PETITIONER:
DIVISIONAL PERSONNEL OFFICER, SOUTHERN RAILWAY & ANR.

Vs.

RESPONDENT:
T.R.

DATE OF JUDGMENT15/09/1975

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
KRISHNAIYER, V.R.
GUPTA, A.C.

CITATION:
1975 AIR 2216 1976 SCR (1) 783
1976 SCC (3) 190
CITATOR INFO :
O 1985 SC1416 (5,63,107,108,109,113,114,115,
RF 1986 SC 555 (6,8)
F 1989 SC 662 (9)
F 1990 SC 987 (8,11)
R 1991 SC 385 (4)

ACT:
Probation of offenders Act 1958, s.12 and Railway Servants (Discipline and Appeal) Rules, 1968, r.14 (1) - Release on probation under the Act- Effect power to take disciplinary action.

HEADNOTE:
Rule 14(1) of the Railway Servants (Discipline and Appeal) Rules, 1968 provides that not withstanding anything contained in rr.9 to 13, 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 he circumstances of the case' and make such orders thereon as it deems fit,

Section 12 of the Probation of' Offenders Act, 1958, provides that not with standing anything contained in any other law a person found guilty of an offence and dealt with under the provisions of s.3 or s.4 shall not suffer a disqualification, if any, attached to a conviction of an offence under such law.

The respondents were found guilty of certain minor offences and instead of being sentenced, were released on probation under the provisions of the Probation of offenders Act. The concerned Disciplinary Authorities however, re moved them from service on the ground of their conviction without any further opportunity to the respondents. The respondents challenged the orders of removal and the High Court quashed the orders.

Dismissing the appeals to this Court,

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HELD: (1) The conviction of the delinquent employee would be taken as sufficient proof of misconduct, and then, the authority will have to hold a summary inquiry as to the nature and extent of the penalty to be imposed If the authority is of the opinion that the offence is too trivial

or of a technical nature it may not impose any penalty in spite of the conviction. If the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude, and therefore it was not desirable or conducive in the interests of administration to retain such a person in service, the disciplinary authority has the undoubted power, after hearing the employee and considering the circumstances of the case, to inflict any penalty without any further departmental inquiry. As there was no such application of mind and consideration of circumstances the orders of removal are rightly quashed [795H-796E, H]

(2) The view of the Kerala High Court, that as the Magistrate released the 7 delinquent employee on probation, no penalty was imposed and that therefore r.14 (1) did not apply, is not correct. The word 'penalty' in the rule is relatable to the penalties to be imposed by the Disciplinary Authorities under the Rules and not to the sentence passed by a criminal court. Because, so far as the disciplinary authority is concerned it could only impose a penalty and not a sentence, just as a criminal court, after conviction, does not impose a penalty but passes a sentence. Hence, the words "where any penalty is imposed" in r.14 (1) should be read as 'where any penalty is impossible' by the Disciplinary Authority. [787E-F; 788A-R; 789D-H]

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(3) If the Magistrate did not choose, after convicting the accused, to pass any sentence on him but released him on probation it could not be said that, the stigma of conviction is completely washed out or obliterated or that no disciplinary action could be taken under r. 14(1). [790B-C]

Sections 3, 4 and 9 of the Probation of offenders Act show that an order of' release on probation comes into existence only after the accused is found guilty and is convicted of the offence. Such an order is merely in substitution of the sentence from a humanist point of view. The control over the offender is retained by the criminal court and where it is satisfied that the conditions of the bond had been broken by the offender, who has been released on probation the Court can sentence on the basis of the original conviction, showing that the guilt is not obliterated. [790H-791D]

(4) The words disqualification, if any attaching to a conviction of an offence under such law, in s. 12 mean (1) that there must be a disqualification resulting from a conviction; and (ii) that such disqualification must be provided by some law other than the Probation of offenders Act. It could not be contended that the 'disqualification' referred to is the 'liability under r. 14(1) to disciplinary action without a departmental enquiry', and that such disqualification is removed by release on probation. The disqualification must he an automatic disqualification; such as regarding holding of officer or standing for elections, as a consequence of' the conviction. Rule 14(1) incorporates the principle contained in proviso (a) to Art. 311(2). But neither of these provisions contain any express provision that the moment a person is found guilty of misconduct of a criminal charge he will have to be automatically dismissed from service. These provisions are merely enabling and do not enjoin or confer a mandatory duty on the disciplinary authority to pass an order of dismissal, removal or reduction in rank the moment an employee is convicted. The proviso to Art. 311(2) was enacted because, when once a

delinquent employee has been convicted of a criminal offence at a trial, where he had a full and complete opportunity to contest the allegations, that should be treated as a sufficient proof of his misconduct, and the disciplinary authority may be given the discretion to impose the penalties referred to in Art. 311(2), without holding a fresh full-dress departmental inquiry. If r. I'' of the Probation of offenders. Act completely wipes out this liability to disciplinary action on the basis that it is a 'disqualification' under the section then it would be ultra vires as it would be in direct conflict with the Constitutional provision. [788G-H; 789C-D, 791F 792F]

R. Kumaraswami Aiyar v The Commissioner Municipal council, Tiruvannamai and another [1957] Cri. L. J. .255, 256 Om Prakash v. The Director Postal Services (posts and Telegraphs Deptt.) Punjab Circle, Ambala and others, A.I. R. 1973 Punjab 1, 4; Director of Postal Services and Anr. v. Daya Nand, [1972] S.L.R. 325, 341, Embaru v. Chairman Madras Port Trust [1963] 1 L.L.J. 49. Akella Satyanarayana Murthy v. Zonal Manager. Life Insurance Corporation of India, Madras. A.I.R. 1969 A.P. 371, 373 and Premkumar v. Union of India and others, [1971] Lab. & Ind. Cases 823, 824. approved.

