DELHI HIGH COURT

Director of Postal Services

Vs.

Daya Nand

L.P.A. No. 90 of 1971.
(Mr. V.S. Deshpande, Mr. S. Rangarajan and Mr. B.C. Misra, JJ.)

31.01.1972

JUDGEMENT

V.S. Deshpande, J

1. In view of clause (2) of Article 311 of the Constitution, no person holding a civil post under the Union.

> "Shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed but only on the. basis of the evidence adduced during such inquiry."

2. One of the exceptions to the above rule is enacted in proviso (a) to Article 311(2) which runs as follows:-

> "Provided that this clause shall not apply (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge."

Tirkha Ram, petitioner in Civil Writ No. 217 of 1969 and Daya Nand, respondent in L P.A. 90 of 1971, were employees of the Indian Posts and Telegraphs Department. Tirkha Ram along with another was charged under sections 468/34 and 420/511 Indian Penal Code. Both of them pleaded guilty to the charges and were convicted of the the same. Instead of being sentenced, however, they were placed on probation for one year under section 4 of the Probation of Offenders Act, 1958. Thereupon Tirkha Ram

was dismissed under proviso (a) to Article 311(2) of the Constitution without being given an opportunity either to rebut any charges or to show cause against any proposed punishment. He, therefore, filed Civil Writ 217 of 1969 for getting the order of dismissal quashed by this Court.

3. Daya Nand was charged for the offence punishable under section 52 of the Indian Post Office Act, 1898 and was convicted of the same. He was also put on Probation for one year under section 4 of the Probation of Offenders Act. He was also dismissed thereafter under proviso (a) to Article 311(2) without being given an opportunity to rebut any charges or to show cause against any proposed punishment. He filed Civil Writ 81 of 1968 to get the order of dismissal quashed by this Court. Rajinder Sachar J. allowed his writ petition on the ground that in view of section 12 of the Probation of Offenders Act, in 1958, the order of dismissal could not be passed under proviso (a) to Article 311(2). Hence the appeal by the Government.

The grounds on which the orders of dismissal were challenged are two-fold, namely:-

(A)That the orders were contrary to Article 311(2) including proviso (a) thereto, independently of section 12 of the Probation of Offenders Act, 1958; and

(b) That the orders were contrary to Article 311(2) including proviso (a) thereto read with section 12 of the Probation of Offenders Act, 1958.

4. The objections falling in the first class were as follows :-

1. That the impugned orders were contrary to the audi alter am partum rule of natural justice. For, in the Criminal trail leading to the conviction on a criminal charge the accused had the opportunity to rebut the charges but he had no opportunity to show cause against the departmental punishment of dismissal to be inflicted on him. As such opportunity was not given before the impugned orders were passed, they were contrary to natural justice and void.

(2) That the impugned orders were passed simply because Tirkha and Daya Nand were convicted on criminal charges. The power to pass an order of dismissal under proviso (a) to Article 311(2) was to be exercised "on the ground of conduct which has led to conviction." The orders were not passed on the ground of conduct and were, therefore, void.

(3) The power to punish was a quasi-judicial one and, therefore, the orders of punishment should have been speaking orders giving reasons for punishment. As no reasons were given for the punishment in these orders, they are void.

5. The objection falling in the second class, i.e., (4) is that even if the orders of

dismissal could be passed under proviso (a) to Article 311(2) prior to the enactment of the Probation of Offenders Act, 1958, the situation had changed thereafter. Section 12 of the said Act enacts:-

> "Notwithst and in 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, attach ing to a conviction of an offence under such law."

It is only because of the conviction that an accused person loses, the right of hearing guaranteed by the principal pari of Article 311(2) This loss of the right of hearing amounts to a "disqualification" which is removed by section 12 in respect of a person put on probation. Such a person, is therefore, entitled to the hearing as prescribed under the principal part of Article 311(2) as the proviso (a) thereto is made inapplicable to the case of such persons by section 12.

We consider these objections below.

> (1) The rule of natural justice, namely, audi alter am partum, simply requires that a civil servant should be heard before he is visited with civil consequences. An action adverse to the rights or property of a person should not be taken against him unless he is given an opportunity to show cause against it. In Article 311(2), this right is elaborated and a Government servant is granted an opportunity to defend himself at two stages, namely,(l) to rebut the charges are held to have been substantiated and the proposed punishment is intimated to him, to show cause why the punishment should not be inflicted on him. These two opportunities are given. however, only because of the express language of Article 311(2) and not because the unmodified rule of audi alteram partem requires them. *(Suresh Koshy George v. The University of Kerala,* [1] and Management Shahdara (Delhi) Saharanpur *Light Railway Co. Ltd. v. S. S. Railway Workers' Union,* [2.]

