
(1983) 04 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1965/74

Kishan Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-04-1983

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311

Citation : (1983) WLN 713

Hon'ble Judges : Dwarka Prasad Gupta, J;D.P. Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Dwarka Prasad Gupta, J.—The petitioner has challenged by means of this writ petition the order passed by the Principal, Government College, Banner dated June 30, 1972 dismissing the petitioner from Government service.

2. The facts of the case are that the petitioner was initially employed as a class IV employee in the office of the Collector, Barmer on November 4, 1966. The service of the petitioner was subsequently transferred on his own request to the Government College, Barmer, by the order of the Collector, Barmer dated March 7, 1976. Later on, the petitioner was confirmed on the post of class IV employee by order dated May 5, 1968 with effect from March, 1, 1965. While the petitioner was working as class IV employee at the Government College, Banner, a complaint was received against him to the effect that he suppressing the information that he was apprehended at Luni Railway Junction for carrying opium on March 11, 1960 and in that case he was convicted by the Court of the Railway Magistrate, Jodhpur on September 7, 1960 and was sentenced to I year's imprisonment and a fine of Rs. 300/- and in default of payment of fine he was to undergo 6 months further imprisonment. A notice was issued by the Principal of the Government College, Barmer to the petitioner on January 12, 1970 calling upon him to show cause whether he was convicted in the opium case. The petitioner in reply to this notice neither admitted nor denied the fact of his

conviction on a criminal charge under the Opium Act, but he merely stated that since his employment, his conduct as well as work have been satisfactory and that the State Government has made provision in the rules for giving employment to ex-convicts, as such no action should be taken against the petitioner. Thereafter, another notice Ex. 2 was issued by the Principal, Government College, Barmer to the petitioner on February 3, 1971 by which he was again directed to admit or deny the facts of his alleged conviction in an opium case in which he was sentenced to one year's imprisonment and a fine of Rs. 300/- and in default of payment of fine of 6 months' further imprisonment. But again in his reply, the petitioner did not give a specific answer to the question as to whether he has so convicted or not. Thus the petitioner failed to specifically admit or deny the allegation of his conviction and also failed to inform the principal as to whether he has undergone the sentence awarded to him. After the receipt of this notice, the petitioner gave a long detailed reply on February 3, 1971 but still he failed to answer the question posed to him about his conviction on a criminal charge before he was employed in Government service. The petitioner took the stand that without prejudice and without proceeding to answer the question asked, mere conviction could not be regarded as a disqualification. The petitioner still maintained that the complaint was false, as a person who had been convicted and has undergone some sentence, according to the policy of the State Government, was not barred from employment.

3. Thereafter the Principal of the Government College, Barmer gave a further notice Ex. 3 to the petitioner on May 2, 1972 in which after giving the details of conviction and of the sentence undergone by the petitioner, he was asked to explain the conduct which led to his conviction on a criminal charge and also to explain as to why he concealed the fact of his previous conviction at the time of seeking employment with the State Government and even thereafter. He was further called upon to show cause why he should not be dismissed from Government service on account of his being convicted on a criminal charge. The petitioner gave a reply to this notice on May 26, 1972 which was also of evasive nature and the insistence of the petitioner was that procedure prescribed in Rule 16 of the C.C.A. Rules should be followed, since the notice dated May 2, 1972 was allegedly given under Rule 6. It appears that on account of the attitude adopted by the petitioner in failing to disclose the facts regarding his previous conviction, the principal of the Government College, Barmer made enquiries from the Superintendent, Central Jail, Jodhpur to find out the details about the earlier conviction of the petitioner on a criminal charge. The Superintendent, Central Jail, Jodhpur vide his letter dated April 22, 1972 informed the Principal that the petitioner was convicted by the Railway Magistrate, Jodhpur on September 8, 1960 in criminal case u/s 9 of the Opium Act and that he was sentenced to one year's rigorous imprisonment and a fine of Rs. 300/- and in default to undergo further rigorous imprisonment for 6 months. He also informed that the petitioner preferred an appeal which was dismissed and although the petitioner remained on bail during the pendency of the appeal, he served the sentence for the

requisite period and deposited the full amount of fine and earned 68 day jail remission and was thereafter released from jail.

4. As the petitioner continued to give evasive replies, the Principal, Government College, Barmer relief upon the information supplied to him by the Superintendent, Central Jail, Jodhpur by his letter dated April 22, 1972 (Ex. R/1) and came to the conclusion that the petitioner was convicted of a criminal charge u/s 9 of the Opium Act and he was sentenced to one year's rigorous imprisonment and a fine of Rs. 300/-. Treating the conviction of the petitioner as prima facie evidence of mis-conduct and in absence of any extenuating circumstances having been shown on the part of the petitioner, the Principal, by his order dated June 30, 1972 held that no departmental enquiry u/s 16 of the C.C.A. Rules was required to be made and the petitioner was dismissed from Government service on the ground of mis-conduct which led to his conviction on the aforesaid criminal charge. The petitioner filed an appeal which was dismissed by the order dated April 18, 1974. Thereafter the present writ petition was filed and the petitioner reproduced in the writ petition a character certificate from the Superintendent of Police, Barmer dated June 29, 1972 and a character certificate of Inspector General of Prisons, Rajasthan, Jaipur dated May 29, 1973 in which the fact of conviction on a criminal charge and awarding of sentence to the petitioner as a result thereof was affirmed and it was stated that during the course of stay at General Jail, Jodhpur, the petitioner's conduct was satisfactory.

