

(2015) 04 AHC CK 0183
In the Allahabad High Court
Case No : Service Bench No. 459 of 2015

Manoj Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 307, 311, 311(2)
Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2015) 4 ALJ 58 : (2015) 111 ALR 856 : (2015) 4 AWC 4170 : (2015) 147 FLR 220 : (2015) LabIC 2966

Hon'ble Judges : Narayan Shukla, J;Rajan Roy, J

Bench : Division Bench

Advocate : Praveen Kumar, for the Appellant; Pankaj Srivastava, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Mr. Praveen Kumar, learned counsel for the petitioner as well as Mr. Pankaj Srivastava, learned counsel for the respondents. The petitioner has assailed the judgment and order dated 12.03.2015 passed by the Central Administrative Tribunal in Original Application No. 94 of 2012. The learned Tribunal by means of order impugned has upheld the order of punishment awarded to the petitioner i.e. removal from service. The petitioner has challenged the order of punishment on the ground that it was in violation of Rule 14(1) of Railway Servants (Discipline and Appeal) Rules, 1968 which is extracted below:

"Rule-[14] Special procedure in certain cases:

Notwithstanding anything contained in Rules 9 to 13:--

(i) where any penalty is imposed on a railway 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 by it

in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules;

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the railway servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case falling under clause (i).

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule."

2. In light of the aforesaid Rule he has submitted that he would have been given an opportunity of hearing before any penalty was imposed upon him. Thus he has claimed the violation of Rule 14(1) of Railway Servants (Discipline and Appeal) Rules, 1968.

3. He has further pointed out that the order impugned has been passed also in violation of Article 311 of the Constitution of India. He contended that the proviso (a) of Article 311(2) requires examination of the conduct leading to conviction by the disciplinary authority but no such examination was done by him. Article 311 of the Constitution of India is extracted below:--

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-(1) No person who is a member of a civil service of the Union or an All-India service or a Civil Service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

2. No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and give a reasonable opportunity of being heard in respect of those charges.

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President of the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

3. If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

4. The petitioner was implicated in a Criminal Case No. 82 of 2006 under Section 307/34 I.P.C. The case was registered before the Trial Court in Session Trial No. 1327 of 2008 which was tried in the case and ultimately was allowed and he was sentenced for rigorous imprisonment of 10 years. On this ground the petitioner was issued a show cause notice by the disciplinary authority for his removal from service and he was called upon the same to file reply of the show cause notice dated 13.07.2011 within fifteen days. It has been submitted that on the date of show cause notice the petitioner was in-judicial custody and he was enlarged on bail only on 20.09.2011. Whereas before his enlargement the Disciplinary Authority has passed the order of removal from his service on 12.08.2011. It has been further contended that the show cause notice was not served to the petitioner at any point of time.

5. Thus it has been contended that the action of the respondents in passing the order of punishment is in violation of Rule 14(1) of Railway Servants (Discipline and Appeal) Rules, 1968.

6. As far as the first contention of the petitioner regarding the conduct leading to his conviction not having been considered by the disciplinary authority is concerned we are of the view that this submission may have carried weight if the petitioner had been convicted of some minor criminal offence or one which was not as heinous an offence as under Section 307 read with Section 34 of the Indian Penal Code and did not involve moral turpitude, but not in a case of conviction under the aforesaid provisions, therefore, this submission does not persuade us to interfere in this case. The petitioner has been convicted under the aforesaid provisions of the Indian Penal Code and a sentence of ten years imprisonment with a fine of Rs. 10,000/- has been imposed on him. The criminal offence under Section 307 of the Indian Penal Code involves an attempt to murder. It is a serious crime. Obviously the petitioner has been convicted because of his role in the crime. It is difficult to fathom that any other view of the matter could have been taken by the disciplinary authority on consideration of the conduct of the petitioner which had led to his conviction, than his removal from service. It is not a case where a lesser punishment than removal from service could have been awarded. In fact the petitioner could have been dismissed from service but a lesser punishment of removal from service has been awarded.

7. In a recent judgment dated 25.03.2015 rendered in Special Appeal (Defective) No. 219 of 2015 State of U.P. v. Prem Milan Tiwari a Division Bench of this Court