Proviso (a) to Article 311(2) exempts the punishing authority from compliance with the giving of both these opportunities under Article 311(2). The reason for the dispensing with both these opportunities by proviso (a) seems to be the following. Firstly, the accused person has a much better opportunity of rebutting the charges against him in a criminal trial as compared to a departmental inquiry. Secondly, the conviction on a criminal charge is generally a greater punishment than the departmental punishment of dismissal, removal, reduction in rank etc. As the accused had an opportunity to show cause why he should not be convicted and sentenced by a

criminal court it is thought needless that he should be given an opportunity to show cause against the lesser penalty of a departmental punishment such as a dismissal or removal. At any rate, for whatever reasons, the framers of the Constitution have decided by enacting proviso (a) that both the opportunities in Article 311(2) should be dispensed with.

6. It is true that proviso(a)to Article 311(2)'simply exempts the punishing authority from the obligation to follow the procedure prescribed in Article 311(2) as a condition precedent to the imposition of the punishment of dismissal, removal or reduction in rank. It does not prohibit the said authority from following the whole or part of the said procedure if it so wishes. But the authority cannot be compelled to exercise such a discretion by this Court when proviso (a) clearly relieves the authority from the obligation to follow the said procedure. A Statute or statutory rule or administrative action contrary to natural justice can be struck down by this Court only if it is unconstitutional, In other words, it is only if the principal of natural justice underlying a constitutional provision (such as a fundamental right) or the procedure prescribed in Article 311(2) is violated that the impugned order can be quashed. But in view of proviso (a) to Article 311(2), the contention that the impugned orders could not have been passed without giving an opportunity to Tirkha Ram and Daya Nand to rebut the charges against them or at any rate to show cause against the proposed punishments is not backed by any constitutional decision. We are supported in this view by a recent decision of a Division Bench of the *Madhya Pradesh High Court in Premkumar v. Union of India,* [3] It is, therefore, rejected. (2) It may be mentioned that just as the procedure prescribed in Article 311(2) is dispensed with in impossing major punishments of dismissal, removal or reduction in rank after conviction on a criminal charge under proviso (a) to Article 311(2) similarly rule 19 of the Central Civil Services (Classification, Control Appeal) Rules, 1965 dispenses with the procedure after conviction in imposing other major penalties and the minor penalties listed in rule 11 thereof. The Jaw has thus been made consistent and no natural justice procedure is required to be followed in imposing a major or a minor penalty after the conviction of the employee concerned of a criminal offence.

7. In *lqbal Singh v. Inspector General of Police, Kashimri Gate,* [4] Article 311(2) and proviso (a) thereto were not under consideration. Sub rule (2) of rule 16.2 of the Punjab Police Rules, 1934 broadly corresponded to proviso (a) to Article 311(2) but expressly required the disciplinary authority to consider the nature and gravity of the offence and also whether the offence is such as to render further rentention of the

convicted police officer in service *prima facie* undesirable. This requirement was embodied in the statutory rule itself and was not relegated to an administrative form reproduced in *0m Parkash v.The Director, Postal Services, Punjab Circle, Ambala* [5] decided on 7th December, 1971 by a Full Bench of the Punjab & Haryana High Court.) The impugned order mentioned the nature of the offence leading to conviction but did not refer to the extenauting circumstances of the case, if any. It was held that the order did not show that it was not based merely on the conviction and that the competent authority considered the nature and gravity of the offence though this was required to be considered by the amended statutory rule itself. The cases before us are under proviso (a) to Article 311(2) which itself does not contain these requirements. The insistence by their Lordships in paragraph 11 of the judegment on the grant of hearing before imposition of punishment was thus based on the natural justice rule of audi alleram partem which was perhaps excluded by sub-rule (2) of rule 16.2 of the Punjab Police Rules. Further, the attention of their Lordships does not seam to have been invited to Article 311(2)(a) of the Constitution. It seems to us, therefore, that the decision of their Lordships may not be taken to mean that a second inquiry into charges and opportunity to show cause against the proposed punishment is necessary after conviction of the Government employee concerned notwithstanding Article 311(2)(a) of the Constitution. If, however, it was so intended to mean, then we arein respectful disagreement with their Lordships.

8. The orders passed against Tirkha Ram and Daya Nand were as follows:-

Agains t Tirkha Ram:-

> "The Hon. Court of Shri I.P. Vaish, Judicial Magistrate, 1st Class, Palwal, has convicted Shri Tirkha Ram, Porter, Delhi Air (Under Suspension) Under Section? 420/511 and 468/34 Indian Penal Code in its judgment announced "On 4th May, 1966. The learned court has, however, applied section 4(i) of the Probation of Offenders Act taking into consideration young age, first offence and repentance upon the crime and directed him to execute bond of Rs. 1000.00 with one surety for the like amount for one year for keeping good behavior. Since the official has been convicted under section 420/511 and 468/34 Indian Penal Code by a court of law, the following order is made. Order 1, the undersigned; do hereby dismiss Shri Tirkha Ram, Porter, under suspension, from Government service with immediate effect.