5. The case of the petitioner is that mere conviction for a criminal charge by itself was not sufficient for the imposition of the penalty of dismissal upon the petitioner. It was also argued that the petitioner was not convicted for an offence involving moral turpitude and further that the conduct of the petitioner, while he was in jail and after his release from jail, was not considered while passing the order of dismissal. It was also argued that the petitioner was dismissed without holding a proper inquiry in accordance with the provisions of Rule 16 of the C.C.A. Rules. According to the learned Counsel for the petitioner, the Principal was not justified in dropping the inquiry under Rule 16 and taking recourse to the provisions of Rule 19. Learned Counsel complained that the petitioner was misled as no proper notice was given to him that the proceedings were intended to be taken against him under Rule 19 of the C.C.A. Rules. It was argued that the order passed in appeal was a non-speaking order and rejection of the petitioner's appeal without application of mind was improper and deserves to be set aside.

6. Rule 4(1) of the Rajasthan Civil Services (Conduct) Rules, 1971 provides that any Government servant who is convicted of an offence involving moral turpitude, whether in the course of the discharge of his duties or not, shall be liable to disciplinary action. Rule 19 of the C.C.A. Rules provides a special procedure in certain cases and notwithstanding anything contained in Rules 16, 17, and 18 a penalty can be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. In that event, the

disciplinary authority may consider the circumstances the case and pass orders as it may deem fit. The normal procedure of imposing penalty is provided in Rule 16, which requires that definite charges, on the basis of which an inquiry is proposed to be held, should be framed. A charge-sheet, together within a statement of allegations on which the said charges are based, has to be communicated in writing to the Government servant concerned and he shall then be required to submit a written-statement indicating his explanation or defence. Thereafter the detailed procedure specified in Rule 16 has to be followed before a penalty could be imposed under that Rule. But in three types of cases enumerated in the proviso to Article 311(2) of the Constitution and mentioned in Rule 19 of the C.C.A. Rules, the elaborate procedure contained in Rule 16 need not be followed. But the disciplinary authority, in the three types of cases, is required to consider the circumstances of the case and pass order as it may consider prior. Rule 19 of the C.C.A. Rules reads as under:

19. Special procedure in certain cases : Notwithstanding anything contained in Rules 16, 17 and 18.

(i) Where a penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) Where the Disciplinary Authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules; or

(iii) Where the Governor is satisfied that in the interest of the security of the State, it is not expedient to follow such procedure.

The Disciplinary Authority may consider the circumstances of the case and pass such orders as it deems fit.

Provided that the Commission shall be consulted before parsing such orders in any case in which such consultation is necessary.

Note : If any question arises whether it is reasonably practicable to give any person an opportunity of showing cause under Clause (2) of Article 311 of the Constitution, the decision thereon of the authority empowered to dismiss, or remove such person or to reduce him in rank, as the case may be, shall be subject to only one appeal to the next higher authority.

7. In a case where a Government servant has been convicted by a Court on a criminal charge and on the basis of the conduct which led to his conviction, a penalty is proposed to be imposed on such Government servant, then the case would fall under Clause (1) of Rule 19 and in such a case the elaborate procedure prescribed in Rule 16 need not be followed. In that case, the disciplinary authority is required only to consider the conduct of the concerned Government servant which led to his conviction and all the attendant circumstances, giving an opportunity to the Government servant concerned to have his say in the matter. The aforesaid principle is now well settled after the decision of their Lordships of

the Supreme Court in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, ; wherein considering similar provisions contained in Rule 14(1) of the Railway Service (Disciplinary and Appeal) Rules, 1968, their Lordships observed as under:

The term "consider" postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employees...the position is that the conviction of the delinquent employee would be taken as sufficient proof of mis-conduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction. This is a very salutary provision which has been enshrined in these Rules and one of the purposes for conferring this power is that in case where the disciplinary authority is satisfied that the delinquent employee is a youthful offender who is not convicted of any serious offence and shows poignant penitence or real repentance he may be dealt with as lightly as possible. This appears to us to be the scope and ambit of this provision. We must, however, hasten to add that we should not be understood as laying down that the last part of Rule 14 of the Rules of 1968 contains a licence to employees convicted of serious offences to insist on reinstatement. The statutory provisions referred to above merely imports a rule of natural justice in enjoining that before taking final action in the matter the delinquent employee should be heard and the circumstances of the case may be objectively considered. This is in keeping with the sense of justice and fair play. The disciplinary authority has the undoubted power after hearing the delinquent employee and considering the circumstances of the case to inflict any major penalty on the delinquent employee without any further departmental inquiry if the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude and, therefore, it is not desirable or conducive in the interests of administration to retain such a person in service.

