

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (S) No. 260 of 2020

1. Union of India through its Secretary, Ministry of Railway, New Delhi		
2. The Senior Divisional Personnel Officer, East Central Railway, Dhanbad		
3. The Assistant Operation Manager, East Central Railway, Dhanbad		
4. The Senior Divisional Operation Manger, East Central Railway, Dhanbad		
5. The Addl. Divisional Railway Manager-cum-Appellant		
Authority, East Central Railway, Dhanbad	---	Petitioners
Versus		
Harendra Kumar Ekka	---	Respondent

CORAM: **Hon'ble Mr. Justice Aparesh Kumar Singh**

Hon'ble Mr. Justice Deepak Roshan

Through: Video Conferencing

For the Petitioners : Mr. Jalisur Rahman, Advocate

For the Respondent : Mr. Anil Kumar, Sr. Advocate

05/06.01.2022 Heard learned counsel for the parties.

2. The only question raised in the present application is that once the conviction has been stayed by the criminal appellate court whether the learned CAT was right in setting aside the order of removal of the applicant from service dated 17th May, 2018 imposed solely on the ground of his conviction?

3. Learned CAT by the impugned order dated 22nd August, 2019 (Annexure-9) passed in O.A. No. 051/00213/2019 took note of the order of suspension of sentence dated 6th October, 2017 (Annexure-2) and stay of judgment of conviction vide order dated 12th March, 2018 (Annexure-3) passed in Cr. Appeal (DB) No. 753 of 2017 and also the decision of the Apex Court in the case of **Lok Prahari through its General Secretary, S.N.Shukla Vs. Election Commission of India & others** reported in **(2018) 18 SCC 114** while appreciating the distinction between suspension of sentence and stay of conviction and accordingly held that the penalty of removal from service on the applicant solely on the ground of his conviction by criminal court deserves to be set aside. It further directed the respondent authority to take appropriate decision on the payment of salary/subsistence allowance for the period of his termination/suspension within the stipulated period.

4. Learned counsel for the petitioner has referred to Railway Board's letter no. E(D&A) 93 RG6-65 dated 6th June, 1994 and also letter No. E(D&A) 213 dated 8th July, 2013 (Annexure-4 series) to make his point that Railway Board has prescribed that mere filing of an appeal or stay of the execution of the sentence shall not take away the effect of conviction, unless the appeal is allowed and conviction is set aside by the appellate court. This circular, however, is silent as to the effect of stay of conviction. The learned Tribunal took note of this

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silence on this point in the circular and relied upon the decision of the Apex Court rendered in the case of **Lok Prahari (Supra)**, where the effect of stay of conviction by the appellate court under Section 389 Cr.P.C was an issue in the context of disqualification of members of Parliament/State Legislature, who have faced conviction. The Apex Court held that once the conviction has been stayed during pendency of an appeal, the disqualification under Section 8 of the Representation of People Act, 1961 which operates as a consequence of the conviction cannot take or remain in effect. The stay of the conviction would relieve the individual from suffering the consequence inter alia of a disqualification relatable to the provisions of sub-section (1), (2) and (3) of Section 8. The principles of law enunciated on this issue by the Apex Court does not permit of any departure in the present case, where the applicant has been removed only on the ground of his conviction and that conviction had been stayed by this Court in Cr. Appeal No. 753 of 2017 vide Annexure-3 order dated 12th March, 2018. The order of the learned tribunal tested on these principles cannot be faulted. The question posed at the outset is answered in the affirmative.

5. The writ petition being devoid of merit, is accordingly dismissed.

(Aparesh Kumar Singh, J)

(Deepak Roshan,J)