(Sd)

Senior Superintendent".

Against Daya Nand.:-

> "The Hon. C)urt of Sh Salig Ram Seth, Assistant Sessions Judge, Delhi, held Shri Diya Nand Sharma, Porter under suspension, guilty of the offence under Section 52 of the Indian Penal Code Act in the judgment delivered on 4th August, 1965. The Court, however, taking into view little value of the packets and young age of the official applied section 4 of the Probation of Offenders Act, 1958 and directed him to furnish personal bond for Rs. 1000.00along with one surety of the same amount for keeping good behavior for one year. In the event of default the official was to undergo Rigorous Imprisonment for one year".
>
> "Since the offence under Section 52 of Indian Penal Code Act has been held to be proved against the official by a court of law, the following order is made.

Order

> I, the undersigned, do hereby dismiss Shri Daya Nand Sharoia, Porter under suspension, from the Government service with immediate effect.

(Sd). ... ... Senior Superintendent."

9. The crux of the question is whether the requirements of proviso (a) to Article 311(2) have been complied with in passing the impugned orders This has to be decided primarily on reading the impugned orders in the light of the circumstances in which they were passed. Firstly, a distinction has to be observed between the substance of the power conferred on the authority to make such orders and the form in which the orders may be expressed. The substance consists of the conditions which must be fulfillled before the power to dismiss is exercised This condition is ordinarily mandatory. A non-compliance with the condition would invalidate the exercise of the power. *Nazir Ahmed v. King Emperor",* [6] and *C R. Abrol v. Administrator Under the Slum Areas,* [7] In these cases it is not disputed th-.it in fact the conduct of Tirkha Ram and Daya Nand led to their convictions on criminal charges. The requirements of substance for the exercise of the power of dismissal under proviso (a) to Article 311(2) were, therefore, satisfied.

10. The contention here is that the impugned orders are based on conviction and not on conduct. What is a conviction? It is a finding that the accused has committed the act amounting to the offence with which he was charged. This act is the "conduct" referred to in proviso (a) to Article 311(2). It is only that part of the conduct which has

led to the conviction of the accused which is referred to in proviso (a) It is precisely the same conduct on which the conviction is based. The conduct and the conviction are, therefore, inseparable. To say that the accused was convicted of a specified offence necessarily means that the accused committed the act or was guilty of the conduct constituting the said offence. Any conduct, therefore, which has led to conviction is sufficient to enable the punishing authority to dismiss the convicted employee The dismissal is on account of the employee having behaved badly, that is, on the ground of his conduct and not because he is convicted. But the conduct, proved to be bad, let to conviction. Whether conduct in a particular case was good or bad could be a matter of opinion and degree; but when it has led to conviction by a criminal court it has to be accepted as had beyond doubt or controversy. It is to avoid such controversy, whether the conduct was had or not, that reliance is placed on conviction to show that the conduct was bad. For instance, when the previous conduct of the accused is taken into account for imposing a higher than ordinary punishment on him, reference is made not to his conduct but to his previous conviction to clinch the issue that the previous conduct was had as proved by the conviction. We have never heard an argument that a higher than ordinary punishment based on the previous conviction of the accused was vitiated because it was not based on the conduct leading to the conviction of the accused but merely on his conviction. The reason is that the reference to conviction necessarily implied reference to the conduct which was the subject-matter of the charge which was proved resulting in the conviction.

11. The inseparability, in such a context, of conduct from conviction is demonstrable. Can the punishing authority regard the conduct forming the criminal charge as not proved? Can it take a different view of the offence and come to the conclusion that the accused was not guilty ? In our view, it is not only not required to do so but is not even entitled to do so The conviction is binding on the State as well as the accused. Proviso (a) to Article 311(2) is based on the theory that the conduct is conclusively had because of the conviction. If the punishing authority cannot take any other view of the conduct except the view which resulted in the conviction, it is not understandable why any sharp distinction between conduct and conviction should be made in taking action under proviso (a).