Thus, it is well established that the conviction of the delinquent employee can be taken as sufficient proof of mis-conduct and once the fact of conviction of the employee on a criminal charge is established the elaborate procedure under Rule 16 of the C.C.A. Rules is dispensed with. But what is required in such a case is mere compliance with the principles of natural justice embodied in Rule 19, which enjoins the disciplinary authority before taking final action in the matter to give an opportunity to the delinquent employee to explain his conduct and to consider the circumstances of the case objectively. The delinquent employee has only a right to submit his explanation and he may point out such extenuating circumstances which may have a bearing on his conduct which led to his conviction. The disciplinary authority has undoubted power, after hearing the delinquent employee and on considering the circumstances of the case, to inflict

any major penalty on the delinquent employee without any departmental inquiry, if in its opinion it is not desirable or conducive in the interest of administration to retain the delinquent employee in service. This procedure is in accordance with the sense of justice and fair play. Their Lordships in Ravulappalli Kondaiah and Others Vs. State of Andhra Pradesh, substantially accepted the view taken by this Court in Kuldeep Singh v. Union of India 1974 R.L.W. 171, wherein this Court observed as under:

The crucial words, which fall for our interpretation, are "the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit." The word "consider" or the process of consideration has within its ambit an examination of circumstances with objectivity rather than a mere subjective conclusion. Essentially it implies the duty to act judicially. The order of dismissal, removal a reduction in rank as a result of conviction by a Criminal Court cannot be called a consequential order. The other side of the picture is not available to the authority called upon to objectively consider and judicially decide important right of a Government servant whether he is to be retained in the Government service or whether his status is going to be affected.

The Government servant although he is denied the benefit of an enquiry and a notice of the proposed penalty he can nevertheless be given an opportunity of showing his side of the case if he is told that an action was proposed to be taken against him under Rule 1719. Any objective consideration necessarily implies the examination of the two sides of the matter and the duty conferred on the punishing authority under Rule 1719 postulates that he must have both sides of the picture before he can adequately discharge the onerous duty of reaching the conclusion which to the Government servant concerned is a matter of vital importance. In our opinion, therefore, on the authority of the Supreme Court and on a correct interpretation of the word "consider the circumstances of the case" Rule 1719 requires that an intimation must be given to the Government servant if an action is to be taken under Rule 1719. It is on principles of natural justice that such a step is warranted.

In Union of India v. Tarachand 1975 (2) S.L.R., it was held by their Lordships of the Supreme Court that the appointing authority may not state in so many words in its order that penalty was imposed - "on the ground of conduct which has led to conviction", but the contents of the order may lead to the inference that the authority had applied its mind to the conduct of the employee leading to his conviction and has also taken into confederating the circumstances of the case while imposing the penalty. Learned Counsel for the petitioner placed reliance upon the decision of the Gujarat High Court in Balubhai Amidas Khristi v. State of Gujarat and Ors. 1978 (2) S.L.R. 815 in support of his contention that the disciplinary authority should have given reasons why the mandatory procedure prescribed in Rule 16 was not followed. However, the decision in Balubhai Khrist v. case 1978 (2) S.L.R. 815 is distinguishable, because the provisions contained in Rule 10 of the Gujarat Panchayat Service (Discipline and

Appeal) Rules, 1964 are different, in as much as they not only require the disciplinary authority to consider the conduct of the employee which led to his conviction on a criminal charge but also provide that the normal procedure shall be followed unless it is dispensed with if "it not considered expedient by the disciplinary authority" to follow the procedure prescribed in those Rules. Thus, the disciplinary authority was required by the provisions of Rule 10 of the Gujarat Rules to give reasons, if it is considered expedient by him to dispense with the normal procedure.

8. It may be pointed out that Clause (a) of the proviso to Article 311(2) of the Constitution completely dispenses with all the three stages of departmental enquiry if the employee is convicted on a criminal charge. The reason is not too far to seek when faced with a criminal charge, the employee has full and complete opportunity to contest the allegation made against him and to produce defence in respect thereof. The charges framed in the criminal trial also give clearly notice regarding the allegations made against the accused. The witnesses are examined and cross-examined in the presence of the delinquent employee and he is afforded full opportunity by the criminal court to defend himself before the arguments are heard and the final order of conviction is passed. In such cases, it would be fruitless duplication, if after a conviction by a criminal court fresh departmental enquiry is held over again in respect of the same charge and the witnesses are examined again. Clause (a) of the proviso to Article 311 as well as Rule 19 of the C.C.A. Rules dispenses with the holding of a fresh departmental enquiry in case where the employee concerned is convicted of a criminal charge by a court. Once an employee is convicted of a criminal offence, it is treated as a prima facie proof of his mis-conduct. The disciplinary authority is thereafter required merely to afford an opportunity to the delinquent employee of hearing so that he could bring before the disciplinary authority any extenuating circumstances which may call for the imposition of lesser penalty in respect of his mis-conduct. It was held by their Lordships of the Supreme Court in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, that the conviction of an employee for criminal offence should be treated as sufficient proof of his mis-conduct. Thus, it is for the employee concerned to explain his conduct which led to his conviction. The argument of the learned Counsel that the conviction by the Criminal Court was not sufficient for imposition of penalty of dismissal cannot be accepted in the present case, in as much as the petitioner was given sufficient opportunity to explain his conduct in relation to his conviction by the Criminal Court. It appears from the documents placed on record that the petitioner was not even prepared to accept the fact of his conviction, inspite of the fact that the Principal of the College gave repeated notices to the petitioner to explain his conduct which led to the conviction on a criminal charge. The first notice Ex. 1 was issued to the petitioner on Jan. 12, 1972 by the Principal of the College, which was followed by another notice Ex. 2 dated February 3, 1972. In the replies given to both these notices, the petitioner did not offer any explanation at all in respect of the

conduct which led to his conviction on a criminal charge, but he even refused to accept the allegation that he was convicted by the Criminal Court. The replies dated January 19, 1972 and February 3, 1972, which have been reproduced in the writ petition, go to show that that to say of his being repented in respect of his conduct which led to his conviction, the petitioner insisted "without choosing to answer the question", that even if it was thought that he has undergone imprisonment then also ex-prisoners are rehabilitated and that mere conviction on a criminal charge could not be regarded as a disqualification. The petitioner was expected to tell the truth if he was really repented and he ought to have fairly disclosed as to the precise offence for which he was convicted, whether the offence involved moral turpitude and he should have also furnished his explanation in respect of his conduct which led to his conviction and he ought to have pointed out any extenuating circumstances, if at all, which would have been taken into consideration by the disciplinary authority.

