

(2007) 03 CAL CK 0042
In the Calcutta High Court
Case No : F.M.A. No. 149 of 2002

Umesh Prosad Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-03-2007

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 15, 16, 17, 18

Railway Protection Force Rules, 1959 — Rule 44, 45, 46, 47

Citation : (2007) 3 CHN 737 : 111 CWN 1111

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Arunabha Basu, J

Bench : Division Bench

Advocate : Asish Sanyal and Achin Kumar Majumdar, for the Appellant;C.R. Bag and Y.N. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—The appellant herein moved a writ petition before this Hon''ble Court challenging the validity and/or legality of the order of dismissal dated 8''' March, 1985 whereby and whereunder the Senior Security Officer, R.P.F., Kharagpur dismissed the writ petitioner from service in exercise of the powers conferred by Rule 47 of the R.P.F. Rules, 1959. The said Rule 47 of the R.P;F. Rules, 1959 is quoted hereunder:

47. Special Procedure in certain case.—Notwithstanding anything contained in Rules 44, 45 and 46, where a penalty is imposed on a member of the Force (a) on the ground of conduct which has led to his conviction on a criminal charge, or (b) 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, the disciplinary authority may consider the circumstances of the case and pass such orders thereof as it deems fit.

2. The learned Single Judge while deciding the writ petition specifically held that the impugned order passed by the disciplinary authority is not supported by the

compliance of the requirement of law since no opportunity of hearing or representation was given to the said writ petitioner. The learned Single Judge also observed that the writ petitioner was not heard before the penalty was imposed by the disciplinary authority and to that extent there was an infraction of the procedural requirement of law but in spite of the aforesaid observations and specific findings the learned Single Judge refused to intervene in the matter in exercise of its power and authority under writ jurisdiction. The relevant extracts from the aforesaid judgment of the learned Single Judge is set out hereunder:

...In our present case of course the delinquent employee was neither given any opportunity of hearing nor any opportunity of submitting any representation which he should have been given by the disciplinary authority while exercising his power under Rule 47 in view of the requirement of law as warranted by judicial interpretation including the interpretation given by the Supreme Court in respect of analogous provisions of other rules. There is no doubt that an order of penalty passed in exercise of Rule 47 entails civil consequences and therefore an opportunity of hearing or representation as an attribute of the principle of natural justice is a requirement implicit in the said rule. There is therefore no difficulty in holding that the impugned order as passed by the disciplinary authority in the present case is not supported by immaculate compliance of the requirement of law as no opportunity of hearing or representation was given to the petitioner.... True it is that in the present case the petitioner was not heard before the penalty was imposed by the disciplinary authority and to that extent there was an infraction of the procedural requirement of law....

3. Mr. Asish Sanyal, the learned Counsel representing the writ petitioner/appellant herein submits that the disciplinary authority cannot automatically pass the order of dismissal in respect of an employee due to the conviction in the criminal case without observing the principle of natural justice, which requires that the concerned employee should be given an opportunity of hearing or representation before imposing any penalty. Mr. Sanyal further submits that a detailed enquiry may be dispensed with by the disciplinary authority while proceeding under Rule 47 of the R.P.F. Rules, 1959 but the said disciplinary authority is bound to consider the circumstances of the case before imposing any penalty and such consideration should be made after granting an opportunity of hearing or to submit a representation about the penalty to be imposed by the disciplinary authority for the conviction of the concerned employee on a criminal charge by a competent Court. Mr. Sanyal also submits that while considering the circumstances of the case under Rule 47 by the disciplinary authority, there should be proper application of mind by the said disciplinary authority upon considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed upon the concerned employee due to the conviction on a criminal charge by a competent Court of Law and according to the said learned Counsel, the same can be objectively determined only if the employee concerned is heard or at least given an opportunity to submit a

representation before passing the final order of punishment.

4. It has been urged on behalf of the appellant that the purported order of dismissal passed in exercise of Rule 47 of the R.P.F. Rules, 1959 entails civil consequences and therefore, an opportunity of hearing or representation as an attribute of the principle of natural justice is a requirement implicit in the said rules, which has also been specifically observed by the learned Single Judge. In support of the aforesaid arguments, learned Counsel of the writ petitioner/appellant cited the following decisions of the Hon'ble Supreme Court:

- 1) The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others,
- 2) 1977(2) SLR 81 [Union of India v. Rajendra Prasad Srivastava] (Paragraphs 7 & 8)
- 3) 1981(3) SLR 274 [Dost Mohammad v. Union of India and Ors.] (Paragraphs 6&7)
- 4) Ranjit Thakur Vs. Union of India (UOI) and Others,
- 5) Union of India and Another Vs. Tulsiram Patel and Others, .