12. The Central Civil Services (Conduct) Rules, 1964 and such rules preceding them show that the standard of conduct expected of a Government servant is much higher than the standard expected of an ordinary person. A government servant must maintain complete devotion to duty and integrity. He must not commit an act which is

unbecoming of a public servant and so on. It is in dealing with lapses from this high standard of conduct that the Government has to consider the scale of punishments before imposing one on a Government servant. This scale runs from as small a punishment as a mere warning or censure to the highest one capable of being imposed on a Government servant, namely, the dismissal. But even dismissal is merely the loss of employment. In economic terms it may mean much to the employee. But in the eye of law and morals a conviction on a criminal charge is always a more serious punishment than dismissal. The only exception is that certain trivial or technical offences such as an offence against the rule of the road or of traffic may even in the eye of law and morality be less serious than the misconduct of a person in his capacity as a Government servant. Barring this exception. the punishing authority is entitled to take the view that the conduct resulting in conviction of the criminal offence is serious enough to attract a major penalty such as dismissal. Taking into account the standard of behavior required of a Government servant, it is inconceivable that a person convicted of a criminal offence can be allowed to remain in Government service. Therefore, whenever a Government servant is convicted of a criminal offence (unless in an exceptional case the charge is a trivial or technical one like a traffic offence) the punishment of dismissal would be inflicted on the convict as a matter of course. It is only in theory that it is true that the punishing authority has to consider which particular punishment should be imposed on the convicted person. In practice, however, continuance of a convict in Government service would be always regarded as undesirable unless the conviction was for a technical offence.

13. The question whether the punishing authority has applied its mind to the question of what particular punishment should be imposed on the convicted person is to be answered by looking to the language of the order and the circumstances in which it was passed. The impugned orders refer to the conviction and the offences on the proof of which the convictions were based. The definitions of the offences bring out the acts committed by the accused, namely, the conduct which led to their convictions. Daya Nand was held guilty of the offence under section 52 Indian Post Office Act, 1898, namely, misappropriation of a postal article in course of transmission by post. Taking into view the little value of the packets and the youth of the accused, he was put on probation. These circumstances were expressly referred to in the order. The punishing authority, therefore, knew what the accused had done and all that could be said in favor of the accused. Nevertheless, it chose to dismiss the accused. No inference can be drawn from the order and the surrounding circumstances that the authority did not apply its mind to the conduct of Daya Nand. Similarly, Tirkha Ram with another

confessed to have committed the offences punishable under sections 468/34 and 420/511 Indian Penal Code. Forged money orders for Rs. 600.00 and Rs. 575.00 were received at the postoffice as being payable to fictitious persons even though no such moneys had really been sent by these money orders. Forged documents were used in attempting to cheat the postal authorities to deliver these moneys to fieititious persons. The impugned order against Tirkha Ram also refers to the offences for which he was convicted necessarily importing the acts committed by him inasmuch as these acts constituted the definitions of the offences for which he was convicted. The order also took into account of the facts which could be urged in favor of Tirkha Ram such as his youth and that he was a first offender and that he had repented of the offences committed by him inasmuch as these were taken into account by the criminal court in putting him on probation. The punishing authority was thus aware not only of the had side of the conduct which led to the conviction but also of the extenuating circumstances due to which probation instead of sentence was given to Tirkha Ram. It cannot, therefore, be said that the punishing authority did not apply its mind to the conduct leading to the conviction.

14. While the conditions on which the power of punishment was exercised were a matter of substance and, therefore, mandatory, the form or the manner in which the orders of punishment were expressed could not be regarded as mandatory but only directory. In 0m Parkaik's case referred to above, reference is made to a standardized form in which an order of punishment after the decision of the first appeal thereon is to be passed against a Government servant. This form seems to have been evolved in administrative instructions for the guidance of punishing authorities by the Government. It is not a part of the statutory Central Civil Services (Classification, Central & Appeal) Rules or any other statutory rules or statute By itself, therefore, it is not binding on the punishing authorities. The utility of the form, however, lies in focussing the attention of the punishing authorities on the considerations relevant in imposing punishment under proviso (a) to Article 311(2). Two features of this form are absent from the impugned orders. Firstly, the second paragraph of the form is as follows :-

> "It is considered that the conduct of the said .....which has led to his conviction in such as to render his further retention in the public service undesirable".

Secondly, the form contains the words :-

> "Dismisses/removes/directsthe said..... shall be com- cursorily relied

from service".

so that the punishing authority may choose the appropriate punishment from this list. It is true that the use of this form would *prima facie* show that the punishing authority regarded the continuance of the Government servant in service as undesirable and also that out of the three punishments described therein, the particular punishment imposed was the appropriate one. We are entirely in favor of the form being used in as many cases as possible by the punishing authorities. The question, however, is whether the failure to use the form vitiates the impugned orders The answer is not in doubt. The law is well established that the failure to use a prescribed form in passing an order by itself does not nullify the order. It is open to the authority to show aliunde that the conditions necessary for the validity of the order were complied with. For instance, executive action of the Government has to be expressed to be taken in .the name of the President or of the Governor as the case may be in view of Articles 77(1) and 166(1) of the Constitution. But the failure to do so will not disable the authorities from proving that they were orders which could b-' said be made by the President and the Governor in accordance with the rules of business. in-*Swadeshi Cotton Mills Co. Ltd. v. State Industrial Tribunal U. P.,*[8] . It was contended that the failure to recite in the order itself the conditions to be fulfilled before the order could be passed should lead to the presumption that the conditions were not fulfilled unless the contrary was established On this contention, the Supreme Court observed at pages 1386-1387 as follows:-

> "The validity of the order the referee does not depend upon the recital of the formation of the opinion in the order but upon the actual formation of the opinion and the making of the order in consequence.....The difference between a case where a general order contains a recital on the face of it and one where it does not contain such recital is that in the latter case the burden is thrown on the authority making the order to satisfy the court by other means that the conditions precedent were fulfilled "

As stated above, there is no dispute in the present cases that the conditions were in fact fulfilled.

