FULL BENCH

Before R. S. Narula, Bal Raj Tuli and Man Mohan Singh Gujral, JJ.

OM PARKASH,—*Petitioner.*

versus

THE DIRECTOR, POSTAL SERVICES, AND OTHERS.—*Respondents.*

Civil Writ No. 2192 of 1970.

December 7, 1971.

Probation of Offenders Act (XX of 1958)—Sections 3, 4 and 12—Government servant convicted on a criminal charge but dealt with under sections 3 or 4—Order imposing punishment on such government servant, simply because of the conviction—Whether sustainable—Dismissal, removal or compulsory retirement on the basis of misconduct leading to the conviction without conforming to the prescribed procedure of show cause notice—Whether legal—Section 12—Whether obliterates such misconduct.

Held, that the departmental punishment of removal or dismissal from government service is not an essential and automatic consequence of conviction on a criminal charge. An order imposing a punishment on a government servant simply because of his conviction on a criminal charge without reference to the conduct which led to the conviction cannot be sustained. The authority competent to take disciplinary action against a government servant, convicted on a criminal charge, has to consider all the circumstances of the case and then to decide whether the conduct of the delinquent official which led to his conviction is such as to render his further retention in public service undesirable and if it is so, whether to dismiss him or to remove him from service or to compulsorily retire him. To be punished departmentally for misconduct is not a "disqualification" within section 12 of the Probation of Offenders Act, 1958, but is a liability under the relevant service rules. Section 12 of the Act does not wash away or obliterates the conduct of the employee which has led to his conviction and does not, therefore, give him any immunity against departmental punishment, nor exonerates him from liability to departmental punishment for such conduct if it amounts to misconduct under the relevant rules. The original misconduct of a government servant does not merge with his conviction so as to become non-existent after conviction. Hence an order of dismissal or removal or for compulsory retirement of a government servant, convicted on a criminal charge but dealt with under sections 4 or 5 of the Act, can be passed under the service rules without conforming to the procedure prescribed, not on the basis of the conviction, but only if the competent authority finds that the relevant misconduct of the government servant renders his further retention in public service undesirable. (Para 21)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, or any other appropriate writ, order or direction be issued quashing the impugned orders dated 15th September, 1969 and 17th April, 1970 and reinstating the petitioner with effect from the date of his suspension on 12th May, 1966 and also for the payment of all his arrears of pay.

HARBANS LAL, N. D. GOYAL AND BALWANT SINGH MALIK, ADVOCATES, for the petitioner.

R. N. MITTAL, ADVOCATE FOR ADVOCATE-GENERAL, HARYANA WITH MR. SANTOSH KUMAR AGGARWAL, ADVOCATE, for the respondents.

JUDGMENT

R. S. Narula, J.—This writ petition for quashing the order of the second respondent (the Postmaster, Amritsar), dated September 15, 1969, whereby the petitioner was dismissed from service consequent upon his conviction under section 420/511, and 465/471 of the Indian Penal Code in connection with the submission by him of false medical reimbursement claims, was admitted by the Motion Bench (myself and Suri, J.) on July 1970, to a Full Bench in view of the doubt entertained by the Bench about the correctness of the view expressed by a learned Single Judge of this Court (P. D. Sharma J.) in *Kehar Singh* v. *Regional Employment Officer, Chandigarh*, (1), wherein it has been held that section 12 of the Probation of Offenders Act, 1958 (hereinafter called the Act) prohibits the removal from service of a Government servant who after conviction has been dealt with under section 3 or section 4 of the Act, as conviction of such a Government servant cannot be taken into consideration for removing him from service.

(2) The facts which have led to the filing of this petition are neither complicated nor disputed. The petitioner who was originally a temporary packer in the Postal Department with effect from July, 1948 (Annexure R-1) was appointed by respondent No. 2 as temporary Postman *vide* order, dated September 12, 1950 Annexure R-2). He took charge of that post on September 15, 1950, *vide* his charge report Annexure R-3. During the course of his employment as a Postman, he was convicted by a judgment of the Criminal Court, dated March 20, 1969 (Annexure 'A' to the petition) for the

(1) 1967 S.L.R. 527=1967 P.L.R. 331.

commission of offences referred to in the opening sentence of this judgment on the finding that he had knowingly used a forged cash-memo for claiming medical reimbursement and had tried to cheat the Government in that manner. Instead of sentencing the petitioner to any term of imprisonment, the Magistrate released him on probation under section 4 of the Act on his entering into a bond of Rs. 1000/- undertaking to appear and receive the sentence of imprisonment when called upon to do so during the period of six months from the date of the judgment. Subsequent to his conviction, the petitioner was dismissed from service by the order of his appointing authority (who is respondent No. 2, the Postmaster, Amritsar), dated September 15, 1969 (Annexure 'B'). The said order reads :—

> "Whereas Shri Om Parkash son of Shri Charanjit Rai, Postman No. 37, Amritsar H.O. (under suspension) was convicted on criminal charges under sections 120-B, 420/511, 467, 468 and 471/109 Indian Penal Code in the Court case No. 153/67 SPE Ambala F.I.R. No. 44/66) by the Court of Shri S. K. Jain, Special Judicial Magistrate 1st Class, Punjab, Patiala, on March 20, 1969, in connection with submission of false medical reimbursement claims by him.
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> I, the undersigned, now, therefore, dismiss Shri Om Parkash son of Shri Charanjit Rai, Postman, Amritsar H.O. from Government service with effect from September 16, 1969, forenoon."