5. Following the aforesaid decisions of the Hon'ble Supreme Court, a Division Bench of the Punjab & Haryana High Court decided the identical issue in the case of Hari Ram v. Dakshin Haryana Bijli Vitaran Nigam Limited and Anr. reported in 2006 (2) SLR 830.

6. Mr. C. R. Bag, learned Counsel of the respondent authorities submits that the appellant had committed theft of railway properties being a Constable of Railway Protection Force and therefore, the authorities are bound to consider the incident seriously. Mr. Bag further submits that the appellant being a Security Personnel entrusted with the duty to protect the railway properties and the said appellant instead of protecting the railway properties committed theft of 11 pieces of Taj Soap and 9 pieces of Cinthol soap. According to Mr. Bag, dismissal from service of the appellant is the appropriate penalty and the same should not be interfered with in the interest of the public. Mr. Bag also submits that the necessities of situation can exclude the principles of natural justice.

7. The learned Counsel of the respondent authorities submits that the case of the appellant had been duly examined on its merits and appropriate order of penalty was passed against the appellant as the said appellant was found guilty of moral turpitude by a competent Criminal Court. It has been specifically urged on behalf of the appellant that there is no necessity to grant any opportunity of personal hearing or submission of written representation to the appellant herein before imposition of penalty in order to comply with the principles of natural justice as the competent Criminal Court already held the writ petitioner guilty of moral turpitude and convicted in the criminal case. According to the learned Counsel of the respondents, the principle of natural justice has no application when the

authority concerned is of the opinion that it would be inexpedient to hold an enquiry. Mr. Bag further submits that the retention of the writ petitioner in service is undesirable or contrary to public interest in view of the fact that the said writ petitioner has already been found guilty of moral turpitude by the competent Criminal Court.

8. It has been categorically submitted by Mr. Bag that since the appellant/writ petitioner has been found guilty of moral turpitude by a competent Criminal Court and became the threat of security of the Railways, there is no other alternative but to dismiss the said writ petitioner from service without even giving any opportunity of hearing and in such circumstances, it cannot be said that there is any violation of the principles of natural justice. The learned Counsel of the respondent authorities submits that in the present case, the appellant/writ petitioner cannot suffer any prejudice for refusing to grant any opportunity of personal hearing as the said appellant/writ petitioner got ample opportunity to defend himself before the Criminal Court, which found the said appellant/writ petitioner guilty of moral turpitude and as a matter of fact, the decision of the Criminal Court was subsequently approved by the Appellate Court and even by the High Court in its revisional jurisdiction.

9. According to the learned Counsel of the respondents-Railway Authorities, the appellant/writ petitioner cannot claim further opportunity of personal hearing and/or consideration of any representation on the plea of observations of the principles of natural justice in spite of getting adequate opportunity to defend himself before the Criminal Court in the criminal proceedings. Mr. Bag submits that the principles of natural justice can be excluded in the facts of the present case on the ground that the said appellant/writ petitioner was granted adequate opportunity to defend himself before the Criminal Court and in spite of all efforts the said appellant/writ petitioner all through lost before the concerned Criminal Court and subsequently before the Appellate Court and also the Revisional Court as a result whereof the order of conviction on a criminal charge was affirmed and therefore, in terms of Rule 47, the respondent authorities are entitled to impose penalty without granting any further opportunity of hearing and/or submission of representation before imposing the penalty.

10. Scrutinising Rule 47 of the RPF Rules we are, however, of the opinion that the conviction in a criminal case cannot automatically authorise the disciplinary authority to impose penalty without considering the circumstances of the case as has been specifically prescribed in the said Rule 47.

11. Rule 47 of the RPF Rules, 1959 clearly provides that the disciplinary authority is bound to consider the circumstances of the case before imposing punishment, which obviously requires an opportunity of hearing. In the instant case, the disciplinary authority passed the impugned order of dismissal without granting an opportunity of hearing to the appellant/writ petitioner herein. As a matter of fact, the disciplinary authority did not even grant an opportunity to the said appellant/writ petitioner to submit written representation before imposition of the penalty.

12. On examination of the judgment under appeal, it appears that the learned Single Judge in the earlier part of the judgment clearly admitted that the order of dismissal was passed against the appellant/writ petitioner under Rule 47 of the R.P.F. Rules, 1959 without giving any opportunity of hearing and further observed that as the order of penalty passed in exercise of Rule 47 entails civil consequences, therefore, an opportunity of hearing or representation is a mandatory requirement of the principles of natural justice since the same is implicit in the said rules. The learned Single Judge, therefore, arrived at a conclusion that the impugned order passed by the disciplinary authority is not supported by immaculate compliance of the requirement of law. The learned Single Judge should not have refused to exercise the authority and power under the writ jurisdiction when it has been established that the mandatory provisions of the rules was not complied with and the principles of natural justice have been flagrantly violated by the disciplinary authority while imposing penalty on the concerned employee, namely, the writ petitioner herein.

