

(1985) 07 DEL CK 0016

In the Delhi High Court

Case No : Regular Second Appeal No. 27 of 1985

Union of India

APPELLANT

Vs

Kasturi Lal

RESPONDENT

Date of Decision : 29-07-1985

Acts Referred:

Citation : (1986) 29 DLT 1 : (1986) 10 DRJ 164 : (1986) LabIC 728 : (1986) 1 RCR(Criminal) 425

Hon'ble Judges : Gian Chand Jain, J

Bench : Single Bench

Advocate : Dalip Singh and Anita Sachdeva, for the Appellant;

Judgement

G.C. Jain, J.

(1) Kasturi Lal, the respondent was appointed by the Northern Railways as Points man on December 26, 1953. He was promoted as Shunts man and confirmed to that post in 1959. He was, thereafter posted as Luggage Porter Jamadar.

(2) On March 15, 1972 a police party saw him removing a bushirt from a package lying in a wagon standing on the railway platform. He was arrested. On search he was found wearing pants over his own pants. That pants were also taken into possession. Investigations revealed that the bushirt and the pants were part of the Railway Property booked with the railways for carriage. He was prosecuted and convicted for an offence u/s 3 of the Railway Property (Unlawful Possession) Act, 1956 on November 25, 1975. The learned Metropolitan Magistrate, however, released him on probation on his furnishing a personal bond with one surety in the amount of Rs. 2000.00 for a period of one year and in the meantime to keep peace and be of good behavior.

(3) The Divisional Commercial Superintendent thereafter issued a notice to the respondent dated January 25, 1977 intimating him that the conduct for which he had been convicted by the criminal court did not justify his continuation in the service. He was asked to show cause why he be not removed from service under

rule 14(1) of the Railway Servants (Discipline and Appeal) Rules. 1968 (for short "the Rules"). The respondent submitted his reply dated February 17, 1977 It was submitted that he had completed the period of probation and his conduct had been very good during the said period. He had also undergone sterilization .Many employees had committed offences of similar nature but were still in service.

(4) On examining the Court's judgment and the reply to the show cause notice submitted by the respondent the Divisional Commercial Superintendent removed the respondent from service vide order dated June 17, 1977. Appeal filed against the said order was dismissed by the Senior Divisional Commercial Superintendent, holding that. no extenuating circumstances had been made out. Review petition filed against this order was dismissed by the Divisional Superintendent, Northern Railway in January 1978.

(5) Feeling aggrieved, the respondent brought a suit seeking a decree for declaration that his removal from service was illegal and he was entitled to reinstatement with all benefits. The pleas raised were (1) Rule 14(1) of the Rules was inapplicable and his conviction in the circumstances could not be the basis of his removal from service in view of the provisions contained in Section 12 of the Probation Offenders Act; (2) he had completed the period of probation to the satisfaction of the superior authorities and thereafter could not be removed from service. His removal amounted to a second punishment, and (3) the order was illegal as it had been made without holding any enquiry and was violative of principles of natural justice.

(6) Learned Subordinate Judge held that in view of the provisions contained in Section 12 of the Probation of Offenders Act, the conviction of the respondent stood obliterated. He said "thus it will be considered that there was no conviction at all so far as it relates to the services of the plaintiff." He also held that the authorities concerned had not considered the case of the respondent sympathetically, the misconduct was not such a grave misconduct as to invite a major penalty like removal from service and, in any case, the disqualification stood removed because of the provisions contained in Section 12 of the Probation of Offenders Act. With these findings he decreed the suit on June 3, 1983.

(7) Affirming the findings of the learned Subordinate Judge the appeal was dismissed by the learned Additional District Judge on November 21, 1984. Feeling aggrieved the Union of India has filed this second appeal.

(8) The Railway Servants (Discipline and Appeal) Rules have been made by the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Rule 14(1) of the Rules which is relevant for the purpose of this appeal reads as under :

"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) (iii) the disciplinary authority may consider the circumstances of the case and make such order thereon as it deems fit."

(9) The penalty under this rule, without any doubt, could be imposed only when a railway servant has been convicted on a criminal charge. In the absence of a conviction on "a criminal charge" this rule would have no application.

(10) The respondent admittedly, was convicted by the learned Metropolitan Magistrate on November 25, 1975 for an offence u/s 3 of the Railway Property (Unlawful Possession) Act, 1956 and thus he had been convicted of a criminal charge for his conduct within the meaning of Rule 14(1).

(11) On this conviction the respondent was not sentenced at once to any punishment but instead released on probation of good conduct. What is the effect of the order releasing him on probation of a good conduct ? Does Section 12 of the Probation of Offenders Act obliterate the conviction so as to make Rule 14(1) of the Rules in application to his case ? The reply, in my view, must be in the negative. The findings recorded by the courts below on this point were erroneous.

