

(2007) 08 DEL CK 0026
In the Delhi High Court
Case No : W.P (C) No. 3254 of 1992

Satraj Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-08-2007

Acts Referred:

Constitution of India, 1950 — Article 142, 226, 311(2)
Criminal Procedure Code, 1973 (CrPC) — Section 361, 386
Penal Code, 1860 (IPC) — Section 323, 409
Probation of Offenders Act, 1958 — Section 12, 3, 4, 6, 9
Railway Protection Force Act, 1957 — Section 10
Railway Protection Force Rules, 1987 — Rule 161(1)
Railways Act, 1989 — Section 120, 121

Citation : (2007) 4 ILR Delhi 215

Hon'ble Judges : Vipin Sanghi, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Ranbir Yadav, for the Appellant; R.C. Nangia, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—The petitioner has filed this writ petition under Article 226 of the Constitution of India seeking a writ in the nature of mandamus directing the respondents to reinstate him in service with full back wages from the date of his dismissal.

2. The petitioner was appointed as a Constable in Railway Protection Force (RPF) on 7.7.1980. While he was serving in Company No. 30, Muradabad attached with Crime Cell of DSC, Railway Protection Force Office, Muradabad, on 3rd December, 1984, on the complaint of one Ram Singh, Sub Inspector, Railway Security Force, a First Information Report (FIR)/complaint was registered against the petitioner, bearing No. 58/1984 u/s 323 IPC and under Sections 120 and 121, Indian Railway Act. The substance of the accusation was that the petitioner, under the influence of liquor, came to the office of the said Ram Singh, Sub Inspector and started abusing him, and when the complainant tried to prevent him, he opened

his belt and hit the complainant on the head.

3. The petitioner was convicted u/s 323 IPC and Sections 120 and 121 of Indian Railway Act by the Judicial Railway Magistrate vide his judgment and order dated 8.12.1987 and sentenced to 2 months' rigorous imprisonment with penalty of Rs. 50/-. In default of payment of penalty, 10 days more imprisonment was to be undergone. In respect of his conviction u/s 121, Railway Act, he was sentenced to one month's rigorous imprisonment and a penalty of Rs. 30/- was imposed, and in default, ordinary imprisonment of 7 days was to be undergone by him. Conviction u/s 120 of the Railways Act resulted in penalty of a sum of Rs. 30/-, and in default 5 days imprisonment.

4. Consequent upon his aforesaid conviction, the petitioner was dismissed from service under Rule 161(1) of the RPF Rules, 1987 on 27.1.1988. The petitioner had preferred an appeal against his aforesaid conviction and the learned Sessions Judge, Bikaner, Rajasthan vide his judgment dated 4.4.1989 while dismissing his appeal, released him on probation u/s 4 of the Probation of Offenders Act, 1958 (hereinafter referred to as the Act). The learned Sessions Judge, Bikaner, in the same order, inter alia, ordered that there shall be no adverse effect on his service.

5. Armed with the aforesaid observations of the learned Sessions Judge, Bikaner, the petitioner represented to the respondent and sought reinstatement in service with all consequential benefits. The respondents declined the said representation on 26.4.1990 informing him that he could not be taken back into service. Petitioner sent a legal notice to the respondents again making the same demand. However, the same was also not entertained favorably. Consequently, the petitioner, thereafter, filed the present petition.

6. By placing reliance on Section 12 of the submission of the petitioner is that the result of his being released on probation is that the disqualification attached to his conviction does not survive and consequently, he could not be dismissed from service on account of the said conviction. He also submits that the learned Sessions Judge has specifically directed that his convicted shall have no adverse effect on his service, and consequently, the respondents were bound to ignore his conviction as aforesaid, and that they could not have made that as the basis for passing the order of dismissal dated 27.1.1988.