The validity and legality of the above quoted order has been assailed in this petition filed on July 15, 1970, under Articles 226 and 227 of the Constitution.

(3) The argument relating to the order of dismissal being violative of Article 311(1) of the Constitution has not even been touched by the counsel at the hearing of the petition for the obvious reason that the petitioner was appointed as well as dismissed by the same authority, namely, the Postmaster, Amritsar. Mr. Harbans Lal, learned counsel for the petitioner, has put in the forefront the argument that section 12 of the Act prohibits the dismissal of the petitioner from service on account of his conduct which has led to his conviction as the petitioner has been dealt with under section

4. The provisions of sections 3, 4 and 12 of the Act may be noticed at this stage in order to appreciate the submissions made by the learned counsel for the parties. Those provisions are in the following terms:—

"3. When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.

Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

4. (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties to appear and receive sentence when called upon during such period, not exceeding three years, as the Court may direct, and in the meantime to keep the peace and be of good behaviour :

Provided that the Court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the Court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the Court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the Court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The Court making a supervision order under sub-section (3), shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the Court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The Court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders the sureties, if any, and the probation officer concerned.

12 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 under section 4, is subsequently sentenced for the original offence."

Though the Magistrate did not specifically refer to section 4 of the Act, we are deciding this case on the assumption that the petitioner

was dealt with under that provision. The only question that calls for decision in this respect is whether his having been so dealt with exonerates the petitioner from liability to departmental proceedings for the original conduct which has led to his conviction or not. As I read the purview of section 12 it does no more than remove any "disqualification" which may be "attaching to a conviction of an offence" under any law other than the Act. The proviso to section 12 is not relevant for our purposes as admittedly it has no application to the present case. According to Mr. Harbans Lall, the dismissal from service is a disqualification attached to the conviction. This, however, is not correct. No service rule has been cited before us which entails automatic dismissal or removal from service consequent on mere conviction by a Criminal Court. On the other hand rule 19(i) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter called the 1965 Rules), under which the impugned action is claimed to have been taken, merely provides that the disciplinary authority may consider the circumstances of the case and make such orders thereon as it thinks fit in the course of the proceedings for the imposition of any penalty on a Government servant "on the ground of conduct which has led to his conviction on a criminal charge" notwithstanding anything contained in rules 14 to 18 which rules deal with the normal procedure for taking disciplinary action against a delinquent Government servant. The relevant part of rule 19 is quoted below :—

> "Notwithstanding anything contained in rule 14 to rule 18:—
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> (i) where any penalty is imposed on a Government 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 orders thereon as it deems fit :
>
> Provided that * * * *"

The above quoted rule shows that the penalty which can be imposed on a Government servant under that rule (without following the normal procedure of notices and inquiry laid down in rules 14 to

18) is not for his having been convicted on a criminal charge but for the misconduct which has led to his such conviction. Departmental punishment is, therefore, not a necessary and automatic consequence of conviction on a criminal charge. The competent disciplinary authority has to consider all the circumstances of the case and then make such orders in relation to the question of imposition of penalty on the Government servant for his original conduct which has led to his conviction. Following parts of sub-paragraph 2 of Instruction (8) issued by the Central Government in regard to the action to be taken in cases where Government servants are convicted on a criminal charge further make this position clear :—

> "The following principles should apply in regard to action to be taken in cases where Government servants are convicted on a criminal charge :—
>
> (i) In a case where a Government servant has been convicted in a Court of law of an offence which is such as to render further retention in public service of the Government servant *prima facie* undesirable, action to dismiss, remove or compulsory retire him from service should not be taken before the period for filing an appeal has elapsed or, if an appeal has been filed, before the appeal has been decided in first Court of appeal.
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> (ii) — — — — —
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> (iii) — — — — — —
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> (iv) — — — — —
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> (v) Action to dispense with the services of the Government servant should be taken promptly as soon as the first appeal is decided against the Government servant and before the second appeal is filed. This would obviate further loss to Government in the form of subsistence allowance to the Government servant.
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> (vi) In a case where the conviction is not for an offence of the type referred to in sub-paragraph (i) above the disciplinary authority should call for and examine a copy of the judgment with a view to decide on taking such further departmental action, as might be deemed appropriate. The principles enunciated in

sub-paras. (i) to (iv) above, shall apply *mutatis mutandis* in regard to the action to be taken in such cases."

