

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Arindam Sinha

And

The Hon'ble Justice Suvra Ghosh

MAT 1174 of 2012

Union of India & Ors.
Versus
Umesh Prasad Singh

For appellant/applicant : Mr. Rajdip Roy , Adv.

For respondent/writ petitioner : Mr. Achin Kumar Majumdar, Adv.
Mr. Pratik Majumdar

Heard on : 13th April, 2021.

Judgment on : 13th April, 2021.

Arindam Sinha, J. : This appeal is against order dated 18th May, 2007 passed by the disciplinary authority awarding punishment of dismissal from service with effect from 19th May, 2007. The award was in exercise of power given to the disciplinary authority by clause (a) in rule 47 of Railway Protection Force Rules, 1959. The clause in the rule is reproduced below:

“47, Special Officer 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,

(b)

the disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit.”

Mr. Roy, learned advocate appears on behalf of appellants and relies on judgment of Supreme Court in **Divisional Personnel Officer vs. T. R. Chellappan** reported in **(1976) 3 SCC 190**, paragraph 9. We reproduce below, relevant passage from the paragraph:

“.....It was for this reason that the founders of the Constitution thought that where once a delinquent employee has been convicted of a criminal offence that should be treated as a sufficient proof of his misconduct and the disciplinary authority may be given the discretion to impose the penalties referred to in Article 311(3), namely, dismissal, removal or reduction in rank. It appears to us that proviso (a) to Article 311(2) is merely an enabling provision and it does not enjoin or confer a mandatory duty on the disciplinary authority to pass an order of dismissal, removal or reduction in rank the moment an employee is convicted. This matter is left completely to the discretion of the disciplinary authority and the only reservation made is that departmental inquiry contemplated by this provision as also by the Departmental Rules is dispensed with. In these circumstances, therefore, we think that Rule 14(i) of the Rules of 1968 only incorporates the principles enshrined in proviso (a) to Article 311(2) of the Constitution.....”

He submits, impugned order should be set aside in appeal and the order of the disciplinary authority restored, alongwith order passed by the appellate authority rejecting respondent’s appeal.

Mr. Majumdar, learned advocate appears on behalf of respondent writ petitioner and relies on judgment of Supreme Court in **Union of India vs.**

Tulsiram Patel reported in **AIR 1985 Supreme Court 1416**, paragraph 127.

We reproduce below, relevant passage from the paragraph:

“.....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 concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case.....”

He submits, there should be no interference with impugned order.

We have considered the authorities cited. We are clear in our mind that separate proceeding is not required for the purpose of disciplinary authority considering the circumstances and awarding punishment. We have also seen that clause (i) in rule 14 of Railway Servants (Discipline and Appeal) Rules, 1968 is similar to clause (a) in rule 47 of Railway Protection Force Rules, 1959.

Supreme Court in **Tulsiram Patel** (supra) said, in addition to that said by it in **T. R. Chellappan** (supra), the disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank. The disciplinary authority has to pass the requisite order. A government servant, who is

aggrieved by the penalty imposed can agitate in appeal, revision or review as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case.

We find there is no illumination regarding facts and circumstances of the case as considered in order dated 18th May, 2007 of the disciplinary authority, impugned in the writ petition. There are recitals of the criminal case and conviction, earlier award of punishment and challenge thereto but the circumstances that led to the conviction do not find place in the order for anyone to discern it to be a requisite order. It is simply confirmation of earlier order dated 8th March, 1985, on the additional recital of respondent writ petitioner having had been given opportunity of hearing. We looked at earlier order dated 8th March, 1985, of the disciplinary authority. We reproduce it below:

“S.E.Rly.

Office of the Sr. Security Officer RPF/KOP

Dismissal order

Whereas Sri U. P. Singh ASK A175 of P.D.P.K. (now at SRCS post) of Shalimar Division has been convicted on a Criminal Chage under R.P. (UP) Act.

And whereas it is considered that the conduct of the said Sri U.P. Singh Sl. No. A278 which has been to his conviction, is such as to render his further retention in this public service undesirable.

Now, therefore, in exercises of the powers conferred by Rule 47(A) of KPT Rules 59 the undersigned herby dismisses the said Sri U.P. Singh RSK A275 from the service with effect from 8.3.83 March, 1985.

Sd/-

Disciplinary Authority

Station KOP

Dated 8th March, 1985”

Order dated 18th May, 2007 passed by the disciplinary authority does not meet with the requirement of it being a requisite order as per law declared in **Tulsiram Patel** (supra). The quashing of it is confirmed but impugned order varied to the extent that the disciplinary authority will pass requisite order, wherefrom it will appear that circumstances of the case, which led to appellant's conviction, is the basis of attraction and award of punishment, if awarded.

The fresh order must be passed within eight weeks from date.

The appeal is disposed of.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)