15. In Gulapalli Nageswara Rao. v. Andhra Pradesh State Road Transport Corporation at 337, the scheme published under section 68-C of the Motor Vehicles Act, 1939, did not contain the words that the State Transport Undertaking was of the opinion that the scheme was necessary in the interests of the public though these were the conditions on which the scheme could be framed there under. The scheme was however, not held

to have been vitiated thereby. The Supreme Court observed that:-

> "An express recital of the formation of the opinion by the Undertaking in the scheme is not made a condition of the validity of the scheme".

At page 338 the Court observed:-

> "The State Transport Authority can frame a scheme only if it is of opinion that it is necessary in public interest that the road transport service should be run or operated by the Road Transport Undertaking. When it proposes, for the reasons mentioned in the section. a scheme providing for such a transport undertaking, it is a manifest expression of its opinion in that regard. We gather from Reading of the scheme that the State Transport Undertaking formed the necessary opinion before preparing the scheme and publishing it. The argument of the learned counsel carries technicality to a breaking point and for the aforesaid reasons, we reject it."

This reasoning fully applies to the cases before us. For, the impugned orders refer both to the serious nature of the offences as well as the extenuating circumstances in which the offences were committed and yet imposed the punishments of dismissal. This itself shows that the authorities were of the view that it was undesirable to keep these persons in service and that the maximum punishment of dismissal must be imposed on them.

16. "In *Roshanlal Gautam v. State of Uttar Pradesh,at* [9] the impugned-notification was wrongly issued under section 3 of the U. P. Road Transport (Development) Act, 1955 though it ought to have been issued under Section 68.C of the Motor Vehicles Act, 1939. The argument, therefore, that the authority issuing the notification could not have applied its mind to the requirements of section 68-C was apparently unanswerable. Nevertheless it was rejected and the Supreme Court observed as follows:-

> "Even if they (i.e.' requirements of section 68-C) were not (kept in mind) .....we find no difficulty in holding that as the requirements are basically the same, the exercise of power must be referred to section 68-C under which it has validity, and not to section 3 of the U. P. Act."

This strikingly emphasizes the need of determining the validity of the impugned orders by looking to their substance and not to their form. It is this principle which underlies the rule that even if an impugned order recites a wrong source of power, the exercise of power can be upheld by being referred to the right source provided that the

power in fact was exercised on fulfillment of the correct conditions.

17. If therefore, the serious nature of the offences leading to the conviction and the extenuating circumstances are both recited in the punishing order (as in the impugned orders) then the inference would be that the punishment of dismissal was imposed after due application of its mind by the punishing authority. If, on the other hand, in an impugned order the offence referred to is of a trivial or technical nature and/or the extenuating circumstances are not referred to but nevertheless an apparently disproportionate serious punishment such as dismissal was imposed, then it is arguable that the punishing authority did not apply its mind before imposing the punishment. In either of these cases, the omission to refer to conduct would not be material. For, the reference to the nature of the offence necessarily includes the reference to the conduct constituting the offence.

18. The Full Bench of the Punjab & Haryana High Court in 0m Parkash's case referred to above, regarded an order of dismissal referring to .the conviction on criminal charges under the specified sections of the Indian Penal Code in connection with the submission of false medical reimbursement claims by the concerned employee as being based on conviction rather than on conduct and quashed the same. The impugned order, however, did not refer to the extenuating circumstances, if any. The offences were of a serious nature and their mention necessarily contained the reference to the conduct which constituted the offences. Further, the conduct was also specifically referred to as consisting in the submission of false medical reimbursement claims. Even though, therefore, the extenuating circumstances were not referred to, with the greatest respect for the learned Judges, for the reasons given by us above, such an order in our view could not be said to be based on mere conviction without reference to the conduct leading to the conviction.

19. The impugned order in *Akella Sratyanarayana Murthy v. Zonal Manager, Life Insurance Corporation of India,* [10] also contained a reference to the offence under which the employee had been convicted, namely, section 409 Indian Penal Code. In view of the serious nature of the offence (the mention of which necessarily contained a mention of the facts constituting the offence) it could not be inferred in our view, with the greatest respect for the learned Judges, that the punishing authority passed the order on the basis of the conviction and not on the basis of the conduct leading to the conviction of the employee a conclusion reached by the learned Judges. On the other hand, in *Rajinder Singh v. The Punjab State,* [11] the impugned order did not even mention for what offence or offences the employee had been convicted. This was, in

our view, pre-eminently a case where the punishing authority could not have applied its mind inasmuch as it did not even know the commission of which offence has led to the conviction of the employee. That order could truly be said to be based merely on the conviction for some offence, the facts which constituting it were not known to the punishing authority. It could not therefore be said to be based on the conduct leading to the conviction. We, therefore, agree with the learned Judges in that conclusion.

20. In *Shri Narain Singh v. Union of India,* [12] by D.K.Kapoor J.) the appellant had alleged that the order of punishment had been passed on the ground of conviction and not on the ground of conduct while the Union of India had alleged that it was passed on the ground of conduct. The learned Judge held that the Union of India had failed to prove its contention. But when the Union of India offered to adduce the evidence of the order of dismissal itself, this evidence was disallowed on the ground of delay. Further, the precise nature of the charge and the offence as well as the law under which the appellant was convicted could not also be known from a perusal of the judegment. This decision, therefore, offers no guidance about the law on the subject but seems to be based merely on the failure of the Government to discharge the burden of proof resting on it.

21. We are, therefore, of the view that in passing an order under proviso (a) to Article 311(2), the punishing authority is not required to recite the words "on the ground of conduct which has led to conviction". Just as a mere recital of these words would not be conclusive to show that the punishing authority applied its mind to the conduct of the employee leading to his conviction, similarly the absence of these words would not preclude the punishing authority from showing that it had applied its mind to the conduct of the employee leading to his conviction. In deciding upon the question whether the punishing authority had in its mind the conduct of the employee leading to his conviction in imposing the punishment, we have to read the order of punishment as a whole. The omission of the word "conduct" from the order becomes immaterial when the offence committed by the employee is described by reference to the section of the statute in which it is defined inasmuch as the very definition of the offence has to be the description of the conduct which led to his conviction. If the offence is serious, then the misconduct is also serious. The imposition of a serious punishment for a serious offence constituted by serious misconduct is *prima facie* justifiable on the very face of the order. The impugned orders before us further took into consideration the taunting circumstances Nothing more was required lo be considered by the punishing authority. The impugned orders are therefore, passed on the ground of

conduct which led to the conviction of Daya Nand.and Tirkha Ram. They are, therefore, unimpeachable and valid.

(3) An order of punishment visits a Government employee with civil consequences. It affects his rights adversely. It has to be, therefore, a speaking order. There are different ways in which an order may be a speaking order. For instance, under Article 311(2) the report of the Inquiry Officer contains the reasons why the evidence against the employee is believed and why the charges against him are regarded as proved by the Inquiry Officer. The punishing authority may there after simply agree with the Inquiry Officer's report and without giving any further reasons impose punishment on the employee in accordance with the report. Though the order itself does not contain the reasons, they are contained in the report of the Inquiry Officer on which the order is based. It is. Therefore, a speaking order. Alternatively, a punishing order itself may contain the reasons for the punishment. Orders of punishment passed under proviso (a) to Article 311(2) would ordinarily resemble orders of punishment passed under the principal part of Article 311(2). For, the place occupied by the inquiry under Article 311(2) is taken by the criminal trial in proviso (a) thereto. Just as the order of punishment underArticle311(2)is based on the report of the Inquiry Officer, similarly the order of punishment under provision (a) is based on the conviction of the accused by the criminal court. The reasons for imposing the punishment are the reasons on which the conduct of the employee led to his conviction by the criminal court. It is not necessary for the punishing authority, therefore, to repeat those reasons when the said authority expressly says that the punishment Js being imposed because of the conviction which means because of the conduct leading to the conviction. For, in the absence of the conduct, there could be no conviction. A conviction has to be preceded by the conduct. The punishing authority is invariably an administrative authority. It is not expected to write judgments like courts. Orders of such authority have, therefore, to be viewed as orders by laymen. When a layman says that the punishment is inflicted because of the conviction of the employee for a certain specified offence he means that the conduct of the employee was had enough as the offence is serious enough. The punishing orders are sufficient indication of the reasons for punishment as they refer both to the serious offences committed and to the extenuating circumstances which could be urged against the proposed punishments.

22. As the punishing orders contain the reasons and as the same material which was

considered by the punishing authority is considered by the appellate authority, the order of the appellate authority in dismissing the appeal need not contain more reasons than its agreement with the order of the punishing authority. It is only if some material which was not present before the punishing authority is urged before the appellate authority that the appellate authority would have to give some reasons as to what it thought of the new material brought before it even though it may simply agree with the punishing authority as to its conclusion on the material already seen by it.

23. In a revision under rule 55 of the Mineral Concession Rules, 1960 against the order of State Government granting license to one party, there is inevitably fresh material before the revising authority inasmuch as the parties attacking the grant of license were not heard by the State Government and would be heard for the first time by the revising authority. This was why reasons in addition to those given by the State Government would have to be given by the revising authority as held by the Supreme Court in *Bhagat Raja v. The Union of India,* [13] But in a disciplinary proceeding, the material before the appellate authority is invariably the same as before the punishing authority. If the appellate authority agrees with the punishing authority on the same material, then no fresh reasons need be given for the appellate orders by it. It is true that in scrutinizing the correctness of the order of the punishing authority, rule 27 (2) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 lays down the matters to be taken into account by the appellate authority, namely :-

> (a) The correctness of a procedure,
> (b) whether the findings are warranted by evidence,
> (c) whether the penalty was adequate. No appellate authority worth the name would ignore consideration of these matters. Rule 27 (2) does not require, however, that the appellate authority should say in so many words that it has considered these matters. On the one hand, a mere recital that these matters have been considered would not be conclusive to show that the appellate authority considered them. On the other hand, the absence of such recital would not show necessarily that the appellate authority had not considered them. If in fact the procedure followed was correct, the finding was warranted by evidence and the punishment was adequate, then it is a needless ritual for the appellate authority to say so. It is the duty of this Court in a petition under Article 226 of the Constitution for the issue of a writ of *certiorari* to consider the validity of the punishing order and the validity of the appellate order. We are satisfied that all the criteria laid down in rule 27 (2) were satisfied when the appellate

authority dismissed the appeal of the employee. The appellate order cannot be said to be a non- speaking order merely because these matters are not recited in it. The impugned orders are not, therefore liable to be quashed on the ground that they were non-speaking orders.

(4) The essence of this contention is that by virtue of section 12 of the Probation of Offenders Act, 1958, Daya Nand and Tirkha Ram were entitled to a hearing before they were punished notwithstanding proviso (a) to Article 311(2). The argument is that under proviso (a) the hearing could be dispensed with only because of some disqualification to which Daya Nand and Tirkha Ram became subject due to their being convicted and that this disqualification was removed by section 12 with the effect that their cases were taken out of the proviso (a) and they became entitled to hearing under the principal part of Article 311(2). This is the basis of the decision of the learned Single Judge under appeal in L. P. A. 90 of 1971. In our view, a consideration of section 12 of the Probation of Offenders Act vis-a-vis proviso (a) to Article 311(2) discloses the following legal situation. Firstly, the ordinary meaning of "qualification" is the possession of some merit or quality which makes I he possessor eligible to apply for or to get some benefit. The word "disqualification" used in section 12 has the opposite meaning. It imposes a disability on the person to whom the disqualification is attached in applying for or getting such benefit. The disqualification contemplated by section 12 is something attached to the conviction, namely, something which is a consequence or the result thereof. Instances of such disqualification may be found in a statute, statutory rule or in administrative practice. Under section 108 of the Representation of People Act, 1951, a person is disqualified to be a Member of Parliament or State Legislature if he is convicted of certain offences. It would also be an administrative consideration in entertaining applications for jobs or for grant of licenses to disfavor an applicant who is a convict. Such a disqualification is removed by section 12. This meaning of disqualification does not include the reason why a hearing prior to punishment is dispensed with by proviso (a) to Article 311(2) of the Constitution. Secondly, the object of section 12 is to remove a disqualification attached to conviction. It does not go beyond it. The object of proviso (a) to Article 311(2) is totally different. The criminal trial having given the full benefit of the rule of Audi alter am partum of natural justice to the accused person, the framers of the Constitution thought that it would not only be unnecessary but inappropriate and harmful to public interest to allow the

convicted person to insist on a second hearing before he is visited with the punishment of dismissal, removal or reduction in rank. This is sound public policy. Its object is that the departmental punishment should follow quickly after the conviction by a criminal court. Government should not be required to keep a convicted person in service and to pay him his salary by having resort to a second inquiry in a departmental proceeding. This object is totally unrelated to the object of section

12. It is unthinkable, therefore, that the affect of section 12 should be that a totally unnecessary second inquiry would have to be held by the Government before punishing an employee who has been convicted after a full criminal trial. This is an additional reason why the dispensing with the second inquiry by proviso (a) to Article 311(2) cannot be regarded as a disqualification within the meaning of section 12. Lastly and this is decisive, we must consider if section 12 can amend or modify proviso (a) to Article 311(2) at all. The Power of Parliament to legislate under Article 245 of the Constitution is "subject to the provisions of this Constitution". It is, therefore, subject, *inter alia*, to proviso (a) to Article 311(2). The expression "subject to" has also been used in Article 372 of the Constitution. Reading Article 372 and Article 245 together, the effect is that a pre-constitutional law will remain operative only if it is in consonance with the Constitution and a post constitutional law can be passed by the legislature only if it conforms with the Constitution. These two articles bring about the same effect as was done by Article Vi of the Constitution of the United States of America which declares that "This Constitution . shall be the supreme law of the land". In *Marbury v. Madison, 1 Cranch.* [14] Chief Justice Marshall of the United States Supreme Court observed as follows :-

"The Constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative Acts & like other Acts alterable when the Legislature is pleased to alter it. If the former part of the alternative is true, then a legislative Act contrary to the Constitution is not law".