(4) What section 12 removes is a disqualification attaching to a conviction. In my opinion, neither liability to be departmentally punished for misconduct is a disqualification, nor it attaches to the conviction. "Disqualification" in its ordinary dictionary meaning connotes something that disqualifies or incapacitates. To disqualify a person for a particular purpose means to deprive that person of the qualities or conditions necessary to make him fit for that purpose (page 655 of Webster's Third New International Dictionary). Disciplinary proceeding cannot be called a disqualification, but is at best a liability incurred in certain circumstances. The Central Civil Services (Conduct) Rules, 1964 (hereinafter called the 1964 Rules) apply to every person appointed to a civil service or a post in connection with the affairs of the Union. Admittedly those Rules are applicable to the petitioner also. Rule 3 of the 1964 Rules requires every Government servant to maintain at all times (i) absolute integrity, and (ii) devotion to duty; and prohibits the doing of anything "which is unbecoming of a Government servant." Whatever goes contrary to the requirement of rule 3(1) would, in my opinion, be misconduct on the part of the concerned Government servant. Rules 4 to 16 of the 1964 Rules contain several restrictions or mandatory prohibitions against a Government servant, the violation of which may amount to misconduct. Rule 12 of the 1965 Rules authorises the imposition of any of the penalties enumerated in rule 11 of those Rules on a Central Government servant in accordance with the procedure laid down in rules 14 to 18. The inquiry required to be held under those provisions is for ascertaining the truth of any imputation of misconduct or misbehaviour against a Government servant. Those Rules are made, insofar as the three major penalties are concerned, for fulfilling the requirements of Article 311 (2) of the Constitution, and so far as the minor punishments are concerned, for satisfying the principles of natural justice. Rules 19 envisages cases in which a Criminal Court has held a proper enquiry and found a person guilty of the relevant misconduct constituting a particular offence. The principles of natural justice would not require a second inquiry for ascertaining the truth of those facts by departmental authorities for inflicting the departmental punishment on a Government servant after a full-fledged inquiry by a regular Court. That is why rule 19 excludes

the application of the procedure prescribed by rules 14 to 18 to a case where the relevant conduct has led to a conviction on a criminal charge. Similarly, the proviso to clause (2) of Article 311 of the Constitution excludes the operation of the purview of that clause to a case of conviction on a criminal charge. Whereas the purview of Article 311(2) states that none of the major punishments shall be inflicted except after an inquiry in which the delinquent Government official has been informed of the charges against him and given a reasonable opportunity of being heard in respect of the charges and given a further opportunity of making representation against the proposed penalty, proviso (a) to that clause states that "where a person is dismissed or removed or reduced in rank on the ground of misconduct which has led to his conviction on a criminal charge," the purview of clause (2) of Article 311 shall not apply.

(5) Liability to be proceeded against departmentally with a view to be punished is, as already stated, not a disqualification. The other reason why section 12 of the Act does not help the petitioner is that the departmental proceedings are not attached to the conviction of the offence Departmental proceedings are not taken because the man has been convicted. The proceedings are directed against the original misconduct of the Government servant. Only the procedure varies in a case where the necessity of a formal inquiry into the allegations of misconduct is rendered unnecessary on account of such an inquiry having been held by a criminal Court on the basis of a much higher standard of proof requisite for the conviction of an accused. Section 12 does not wash away the misconduct of the Government servant. No part of section 12 is intended to exonerate a Government servant of his liability to departmental punishment for misconduct. This provision does not afford immunity against disciplinary proceedings for the original misconduct. What forms basis of the punishment is the misconduct and not the conviction. In fact it is no fault of a Government servant that he has been convicted by a Court. His fault lies in the action which has led to his conviction. Section 12 merely removes any disqualification attaching to conviction. Illustrations of such disqualification may be found in service rules relating to different services which provide *inter alia* that a person who has been convicted of an offence involving moral turpitude would not be qualified to be appointed to the service. Section 8(1) of the Representation of the People Act, 1951, provides that a person convicted of an offence punishable under certain specified provisions of law "shall be disqualified for a period of six years from

the date of such conviction." Sub-section (2) of that section states that a person convicted by a Court in India for any offence and sentenced to imprisonment for not less than two years shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of five years since the release. Of course, this is subject to the proviso to that sub-section. Section 11A of that Act provides that if any person is convicted after the commencement of the 1951 Act of certain specified offences under the Indian Penal Code, or is found guilty of a corrupt practice during the course of the trial of an election petition, he shall be disqualified for voting at any election. These are illustrations of disqualifications attaching to certain convictions. If an appointing authority holds that a person who has been dealt with under section 4 of the Act is disqualified from being appointed to a particular service on account of his conviction, such an order may be liable to be set aside because of the provisions of section 12 of the Act. But, as already stated, there is admittedly no service rule applicable to the petitioner according to which his mere conviction disqualifies him from continuing to hold the office of Postman.