9. When the petitioner failed to disclose the requisite particulars about his conviction on a criminal charge, the Principal of the College wrote to the Superintendent, Central Jail, Jodhpur, who supplied the requisite particulars by his letter dated April 22, 1972. It was disclosed that the petitioner was convicted by the Railway Magistrate, Jodhpur on September 8, 1962 in Criminal Case No. 115/1 60 u/s 9 of the Opium Act and sentenced him to one year's rigorous imprisonment and a fine of Rs. 300/- and in default to further undergo rigorous imprisonment for six months. The appeal filed by the petitioner was dismissed and that he has undergone the sentence awarded to him and has deposited the full amount of fine. It was only thereafter that notice Ex. 3 was given by the Principal of the College to the petitioner on May 2, 1972 wherein all the aforesaid facts which had come to the knowledge of the Principal were enumerated and the petitioner was called upon to state the circumstances which led to his conviction u/s 9 of the Opium Act and the reason why he deliberately concealed the fact of his conviction from the appointing authority. The petitioner was also asked to show cause why he should not be dismissed from service on account of his conduct which led to his conviction on a criminal charge. A detailed reply was furnished to the notice by the petitioner on May 26, 1972. In this reply also the petitioner did not admit the fact of his conviction nor he disclosed the circumstances in respect of his conduct leading to his conviction which might have a bearing on the question of quantum of penalty to be imposed upon him. On the other hand, the petitioner insisted that the procedure under Rule 16 should be followed as the mandatory provisions of the Rule could not be ignored. In such circumstances, the disciplinary authority, namely, the Principal of the College passed the order of dismissal of the petitioner on June 30, 1972 (Ex. 4). Thus, either when the principles of natural justice are taken into consideration or its provisions of Rule 19 are applied, the petitioner was afforded sufficient opportunity to explain his conduct which led to his conviction and to point out any extenuating circumstances, but instead of doing so the petitioner even refused to accept the fact of his conviction. It was only at the stage of filing of an

appeal that the petitioner accepted the fact that he was convicted under the Opium Act, and then he insisted that his conduct subsequent to the conviction should be taken into consideration. However, the fact of conviction has now been admitted by the petitioner in para 20 of the writ petition, which runs as under:

That it is of course proved that the petitioner had been found to be guilty u/s 9 of the Opium Act and he was sentenced to one year's R.I. with Rs. 300/- as fine in default of which further six months R.I. in Criminal Case No. 115 of 1960 by the Railway Magistrate, Jodhpur by his order dated 8-9-1960 and his appeal against the said order had also been dismissed and the petitioner served the sentence for 9 months and 19 days and received the remission of 58 days and also deposited fine of Rs. 300/-.

As held by their Lordships of the Supreme Court in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, the summary inquiry, which is to be conducted by the disciplinary authority at the stage of passing an order under Rule 19 is intended to afford the delinquent employee an opportunity to explain his mis-conduct, so as to bring before the disciplinary authority all such facts including the extenuating circumstances which might have a bearing upon his conduct which led to his conviction. Say for instance a Government employee finds a miscreant trying to molest or outrage the modesty of his sister or other female relative, the employee may cause simple or previous hurt to the miscreant while protecting the lady and such an act may lead to his conviction by a Criminal Court. In the course of summary inquiry under Rule 19, inspite of his conviction the delinquent employee may explain his conduct and then the circumstances which led him to commit the offence would necessarily be taken into consideration by the disciplinary authority while imposing a penalty upon the delinquent employee. If such an explanation is furnished, giving true facts and explaining the conduct of the delinquent employee in respect of his conviction, the disciplinary authority may leave the employee merely with a warning or with the imposition of a lighter penalty. It is precisely the purpose for which the summary enquiry is envisaged under Rule 19, so that the delinquent employee may furnish an explanation in respect of his conduct which led to his conviction. As held by their Lordships of the Supreme Court in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, conviction is prima facie evidence of mis-conduct and as such no further evidence is to be led on behalf of the department in proof of the mis-conduct but it is for the Government servant concerned to furnish his explanation and explain his conduct.