had the occasion to consider the validity of the judgment passed by the learned single Judge setting aside the punishment order on the ground that the conduct leading to conviction had not been considered. This Court after referring to the Constitution Bench judgment in the case of Union of India and Another Vs. Tulsiram Patel and Others, AIR 1985 SC 1416 : (1985) 3 CompLJ 45 : (1985) 51 FLR 362 : (1985) 2 LLJ 206 : (1985) 2 SCALE 133 : (1985) 3 SCC 398 : (1985) 2 SCR 131 Supp : (1985) 2 SLJ 145 and the judgment in the case of Shankar Dass Vs. Union of India (UOI) and Another, AIR 1985 SC 772 : (1985) 51 FLR 68 : (1985) LabIC 590 : (1985) 2 LLJ 184 : (1985) 1 SCALE 391 : (1985) 2 SCC 358 : (1985) 3 SCR 163 : (1985) 2 SLJ 454 , also considered the subsequent decision of the Supreme Court in the case of Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, AIR 1995 SC 1364 : (1995) 3 JT 32 : (1995) 2 SCALE 1 : (1995) 3 SCC 377 : (1995) 2 SCR 308 , wherein, their Lordships held "Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice." As also, the judgment of the Supreme Court in the case of Govt. of A.P. and Another Vs. B. Jagjeevan Rao, (2014) 7 SCALE 434 : (2014) 3 SCT 323 , wherein the High Court had set aside the order of dismissal after noticing the decisions of the Supreme Court in the cases of Union of India and Another Vs. Tulsiram Patel and Others, AIR 1985 SC 1416 : (1985) 3 CompLJ 45 : (1985) 51 FLR 362 : (1985) 2 LLJ 206 : (1985) 2 SCALE 133 : (1985) 3 SCC 398 : (1985) 2 SCR 131 Supp : (1985) 2 SLJ 145 and Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, AIR 1995 SC 1364 : (1995) 3 JT 32 : (1995) 2 SCALE 1 : (1995) 3 SCC 377 : (1995) 2 SCR 308 , and the Supreme Court held: "Regard being had to the aforesaid enunciation of law and keeping in view the expected standard of administration, conviction on the charge of corruption has to be viewed seriously and unless the conviction is annulled, an employer cannot be compelled to take an employee back in service." Considering the aforesaid cases this Court took the view that the dictum of the Supreme Court in the cases of S. Nagoor Meera (supra) and B. Jagjeevan Rao (supra) must govern the facts of the said case. The respondent was a constable in the police and was convicted of a heinous crime punishable under Section 302 of the Penal Code. To the question "can the State be compelled or required to take back in service such a person, pending the disposal of the appeal? This Court answered in negative and set aside the judgment of learned single Judge.

8. On consideration of the facts in this case, in the aforesaid back drop and for the reasons already mentioned earlier, we are also inclined to take the same view. The petitioner herein having been convicted under Section 307 read with Section 34 of the Indian Penal Code cannot be allowed to be reinstated in service.

9. As far as the denial of notice required under proviso to Rule 14(iii) of the Railway Servants (Discipline and Appeal) Rules, 1968 is concerned, the proviso

to Article 311(2) of the Constitution of India excludes any opportunity of hearing before imposing a punishment in such cases. Similar proposition has been laid down by the Constitution Bench in the case of Union of India and Another Vs. Tulsiram Patel and Others, AIR 1985 SC 1416 : (1985) 3 CompLJ 45 : (1985) 51 FLR 362 : (1985) 2 LLJ 206 : (1985) 2 SCALE 133 : (1985) 3 SCC 398 : (1985) 2 SCR 131 Supp : (1985) 2 SLJ 145 , and in the case of Shankar Dass Vs. Union of India (UOI) and Another, AIR 1985 SC 772 : (1985) 51 FLR 68 : (1985) LabIC 590 : (1985) 2 LLJ 184 : (1985) 1 SCALE 391 : (1985) 2 SCC 358 : (1985) 3 SCR 163 : (1985) 2 SLJ 454 wherein it was held that imposition of punishment in such cases has to be an ex-parte action.

10. Reference may also be made in this regard to a judgment of this Court dated 29.01.2014 passed in writ petition No. 29(S/S) of 2004 (Savitri Devi v. State of U.P. and others) where a similar plea of non consideration of the conduct leading to the conviction before passing the order of punishment was considered and repelled.

11. The proviso to Rule 14(iii) of the Rules, no doubt, provides that the railway servant may be given an opportunity for making a representation against the penalty proposed to be imposed before any order is made in a case falling under clause (i) i.e. where any penalty is imposed upon a railway servant on the ground of conduct which has led to his conviction on a criminal charge.

12. However, even if the version of the petitioner is accepted on its face value, in view of the facts of the present case and considering the seriousness of the criminal offence for which the petitioner has been convicted, in our view, it is not a case where the disciplinary authority could have taken any other view of the matter even if an opportunity of hearing was given to the petitioner. Thus, it would have been an empty formality, therefore, no prejudice has been caused to him. Principle of natural justice is not like an unruly horse. Its application depends upon the facts of a case and not in a factual vacuum. Moreover, it is also trite that even if there has been violation of the principles of natural justice this Court under Article 226 of the Constitution of India is not bound to interfere in exercise of its extraordinary jurisdiction because by doing so it would be restoring an illegality. A person convicted under Section 307 of the Indian Penal Code should not be reinstated in service till he is absolved in appeal. Therefore, doing so on the plea of violation of proviso to Rule 14(iii) of the Rules would amount to bringing to life another illegality, and would do more harm than good. Reference may be made in this regard to the judgments of Supreme Court reported in the case of M.C. Mehta Vs. Union of India (UOI) and Others, AIR 1999 SC 2583 : (1999) 5 JT 114 : (1999) 4 SCALE 267 : (1999) 6 SCC 237 : (1999) 3 SCR 1173 : (1999) 2 UJ 1254 : (1999) AIRSCW 2754 : (1999) 6 Supreme 265 , and State of Maharashtra and Others Vs. Prabhu, (1995) 1 LLJ 622 : (1994) 2 SCC 481 . Except for the writ of habeas corpus and cases involving violation of fundamental rights invocation of the writ jurisdiction under Article 226 is not as a matter of right but discretionary.

13. We are also of the view that considering the conviction of the petitioner under Article 307 I.P.C. read with Section 34 I.P.C. giving of notice would have been an empty formality, therefore, no prejudice has been caused to the petitioner.

14. In view of the above discussion we decline to exercise our discretionary powers under Article 226 of the Constitution of India in favour of the petitioner as we do not find any valid ground to interfere with the impugned order passed by the Tribunal. The writ petition is accordingly, dismissed.