7. In support of his submissions, learned Counsel for the petitioner has relied upon:

- i. Iqbal Singh Vs. Inspector-General of Police and Others,
- ii. Taramati Chandulal v. State of Maharashtra, 1981 CriLJ 445
- iii. Shankar Dass Vs. Union of India (UOI) and Another, and
- iv. Rajbir Vs. State of Haryana,

8. On the other hand, the submission of learned Counsel for the respondent is

that the disqualifications that is removed by virtue of Section 12 of the Act in the case of convict who is released on probation u/s 3 and 4 of the said Act is a disqualification prescribed by law, such as the Representation of People Act, or some other law which specifically creates a disqualification against a person who is convicted of an offence. The said provision does not have the effect of washing away the conviction of the person, and if he is open to face punishment under his service conditions and Rules, as a consequence of his conviction, the mere release on probation does not prevent action from being taken by the employer against him as per such service conditions and Rules. He further submits that the directions issued by the learned Sessions Judge, Bikaner in his judgment dated 27.1.1988, to the effect that there shall be no adverse effect on his service, was beyond his powers and is of no avail. He has also cited various decisions in support of his arguments to which reference is made later in this judgment.

9. The issue, whether the release of a person on probation who is convicted of an offence has the effect of saving him from action under his service conditions and Rules, and whether the "Disqualification" from which he is saved u/s 12 of the Act would also include action against him by his employer under his service conditions/Rules is no longer rest integra.

10. Union of India and others Vs. Bakshi Ram, was an appeal from a decision of the Rajasthan High Court, wherein the Rajasthan High Court, relying upon Section 12 of the Act had held that release on probation has the effect of removing the disqualification attaching to the employees conviction u/s 10(n) of CRPF Act. The Hon'ble Supreme Court reversed the said decision of the High Court. Paragraphs 8 to 13 of the said decision being relevant are produced herein below:

8. It will be clear from these provisions that the release of the offender on probation does not obliterate the stigma of conviction. Dealing with the scope of Sections 3, 4 and 9 of the Probation of Offenders Act, Fazal Ali, J., in The Divisional Personnel Officer, Southern Railway and Anr. etc. v. T.R. Challappan etc. [1975] 2 SLR 587 speaking for the Court observed:

These provisions would clearly show that an order of release on probation comes into existence only after the accused is found guilty and is convicted of the offence. Thus the conviction of the accused or the finding of the Court that he is guilty cannot be washed out at all because that is the sine qua non for the order or release on probation of the offender. The order of release on probation is merely in substitution of the sentence to be imposed by the Court. This has been made permissible by the Statute with a humanist point of view in order to reform youthful offenders and to prevent them from becoming hardened criminals. The provisions of Section 9(3) of the Act extracted above would clearly show that the control of the offender is retained by the criminal court and where it is satisfied that the conditions of the bond have been broken by the offender who has been released on probation, the Court can sentence the offender for the original offence. This clearly shows that the factum of guilt on the criminal charge is not

swept away merely by passing the order releasing the offender on probation. Under Sections 3, 4, or 6 of the Act, the stigma continues and the finding of the misconduct resulting in conviction must be treated to be a conclusive proof. In these circumstances, Therefore, we are unable to accept the argument of the respondents that the order of the Magistrate releasing the offender on probation obliterates the stigma of conviction.

9. As to the scope of Section 12, learned Judge went on (at 596):

It was suggested that Section 12 of the Act completely obliterates the effect of any conviction and wipes out the disqualification, attached to a conviction of an offence under such law. This argument, in our opinion, is based on a gross misreading of the provisions of Section 12 of the Act, the words "attaching to a conviction of an offence under such law" refer to two contingencies: (i) that there must be a disqualification resulting from a conviction and (ii) that such disqualification must be provided by some law other than the Probation of Offenders Act. The Penal Code does not contain any such disqualification. Therefore, it cannot be said that Section 12 of the Act contemplates an automatic disqualification attaching to a conviction and obliteration of the criminal misconduct of the accused. It is also manifest the disqualification is essentially different in its connotation from the word "misconduct".

10. In criminal trial the conviction is one thing and sentence is another. The departmental punishment for misconduct is yet a third one. The Court while invoking the provisions of Section 3 or 4 of the Act does not deal with the conviction; it only deals with the sentence which the offender has to undergo. Instead of sentencing the offender, the Court releases him on probation of good conduct. The conviction however, remains untouched and the stigma of conviction is not obliterated. In the departmental proceedings the delinquent could be dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; (See Article 311(2)(b) of the Constitution and *Tulsiram Patel* case: 1985 Supp. 2 SCR.

