

SHANKER DASS

v.

UNION OF INDIA & ANR.

March 12, 1985

[Y.V. CHANDRACHUD, C.J., D. A. DESAI AND AMARENDRA NATH  
SEN, J.J.]

*Constitution of India 1950, Article 311 (2) and Probation of Offenders Act 1958, Sections 3,4 and 12—Employee—Prosecuted and convicted for breach of trust—Released under the Probation of Offenders Act—Dismissed from service summarily consequent upon conviction—Dismissal order whether permissible and valid—Right to impose penalty carries with it a duty to act justly.*

*Words & Phrase :*

*'disqualification'—Meaning of section 12 Probation of Offenders Act, 1958.*

The appellant was employed as a Cash Clerk in a Department under the administrative control of the Government of India. He was prosecuted for breach of trust in respect of a sum of Rs. 500. He repaid the amount and pleaded guilty to the charge. The Magistrate accepting the plea convicted the appellant under section 409 of the Indian Penal Code, but having regard to the peculiar circumstances relating to the crime and the adverse circumstances in which the appellant was placed, when he committed the offence, viz. his son died during the period, his wife fell down from an upper storey and was seriously injured, his daughter fell ill and that illness lasted for about eight months; released him under section 4 of the Probation of Offenders Act, 1958. As a result of this conviction, the appellant was dismissed from service summarily,

The appellant filed a suit for setting aside his dismissal from service, contending that since he was released under the Probation of Offenders Act, 1958, it was not permissible for the authorities to impose the penalty of dismissal from service. The suit was dismissed on the ground that since the appellant was convicted of a criminal charge he was liable to be dismissed under clause (a) of the second proviso to Article 311(2) of the Constitution.

The appellant's first appeal was dismissed, but the second appeal to the High Court was allowed by a Single Judge on the ground that by virtue of the provision contained in section 12 of the Probation of Offenders Act 1958, the

A appellant could not be dismissed from service without affording him a reasonable opportunity of being heard, as required by Article 311 (2) of the Constitution. The Letters Patent Appeal of the Government of India against the judgment was allowed by a Division Bench.

Allowing the appellant's appeal to this Court,

B HELD : 1. The judgment of the Division Bench of the High Court in the Letters Patent is set aside, and the appellant shall be reinstated in service forthwith, with full back wages from the date of dismissal until reinstatement. [168E]

C 2. Section 12 of the Probation of Offenders Act, 1958 provides that notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or 4 thereof, "shall not suffer disqualification" attaching to a conviction for an offence under such law. The order of dismissal from service consequent upon a conviction is not a "disqualification" within the meaning of section 12. There are statutes which provide that persons who are convicted for certain offences shall incur certain disqualifications. For example, Chapter III of the Representation of the People Act, 1951, entitled "Disqualifications for membership of Parliament and State Legislatures" and Chapter IV entitled "Disqualifications for Voting" contain provisions which disqualify persons convicted of certain charges from being members of legislatures or from voting at elections to legislatures. That is the sense in which the word "disqualification" is used in section 12 of the Probation of Offenders Act, 1958. [166F-H]

E In the instant case, it is therefore not possible to accept the reasoning of the Single Judge in the Second Appeal.

F 3. Clause (a) of the second proviso to Article 311 (2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But, that power, like every other power has to be exercised fairly, justly and reasonably. The Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may, perhaps not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that Article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. [168B-C]

H In the instant case, the Government chose to dismiss the appellant in a huff without applying its mind to the penalty which could appropriately be imposed upon him in so far as his service career was concerned. Considering the facts of the case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical. [167H ; 168D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. . 480 of 1973

On appeal by Certificate from the Judgment and Decree dated 10.10.1972 of the High Court of Delhi in Letters Patent Appeal No. 380/71.

*Mrs. Indra Sawhney* for the Appellant.

*V.C. Mahajan, G.D. Gupta, C.V. Subba Rao and R.N. Poddar* for the Respondents.

The Judgment of the Court was delivered by

CHANDRACHUD, C.J. Cases which evoke sympathy come frequently before the Courts. But, pity, not often. The case before us has a unique story to tell, the story of a crime committed under the stress of personal misery, compounded by the apathy of the Establishment and the appalling delays of law. Ironically, the silver lining is furnished by the bravery of a broken man who has been fighting against injustice for the last 23 years. When justice is done, or so the judges believe, the conscience is assuaged. But in this case, despite our doing all that can be done for the appellant within the framework of law, we have an uneasy conscience. Delay not only defeats justice and robs it of its immediate relevance to the parties but it shakes the very confidence of the people in the desire and ability of law courts to assist them when they need that assistance most.

The appellant was retrenched by the Ministry of Rehabilitation, Government of India in 1960, whereupon he was employed as a Cash Clerk by the Delhi Milk Supply Scheme Department, which is under the administrative control of the Government of India. In 1962, he was prosecuted for breach of trust in respect of a sum of Rs. 500. He repaid that amount and pleaded guilty to the charge. Accepting that plea, the learned Magistrate, First Class, Delhi, convicted him under section 409 of the Penal Code but, in view of the peculiar circumstances relating to the crime and the criminal, he released him under section 4 of the

**A** Probation of Offenders Act, 1958. As a result of the conviction, the appellant was dismissed from service summarily, with effect from April, 14, 1964.