(6) Mr. Harbans Lal placed reliance for his proposition on two decided cases. First is the judgment of P. D. Sharma, J. in *Kehar Singh's case* (1) (supra). A somewhat similar argument was advanced in that case on behalf of the Government servant. It, however, appears from the following passage in the judgment which deals with the point that the State counsel did not seriously contest the proposition :—

> "The learned counsel for the petitioner submits that the pharseology of section 12 of the Act is express, explicit and mandatory, and it admits of no implication. In his view the petitioner's conviction under section 380, Indian Penal Code, could not have formed a basis for his removal from service because his case had been dealt with by the trial Magistrate under section 4 of the Act. His argument finds support from the clear wording of section 12 of the Act. The learned counsel for the respondents could not successfully controvert the point made out by the learned counsel for the petitioner. The impugned order is bad in law because it rested on the petitioner's conviction under section 380, Indian Penal Code, which could not have been taken into consideration by respondent No. 1 and under section 12 of the Act."

With the greatest respect to the learned Judge, the view taken by him cannot be supported on the language of section 12. That conviction could not form basis for the removal of a Government servant is no doubt correct. But to say that this is so because the Government servant's case has been dealt with under section 4 of the Act does not appear to be justified. The learned Judge did not discuss the matter and did not give any reason for the view which prevailed with him, but merely stated that the argument found "support from the clear wording of section 12 of the Act." I have already analysed section 12. It nowhere says that conviction would either form or not form the basis of an order for removal from service of a person who has been dealt with under section 4 of the Act.

(7) The other case on which the learned counsel for the petitioner relied is the Division Bench judgment of the Delhi High Court in *Shri Iqbal Singh, Ex-Head Constable Police* v. *Inspector General of Police, Delhi, and others*, (2). Iqbal Singh had been convicted under section 337 of the Indian Penal Code but was released on probation under section 4 of the Act and on payment of certain amount to the injured person by way of compensation. After the dismissal of his appeal, the competent police authority passed an order dismissing Iqbal Singh from the police force on his having been convicted in the above-mentioned case. That action was taken under sub-rule (2) of rule 16.2 of the Punjab Police Rules, 1934. There was some dispute in that case about the applicability of the unamended or the amended sub-rule (2) of rule 16.2. The judgment of the Court did not, however, turn on that issue. The relevant argument advanced before the Division Bench was "that on account of his (Iqbal Singh's) conviction. he could not suffer the disqualification of incurring dismissal" under Punjab Police Rules because of the provisions of section 12 of the Act. The writ petition of Iqbal Singh was allowed because (i) the order of dismissal had been based merely upon his conviction in the criminal case, and (ii) because it was held that the disqualification contained in sub-rule (2) of rule 16.2 of the Police Rules attached to the conviction on a criminal charge and, therefore, violated the express immunity provided by the provisions of section 12 of the Act. We are in respectful agreement with the decision of the Delhi High Court on the first point, but with the greatest respect to the learned Judges of that Court, we are unable to agree with the second conclusion and the reasoning given in support thereof. So far

(2) 1971 S.L.R. 257=A.I.R. 1970 Delhi 240.

as the first question is concerned, the order of dismissal in that case did not show clearly that it was based on anything except the conviction. The order did not show that the competent authority had at all considered the nature or gravity of the offence or recorded any conclusion of his own regarding Iqbal Singh having rendered himself undesirable for retention in service on account of his conduct which had led to his conviction. On the second point the decision of the Division Bench of the Delhi High Court was based on the following observations :—

> "The word 'disqualify' is also stated to mean making someone unfit for something. The further meaning given is that the person may be deprived within the meaning of the word 'disqualify' of any right or privilege. We are of the view that the words 'disqualification, if any, attaching to a conviction of an offence' as used in section 12 of the Act would include a person's losing his right or qualification to remain or to be retained in service. Section 12 of the Act clearly saves the convict from suffering such disqualification attaching to his conviction. In respect of his conviction, the petitioner had the protection of section 12 and he was saved from suffering any disqualification such as the one which resulted in his dismissal.
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> Without a conviction neither the amended nor the unamended sub-rule (2) would be attracted. It is the conviction to which attaches the disqualification of attracting the provisions of sub-rule (2). In our view the dismissal of the petitioner is unsustainable even in terms of the amended sub-rule (2) of rule 16.2 of the Punjab Police Rules because of the express immunity which is provided by the provisions of section 12 of the Act."

The fallacy in the argument advanced before us on the basis of the judgment of the learned Judges of the Delhi High Court lies in assuming that liability to dismissal or removal from service is a disqualification and in arguing that the supposed disqualification attaches to the provisions of rule 19(i). Another point which the Delhi High Court decided in favour of Iqbal Singh relates to the requirement of natural justice in affording a delinquent Government official an opportunity of being heard before inflicting any departmental punishment on him in spite of his conviction. With this

aspect of the matter, I will deal while disposing of the second contention of Mr. Harbans Lal. It is somewhat unfortunate that the learned counsel who appeared for the State in *Iqbal Singh's case* (2) (supra) did not place before the Division Bench of the Delhi High Court various previously decided cases which were directly on the point.