10. Learned Counsel for the petitioner argued that conviction by a Criminal Court itself was not sufficient for dismissal and that the conduct which led to the conviction of the petitioner was not considered in the present case. I am unable to accept this contention. The conviction of the petitioner in the criminal case by itself may not be sufficient for dismissal, but it is undoubtedly prima facie proof of mis-conduct and in the absence of any explanation on the part of the

delinquent employee, the disciplinary authority was bound to take into consideration the conviction of the employee by the Criminal Court for the purpose for imposition of such penalty as it might consider proper in the circumstances of the case. It was not necessary for imposing penalty that the disciplinary authority should have referred in so many words to the conduct of the delinquent employee which led to his conviction. A perusal of the order Annexure 4 goes to show that all the circumstances which came to the knowledge of the Principal from the better of the Superintendent, Central Jail, Jodhpur were taken into consideration by him while imposing penalty of dismissal of the petitioner. It may be pointed out that the disciplinary authority did every thing in its power to find out the truth and he also gave full opportunity to the petitioner to present his case of the picture and to explain his conduct which led to his conviction by the Criminal Court, but the petitioner deliberately tried his utmost to conceal the fact of his conviction from the disciplinary authority, what to say of finishing an explanation for his conduct which led to his conviction. No extenuating circumstances were pointed out by the petitioner as to why some lesser penalty should be imposed upon him. It appears from the record that the conduct of the petitioner, was taken into consideration by the disciplinary authority, which led to his conviction by the Criminal Court. It cannot also be lost sight of that the petitioner insisted on not disclosing the fact of his conviction on criminal charge and he did not furnish any explanation, with the consequence that the disciplinary authority had no alternative but to impose the penalty of dismissal upon the petitioner. Even in the appeal, the petitioner did not disclose any extenuating circumstances or any fact relating to the conduct which led to his conviction on the criminal charge, nor any such facts have been disclosed by the petitioner in this writ petition. Even the order of conviction passed by the Railway Magistrate, Jodhpur has not been produced by the petitioner before this Court.

11. It was strenuously argued by the learned Counsel for the petitioner that the notice Ex. 3 was given under Rule 16 of the C.C.A. Rules and as such the proceedings under Rule 16 ought to have been taken and they could not have been dispensed with. There is no doubt that the notice Ex. 3 refers to Rule 16, but neither a charge-sheet was served upon the petitioner as envisaged in Rule 16 nor it was indicated in the notice that the procedure prescribed in Rule 16 was sought to be followed. On the other hand the disciplinary authority, after narration of the fact of conviction of the petitioner on a criminal charge directed him to show cause as to why he failed to disclose the fact of his aforesaid conviction at the time of his appointment, and why he concealed the fact for such a long period. The petitioner was also given an opportunity to have his say in the matter and to show cause why the penalty of dismissal be not imposed upon him. Thus, the notice Ex. 3 complied with all the requirements of Rule 19 and it cannot be held that there was no proper notice to the petitioner or that he could have been misled on account of notice Ex. 3. The contention of the learned Counsel for the petitioner that an enquiry under Rule 16 has been initiated which

was subsequently dropped cannot be accepted in view of the contents of the notice Ex. 3 which clearly show that action under Rule 19 was envisaged to be taken.

12. Then it was argued by the learned Counsel for the petitioner that the petitioner was not a Government servant at the time of his conviction and so the conduct which led to his conviction prior to his employment in Government service could not be taken into consideration. It may be pointed out that the petitioner was bound to disclose his earlier conviction while seeking employment under the Government. In Rule 12 of the Rajasthan Class IV Services (Recruitment and other Service Conditions) Rules, 1963, which were applicable to the petitioner, it has been provided that the character of a candidate for direct recruitment to the service must be such as to qualify him for employment in the service. Note (1) below Rule 12 provides that a conviction by a court of law need not of itself involve the refusal of a certificate of good character. The circumstances of the earlier conviction could have been taken into account and if it involved no moral turpitude or association with crime of violence or with a movement which has as its object the overthrow by violent means of Government as by law established, then mere conviction need not be regarded as a disqualification. It has further been provided in Rule 12 that a person convicted of an offence involving moral turpitude or violence, would be required to submit a certificate from the Superintendent. After Care Home, endorsed by Inspector General of Prisons to the effect that he is suitable for employment as he has proved to be completely reformed by disciplined life, while in prison and subsequently in an After Care Home. Thus, it was incumbent upon the petitioner to disclose the fact of his conviction by a criminal Court at the time of seeking employment with the State. It appears that the petitioner deliberately withheld the information about his earlier conviction at the time of his employment and he did not produce the requisite certificates at the relevant time. Even when he was confronted with the facts relating to his earlier conviction, by the Principal of the College, instead of giving straight answers and expressing his repentance for his earlier mis-conduct which resulted in his conviction, the petitioner deliberately tried to conceal the true facts. It was only when he filed an appeal the petitioner produced certificate of good conduct from the Superintendent of Police, Barmer and Inspector General of Prisons, Rajasthan. Even the certificate given by the Inspector General of Prisons does not state that the petitioner was suitable for employment under the Government and that he was completely reformed by his disciplinary life while in prison and by his subsequent good conduct. The fact that the petitioner did not disclose his earlier conviction, which did not entitle him for seeking an employment with the State and the appointment was obtained by him by non-disclosure of an important fact relating to conviction on a criminal charge stares one in the face in this case. There was of course, no bar to the appointment of the petitioner in Government service, even if he had been convicted for a criminal offence unless he had committed a serious offence involving moral turpitude or violence. He could have convinced the

Superintendent of Police and Inspector General of Prisons regarding his reformation by leading a disciplined life. But the fact of his conviction ought to have been disclosed by the petitioner at the time of seeking employment but he got the employment with holding disclosure of the important information which would have disentitled him from seeking employment under the State without consideration of I.H. over all conduct and the circumstances leading to his conviction. Thus even initial appointment of the petitioner was bad in law and there was no bar to the disciplinary authority taking into consideration the conviction of the petitioner prior to his appointment, when such an important fact was not disclosed by him at the time of obtaining an employment under the State.