**B** The appellant filed a suit in 1966 in the court of the Sub-Judge, First Class, Delhi for setting aside his dismissal from service, mainly on the ground that since he was released under the Probation of Offenders Act, it was not permissible to the authorities to visit him with the penalty of dismissal from service. That suit was dismissed on the ground that since the appellant was **C** convicted of a criminal charge, he was liable to be dismissed under clause (a) of the second proviso to Article 311 (2) of the Constitution. The decree of the trial court was confirmed by the learned Additional Senior Sub-Judge, Delhi in January 1968. The appellant filed Second Appeal No. 142 of 1968 in the High Court of Delhi, which was allowed by D.K. Kapur, J. on April, 13, 1971. **D** The learned Judge accepted the contention of the appellant that, by reason of provision contained in section 12 of the Probation of Offenders Act, he could not be dismissed from service without affording him a reasonable opportunity of being heard, as required by Article 311 (2) of the Constitution. The Government of India filed a Letters Patent appeal against that judgment, which **E** was allowed by Jagjit Singh and R.N. Aggarwal, JJ. on October 10, 1972. This appeal of the year 1973 has come up for hearing in this Court more than 11 years after it was filed.

**F** Section 12 of the Probation of Offenders Act must be placed out of way first. It provides that not withstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or 4 "shall not suffer disqualification" attaching to a conviction for an offence under such law. The order of dismissal from service consequent upon a conviction is not a "disqualification" within the meaning of section 12. There are statutes which provide that persons who are convicted for **G** certain offences shall incur certain disqualifications. For example, Chapter III of the Representation of the People Act, 1951, entitled "Disqualifications for membership of Parliament and State Legislatures" and Chapter IV entitled "Disqualifications for Voting" contain provisions which disqualify persons convicted of certain charges from being members of legislatures or from voting at elections **H** to legislatures. That is the sense in which the word "disqualifica-

tion" is used in section 12 of the Probation of Offenders Act. Therefore, it is not possible to accept the reasoning of the learned Single Judge of the Delhi High Court.

But though this is so the ultimate order passed by the learned single Judge has to be upheld. It can be supported on grounds other than the one on which it rests.

The learned Magistrate First Class, Delhi, Shri Amba Prakash was gifted with more than ordinary understanding of law. Indeed he set an example worthy of emulation. Out of the total sum of Rs. 1,607.99 which was entrusted to the appellant as a Cash clerk, he deposited Rs. 1,107.99 only in the Central Cash Section of the Delhi Milk Scheme. Undoubtedly, he was guilty of criminal breach of trust and the learned Magistrate had no option but to convict him for that offence. But, it is to be admired that as long back as in 1963, when section 235 of the Code of Criminal Procedure was not on the Statute book and later refinements in the norms of sentencing were not even in embryo, the learned Magistrate gave close and anxious attention to the sentence which, in the circumstances of the case, could be passed on the appellant. He says in his judgment The appellant was a victim of adverse circumstances; his son died in February 1962, which was followed by another misfortune; his wife fell down from an upper storey and was seriously injured: it was then the turn of his daughter who fell seriously ill and that illness lasted for eight months. The learned Magistrate concluded his judgment thus :

"Misfortune dodged the accused for about a year... ..and it seems that it was under the force of adverse circumstances that he held back the maney in question. Shankar Dass is a middle aged man and it is obvious that it was under compelling circumstances that he could not deposit the money in question in time. He is not a previous convict. Having regard to the circumstances of the case, I am of the opinion that he should be dealt with under the Probation of Offenders Act, 1958."

It is to be learned that despite these observations of the learned Magistrate, the Government chose to dismiss the appellant in a huff, without applying its mind to the penalty which could

A appropriately be imposed upon him in so far as his service career was concerned. Clause (a) of the second proviso to Article 311 (2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But, that power, like every other power, has to be exercised fairly, justly and reasonably. Surely

B the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a non-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant

C or the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical.

D Accordingly, we allow this appeal, set aside the judgment of the Delhi High Court dated October 10, 1972 and direct that the appellant shall be reinstated in service forthwith, with full back wages from the date of his dismissal until reinstatement. The Government of India will pay to the appellant the costs of the suit,

E the First Appeal, the Second Appeal, the Letters Patent Appeal and of this Appeal which we quantify at Rupees five thousand. The appellant will report for duty punctually at his former place of work on April 1, 1985.

F In this brief judgment, we have referred to many unhappy facts. We must mention one more. We had adjourned this appeal after hearing it a while, in order to enable the Government to consider whether the appellant could be reinstated in service with a reasonable adjustment in the payment of back wages. The learned

G counsel appearing on behalf of the Union of India showed us a letter written by a Deputy Secretary stating that the Hon'ble Minister of Agriculture desired him to say that the Court should decide the case on merits. We have done our modest best in that regard.