

perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily"

23. Supreme Court similarly in **Sanjay Kumar Manjul vs. Chairman, UPSC11**, observed as under:

"25. The statutory authority is entitled to frame statutory rules laying down terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned who can take ultimate decision therefore.

27. It is well settled that the superior courts while exercising their jurisdiction under articles 226 or 32 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post."

(emphasis supplied)

24. On specific query, learned counsel for the petitioner is unable to show as to how the amendment in the Rules 2016 makes Rule 10 manifestly arbitrary merely for the reason that the Rule making authority does not want a candidate for the post of Sub-Inspector who has attained the age of 28 years on the cut of date to be considered eligible for the post.

25. Having regard to the discussions hereinabove, the writ petition being devoid of merit is, accordingly, **dismissed**.

(2023) 5 ILRA 1592
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.04.2023

BEFORE

THE HON'BLE SUNEET KUMAR, J.
THE HON'BLE RAJENDRA KUMAR-IV, J.

Writ-A No. 6089 of 2023

Satya Narain Dubey ...Petitioner
Versus
U.O.I. & Ors. ...Respondents

Counsel for the Petitioner:
Sri Santosh Kumar Kushwaha

Counsel for the Respondents:
A.S.G.I.

Civil Law - Service Matter - Railway Servants (Discipline & Appeal) Rules, 1968 - Rule 14(1) - Where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit. Issue: Whether the disciplinary authority is required to pass a reasoned and speaking order under Rule 14(1) of the Rules, 1968? Held: The requirement of the Rule mandates the disciplinary authority to 'consider the circumstances' of the case, i.e., the trial court judgment leading to the conviction of the officer. The conduct/role which led to the conviction of the officer on a criminal charge has to be considered. The disciplinary authority is not required to enter into the merits/evidence of the trial proceedings. The Rule does not mandate the authority to pass a reasoned and speaking order. The disciplinary authority is not required to sit in appeal on the findings returned by the trial court convicting the government servant. In the instant case, the order of punishment imposed by the disciplinary authority categorically records that the explanation of the petitioner was considered and that the charge against the petitioner in the trial was duly proved. The Court held that it was sufficient compliance with Rule 14(1) of the Rules, 1968. (Para 16, 17)

Dismissed. (E-5)

(Delivered by Hon'ble Suneet Kumar, J.
&
Hon'ble Rajendra Kumar-IV, J.)

1. Heard learned counsel for the petitioner - applicant and learned counsel for the Union of India / Railway Department.

2. The present writ petition is directed against the judgment and order dated 28.03.2022, passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad (for short, "Tribunal"), in Original Application No.330 /1393 of 2011, (Satya Narayan Dubey versus Union of India and others).

3. The services of the petitioner came to be terminated pursuant to Rule 14(1) of the Railway Servants (Discipline & Appeal) Rules, 1968, (for short "Rules, 1968"), on being convicted by the learned trial Court under Sections 409 & 477-A IPC and 13(2) & 13(1) of the Prevention of Corruption Act to undergo 7 years, 2 years and 5 years of rigorous imprisonment besides imposition of fine.

4. Petitioner has since been bailed out by the Appellate Court. The learned Tribunal was of the view that none of the orders passed either by the disciplinary authority, appellate authority or the revisional authority qualify as reasoned and speaking order, but having regard to the fact that the petitioner being convicted by the trial Court and the penalty imposed thereof upon him is sustainable.

5. Relevant portion of paragraph nos.5 and 6 of the impugned order is extracted:-

"5. No doubt we are of the firm view that none of the three orders i.e. the

order of the disciplinary authority, the appellate authority and the revisionary authority would qualify as reasoned and speaking orders, we have also to take cognizance of the fact that the applicant has been convicted by the competent Criminal Court, and even through the orders suffer from legal infirmity, the root cause of the penalty of removal from service sustains. Learned counsel for the applicant submits that the applicant has preferred an appeal against his conviction, which is still pending.

6. In the light of the peculiar facts and circumstance of the case it would not be appropriate to award any relief to the applicant even though he may have been removed from service by way of cryptic and non speaking order. Therefore, since no relief is possible at this juncture, this OA stands disposed. The applicant would be at liberty to revive the same in case he manages an adequate and appropriate relief in his criminal appeal."

6. Petitioner after being released on bail, appeared before the authority and submitted a copy of the order of the trial Court, pursuant thereof, a show cause notice dated 01.11.2007, came to be issued calling upon the petitioner to file objection / representation to the proposed penalty of removal from service. Pursuant thereof, petitioner appeared and filed his objection dated 08.11.2007, wherein, a cryptic reply was given that he is not satisfied with the judgment and order passed by the CBI Court. Further, it is stated that he has filed an appeal which has been admitted, consequently, prayed that his case for reinstatement be considered sympathetically.