(8) In *R. Kumaraswami Aiyar* v. *The Commissioner, Municipal Council, Tiruvannamalai and another,* (3), a learned Single Judge of the Madras High Court was called upon to decide a similar issue. R. Kumaraswami Aiyar, the petitioner in that case, (hereinafter called Aiyar) was a municipal employee who had been convicted of the offence of cheating under section 420 Indian Penal Code, but instead of being sentenced to imprisonment was released on entering into a bond in the sum of Rs. 500 with two sureties under section 4(1) of the Madras Probation of Offenders Act (3 of 1937), which provision, for all practical purposes, is like section 4 of the Act. Acting under rule 3 of the rules regulating the conditions and tenure of municipal employees, the Municipal Council issued a memorandum to Aiyar to show cause why his service should not be terminated on account of his conduct which had led to his conviction. A petition under Article 226 of the Constitution filed by Aiyar in the Madras High Court for prohibiting the Municipal Council from continuing the departmental proceedings against him with a view to terminate his service because of the provisions of section 12-A of the Madras Act (which for all practical purposes contains provisions similar to section 12 of the Act) was dismissed by the Madras High Court, and an argument of the type advanced before us was repelled by the learned Judge of that Court with the following observations :—

"In my view section 12-A is incapable of the construction sought to be put upon it on behalf of the petitioner. What the section says is 'shall not suffer any disqualification attaching a conviction' and there is a vital distinction between a disqualification attaching to a conviction and the taking of proceedings consequent upon such a conviction.

If for instance the petitioner is dismissed from service because he has been found guilty of an offence involving moral turpitude, it cannot be said that he is suffering from a disqualification attaching to a conviction. What section

(3) 1957 Cr. L. J. 255.

12-A has in view is an automatic disqualification flowing from a conviction and not an obliteration of the misconduct of the accused. In my judgment the possibility of disciplinary proceedings being taken against a person found guilty is not a disqualification attaching to the conviction within the meaning of section 12-A of the Probation of Offenders Act.

In the present case the conviction does not act as any disqualification for holding any office, that is, it has no automatic effect. Only the moral turpitude involved in the petitioner's act, is treated as a ground for removing him from service. If this is the proper construction of section 12-A of the Probation of Offenders Act, it is clear that the first respondent, the Municipal Commissioner had jurisdiction to proceed under rule 3 of the statutory rules and there is no substance in this writ petition. The rule is discharged and the petition is dismissed."

(9) The next case in which a similar question was raised before the Madras High Court is *Embaru (P)* v. *Chairman, Madras Port Trust,* (4). In that case Embaru approached the High Court to get quashed the order of the Madras Port Trust dismissing him from service on the ground that the Presidency Magistrate while convicting him of an offence under section 420 of the Indian Penal Code had not awarded any sentence of imprisonment to him, but had instead directed Embaru to be released on his own bond with a surety under section 4(1) of the Madras Probation of Offenders Act, 1937, to appear and receive sentence when called upon during the period of one year. It was argued before Veeraswami, J. that in view of the probation order Embaru had earned immunity from dismissal or any other punishment. The argument was repelled with the following observations :—

"It is no doubt true that the object of section 12-A is that a person on conviction and release on probation under section 4(1) shall be free from any disqualification attaching to a conviction for the offence concerned. But, in my opinion, this does not mean that a probation order is a bar to an order of dismissal from service. This dismissal is not one attaching to a conviction and it does not automatically

(4) 1963 (1) L.L.J. 49.

flow from it. It is only a consequence which is attaching to or flow from a conviction that is within the ambit of section 12-A, and not any result which may be based upon a conviction, be it after or without an enquiry. The words 'any disqualification' by themselves may perhaps be wide enough to cover a case of dismissal. But the scope of these words has to be interpreted in the context of the word 'attaching'. Unless the disqualification is necessarily annexed to or flows from a conviction without anything more, the section can afford no protection."

Veeraswami, J. also placed reliance for taking the above view on the earlier judgment of the Madras High Court in R. *Kumaraswami Aiyar's case* (3) (supra).

(10) A Division Bench of the Andhra Pradesh High Court was called upon to deal with the same point in *Akella Satyanarayana Murthy* v, *Zonal Manager, Life Insurance Corporation of India. Madras,* (5). The Act applicable in that case was the same Madras Probation of Offenders Act, 1937. The relevant service rule in *Akella Satyanarayana Murthy's case* (5) was sub-regulation (4) of regulation 39 of the Life Insurance Corporation of India, Staff Regulations (1960), which for all practical purposes is a copy of rule 19 of the 1965 Rules. After referring to the judgment of Rajgopala Ayyangar. J. in *R. Kumaraswami Aiyar's case* (3) *and of Veerswami*. J. in *Embaru case,* (4), the learned Judges held as below :—

"We accept the reasoning of the said decisions and as section 12 of the Probation of Offenders Act, 1958 (Central Act XX of 1958) is substantially similar to section 12-A of the Madras Probation of Offenders Act, 1937 (Act III of 1937), we are of the view that what section 12 of the Central Act has in view is an automatic disqualification flowing from a conviction and not an obliteration of the misconduct of the official concerned. The disciplinary authority is not precluded from proceeding under regulation 39(4)."