13. Mr. Bag, learned Counsel of the respondents-Railway authorities cited the following decisions in support of his arguments that principles of natural justice are not required to be complied with in the facts of the present case by granting any opportunity of personal hearing to the employee concerned. namely, the appellant/writ petitioner herein or even granting any opportunity of submitting representation before passing the final order of punishment:

- 1) Hari Pada Khan Vs. Union of India and others,
- 2) Municipal Committee, Bahadurgarh Vs. Krishan Behari and others,
- 3) Satyavir Singh and Others Vs. Union of India (UOI) and Others, .

14. Rule 47 specifically provides that "the Disciplinary Authority may consider the circumstances of the case and pass such orders thereof as it deems fit". The rules, therefore, casts an obligation on the disciplinary authority to consider the circumstances of the case before passing the order of punishment. While considering the circumstances of the case before passing the final order the disciplinary authority must grant an opportunity of hearing to the concerned employee or at least allow the said employee to submit a representation narrating the facts and circumstances of the case in order to persuade the disciplinary authority not to award any punishment or at least to take a lenient view while awarding punishment. In view of the aforesaid specific mandate of Rule 47, any decision taken by the disciplinary authority without granting an opportunity of hearing to the concerned employee would be denial of principles of natural justice.

15. Mr. Bag, learned Counsel of the respondents referred to and relied on the decision of the Hon''ble Supreme Court in the case of Satya Bir Singh and Ors. (supra) in order to highlight the restrictions imposed by the Hon''ble Supreme Court in the matter of application of the principles of natural justice but in the said decision the Hon''ble Supreme Court specifically held that Rule 19 of the

Central Civil Services (Qualification, Control and Appeal) Rules, 1965 was properly applied to the case of each of the appellants.

16. Mr. Bag also cited a recent decision in the case of Romesh Kumar Sharma Vs. Union of India (UOI) and Others, wherein the Hon"ble Supreme Court upon scrutinising the original records specifically held that the Chief of the Army Staff had followed the requisite procedure. The relevant extract from the aforesaid decision is set out hereunder:

14. Original records were produced before us. A perusal thereof shows that the Chief of the Army Staff had followed the requisite procedure....

17. In the present case, the learned Single Judge specifically held that the writ petitioner was not heard before the penalty was imposed by the disciplinary authority and to that extent there was an infraction of the procedural requirement of law.

18. Therefore, in the facts of the present case, the aforesaid decisions of the Supreme Court cited by the learned Counsel of the respondents cannot be of any help to the said respondents.

19. Mr. Bag referred to another decision of the Hon"ble Supreme Court in the case of K.L. Tripathi Vs. State Bank of India and Others, in support of his arguments. We are, however, of the opinion that the aforesaid decision cannot be made applicable in the facts of the present case as in the aforesaid case the concerned employee" was given an opportunity of personal hearing. The relevant portion from the aforesaid decision is quoted hereunder:

34. ...He did ask for a personal hearing, as we have mentioned hereinbefore and he was given such opportunity of personal hearing. His explanations were duly recorded. He does not allege that his version has been improperly recorded nor did he question the veracity of the witnesses or the entries or the letters or documents shown to him upon which the charges were framed and upon which he was found guilty....

20. Ganesh Santa Ram Sirur Vs. State Bank of India and Another, was also cited by Mr. Bag in support of the proposition that denial of personal hearing cannot "vitate the decision of the disciplinary authority. In the aforesaid case, the concerned employee was admittedly granted opportunity to submit representation before the appellate authority and the appellate authority arrived at its final conclusion on the proposed penalty upon considering the detailed submissions made by the concerned employee. The specific observation of the Hon"ble Supreme Court in the above case is set out hereunder:

29. ...A reading of the show-cause notice and the final order passed by the appellate authority clearly goes to show that the appellate authority has thoroughly considered the detailed submissions made by the appellant and has reached its conclusion on the facts and circumstances of the case and has modified the proposed penalty of dismissal to that of penalty of removal. There is

total application of mind on the part of the appellate authority in arriving at the conclusion in regard to punishment.

Accordingly, the aforesaid decision also cannot be made applicable in the facts of the present case.

