

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2246 of 2017**

Vaibhav Chauhan, S/o Shri B.B.S. Chauhan, Aged about 50 years, R/o Type V/24/1, Bungalow Yard, Railway Officers Colony, Station Road, Bilaspur (C.G.)

---- Petitioner

Versus

1. Union of India, through its Secretary, Ministry of Railway, Rail Bhawan, New Delhi
2. Chairman, Railway Board, Ministry of Railway, Rail Bhawan New Delhi
3. General Manager, South East Central Railway, Bilaspur Chhattisgarh

---- Respondents

For Petitioner	:	Smt. Naushina Ali, Advocate
For Respondents	:	Shri Abhishek Sinha, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri P. Sam Koshy, Judge

Judgment on Board**Per, Thottathil B. Radhakrishnan, Chief Justice****15/05/2017**

1. We have heard the learned counsel for the Petitioner and the learned counsel for the Railways quite in extensio.
2. Under challenge is the decision of the Central Administrative Tribunal Jabalpur Bench, Circuit Sitting at Bilaspur. That order is delivered on 20.4.2017 after reserving that case for orders on 18.4.2017.
3. Hearing the learned counsel for the Petitioner, learned counsel for the Railways and perusing the materials on records, we see that the original application was filed challenging a show-cause notice dated 6.6.2016

informing the proposal to invoke Rule 14 (i) of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as 'the Rules'). When that original application was taken up on 18.4.2017, the counsel appearing for the Railways before the Tribunal produced a letter dated 10.4.2017 of the Chief Personnel Officer, South East Central Railway which showed that the order of dismissal dated 30.3.2017 was already issued and sent to the delinquent-Petitioner. It was submitted before the Tribunal by the Railways that the said dismissal order was attempted to be delivered, but the applicant did not receive it. It was also submitted on behalf of the Establishment that the dismissal order having already been passed, the original application has become infructuous. The Tribunal closed the application as infructuous.

4. In support of this writ petition under Article 227 of the Constitution, the learned counsel for the Petitioner pointed out that the order of the Tribunal is rendered on 20.4.2017 even without the applicant being provided with a copy of the penalty order which was apparently showed before the Tribunal on 18.4.2017. She accordingly argued that the Tribunal erred in refusing the applicant an appropriate opportunity to seek relief by moulding the claims in the original application by requesting for leave to effect requisite amendments to the original application. It is pointed out that even as per the endorsements in the official files, the so-called dismissal order was served by affixture only on 20.4.2017.
5. Per contra, the learned counsel for the Railways argued that in the instant case, the Petitioner is not eligible for any relief under Article 227 of the Constitution inasmuch as he is not deprived of his right to challenge any final order and there is no reason to assume that the impugned order of the Tribunal has resulted in miscarriage of justice.

6. The Petitioner was found guilty by a competent criminal court for an offence punishable under the provisions of the Prevention of Corruption Act, 1988 and appeal against that conviction of sentence is pending with the appellate jurisdiction. The Appellate Court has granted an order suspending sentence. There is no order suspending the conviction as such. With the suspension of sentence alone having been granted, the competent authority under Rule 14 of the Rules has acted under that Rule. The said Rule is referred to in that order of dismissal and it is stated herein that the President of India has taken the decision to remove the Petitioner from service after affording a pre-decisional opportunity to show-cause. It is the admitted situation that the Petitioner obtained the pre-decisional show-cause notice as communicated by the department. That was challenged in the original application. It is also the admitted position that the Petitioner replied to that show-cause notice. Obviously therefore the levy of challenge to the dismissal order referable to Rule 14 of the Rules could be had only after that order was made and communicated. While the learned counsel for the Petitioner may be justified in saying that the service of the said order by affixture is shown to have been made only on 21.4.2017, that is, the day immediately succeeding the date of the order of the Tribunal, we cannot ignore the fact that the Railway has in its possession, materials to show that the order of dismissal was earlier sent through registered-post which is the first mode of service preferred as per rules.
7. In the aforesaid fact situation, we are of the view that though the Tribunal may not be fully justified in having treated the matter as infructuous and it would have been worthwhile for the Tribunal to grant a further opportunity to the Petitioner to agitate the relevant issues; with the passage of time, all that would be necessary is to leave the Petitioner with liberty to challenge the final decision of the dismissal issue invoking Rule 14 (i) of the Rules,

with the rider that nothing stated in the impugned order of the Tribunal or in this judgment will prejudice the Petitioner in any manner in levying such challenge. This writ petition is disposed of accordingly.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(P. Sam Koshy)
Judge