13. On the question as to whether the offence involved moral turpitude, the learned Counsel for the petitioner relied upon a decision of the Himachal Pradesh High Court in *Mohanlal v. State of Himachal Pradesh* AIR 1981 H.P. 122. In that case it was held that timely because the person was found in possession of a small quantity of Opium as he was an Opium addict it could not be considered to be an offence involving moral turpitude. The expression "moral turpitude" was considered in *Baleswar Singh Vs. District Magistrate and Collector, Banaras and Others*, and it was observed as under:

The expression "moral turpitude" is not defined anywhere, But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or - to the society in general. If, therefore, the individual is charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity.

In *Durga Singh Vs. The State of Punjab*, a constable recruited to the Punjab Police Force was convicted u/s 34(6) of the Police Act, 1961 and was ordered to pay fine of Rs. 20/- and in default of payment of fine to undergo simple imprisonment of one week, on the ground that he was found heavily drunk on the road side. A learned judge of the Punjab High Court observed as under about the expression "moral turpitude":

The term has generally been taken to mean to be a conduct contrary to justice, honesty, modesty Or good moral and contrary to what a man owes to a fellow man or to society in general. It has never been held that gravity of punishment is to be considered in determining whether the mis-conduct involves moral turpitude or not. Even if the words "involving moral turpitude" are as held to be implied in "conviction on a criminal charge" in proviso to Article 311(2) it appears to be clear that if a member of the Police Force is guilty of having been found drunk at a public place or to have become habituated to liquor and if he is

convicted by a Criminal Court, then his conviction should be held as involving moral turpitude.

14. In *Mangali Vs. Chhakki Lal and Others*, a person belonging to a district where prohibition was not in force and who had lawfully purchased small quantity of "Bhang" under medical advice, carried the same with him to another district where prohibition was in force and was convicted u/s 60 of the Excise Act. It was held that the person had no bad motive leading to the crime and the act did not lead to depravity of his character nor he did not any thing which could be considered degrading the society in general. The conviction in such circumstances should not be considered to have been made in respect of an offence involving moral turpitude. The following three tests were laid down by the learned judge to decide whether an act does or does not involve moral turpitude:

(1) Whether, the Act leading to a conviction was such as could shock the moral conscience of society in general?

(2) Whether, the motive which led to the act was a base one? and

(3) Whether, on account of the act having been committed, the pre-petrator could be considered to be of a depraved character or a person who was to be looked down upon by the society?

The three tests laid down above in *Mangali Vs. Chhakki Lal and Others*, were also approved by the Punjab High Court in *Risal Singh v. Chandgi Ram and Ors.* (sic). It was observed in that case that the above general tests should be applied and they would be sufficient to enable one to arrive at a conclusion as to whether the particular act involved moral turpitude or not.

15. In *Narain Singh v. N.S. Cheema S.D.M. Fozilka and Ors.* 1977 SLR 448, the tests laid down by the Allahabad High Court in *Mangali Vs. Chhakki Lal and Others*, were applied. In that case the person was found in possession of about 2-1/2 bottles of illicit liquor and there was no allegation that he was found distilling illicit liquor nor there was any evidence to show that he had possessed the liquor in order to sell the same. Their Lordships of the Punjab High Court took notice of the fact that in rural areas in Punjab people generally take liquor and that such a conviction could not shock the moral conscience of society in general and that no morals are involved in such cases. For the aforesaid reasons it was held that the offence committed in that case did not involve "moral turpitude."

16. In law Lexicon "moral turpitude" has been defined as "conduct contrary to justice, honesty, modesty or good morals; and act of absence, vileness, or depravity in the private and social duties which a man owes to his fellow-men, or to society in general. In the matter of Mr. "P" an Advocate AIR 1963 S.C. 1313 it was observed by their Lordships of the Supreme Court that the expression "moral turpitude" or delinquency should not receive a narrow construction.

Where ever conduct is proved contrary to honesty or opposed to good morals or is unethical, it may be safely held that it involves moral turpitude.

17. Thus it is well settled that anything done contrary of justice, honesty, modesty or good morals is an act involving "moral turpitude" and an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man; involves "moral turpitude." (See "Words and Phrases" Vol. 27A). It is not the case of the petitioner that he was convicted by the Criminal Court and sentenced to one year's rigorous imprisonment and to a fine of Rs. 300/- although he was in possession of merely a small quantity of Opium which he kept for his own use. But the very fact that he was convicted by the Railway Magistrate, Jodhpur on being apprehended of being in possession of Opium at a public place namely, I uni Railway Junction, is obviously for the purpose of transporting the same by rail is by itself sufficient to show that the petitioner was guilty of transporting Opium, and was convicted u/s 9 of the Opium Act for the said offence by the Railway Magistrate, Jodhpur. The petitioner has not produced any material to show any extenuating circumstances as were shown to be in the Allahabad and Punjab cases, wherein the persons were found in possession of very small quantity of "Bhang" or liquor or Opium, which too was alleged to have been kept for personal use and no breach of social obligation or crime to wards the society was con mined by the accused person in those cases. As the petitioner was found guilty by a Criminal Court of transporting Opium it appears that he committed a crime against the society and such a conduct on his part of possessing and transporting Opium by rail, shows the depravity of character and an offence against society appears to have been committed by the petitioner, involving moral turpitude. It is only in those cases, where a person has not committed any crime against the society but was found in possession of merely negligible quantity of contraband articles and that too for his personal use, the view has been taken that moral turpitude was not involved. But as observed by their Lordships of the Supreme Court in the matter of Mr. P. AIR 1963 S.C. 1313 there is no reason to moral turpitude and crime against the society. The crime committed in possessing and transporting Opium by rail from one place to another must be held to involve moral turpitude. As already observed above, the petitioner has not disclosed any extenuating circumstances nor he has expressed any explanation or regret for his conduct leading to his conviction u/s 9 of the Opium Act. Even in the writ petitioner has not furnished any explanation for his conduct which led to his conviction and as to why he deliberately evaded or avoided to disclose the information about his aforesaid conviction from his employers. In the absence of any explanation on the part of the petitioner above his conduct, it cannot be held that the conviction of the petitioner did not involve moral turpitude.