11. Section 12 of the Act does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per law. The section was not intended to exonerate the person from departmental punishment. The question of reinstatement into service from which he was removed in view of his conviction does not Therefore, arise. That seems obvious from the terminology of Section 12. On this aspect, the High Court speak with one voice. The Madras High Court in *R. Kumaraswami Aiyer v. The Commissioner, Municipal Council Tiruvannamalai and Anr.* [1957] Cri. L.J. 225 and *Embaru (P) v. Chairman Madras Port Trust* [1963] 1 LLJ 59, the Andhra Pradesh High Court in *A. Satyanarayana Murthy v. Zonal Manager, L.I.C., the Madhya Pradesh High Court in Prem Kumar v. Union of India and Ors.* [1971] LIC 823, the Punjab & Haryana High Court in *Om Prakash v. The Director Postal Services (Post and Telegraphs Deptt.) Punjab Circle, Ambala and Ors.* [1971] 1 SLR 643. The Delhi High Court in *Director of Postal Services and Anr. v. Daya Nand* [1972] SLR 325

have expressed the same view. This view of the High Courts in the aforesaid cases has been approved by this Curtin T.R. Challappan's case [1975] 2 SLR 587.

12. In *Trikha Ram Vs. V.K. Seth and Another*, this Court after referring to Section 12 has altered the punishment of dismissal of the petitioner therein into "removal from service", so that it may help him to secure future employment in other establishment.

13. Section 12 is thus clear and it only directs that the offender "shall, not suffer disqualification, if any, attaching to a conviction of an offence under such law". Such law in the context is other law providing for disqualification on account of conviction. For instance, if a law provides for disqualification of a person for being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of Section 12 stands removed. That in effect is the scope and effect of Section 12 of the Act. But that is not the same thing to state that the person who has been dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation of good conduct. Apparently, such a view has no support by the terms of Section 12 and the order of the High Court cannot, Therefore, be sustained.

11. In *Shankar Dass (supra)*, cited by the petitioner, the Hon''ble Supreme Court had taken the same view. A learned Single Judge of this Court had accepted the contention that by virtue of Section 12 of the Act employee could not be dismissed from service without affording him a reasonable opportunity of being heard, as required by Article 311(2) of the Constitution. The Hon''ble Supreme Court held that "the order of dismissal from service consequent upon a conviction is not a "disqualification" within the meaning of Section 12. There are statutes which provide that persons who are convicted for certain offences shall incur disqualifications. For example, Chapter III of the Representation of the People Act, 1951, entitled (sic) entailed, "Disqualification for membership of Parliament and State Legislatures" and Chapter IV entitled (sic) entailed "Disqualification for Voting" contain provisions which disqualify persons convicted of certain charges from being members of Legislatures or from voting at elections to Legislatures. That is the sense in which the word "disqualification" is used in Section 12 of the Probation of Offenders Act". The view of the learned Single Judge of this Court as aforesaid was expressly rejected by the Hon''ble Supreme Court.

12. In the light of the aforesaid pronouncements of the Hon''ble Supreme Court the judgment of Division Bench of this Court, in *Iqbal Singh (Supra)*, stands impliedly overruled and is no longer good law. The three decisions cited by the petitioner in the case of *Aitha Chander Rao (supra)*, *Rajbir (Supra)* and *Shankar Dass (Supra)* wherein the Hon''ble Supreme Court while granting/upholding the grant of probation, directed that the conviction would not affect the service of the convict, are cases which turn on their own peculiar facts.

13. In *Rajbir (supra)*, though the sentence imposed on the conviction u/s 323

IPC was six months, the appellant had already suffered over one years imprisonment. Both the parties to the assault were close relations. In these circumstances, the Hon''ble Supreme Court observed "We are of the view that in the peculiar facts of the case, the conviction should not affect his service". Similarly in Aitha Chandra Rao (supra), the Hon''ble Supreme Court was swayed by the consideration that the Sessions Judge had found that there was some amount of contributory negligence on the part of the appellant and "having regard to the peculiar circumstances of this case", the court thought it to be an eminently fit case in which the appellant should be released on probation of good conduct u/s 4 of the Act and Section 361 Cr. P.C. In those circumstances, the court directed that his conviction may not affect his service career in view of Section 12 of the Probation of Offenders Act.

