

Central Administrative Tribunal, Allahabad.

Registration T.A.No.521 of 1987

Union of India ... Defendant (Appellant) - Applicant
Vs.
Rudrabir Singh ... Plaintiff-Respondent.

Hon.D.K.Agrawal, JM
Hon.K.Obayya, AM

(By Hon.D.K.Agrawal, JM)

Civil Appeal No.222 of 1985 instituted in the Court of District Judge Gorakhpur against the judgement and decree dated 31.5.1985 passed by Munsif Gorakhpur in Suit No. 1779 of 1983, on receipt in the Tribunal under the provisions of S.29 of the Administrative Tribunals Act XIII of 1985, was registered as T.A.No. 521 of 1987, as indicated above.

2. The facts are that the Respondent- Rudrabir Singh- employed as Chaukidar in N.E.Railway, Gorakhpur was arrested on 10.5.1981 in a case u/s. 411 IPC. The department suspended him w.e.f. 10.5.1981 itself. The trial was held in the Court of Judicial Magistrate, Railway at Gonda and concluded on 20.11.1981. The Respondent having confessed his guilt in his statement u/s.313 Cr.PC ~~was found~~ was found guilty and convicted. However, he was extended the benefit of S.4 of the Probation of Offenders Act (20 of 1958) (hereinafter referred to as the Act) and instead of being asked to undergo imprisonment forthwith, was released on probation of good conduct. The competent authority taking into account the conduct of the Respondent with regard to his involvement in a case u/s.411 IPC as well

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as the past conduct, issued a notice dated 28.2.1983/1.3.83 to show cause for taking action under rule 14(1) of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the DA Rules). The Respondent submitted reply to the notice on 11.3.1983. The competent authority passed the impugned order of removal from service on 7.5.1983. The Respondent preferred an appeal on 12.5.83 which was rejected by the competent authority on 5.8.1983.

3. Thereafter, the Respondent filed the aforementioned Civil Suit No. 1779 of 1983 in the Court of Munsif Gorakhpur for a declaration that the impugned order dated 7.5.1983 and the appellate order dated 5.8.1983 are illegal, against the provisions of law, unconstitutional and malafide. The suit was decreed and the impugned orders were quashed. The Union of India preferred Civil Appeal No.222 of 1985, which has been received on transfer in this Tribunal after the enforcement of Act XIII of 1985.

4. Learned Munsif proceeded to quash the impugned order of removal from service on the sole ground that no disqualification was attached to the order of conviction if the convict was released on probation under the provisions of S.3 or S.4 of the Act. Thus, reliance was placed on the word "disqualification" occurring in S.12 of the Act. S.12 provides that notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of S.3 or S.4 "shall not suffer disqualification" attaching to a conviction for an offence under such law. We have very carefully considered the matter. We are of opinion that the learned Munsif erred in appreciating the correct position of law. Hon'ble Supreme

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Court in Shankar Dass Vs. Union of India and another
(A.I.R. 1985 S.C.-772) has laid down as follows :-

"Where a Govt. servant was convicted of a criminal charge, he could not be said to be not liable to be dismissed in view of provisions of Sec.12 of the Probation of Offenders Act when he is released under the beneficial provisions of that Act.

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.....The order of dismissal from service consequent upon a conviction is not a "disqualification" within the meaning of S.12. There are statutes which provide that persons who are convicted for certain offences shall incur certain disqualifications. For example Chapter III of the Representation of the People Act, 1951 entitled "Disqualifications for membership of Parliament and State legislatures" and Chapter IV entitled "Disqualifications 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 S.12 of the Probation of Offenders Act.

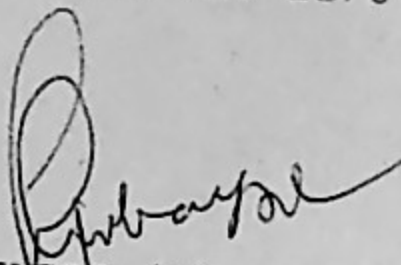
5. In the circumstances, the competent authority was entitled to take into account the conduct -past and present- of the delinquent employee for the purpose of imposing penalty within the meaning of R.14(1) of the D.A. Rules. The order of dismissal from service consequent upon a conviction notwithstanding release under the provisions of the Act was not a deterrent factor to impose such a penalty. The only question, therefore, is as to whether the conduct was or was not taken into account while imposing the penalty under Rule 14(1) of the DA Rules. In this connection, we have perused the notice to show cause, the removal order and the appellate order. Perusal of these three documents indicates that the Respondent's conduct was such that it attracted discretion of the competent authority under R.14(1) of the DA Rules inasmuch as he was found guilty of cheating a passenger of a large sum

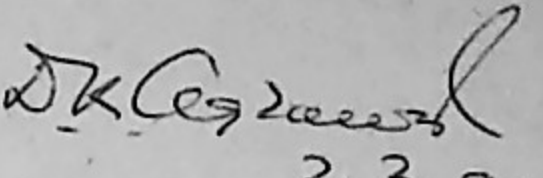
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of money which was recovered from his possession. The Respondent also gave a false statement before the Railway Magistrate that he was aged 60 years while, in fact, his age according to the service record at that time was only 53 years. Therefore, we do not consider that it is a fit case for interference.

6. In view of the above discussions of facts and law, we are of opinion that the appeal is liable to be allowed. The Appeal is accordingly allowed. The judgement and decree passed by learned Munsif Gorakhpur is set aside and the impugned order dated 7.5.1983 is confirmed. The parties are left to bear their own costs.


MEMBER (A)


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MEMBER (J)

Dated 2.3.1990
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