18. Then coming to the last submission made by the learned Counsel for the petitioner that the order passed by the Director, College Education, Rajasthan,

Jaipur rejecting the petitioner's appeal was vitiated on the ground that it was a non speaking order. Learned Government Advocate placed before me the entire record of the proceedings taken on the appeal preferred by the petitioner. After going through the record, I am satisfied that a detailed consideration was made by the Directorate in respect of the question of imposing penalty upon the petitioner. It was also taken notice of that on account of the proviso to Article 311(2) of the Constitution, a detailed inquiry under the relevant service rules was not necessary. The Director has particularly noted the fact that he asked the petitioner more than once to produce a copy of the judgment of the court convicting him of a criminal offence, but the petitioner did not produce a copy of the said judgment. After a consideration of the relevant material, the Director rejected the appeal of the petitioner. of course, the fact remains that the reasons for rejection of the appeal were not conveyed to the petitioner. Ordinarily, in my view the reasons for rejection of the appeal should have been conveyed to the petitioner. However, as held by their Lordships of the Supreme Court in *State of Madras Vs. A.R. Srinivasan*, recording of reasons for rejection of appeal was not obligatory in an order of affirmance, *Gajendragadkar*, the then Chief Justice, speaking for the Supreme Court, observed as under in that case:

In dealing with the question as to whether it is obligatory on the State Government to give reasons in support of the order imposing a penalty on the delinquent officer, we cannot overlook the fact that the disciplinary proceedings against such a delinquent officer begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by a report and the Public Service Commission is consulted where necessary. Having regard to the material which is thus made available to the State Government and which is made available to the delinquent officer also, it seems to us some what unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposed to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the Tribunal, though even in such a case, is not necessary that the reasons should be detailed or elaborate. But where the State Government agrees with the finding of the Tribunal which are against the delinquent officer, we do not think as a matter of law, it could be said that the State Government cannot impose the penalty against the delinquent officer in accordance with the findings of the Tribunal unless it gives reasons to show why the said findings were accepted by it. The proceedings are, no doubt quasi-judicial, but having regard to the manner in which these enquiries are conducted, we do not think an obligation can be imposed on the State Government to record reasons in every case.

19. In *Rajasthan v. Daulatrao and Anr.* AIR 1976 S.C. 2116, it was observed by the Supreme Court that in all cases it cannot be said that a non-speaking order is bad or invalid on that count alone. But when an order is liable to be challenged under Article 226 or 227 of the Constitution, Courts do insist that the statutory

appeal should be and ought to have been disposed of by a speaking order, giving reasons in its support. But it is for the court to see in the facts and circumstances of each case whether it would be proper to set aside the order of the State Government and remit the case back merely on that account. Where facts were not in dispute and the decision of the case rested on points of law, there would be no point in remitting the case to the appellate authority for a fresh determination.

20. In *Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others*, , their Lordship of the Supreme Court distinguished cases of penalties imposed upon public servants as a result of disciplinary enquiries, from the other cases decided by administrative authorities exercising quasi-judicial functions. Relying upon the observations of Gajendragadkar, C.J., in *State of Madras Vs. A.R. Srinivasan*, their Lordships distinguished the cases relating to decisions of other quasi-judicial authorities on the ground that they did not relate to disciplinary proceedings. Their Lordships observed as under:

In this connection we would like to make it clear that while it may be necessary for a disciplinary or administrative authority exercising quasi-judicial functions to state the reasons in support of its order if it differs from the conclusions arrived at and the recommendations made by the enquiring officer in view of the scheme of a particular enactment or the rules made thereunder, it would be laying down the proposition a little too broadly to say that even an order of concurrence must be supported by reasons. It cannot also, in our opinion, be laid down as a general rule that an order is a non-speaking order simply because it is brief and not elaborate. Every case, we think has to be judged in the light of its own facts & circumstances. Reference in this connection may be made with advantage to a catena of decisions. In *State of Assam and Another Vs. Bimal Kumar Pandit*, it was categorically laid down by the Constitution Bench of this Court that it was not a requirement of Article 311(2) that in every case the punishing authority should in its order requiring the civil servant to show cause give not only the punishment proposed to be inflicted on him but also the reasons for coming to that conclusion. In that case, it was clarified that the view is not justified that the appropriate authority must state its own grounds or reasons for proposing to take any specific action against the delinquent Government servant.

Thus, the cases of Government servants subjected to disciplinary enquiries have been treated as forming a separate category by their Lordships of the Supreme Court in *Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others*, and distinguished them from cases of other administrative Tribunals or bodies exercising quasi-judicial functions, because of the nature of the enquiries involved in the disciplinary proceedings.