7. The disciplinary authority vide order dated 18.12.2007, rejected the

representation / explanation furnished by the petitioner after carefully considering the explanation and was of the opinion that the charge in the criminal trial against the delinquent employee was duly proved. Accordingly, punishment of removal came to be imposed. The petitioner filed an appeal followed by revision, the same came to be dismissed.

8. In this backdrop, it is submitted that the learned Tribunal returned a finding that the impugned orders imposing punishment upon the petitioner do not qualify as reasoned and speaking order, therefore, the matter should have been remitted to the disciplinary authority to pass a fresh order in terms of the Rule 14 (i) of the Rules, 1968, which mandates that disciplinary authority may consider the circumstance of the case and make such order thereon.

9. The short question that arises for consideration is as to whether disciplinary authority is required to pass a reasoned and speaking order under Rule 14(i) of Rules, 1968.

10. The services of the petitioner came to terminated under Rule 14 (i) of CCS (CCA) Rules, 1968 (for short "Rules, 1968")

Rule 14 of the Rules, 1968, is extracted:-

"14. Special procedure in certain cases

Notwithstanding anything contained in Rules 9 to 13:

(i) where any penalty is imposed on a Railway servant on the ground of

conduct which has led to his conviction on a criminal charge; or

(ii)

(iii)

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit :

[Provided that the Railway servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case falling under Clause (i).

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.] "

11. When the disciplinary authority provides the reason behind his decision, the decision is treated as an reasoned decision. Speaking order or reasoned order is considered the third pillar of natural justice. Speaking orders are essential for judicial review. Circumstances of the case is a piece of evidence that indicates the probability or improbability of an event (such as crime).

12. Admittedly, petitioner came to be convicted in a corruption case, on a complaint made by the Railways, while petitioner was the Section Engineer. In matters pertaining to corruption there is not much for the disciplinary authority to consider the circumstances of the case as a detailed finding of fact along-with the evidence in support thereof was considered by the trial Court in its judgment and order passed against the petitioner in criminal case under Indian Penal Code and Prevention of Corruption Act.

13. It is not the case of the petitioner that he came to be convicted for offences under the Indian Penal Code alone. In that event the disciplinary authority was bound to consider the circumstances, role and the conduct of the officer in commission of the offence. For instance, as to whether the role of the delinquent employee in commission of the offence, was only of exhortation and no more, the disciplinary authority in that event would consider the circumstance of the case while proposing to impose penalty upon the officer. In a case of direct role in commission of the crime the departmental punishment would be severe.

14. Cases of corruption stand on different footing there is not much for the disciplinary authority to consider the circumstances of the case involving the delinquent employee. The involvement of the petitioner in the commission of the offence of corruption is direct being the main kingpin.

15. We do not find merit in the submission of the learned counsel for the petitioner that a reasoned and speaking order should have been passed by the disciplinary authority.

16. Rule 14 in the case of conviction of the government servant is required to consider the "circumstances of case" and make such orders thereon. The Rule does not mandate the authority to pass a reasoned and speaking order. The disciplinary authority is not required to sit in appeal on the findings returned by the trial court convicting the government servant.

17. The impugned order of punishment imposed by the disciplinary authority categorically records that the

explanation of the petitioner was considered and the charge against the petitioner in the trial was duly proved. That is sufficient compliance of Rule 14 (i) of Rules 1968. The learned Tribunal misread the Rule 14 (i), requiring a reasoned and speaking order, which is not mandated under Rule 14 (i). The requirement of the Rule mandates that the disciplinary authority to "consider the circumstances" of the case i.e. trial Court judgement leading to the conviction of the officer. The conduct / role which has led to the conviction of the officer on a criminal charge has to be considered. The disciplinary authority is not required to enter into the merit / evidence of the trial proceedings. It is not the case of the petitioner that his role in the act of corruption, during the discharge of his duty and responsibility, was secondary and not primary.

18. We do not find any merit in the petition. The writ petition being devoid of merit, is accordingly, dismissed.

19. No cost.

(2023) 5 ILRA 1595
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.05.2023

BEFORE

THE HON'BLE SUNEET KUMAR, J.
THE HON'BLE RAJENDRA KUMAR-IV, J.

Writ-A No. 21096 of 2018

Vijay Pal & Ors. ...Petitioners
U.O.I. & Ors. ...Respondents
Versus

Counsel for the Petitioner:s
 Sri Shyamal Narain, Sri Ravi Prakash Bhatt

Counsel for the Respondents: