
(2013) 02 P&H CK 0247
In the Punjab And Haryana At Chandigarh
Case No : CWP-22659-CAT-2011 (O and M)

Union of India and Another	Vs	APPELLANT
Aman Kumar and Another		RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:

Citation : (2014) 1 SCT 5

Hon'ble Judges : Surya Kant, J; R.P. Nagrath, J

Bench : Division Bench

Advocate : G.S. Bal, for the Appellant; G.S. Ghuman, Advocate for the Respondent No. 1, for the Respondent

Judgement

Surya Kant, J.—The Union of India impugns the order dated 11.03.2011 and 24.08.2011 (Annexure P3 & P5) passed by the Chandigarh Central Administrative Tribunal, Chandigarh Bench, Chandigarh in OA No. 374-HR of 2010 and the subsequent Review Application No. 59 of 2011, whereby the order terminating services of the first respondent has been set aside on the ground that no opportunity to defend himself was granted and a further direction to pass an appropriate order in accordance with law besides recovering the financial benefits payable to the first respondent from the Officer responsible for passing such order, has also been issued. A brief reference to the facts is necessitated. The first respondent was appointed as a Gateman in the Indian Railways in Ambala Divisional Office on 12.06.1995. He was involved in a criminal case u/s 376 IPC registered on 15.09.1997 alleging that he forcibly dragged and raped a girl aged about 17 years when she had gone to the fields for answering the call of nature near the Railway line.

2. The first respondent was held guilty and sentenced to undergo 7 years' rigorous imprisonment by the Additional Sessions Judge, Yamuna Nagar vide judgement and order dated 20.03.1999.

3. Keeping in view the conduct of the first respondent which led to his conviction

on a criminal charge u/s 376 IPC and in compliance to Rule 14(i) of the Railway Servants (Discipline & Appeal) Rules, 1968 (in short, "the Rules"), a show cause notice dated 21.02.2000 (Annexure R1) was served giving him an opportunity to make representation against the penalty proposed, namely, removal from service. The representation was required to be submitted within a period of 15 days from the date of receipt of memorandum.

4. Respondent No. 1 meanwhile preferred Criminal Appeal No. 441-SB-1999 in this Court against his conviction and sentence and it appears that vide order dated 04.02.2000, this Court suspended the sentence awarded to respondent No. 1 by the Additional Sessions Judge. Respondent No. 1 thereafter is said to have submitted an affidavit on 27.05.2000 to the Railway authorities that he "shall maintain good moral character with behaviour/conduct here after to" and based thereupon he was reinstated in service.

5. The criminal appeal preferred by respondent No. 1 was finally heard and dismissed by this Court on January 8, 2004 (Annexure A2).

6. According to learned counsel for respondent No. 1, he was taken into custody on 15.04.2004 to serve the remainder of the sentence and was released on 24.10.2007 after undergoing the entire sentence period.

7. Before we advert to the show managed by respondent No. 1 in collusion and connivance, if not conspiracy with the Railway authorities for his retention in service, it appears useful to refer to Rule 14 of the Rules which reads as follows:--

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) above:

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

8. As may be seen, Rule 14 opens with a non obstante clause and the opportunity to be given to a Railway employee convicted of a criminal charge is

limited only on the quantum of punishment to be awarded to him. No enquiry was thus required to be held under the aforesaid Rule nor it is so contemplated within the scheme of the first proviso to Article 311(2) of the Constitution.

9. The Railway authorities, however, instead of taking the consequential action initiated vide show cause notice dated 21.02.2000 (Annexure R1) to its logical conclusion within a reasonable period, not only reinstated the first respondent in service on the pretext of suspension of his sentence by this Court, they also served him with a memorandum of charge-sheet on 31.08.2006 (Annexure R3) inter alia alleging that he was "absent from duty" and hence liable to be proceeded against under the Rules. Since the first respondent was undergoing the sentence awarded in the rape case, it was but obvious that he could not submit his reply to the charge-sheet nor could defend himself before the enquiry officer in the disciplinary proceedings. After holding an ex parte enquiry on the ground of his absence from duty, the services of respondent No. 1 were "terminated" vide an order dated 06.08.2008 (Annexure R5) which was statedly communicated to him on 05.01.2009.

10. The aforesaid departmental action was challenged by the first respondent before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh in OA-374-HR-2010 wherein the Tribunal after expressing displeasure as to why the facts like conviction of the first respondent for a heinous crime of rape u/s 376 IPC or dismissal of his appeal by the High Court were overlooked, has set aside the order of "termination" of services of respondent No. 1, as noticed earlier, on the ground that the principles of natural justice were violated. Liberty, however, has been granted to the Railway authorities to pass an appropriate order taking into consideration the conviction of the first respondent as well and also to recover the monetary benefits payable to the first respondent from the officer responsible for this illegal action.