24. Even one part of the Constitution which is subject to another part of it cannot derogate from the latter. Entry 11 of List Ii of the Seventh Schedule of the Constitution being "subject to the provisions of entries . 66. of List I..."the State Legislature there under could not provide for "co-ordination and determination of standards-in institutions for higher education" included in entry 66 of List I.(*Gujarat University v. Shri Krishna Ranganath Mudhelkor,* [15] A fortiori, an ordinary statute of Parliament like the Probation of Offenders Act, cannot be so construed as to have the effect of

amending or modifying proviso (a) to Article 311(2). Even if it is assumed for the sake of argument that the word "disqualification" used in section 12 of the Probation of Offenders Act is wide enough to include the dispensing with of the inquiry under proviso (a) to Article 311(2), such construction would have the effect of nullifying proviso (a). The word "conviction" had acquired a legal meaning by being used in the Criminal Procedure Code etc., prior to the farming of the Constitution. On the principle established in *State of Madras v. Gannon Dunkerley & Co.,* [16] the word "conviction" would have to be construed in proviso (a) to Article 311(2) in the same sense in which it was used previously, say in the Criminal Procedure Code, namely, conviction for an offence. After such a conviction a Government employee cannot claim the benefit of a second inquiry because of proviso (a) to Article 311(2). Section 12 of the Probation of Offenders Act cannot be so construed as to give a new meaning to the word "conviction" in proviso (a), namely, that the disqualification which attached to conviction prior to the enactment of section 12 would no longer attach to it even in proviso (a) to Article 311(2). Section 12 may modity the Representation of People Act or administrative practice. But it cannot modify a Constitutional provision. If it is construed to modify proviso (a) to Article 311(2) then on the reasoning made in *Kedar Nath Singh v. State,*[17]. of Bihar section 12 itself could be held to be *ultra vires* the Constitution. Therefore, if two meanings of the word "disqualification" in section 12 are possible, then following the method adopted in Kedar Nath Singh's case by the Supreme Court, that meaning would prevail which would make section 12 valid as against the meaning which would make it unconstitutional. It is clear, therefore to us that proviso (a) dispensing with the procedure prescribed in Article 311(2) cannot be regarded as a "disqualification" within the meaning of section 12 of the Probation of Offenders Act, 1958.

25. The Probation of Offenders Act, 1958 does not obliterate the conviction of a person who is put on probation unlike section 12 of the Criminal Justice Act, 1948 of the United Kingdom which provides that after a person is put on probation his conviction will not be deemed to be a conviction for any purpose except under the said Act, i.e., for the purpose of probation only. It appears that Parliament deliberately chose not to follow the English statute in this respect. The reason perhaps may be that even if Parliament had done so, it could have thereby amended only some other relevant statutes but it could not have thereby amended Article 311(2)(a) of the Constitution. For, on the analogy of the reasoning of the Supreme Court in Cannon Drunkenly & Go's, case the word "conviction" used in Article 311(2)(a) would continue to bear the same meaning as it had prior to the framing of the Constitution.

Such meaning cannot be changed by ordinary subsequent legislation.

26. For the above reasons, the order of the learned Single Judge in Civil Writ 81 of 1968 is set aside and the L.P.A. 90 of 1971 is allowed Civil Writ 217 of 1969 is dismissed. In the circumstances, there will be no order as to costs.

Petiton allowed.

Cases Referred.

1. (1969)I.S.C.A. 317 at 326-327

2. 1969)2 S.C.R. 131. at 145 F)

3. (1972)S.L.R. 14.

4. (1970)6 D.L.T.350.

5. (Civil Writ 2192 of 1970

6. AIR 1936 PC 253

7. ILR (1970) 1 Delhi 768.

8. AIR 1961 Supreme Court 1381

9. 845, (1959) SUPP. I.S.C.R. 319

10. AIR 1969 Andhra Pradesh 371

11. 1969 S.L.R. 754.

12. (R.S.A. No. 99 of 1967 decided on 7.9.1971

13. (1967)3 S.C.R. 302 at 3 07-310.

14. 137-2L. Ed. 60 (1803)

15. AIR 1963 Supreme Court 703.at 715)

16. (1959) S.C.R. 379

17. (1962)Suppl. 2 S.C.R. 769