(12) Section 12 of the Probation of Offenders Act reads :

"12. Removal of disqualification attaching to conviction:-Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law : Provided that nothing in this Section shall apply to a person, who, after his release u/s 4, is subsequently, sentenced for the original offence".

(13) It is clear from the perusal of these provisions that it removed the disqualification attaching to a conviction provided by some law other than the Probation of Offenders Act, Railway Property (Unlawful Possession) Act, 1956 does not provide for any disqualification envisaged by Section 12. This Section, Therefore, does not wash away the conviction or conduct for which the employee had been convicted. It does not say that a person who after conviction has been dealt with u/s 3 or 4 of the Probation of Offenders Act. shall be deemed not to have been convicted. These provisions do not provide immunity against departmental punishment for the misconduct for which the employee was convicted. The law on this point is now well settled. (See The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, and Shankar Dass Vs. Union of India (UOI) and Another,).

(14) Rule 9(1) of the Rules prohibits the making of an order, inter alia, imposing the penalty of removal from service of a railway employee except after an inquiry held, as far as may be, in the manner, provided in that rule and Rule 10. Rule 14(1) is, however, an exception to this rule. It incorporates the principle contained in proviso (a) to Article 311(2) of the Constitution of India. No inquiry, Therefore, was required for imposing the penalty of removal from service on a railway

employee on the ground of conduct which has led to his conviction on a criminal charge. There is no violation of the principle of natural justice in such a case because the concerned railway employee must have had full opportunity to defend himself in the criminal court where the conviction against him was recorded

(15) Miss Anita Sachdev, learned counsel appearing for the respondent relying on the Supreme Court decision in Divisional Personnel Officer v. Challappan (supra), contended that the respondent was still entitled to a hearing which included personal hearing before making the order. On examining the Rule 14(1) the Supreme Court observed :

"THE rule-making authority deliberately used the word "consider" and not "determine" because the word "determine" has a much wider scope. The word "consider" merely connotes that there should be active application of the 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 on 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 inquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employee."

(16) According to this decision the conviction of a delinquent employee was to be taken as sufficient proof of misconduct. The disciplinary authority thereafter was to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee. The final order could be made only after hearing the employee.

(17) In Shankar Dass's Case (supra), however, it was observed in para 7 that the employee may perhaps not be entitled to be heard on the extent of penalty since clause (a) of the second proviso to Article 311(2) made the provision of that Article inapplicable when a penalty was to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge.

(18) I need not go into the question whether the employee was required to be heard at all or not because in the present case the respondent was served with a notice intimating him that the conduct for which he had been convicted was such that it was not desirable to keep him in service any more and he was asked to show cause why he be not removed from service. The respondent submitted a reply. The impugned order was made after considering the judgment of the Metropolitan Magistrate and the reply submitted by the respondent. Thus the disciplinary authority had embarked on a summary enquiry as envisaged in the decision of the Supreme Court in Divisional Personnel Officer v. Challappan

(supra). The respondent had been given a hearing.

(19) Miss Sachdev, learned counsel for the respondent contended that the respondent was entitled to a personal hearing which was not given. The above decision of the Supreme Court nowhere provides for a personal hearing. In my view no personal hearing was required.

(20) Learned counsel for the respondent then contended that the stolen property consisted of a bushirt and pant. Their value was negligible and Therefore the punishment awarded was disproportionate to the misconduct.

(21) The order imposing the penalty, as held by the Supreme Court in Shankar Dass's Case (supra), has to be fair, just and reasonable. In the present case, however, the respondent was convicted of an offence u/s 3 of the Railway Property (Unlawful Possession) Act, 1956 One of the object of enacting the said Act, as stated in the statement of objects and reasons, was to provide effective steps to curb the rising incidence of pilferage and theft of railway property. The respondent was caught red handed stealing a bushirt. He was also found in possession of a pant reasonably suspected of having been stolen. The misconduct, in my view, was grave. The respondent a railway servant, was under a duty to protect the railway property and not to steal it. There were no extenuating circumstances. The value of the stolen property was of no effect in view of the nature of the offence. It cannot be said that the order was unfair, unjust or unreasonable or that the punishment was unconscionable or grossly out of proportion so as to justify interference by the civil court in the discretion exercised by the disciplinary authority. Jaswant Singh Vs. Pepsu Roadways Transport Corporation and Another, , was not a case of theft by the employee and has no application to this case.

(22) As seen earlier the order was made after the service on the respondent with the notice to show cause. The order was made after examining the judgment of the Magistrate and the reply to the show cause notice. It cannot be said that it was a mindless or whimsical order. Admittedly there was no evidence to prove discrimination.

(23) For all these reasons I accept the appeal, set aside the judgments and decrees of the learned courts below and instead dismiss the suit.

(24) The parties are left to bear their own costs throughout.