21. Learned Counsel for the petitioner drew my attention to the provisions of Rule 30 of the Classification, Control and Appeal Rules which provides for consideration of appeals. The Rule lays down the matters which are required to be considered by the appellate authority and the nature of the orders which can

be passed by the appellate authority, subject to the conditions contained in the provisions. There is no provision in Rule 30 requiring the appellate authority to give reasons even when it agrees with the order passed by the disciplinary authority. In *Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others*, the Supreme Court held that apart from any requirement imposed by the statute or statutory rule, either expressly or by necessary implication there is no legal obligation that the statutory tribunal should give reasons for its decision. There is also no general principle nor there is any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision, more particularly when the appellate order is of affirmance.

22. In *Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala* AIR 1961 S.C. 1996, it was held by the Supreme Court that there was a vital difference between an order of reversal passed by the appellate authority and the order of affirmance passed by the revising authority and if the revising authority rejects a revision application stating that there was no valid ground for interference with the order of the subordinate authority in such a case it could not be held that the order was arbitrary or that there was no proper trial of the revision application. Ordinarily, the appellate or the revisional tribunal should give its own reasons. But in a case of affirmance, where the original tribunal has given adequate reasons, the appellate tribunal may dismiss the appeal on the revision agreeing with those reasons.

23. Learned Counsel placed reliance on the decision of their Lordships of the Supreme Court in *Travancore Rayon Ltd. Vs. Union of India (UOI)*, , which was not a case pertaining to a disciplinary enquiry under Service Rules or in accordance with the provisions of Article 311(2) of the Constitution, Their Lordships of the Supreme Court observed as under in *Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others*, in this respect:

We would also like to point out that the observations in *Travancore Rayon Ltd. Vs. Union of India (UOI)*, that in *Bharat Raja Vs. The Union of India (UOI)* and *Others*, this Court in effect overruled the judgment of the majority in *Madhya Pradesh Industries Ltd. v. Union of India* AIR 1916 S.C. 1671 seem to have crept therein through some oversight. A careful perusal of the decision in *Bhagat Raja v. Union of India* would show that this Court did not make any observations therein which can be interpreted as overruling the majority judgment in *Madhya Pradesh Industries Ltd. v. Union of India* (supra). It is also worthy of note that in *Bhagat Raja's* case (supra) the amendment of Rule 55 of the Mineral Concession Rules, 1960 introduced in July 1965 laid down a special procedure in regard to revisions. It required the Central Government to send copies of all applications for revision to all impleaded parties including the person to whom a lease had been granted calling upon them to make such comments as they might like to make within three months from the date of the issue of the communications and on receipt of the comments from any party to send copies thereof to the other parties calling upon them to make further comments as they might like to make

within one month from the date of the issue of the communication. It also provided that the revision application, the communications containing the comments and counter comments referred to above would constitute the record of the case. Thus under the amended rule, the party whose application was rejected got an ample opportunity of showing to the Central Government by reference not only to the record which was before the State Government but by reference to the fresh material as well that the State Government was misled in its consideration of the matter or that decision was based on irrelevant considerations.

It is unfortunate that the attention of the learned Judge deciding Kripal Singh's case was not drawn to the decision of the Supreme Court in Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others, where the position of law has been amply clarified with regard to disciplinary enquiries and appeals and revision therefrom.

24. Learned Counsel for the petitioner also placed reliance on the decision of another learned Single Judge of this Court in Umaid Charitable Trust Vs. Commissioner of Income Tax, The decision in that case is clearly distinguishable in as much as a number of grounds were urged in the name of appeal whereby the findings recorded by the enquiry officer were challenged in respect of the charges which were found to be proved. In that case although the Board of Revenue passed a speaking order but it did not record its findings in respect of various submissions contained in the memo of appeal filed by the petitioner. In the writ petition, a categorical statement was made that during the course of arguments before the Board of Revenue the counsel for the petitioner had assailed the order of punishment on the grounds set out in the memo of appeal and had urged the grounds during the course of hearing of the appeal. It has in view of these facts that the learned Single Judge held that the Board of Revenue was bound to decide the submissions made by the petitioner at the time of hearing of his appeal. The judgment in Umaid Charitable Trust Vs. Commissioner of Income Tax, does not turn on the question of law as to whether the appellate authority should give a reasoned order or not. In that case there was an oral hearing before the Board of Revenue and arguments were heard like an ordinary appeal before a court of law in a Civil or Revenue matter and in such a case the Board of Revenue was required to pass an order discussing all the grounds which were urged before it at the time of oral hearing.

25. In the present case, after looking into the record produced before me, there is no doubt that reasons were duly recorded for rejecting the appeal of the petitioner. of course, they were not communicated to the petitioner. I have satisfied myself that the petitioner's appeal was considered at length and, therefore, I do not feel inclined to remit the appeal to the Director of Education merely on the ground that only a non-speaking order was communicated to the petitioner. While the need of communicating the reasons which are recorded on the file to the delinquent employee must be emphasized i.e. yet in the present

case I do not think that any useful purpose would be served by remitting the case to the appellate authority merely for communicating the reasons for rejecting the appeal of the petitioner particularly as the facts and circumstances of the case were duly considered by the disciplinary authority as well as by the appellate authority, while imposing and upholding the penalty of dismissal from service upon the petitioner.

26. No other print was argued before me. In the result, the writ petition has no force and the same is dismissed. The parties are left to bear their own costs.