

(1977) 03 RAJ CK 0031
In the Rajasthan High Court
Case No : Civil Writ Petition No. 68 of 1977

Nar Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-03-1977

Acts Referred:

Railway Property (Unlawful Possession) Act, 1966 — Section 3

Citation : (1977) RLW 128 : (1977) WLN 118

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Gupta, J.—I have heard learned Counsel for the petitioner. The petitioner was working as a khalasi at the Railway Workshop at Jodhpur and he was found in possession of stolen copper of weighing 4.600 kg. He was prosecuted in a criminal court and was ultimately convicted by a Magistrate u/s 3 of the Indian Railway Property (Unlawful Possession) Act, 1966. The Additional Sessions Judge, Jodhpur on appeal, while maintaining the conviction of the petitioner, set aside the sentence awarded to him, giving him the benefit of the provisions of the Probation of Offenders Act. The Disciplinary Authority passed an order of removal of the petitioner from service on the basis of his conviction by the criminal court. The petitioner moved a writ petition in this Court which was allowed by a Division Bench of this Court of which I was a member, along with a batch of other similar writ petitions. This court took the view that Rule 14 of the Railway Servants (Disciplinary and Appeal) Rules, 1968 (hereinafter referred to as "the Rules") required the Disciplinary Authority to "consider" the circumstances of the case and thereafter pass such order as it deemed fit in the circumstances of the case. It was also held by this Court in *Kuldeep Singh v. Union of India* RLW 1974 171 that besides the words "consider the circumstances of the case" occurring in the aforesaid rule, the principles of natural justice also required that the delinquent employee must be given an opportunity of showing his side of the case, if an

action was proposed to be taken against such employee Under Article 14(c) of the Rules the decision of this Court was substantially confirmed by their Lordships of the Supreme Court in the case of *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, and it was held by their Lordships that although the conviction of a delinquent employee could be considered as sufficient proof of misconduct, but the Disciplinary Authority should embark upon a summary enquiry to determine the nature and extent of the penalty to be imposed on the delinquent employee. If upon such enquiry, the concerned authority came to form the opinion that the offence was a trivial one or was of a technical nature, it is open to it not to impose any penalty upon the concerned employee in spite of the conviction by the criminal court. Their Lordships have thus held that the Disciplinary Authority in such cases is required to make a summary enquiry to decide as to what penalty, if any should be imposed on a delinquent employee. However, their Lordships have added that they should not be understood to lay down that the employees convicted of serious offences could insist on their reinstatement.

2. After the aforesaid decision of their Lordships of the Supreme Court, the Disciplinary Authority issued its memorandum dated February 7, 1976, calling upon the petitioner to show cause by making a representation, as to why the penalty of dismissal from service be not imposed upon him, as he was convicted of a serious charge by a criminal court. The petitioner submitted a representation in answer to this memorandum issued by the Disciplinary Authority and after considering the representation made by the petitioner, the Disciplinary Authority by its order dated March 13, 1976 held that as the petitioner was found in possession of stolen railway property and as theft of railway property was a charge of serious nature, in the opinion of the Disciplinary Authority, the petitioner was not a fit person who should be further retained in service. It was, therefore, ordered that the petitioner may be dismissed from service. The Disciplinary Authority rejected the contention of the petitioner that the offence in his case was of trivial nature and it was held that the theft of railway property was a very serious offence, irrespective of the amount involved therein. The petitioner thereupon filed an appeal which was rejected by the Deputy Chief Mechanical Engineer, who was the competent Appellate Authority. Hence this writ petition.

3. The first contention raised by learned Counsel is that in the representation made by the petitioner, in reply to the memorandum issued by the Disciplinary Authority dated February 7, 1976, the petitioner prayed that he may be afforded an opportunity of personal hearing but no such personal hearing was given to the petitioner by the Disciplinary Authority and as such, the principles of natural justice were violated. The Disciplinary Authority in its order dated March 13, 1976 observed that although the petitioner had asked for a personal hearing, but it was not considered necessary as the petitioner had already submitted a written reply. learned Counsel tried to draw support for his submission from the following observations of their Lordships of the Supreme Court in *The Divisional Personnel*

Officer, Southern Railway and Another Vs. T.R. Chellappan and Others,

The word consider merely connotes that there should be active application of mind by the disciplinary authority after considering the entire circumstances of the case, in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction or a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words, the term consider postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an enquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employee.... The statutory provision 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.

4. What their Lordships have laid down in the aforesaid case is that it is incumbent upon the Disciplinary Authority to afford an opportunity of hearing to the delinquent employee and to consider the circumstances of the case in all its aspects. In my humble view, the affording of an opportunity of hearing to a delinquent employee does not necessarily & in all circumstances mean that an opportunity of personal or oral hearing should be given to him as suggested by the learned Counsel for the petitioner. It must be observed that under the latter part of Rule 14 of the Rules, it is not at all necessary for the Disciplinary Authority to order a fresh departmental enquiry, but what is necessary for him is only to consider the circumstances of the case for the purposes of determining the quantum of punishment to be awarded to the delinquent employee. The employee is required to be heard only for the purpose of deciding the nature and extent of the penalty to be imposed upon him for the misconduct; which is fully established by the decision of the criminal court. It was held by a Division Bench of this Court in *Sugan Chand Vs. The Transport Appellate Tribunal and Others*, that the requirement of the principles of natural justice are mainly that no man should be a judge in his own cause and that no man should be condemned unheard. The latter principle only means that the person concerned should be given a fair and reasonable opportunity of making an adequate representation and in the absence of any statutory requirement, natural justice does not imply any right to be heard in person or through a lawyer. The same view was also taken by a recent Full Bench decision of Punjab and Haryana High Court in *The State of Haryana and Others Vs. Ram Chander*, wherein it was observed that the rules do not provide for a personal hearing and there is no principle of natural justice which requires that a personal hearing should be given in matters like this". The hearing contemplated by their Lordships of the Supreme Court, while deciding the case of the Divisional Personnel Officer (2) was not that the delinquent employee should be given a personal hearing in each and every case. But where the facts were not complicated, the matter could be decided by the

Disciplinary Authority, after considering the material on record as well as the representation which the delinquent employee may make in this matter. In such circumstances, an opportunity to file a written representation would be an adequate hearing and the same would satisfy in such cases the requirements of the principles of natural justice as well as of Rule 14 of the Rules. There is, therefore, no substance in this contention of the learned Counsel.

5. The only other submission made by learned Counsel is that the Appellate Authority has not passed a reasoned order while dismissing the appeal preferred by the petitioner before it. In this respect, it may be pointed out that the Disciplinary Authority in the present case passed a detailed order which appears at the back of Anx. 6 and when the Appellate Authority concurred with the reasons given by the Disciplinary Authority, it was not necessary for the Appellate Authority to pass a detailed order, and repeat all that was said by the Disciplinary Authority. Moreover, the Appellate Authority has also held that the misconduct found proved in the case of the petitioner was of serious nature and that punishment lesser than that of dismissal from service would not have served the ends of justice

6. I am unable to find in the present case any infirmity in the orders passed by the Disciplinary Authority as well as the Appellate Authority. There is thus no substance in this writ petition and the same is hereby dismissed.