14. Same is the position in the case of Shankar Dass (supra). As aforesaid, while laying down the law that the release on probation under the Act does not save the employee from the consequence of suffering a penalty under the Service Rules and Conditions, in the pitiable facts of that case, the court directed the reinstatement of the petitioner. That was a case in which the court held that the penalty of dismissal from service, imposed upon the appellant, was whimsical. The petitioner was employed as a cash clerk by Delhi Milk Supply Department. In 1962 he was prosecuted for breach of trust in respect of a sum of Rs. 500/-. He repaid that amount and pleaded guilty to the charge. The learned Magistrate, First Class, Delhi convicted him u/s 409 of the Penal Code but, in view of the peculiar circumstances relating to the crime and the criminal, he was released under the Probation of Offenders Act. As a result of his conviction, the appellant was dismissed from service summarily w.e.f. 14th April 1964. The Supreme Court took note of the findings of the learned Magistrate that the appellant was a victim of adverse circumstances. His son died in February 1962. His wife fell down from an upper storey and was seriously injured. Thereafter his daughter fell seriously ill and the illness lasted for 8 months. Apparently, under the force of such adverse circumstances and misfortune, the appellant had held back the money in question. The appellant was a middle aged man and it was obvious that it was under compelling circumstances that he could not deposit the money in question in time. The Supreme Court also observed that perhaps Clause (a) of the 2nd proviso to Article 311(2) of the Constitution, confers on the Government the power to dismiss the person from service on the ground of conduct, which led to his conviction on a criminal charge, without a hearing. But, that power like any other power, has to be exercised fairly, justly and reasonably. In the facts of that case, the court held that there were no two opinions that the penalty of dismissal from service imposed upon the employee was whimsical.

15. It would be seen from the decision in Rajbir (supra) & Aitha Chander Rao (supra), that these cases were decided in the peculiar facts of those cases and the Hon''ble Supreme Court did not lay down any proposition of law to the effect that in all cases where a convict is released on probation of good conduct, it should also result in saving the convict from any adverse impact on his service.

Shankar Dass (supra) as noticed above, is a case wherein Hon''ble Supreme Court laid down the law, contrary to the contention of the petitioner herein, but granted reinstatement with back wages to the appellant in the peculiar facts of that case. In these cases the relief was granted to the delinquent officers on humanitarian considerations and the directions given in these cases are those given under Article 142 of the Constitution and do not form precedents Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., ; Indian Bank Vs. ABS Marine Products Pvt. Ltd., .

16. On the other aspect of the validity and effect of the directions given by the learned Sessions Judge, Bikaner in his order dated 4.4.1989, whereby he stated that there shall be no adverse effect on the services of the petitioner, we may refer to the decision of the Hon''ble Supreme Court in Commandent 20 BK. ITB Police Vs. Sanjay Binjola, . In this case, the respondent Sanjay Binjola was convicted u/s 10(n) of the CRPF Act and sentenced to 3 months imprisonment. The appellate court upheld the conviction but reduced the sentence to the extent till the rising of the court and further directed that the order would not adversely affect the service career of the respondent. Relying on Section 386(e) Cr. P.C., the High court upheld this further direction. Before the Supreme Court, the appellant challenged the jurisdiction of the appellate and the revisional court to give such a direction. The Supreme Court held that while exercising the power to amend the order impugned, or to pass consequential or incidental orders u/s 386(e) Cr. P.C. the Appellate Courts power is limited to passing of orders which are permissible under the Cr.P.C. or any other law. Such a power does not confer a jurisdiction upon the Appellate Court to pass orders which tend to interfere with the service career of the convict or affect the rights of a party not before it. The consequential or incidental orders contemplated u/s 386(e) Cr.P.C. are orders which follow as a matter of course being necessary complements to the main orders without which the latter would be incomplete and ineffective. Therefore, after passing the order of conviction and sentence, the criminal court should not have issued any direction relating to the service ordered of the employee which is governed by the Act, Rules made there under and the service Rules governing his condition of services.

17. In our view, Therefore, the directions issued by the learned Sessions Judge, Bikaner to the effect that the conviction of the petitioner shall not have any adverse effect on his service was without jurisdiction and Therefore not binding on the respondent. There is no merit in any of the arguments advanced by the petitioner.

18. No other argument has been raised by the petitioner. With these observations, the petition is dismissed.