21. A Constitution Bench of the Supreme Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, considered the issue relating to dispensation of departmental enquiry in details and the relevant portion of the said decision has also been quoted in the recent decision of the Division Bench of the Punjab & Haryana High Court in the case of Hari Ram v. Dakshin Haryana Bijli Vitaran Nigam Limited and Anr. reported in 2006 (2) SLR 830. In the said decision the Division Bench of the Hon"ble Punjab & Haryana High Court considered the identical issue relating to termination from service in view of the conviction of the concerned employee by the Criminal Court. The relevant portion of the aforesaid judgment is set out hereunder:

5. We have heard learned Counsel for the parties at length. We have also perused the original record which is produced in the Court.

For the foregoing reasons, it is held that:

(i) the departmental punishment of removal or dismissal from Government service is not an essential and automatic consequence of conviction on a criminal charge;

(ii) to (iv) xx xx xx xx

(v) the liability to be departmentally punished for conduct which has led to the conviction of the employee does not attach to the conviction, but attaches to the original conduct (misconduct) which constituted the offence of which the official has been convicted;

(vi) to (xi) xx xx xx xx

(xii) an order of dismissal or removal or for compulsory retirement can be passed under Rule 19(i) (without conforming to the procedure prescribed in Rules 14 to 18) not on the basis of the conviction, but only if the competent authority finds that the relevant misconduct of the concerned Government servant renders his further retention in public service undesirable; and

(xiii) xx xx xx xx

The law has further been clarified by the Supreme Court in the Union of India v. Tulsi Ram Patel AIR 1985 SC 1416 : 1985(2) SLR 576 SC. In the aforesaid case, it has been held as follows:

Where a disciplinary authority comes to know that a Government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose, it will have to peruse the

judgment of the Criminal Court and consider all the facts and circumstances of the case. Once the disciplinary authority reaches the conclusion that the Government servant's conduct was such as to require his dismissal or removal from service or reduction in rank, he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the Government servant concerned by reason of the exclusionary effect of the second proviso, However, conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned Government servant....

22. Having heard the learned Counsel appearing for the parties and considering the decisions cited by the learned Counsel of both the parties we are of the opinion that in the present case, the respondent authorities failed to comply with the requirements of Rule 47 of the R.P.F. Rules by not granting an opportunity of hearing to the appellant/writ petitioner while considering the circumstances of the case before passing the final order of punishment. As observed earlier in terms of Rule 47 of the R.P.F. Rules, 1959, the disciplinary authority was required to consider the circumstances of this case either upon giving an opportunity of personal hearing to the appellant/writ petitioner or at least granting an opportunity to submit representation before passing final order of punishment.

23. In our opinion, the disciplinary authority has failed and neglected to comply with the mandatory requirements of Rule 47 of the R.P.F. Rules, 1959 by not considering the circumstances of the case in an appropriate manner and the same, therefore, vitiates the final order of punishment passed by the disciplinary authority in respect of the employee concerned, namely, the appellant/writ petitioner herein. In the aforesaid circumstances we are of the opinion that the impugned order passed by the disciplinary authority deserves to be quashed on the aforesaid ground of non-complying with the mandatory requirements of Rule 47 by not considering the circumstances of the case upon granting opportunity of hearing to the employee concerned or at least granting an opportunity to submit representation before imposition of penalty by passing the order of punishment.

24. For the aforementioned reasons, the order passed by the disciplinary authority imposing penalty on the appellant/writ petitioner cannot be sustained and the same is, therefore, quashed. Consequently, the impugned judgment and order passed by the learned Single Judge also cannot be approved by us as the said learned Single Judge in spite of coming to the conclusion that the imposition of penalty by the disciplinary authority in the present case was not supported by the requirements of law for not granting opportunity of hearing or submission of representation to the writ petitioner/appellant and further observing that there was an infraction of the procedural requirement of law refused to interfere in the matter upon exercising the power and authority under the writ jurisdiction.

25. We, therefore, set aside the impugned judgment and order passed by the learned Single Judge as the same cannot be sustained in law. The respondents should treat the appellant in the same position where he was placed just before

issuance of the order of punishment by the disciplinary authority and will also pay all admissible arrear dues immediately.

26. The disciplinary authority is granted liberty to pass a fresh order in the matter in accordance with law, if so advised, but such order should be passed within 4 weeks from the date of communication of this order positively. In default, the appellant should be reinstated in service with 50% of back wages and other consequential service benefits. In case it is ultimately decided by the disciplinary authority upon hearing the writ petitioner/appellant that the punishment of dismissal/termination from service is not required to be passed then the said disciplinary authority shall pass appropriate order reinstating the writ petitioner in service forthwith and will also decide the consequential benefits to be granted to the said writ petitioner in accordance with the rules for the period the said writ petitioner had to remain out of service till the order of reinstatement, if any.

27. This appeal thus stands allowed. There will be, however, no order as to costs.

28. Let urgent xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Arunabha Basu, J.

29. I agree.