The rest of the judgment dealt with the merits of that particular petition which discussions would be relevant for dealing with the third point raised by Mr. Harbans Lal.

(5) A.I.R. 1969 A.P. 371.

(11) The last decided case on this point is the Division Bench judgment of the Madhya Pradesh High Court in *Premkumar, son of Ramchandra Rao Damle, Nagpur* v. *Union of India, New Delhi and others*, (6). In that case the learned Judges were dealing with the precise provisions of section 12 of the Act and rule 19 of the 1965 Rules. The Division Bench judgment of the Delhi High Court in *Iqbal Singh's case*, (2) as well as the Division Bench judgment of the Andhra Pradesh High Court in *Akella Satyanarayana Murthy's case* (5) were cited before the learned Judges. They held that the judgment of the Delhi High Court dealt with a case providing for termination of service on conviction and not on the basis of misconduct. They, however, agreed with the view taken by the Andhra Pradesh High Court and repelled the argument which is now sought to be pressed before us by Mr. Harbans Lal.

(12) After a careful consideration of the relevant provisions of law, I am of the considered opinion that the view taken by the two learned Single Judges of the Madras High Court and the Division Benches of the Andhra Pradesh High Court and the Madhya Pradesh High Court is the correct view on the subject, and with the greatest esteem in which I hold the learned Judges of the Delhi High Court, I am constrained to observe that I am unable to subscribe to that view as it cannot be spelt out of the clear language of section 12 of the Act.

(13) There is no force in the argument of Mr. Harbans Lal to the effect that the relevant conduct of the Government servant ceases to exist "after being merged into conviction". There is no warrant for this proposition. Under the head "conviction" it has been stated under section 258(2) of the Code of Criminal Procedure that where in the course of trial of a warrant case, the Court does not proceed in accordance with the provisions of section 349 or section 562, the Court shall, if it finds the accused guilty, pass sentence upon him according to law. Similarly it has been provided in section 306 of the Code of Criminal Procedure in relation to trials before High Courts and Courts of Sessions that if an accused is "convicted", the Judge shall (unless he proceeds in accordance with the provisions of section 562) pass sentence on him according to law. The original conduct for which a person is convicted always stands apart and cannot be said to be either obliterated on conviction or merged with conviction. The conduct holds out independently of the conviction.

(6) 1971 Lah. I.C. 823.

(14) Nor do I find any relevance in the submission of the learned counsel for the petitioner about the objects of enactment of section 12 of the Act as brought out in the authoritative pronouncement of their Lordships of the Supreme Court in *Rattan Lal* v. *The State of Punjab*, (7). It was held by their Lordships that the Act is a milestone in the progress of the modern liberal trend of reform in the field of penology, and the Act is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. The object of enacting the Act cannot, in my opinion, help us in interpreting section 12. The object of releasing offenders on probation in order to reform them has relation to the requirements of the society in general. The object of punishing the delinquent Government servant has relation to the requirements of the Government which is the employer. It cannot be successfully argued that one of the objects of enacting section 12 is to allow persons guilty of misconduct and misbehaviour to continue in Government service after their conviction even if the competent authority comes to the conclusion that the retention of such a person in service would not be conductive to the public interest.

(15) The second contention of Mr. Harbans Lal was that rule 19 of the 1965 Rules imposes a disqualification on a convicted employee by depriving such an employee of the opportunity of being given show-cause notice and of an enquiry otherwise necessary under rules 14 to 18 simply because of his conviction, and that section 12, therefore, operates to remove that disqualification with the result that the procedure laid down in rules 14 to 18 has to be followed even in the case of a convict. We are unable to agree with this contention. Right to receive a show-cause notice and the right to insist on an enquiry are procedural rights and cannot be called "qualifications". The word "qualification" has been defined in Aiyar's Law Lexicon of British India as something which makes a man fit to hold an office (as that of a Director of a company); that which makes anv person fit to do a certain act, or the circumstances or group of circumstances whereby an individual is rendered eligible for a post. Qualification relates to the fitness or capacity of a person for a particular post, pursuit or profession. In Webster's Dictionary "qualification" is defined to mean "any natural endowment or any acquirement which fits a person for a place, office or employment, or enables him to sustain any character with success. "A person is stated to be disqualified for an office if he is personally ineligible. He may also be disqualified if some condition

(7) A.I.R. 1965 S.C. 444.

precedent to his election or appointment has not been fulfilled (Stroud's Judicial Dictionary, Volume I, page 847). It does not, therefore, appear to be correct to say that a statutory rule which takes away the right conferred by any such rule to receive a notice or to get an enquiry held creates a disqualification within the meaning of section 12 of the Act. It is the Government servant's right, conferred on him by Article 311(2) of the Constitution and rules 14 to 18 of the 1965 Rules, to receive a notice and to have the benefit of an enquiry before he can be departmentally punished. A right is not, however, synonymous with a qualification.