11. The aggrieved Railway Authorities/Union of India have approached this Court.

12. We have heard learned counsel for the parties at some length and have gone through the record.

13. It is indeed unarguable that on the basis of the conduct of a Government employee which leads to his conviction on criminal charge, and if such charge involves moral turpitude like a heinous crime of rape, the competent authority is well within its right to consider the nature and gravity of the criminal charge and dismiss or remove him from service by invoking its power under proviso to Article 311(2) of the Constitution. Rule 14 of the Rules is also in consonance with the mandate of Article 311(2) as it facilitates the competent authority to take action accordingly. It was for this precise reason that the show cause notice dated 21.02.2000 (Annexure R1) was served upon respondent No. 1. The manner in which the Authorities proceeded thereafter, however, calls for a serious introspection to find out whether there was a calculated move to help and

retain respondent No. 1 in service?

14. It was way back that the doubt, if any, were removed by the Hon'ble Supreme Court in Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, , laying down that mere suspension of sentence of a Government servant by the Appellate Court or pendency of his criminal appeal is no impediment or legal embargo to not to proceed against him under proviso to Article 311(2) as in that event, the action taken by the disciplinary authority shall be subject to the final outcome of the criminal appeal.

15. The aforesaid view has been consistently restated by the highest court of the land and followed by the High Courts including this Court in a catena of decisions. Yet the settled proposition of law was bypassed and overlooked while reinstating respondent No. 1 in service only because this Court had suspended his sentence even though "conviction" continued to be operative.

16. Shockingly, after dismissal of the criminal appeal by this Court on 08.01.2004 when respondent No. 1 had been taken into custody to undergo the remaining sentence and when there was no challenge by him to the order of conviction or sentence, the Railway Authorities, for the reasons best known to them, thought it appropriate to treat him as "absent from duty". The plea taken before us that the Railway Authorities did not come to know about the dismissal of appeal of respondent No. 1 is ex facie false and a ruse to wriggle out of the consequences which are likely to fall upon the officers responsible for this gravest misconduct. If the Authorities had no knowledge of the order, it simply exhibits their sheer negligence as involvement of respondent No. 1 in the rape-case, his conviction by Sessions Court were very much on the record of the authorities.

17. The effect of the order passed by the learned Tribunal on a technical ground, namely, non-compliance of principles of natural justice in the domestic enquiry held against respondent No. 1, if allowed to sustain, means that despite his conviction u/s 376 IPC way back in the year 1999, he is entitled to all the service benefits for over 10 years though he ought to have been dismissed or removed from service at the earliest but in any case in February, 2000 when the show cause notice to this effect was duly served on him.

18. The Tribunal on a literal interpretation of the Rules may be right in saying that no domestic enquiry could be held unless a reasonable opportunity of being heard was afforded to the delinquent employee. However, in view of the uncontroverted facts brought on record, it was imperative upon the Tribunal to find out whether such an exercise, in the facts and circumstances of the instant case, was of any consequence. When the factum of conviction u/s 376 IPC involving moral turpitude was undisputed and the only procedural requirement under Rule 14(i) of the Rules was to give an opportunity of representation against the proposed punishment and the said procedure having been minutely followed in the instant case by issuing the show cause notice dated 04.02.2000, the subsequent charge-sheet or disciplinary action held in furtherance thereto,

were wholly inconsequential and immaterial.

19. It is not his case or of Railway Authorities that the first respondent ever represented against the show cause notice dated 21.02.2000. After expiry of 15 days period, the notice dated 21.02.2000 became final and operative by virtue of the force it drew from rule 14(i) of the Rules *ibid*. In other words, respondent No. 1 having failed to show any cause as to why he deserved a lesser punishment and the disciplinary authority having taken a decision to remove him from service, the first respondent stood removed from service on expiry of period of 15 days from the date of receipt of show cause notice dated 21.02.2000. We hold accordingly. Once the action had commenced under the Rules, it could be stalled in accordance with the provisions of the Rules only.

20. In the instant case, after issuance of show cause notice and giving 15 days" time to the first respondent to submit his representation on the limited issue of quantum of punishment which, in no circumstance, can be less than what Article 311(2) of the Constitution postulates, namely, dismissal or removal from service or reduction in rank, there was no other choice for the Disciplinary Authority except to "dismiss" or "remove" the first respondent from service, for no order of reduction in rank could be passed as he was a directly-recruited Gateman. Since the disciplinary authority, had decided to remove the first respondent from service, he stood removed from service for all intents and purposes w.e.f. 08.03.2000 i.e. after the expiry of the period of 15 days of the show cause notice dated 21.02.2000. The subsequent exercise of issuing a charge-sheet on the ground of absence from duty or the disciplinary action pursuant thereto, were an exercise in futility and so was the order dated 06.08.2009 (Annexure R5) of termination services of respondent No. 1.

21. For the reasons afore-stated, the writ petition is allowed and the order dated 11.03.2011 and 24.08.2011 (Annexure P3 & P5) passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh in setting aside the termination order or in permitting the authorities to pass a fresh order will have to be set aside with, declaring that the first respondent stands removed from service w.e.f. 8th March, 2000 and is not entitled to any service benefits. Ordered accordingly.

22. Copy of this order, however, be sent to the Secretary, Ministry of Railways, Government of India as well as the General Manager, Northern Railways Region, Ambala to hold a fact-finding enquiry, determine the responsibility of the Officers/officials responsible for helping/favouring respondent No. I for retention in service and take suitable disciplinary action against them. Dasti.