track record of the petitioner as an employee of the Tea Research Institute is not clean and there were previous instances wherein he was penalized. Specific reference has been made to an order dated 31.12.2013 whereby the petitioner was demoted from the post held by him to a lower post. It is submitted that the petitioner is a habitual offender and therefore continuance of the petitioner in the Institution would not be in the interest of justice. The learned counsel for the respondents has however fairly conceded that there was no enquiry before the impugned order of dismissal.

7. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

8. The departmental proceeding started with the order of suspension dated 15.10.2014. The suspension order did not specify that any departmental proceeding was contemplated and a reading of the same would reveal that on earlier occasion the petitioner was penalized and consequent to his arrest in the proceeding under the Negotiable Instruments Act, he was absent from duties. The said order cannot by any stretch of imagination be construed as a charge sheet wherein definite charges were be framed. Be that as it may, immediately two days thereafter on 17.10.2014, the impugned order of dismissal has been issued. A reading of the said order would show that the only reason of dismissing the petitioner from service was his arrest and imprisonment in the proceeding under Section 138 of the Negotiable Instruments Act. The order reveals that there was allegation of violation of Clause Nos. 7.1, 7.2, 7.3.2, 7.3.41 of TRA Service Rule. There is no other consideration in the impugned order of dismissal.

9. As regards the order passed by the appellate authority, it is the contention of the learned counsel for the petitioner that the same is a cryptic order wherein

no reasons have been assigned. A perusal of the same would reveal that there was no independent application of mind by the appellate authority who had simply affirmed the dismissal order. As regards the application of the aforesaid provisions of law of the TRA Service Rule, this Court has carefully looked into the aforesaid provisions. Under Clause 7.3.41, it is provided that disciplinary action can be taken if there is a conviction by a Court of law for any offence involving moral turpitude. For ready reference, the same is extracted hereinbelow-

“7.3.41- Conviction by any court of law of any offence involving moral turpitude.”

The question therefore arises as to whether a conviction of an employee under the Negotiable Instruments Act would involve moral turpitude.

10. Clause 7.3.41 can be invoked only when there is a conviction of an offence involving moral turpitude. When the conviction is not for an offence involving moral turpitude, the aforesaid clause would not be applicable and therefore a summary dismissal would not be allowed. It is an admitted fact that there was no enquiry of any nature prior to the passing of the impugned order on 17.10.2014. As observed above, the suspension order was just two days before on 15.10.2014 followed by the dismissal order. This Court also finds force in the argument made on behalf of the petitioner that there was no proper application of mind by the appellate authority.

11. The case laws relied upon on behalf of the petitioner would amply make it clear that an offence under Section 138 of the Negotiable Instruments Act would not involve moral turpitude. The Hon'ble Supreme Court in the case of **Shanker Dass** (supra) in clear terms has laid down that such a charge may be

a civil wrong but would not involve moral turpitude.

12. The Hon'ble Kerala High Court (Division Bench) in the case of ***Saseendran Nair*** (supra), has laid that an offence under Section 138 of the Act need not necessarily take within its wings the offence of cheating as per the Indian Penal Code. It has further been held that the question whether the act of issuing a cheque without sufficient funds will involve moral turpitude has to be considered de hors the element of cheating. Reference has also been made to the *Corpus Juris Secendum* as per which, moral turpitude implies something immoral in itself, regardless of whether it is punishable by law as a crime, since an act may involve moral turpitude even though it is not a crime. It further states that the term moral turpitude "does not refer to conduct which, before it was made punishable as a crime, was generally regarded as morally wrong or corrupt, as offensive to the moral sense as ordinarily developed."

13. In the case of ***Kaushalya Devi Massand*** (supra), the Hon'ble Supreme Court has laid down as follows:

"9. Having considered the submissions made on behalf of the parties, we are of the view that the gravity of a complaint under the [Negotiable Instruments Act](#) cannot be equated with an offence under the provisions of the [Indian Penal Code](#) or other criminal offences. An offence under [Section 138](#) of the Negotiable Instruments Act, 1881, is almost in the nature of a civil wrong which has been given criminal overtones. ..."

14. Though the past conduct may be a relevant consideration in a matter of this nature, when there was no enquiry and the dismissal is only on the account

of a conviction by a Court without framing any definite charges, the aforesaid would not be a relevant consideration. This Court is fortified in reaching to the above conclusion in as much as the impugned order of dismissal dated 17.10.2014 does not refer to any past conduct of the petitioner and is issued only on the basis of the conviction of the petitioner in a proceeding under Section 138 of the NI Act.

15. In view of the aforesaid facts and circumstances, this Court is unable to agree with the procedure adopted for imposing the penalty of dismissal vide the impugned order dated 17.10.2014 and accordingly the same is set aside. Consequently, the petitioner is directed to be reinstated in service.

16. This Court however makes it clear that there is no direction towards payment of back wages and in the event the petitioner makes such a claim, it will be upon the authorities to take an appropriate decision in that regard.

17. The writ petition accordingly stands allowed.

JUDGE

Comparing Assistant