(16) It was then argued by Mr. Harbans Lal in the same connection that even if the rights conferred by the purview of Article 311(2) and by rules 14 to 18 of the 1965 Rules are taken away or abrogated by the proviso to Article 311(2) and by rule 19 of the 1965 Rules, the principles of natural justice would still hold the field and the impugned order is liable to be set aside as it has been passed without compliance with the well-known principle of *audi alteram partem*. This argument appears to be without any force. So far as the Constitution is concerned, the main provision governing the services is Article 310 according to which every Government servant holds office during the pleasure of the President of India or the Governor of the State, as the case may be. That pleasure is subject only to such provisions as are contained in the Constitution. The safeguard contained in Article 311(2) of the Constitution is limited by the proviso thereto. No right can, therefore, be claimed under one part of the Constitution which has been expressly taken away in relation to certain cases by another part of the Constitution itself. The principles of natural justice are not embodied and cannot be elevated to the position of fundamental rights as observed by their Lordships of the Supreme Court *in Union of India* v. *Colonel J. N. Sinha and another,* (8). It has been held by their Lordships that the rules of natural justice can operate only in areas not covered by any law validly made and that a statutory provision can either specifically or by necessary implication exclude the application of any or all the principles of natural justice. The Supreme Court has held that in such an eventuality the Court cannot ignore the mandate of the legislature or of the statutory authority and read into the concerned provision the principles of natural justice.

(17) The principles of natural justice contained in rules 14 to 18 of the 1965 Rules have been specifically taken away by rule 19,

(8) 1970 S.L.R. 748.

and in the face of that statutory provision, the Court cannot supplant the principles of natural justice so as to nullify the effect of rule 19. The Division Bench of the Delhi High Court has held in *Iqbal Singh's case* (2) (supra) that the principles of natural justice can be invoked in a case under rule 19. With the utmost respect to the learned Judges of the Delhi High Court, we have not been able to subscribe to that view. The second contention of the learned counsel also, therefore, fails.

(18) It was lastly submitted by the learned counsel that the impugned order is liable to be struck down as the petitioner has not been dismissed for the conduct which led to his conviction, but for the conviction itself. I have already observed that I am in agreement with the decision of the Division Bench of the Delhi High Court on that point. A reading of the order (which has already been quoted verbatim in an earlier part of this judgment) shows that the conviction and the punishment have been related therein as the cause and the effect, and the two have been connected with the word "therefore". No mention, has been made of the fact that the original conduct of the petitioner was being considered by the Postmaster, Amritsar, and no finding has been recorded by the competent authority about the retention of the petitioner in service (due to his such conduct being not desirable. Even in Akella Satyanarayana Murthy's *case* (5) (supra), the impugned order was ultimately struck down on a similar ground. In that case the competent authority had merely stated (after referring to the factum of conviction) that he was dismissing Akella Satyanarayana Murthy "in view of the conviction". In the standard forms for orders which may be passed by the competent authority under the 1965 Rules, Form 10 refers to an order under rule 19. I am reproducing below the said standard form including its heading: —

"STANDARD FORM OF ORDER FOR DISPENSING WITH THE SERVICES ON THE FIRST APPEAL BEING DECIDED AGAINST THE GOVERNMENT SERVANT

No. . . . . . .

Government of India
Ministry of ....

Dated :

ORDER

WHEREAS Shri (here enter name and designation of the Government servant) has been convicted on a criminal charge, to writ, under section (here enter the section or sections under which the Government servant was convicted) of (here enter the name of the statute concerned.)

AND WHEREAS it is considered that the conduct of the said Shri (here enter the name and designation of the Government servant) which has led to his conviction is such as to render his further retention in the public service undesirable ;

NOW, THEREFORE, in exercise of the powers conferred by rule 19(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and in consultation with the Union Public Service Commission, the President/undersigned hereby dismisses/removes/ directs the said Shri (here enter name and designation of the Government servant) shall be compulsorily retired from service with effect from (here enter the date of dismissal/removal/compulsory retirement.)

Station :

Date : Disciplinary Authority."

The standard from reproduced above clearly brings out the fact that the order under rule 19 imposing a major punishment cannot be passed against a Government servant who has been convicted, unless the order shows that the competent authority has considered the conduct of the delinquent official and has come to a finding that in the opinion of such an authority, the conduct of the employee which has led to his conviction "is such as to render his further retention in the public service undesirable." No such finding can be spelt out from the impugned order even by implication.

(19) As already stated there is no provision in the relevant rules providing for anybody being dismissed or removed from service in view of or on account of a conviction on a criminal charge. Disciplinary action can be taken for the conduct which had led to conviction or a criminal charge if such conduct constitutes misconduct according to the relevant service rules. An apt illustration was given in this connection by my learned brother Tuli, J. during the hearing of this

petition. It was pointed out that if a Government servant assaults his neighbour and is convicted for the same, it may not be possible to take any departmental action against him (unless the competent authority holds that the conduct of the delinquent official was unbecoming a Government servant), but if the official was convicted for assaulting his immediate officer in his office, he would be liable to be dealt with departmentally. This illustration shows that the rule making authorities have justifiably not provided for disciplinary action being taken in every case of conviction, and have left the matter to be decided by the competent authority in relation to the original conduct and not the conviction.

(20) A Division Bench of this Court (Gurdev Singh and A. D. Koshal, JJ.) has also held in *Rajinder Singh* v. *The Punjab State and another*, (9), that neither the language of Article 311(2) of the Constitution, nor the relevant service rules indicate that as soon as a public servant is convicted on a criminal charge, he must suffer one of the prescribed punishments. On that basis it was observed that before inflicting any of the three major punishments, namely, dismissal, removal or reduction in rank, the competent authority has to apply its mind to the facts of the case to examine the conduct of the public servant concerned which had led to his conviction and to determine the nature or quantum of punishment which his conduct calls for. We are in respectful agreement with the view expressed by the Division Bench in that regard. Inasmuch as the petitioner before us has been dismissed from service on account of the conviction alone without any finding about his conduct (which led to his conviction) justifying his dismissal, the impugned order cannot be sustained.

(21) As we have decided to set aside the impugned order on this ground, it is not necessary to deal with the fourth submission of Mr. Harbans Lal about the appellate order upholding the order of dismissal being bad on account of non-compliance with the requirements of rule 27 of the 1965 Rules inasmuch as it has not dealt with the justification for the quantum of punishment.

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 :

(9) I.L.R. (1971) 1 Pb. & Hr. 514=1969 Curr. L.J. 821.

(ii) the authority competent to take disciplinary action under rule 19(i) of the 1965 Rules against a Central Government servant convicted on a criminal charge has to consider all the circumstances of the case and then to decide (a) whether the conduct of the delinquent official which led to his conviction is such as to render his further retention in public service undesirable; (b) if so, whether to dismiss him or to remove him from service, or to compulsorily retire him; and (c) if the said conduct of the official is not such which renders his further retention in service undesirable whether the minor punishment if any, should be inflicted on him;

(iii) to be punished departmentally for misconduct is not a "disqualification" within the meaning of section 12 of the Act, but is a liability under the relevant service rules ;

(iv) to be retained in Government service or to remain in service is not a qualification, but a right in certain circumstances subject to the relevant constitutional provisions and service rules ;

(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) the difference in the procedure prescribed for imposing any of the three major penalties for misconduct of a Government servant who has not been convicted by a Criminal Court for that conduct on the one hand the procedure to be followed for imposing one of those penalties on an official who has been so convicted on the other, lies only in this that the purview of Article 311(2) and the provisions of rules 14 to 18 of the 1965 Rules apply to the first case, but do not apply to the second. Rule 19 does not contain any disqualification in the same sense as rules 14 to 18 do not contain any qualification ;

(vii) whereas in the case of a conviction, the application of the purview of Article 311(2) is excluded by proviso (a) to

that provision and the application of rules 14 to 18 of the 1965 Rules is excluded by rule 19(i) of those Rules, the application of the principles of natural justice is excluded by the proviso to Article 311(2) read with the purview of Article 310 and by the operation of rule 19 in view of the fact that the concerned Government servant must naturally have had full opportunity to defend himself in the Criminal Court where the conviction can be recorded only after returning a finding of guilt on the basis of a much higher standard of proof than that which is enough for punishing a person in departmental proceedings ;

(viii) section 12 of the Act does not wash away or obliterate the conduct of the employee which has led to his conviction, and does not, therefore, give him any immunity against departmental proceedings, nor exonerates him from his liability to departmental punishment for such conduct if it amounts to misconduct under the relevant service rules ;

(ix) the original misconduct of a Government servant does not merge with his conviction so as to become non-existent after conviction ;

(x) *Kehar Singh's case* (1) (supra) insofar as it relates to the interpretation of section 12 of the Act has not been correctly decided ;

(xi) the view of the Madras High Court, the Andhra Pradesh High Court and the Madhya Pradesh High Court regarding the meaning and effect of section 12 of the Act appears to be more correct than that of the High Court of Delhi ;

(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) an order imposing a punishment on a Government servant simply because of his conviction on a Criminal charge without reference to the conduct which led to the conviction cannot be sustained.

In view of the findings already recorded by me and the legal position as enunciated above, I am constrained to allow this petition and to quash the impugned order whereby the petitioner was dismissed from service. I must, however, make it clear that nothing contained in this judgment absolves the petitioner of his liability, if any under the relevant service rules for being dealt with departmentally for his conduct which led to his conviction. The competent departmental authority would be at liberty to proceed against the petitioner under rule 19(i) of the 1965 Rules afresh, if considered necessary or proper by such authority to do so, in accordance with the law laid down in this judgment. In the circumstances of the case, I would leave the parties to bear their own costs.

(22) *B. R. Tuli, J.*—I entirely agree and have nothing to add.

(23) *Man Mohan Singh Gujral, J.*—I agree.

K. S. K.

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