(5) Therefore the Rajasthan High Court was wrong in giving 1 wide connotation to the word 'consider' in r. 14 and holding that it requires the disciplinary authority to hold a detailed determination of the matter once again. The rule-making authority deliberately used the word 'consider' and not 'determine' because, the latter word has a much wider scope. the word 'consider' merely connotes that there should be active application of mind by the disciplinary authority after considering the entire circumstances of to case in order to decide the nature and the extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. This could only be objectively determined if the delinquent employee is heard and given a chance to satisfy the authority regarding the final orders that may be passed The provision merely imports the rule of natural justice that before taking final action the delinquent employee should be heard and the circumstances objectively considered. [795B-795D]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1664 of 1974.

Appeal by Special Leave from the judgment and order dated the 18th December, 1973 of the Kerala High Court in original Petition No.860 of 1973 and

Civil Appeals Nos. 891-892 of 1975

Appeal by special leave from the judgment and order dated the 25th January, 1974 of the Rajasthan High Court in S.B. Civil Writ Petitions Nos. 352 & 1826 of 1971 respectively.

S. N. Prasad, for the appellants (in all the appeals).

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S. M. Jain, V. S. Dave and Inder Makwana, for the respondent (In C.A. No. 891/75)

The Judgment of the Court was delivered by

FAZAL ALI, J.-Civil Appeal Nos. 1664 of 1974 and 891 of 1975 are appeals by special leave directed against the judgments of the Kerala High Court dated December 18, 1973 and the Rajasthan High Court dated January 25, 1974,

respectively allowing the writ petitions filed before the High Courts by the respondents concerned. Civil Appeal No. 892 of 1975 has also been filed against the judgment of the Rajasthan High Court dated January 25, 1974 with respect to the respondent Abdul Hamid whose petition was allowed by the same judgment of the High Court dated January 25, 1974, which was decided in favour of the respondent Narsing. It would thus appear that the cases of the respondents Narsingh and Abdul Hamid had been decided by one common judgment of the High Court of Rajasthan.

It was agreed at the Bar that as the points involved in all the three cases arc the same, they may be disposed of by one common judgment. We, therefore, propose to dispose of all the three cases by one common judgment indicating, however, the facts of each individual case, wherever necessary.

As regards Civil Appeal No. 1664 of 1974 the respondent T.R. Challappan was a Railway-Pointsman working at Irimpanam on Olavakkot Division of the Southern Railway. On August 12, 1972 at about 3-30 P.M. he was arrested at the olavakkot railway station
platform for disorderly drunken and indecent behavior and a criminal case under s. 51(A) of the Kerala Police Act was registered against him After due investigations the challan was presented before the Sub-Magistrate, Palghat who after finding the respondent guilty instead of sentencing him released him on Probation under s. 3 of the Probation of offenders Act. After the respondent was released the Disciplinary Authority of the Department by its order dated January 3, 1973 removed him from service in view of the misconduct which led to the conviction of the respondent on a criminal charge under s. 51(A) of the Police Act. The order removing the respondent from service merely shows that it proceeded on the basis of the
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conviction of the accused in the criminal case and there is nothing A to show that the respondent was heard before passing the order. The Kerala High Court held that as the respondent was released by the criminal court and no penalty was imposed on him, therefore, r. 14(1) under which the respondent was removed from service did not in terms apply. The High Court accordingly quashed the order passed by the Disciplinary Authority and allowed the writ petition.

In Civil Appeal No. 891 of 1975 the respondent Narsingh was working as a Railway Khallasi working at the Railway Workshop at Jodhpur and was found to be in possession of stolen copper weighing 4 Kilos and 600 Grammes. The respondent was prosecuted and was ultimately,. convicted by the Trial Magistrate under s. 3 of the Indian Railway Property (Unlawful Possession) Act, 1966. On appeal the learned Additional Sessions Judge, Jodhpur, while maintaining the conviction of the respondent set aside the sentence and released him on probation under the provisions of the Probation of offenders Act. On the basis of the order of conviction passed by the Criminal Court the Assistant Personnel officer (W), who was the Disciplinary Authority removed the respondent from service by his order dated February 26, 1971 and the departmental appeal against this order was eventually rejected. Thereafter the respondent moved the High Court in its writ jurisdiction and the petition was allowed by the High Court and the order of removal from service was quashed by the High Court of Rajasthan.

In Civil Appeal No. 892 of 1975 the respondent Abdul Hamid was a second fireman at the Railway Workshop at

Jodhpur and he was prosecuted and ultimately convicted under s. 420 of the Indian Panel Code by the Special Magistrate, Jaipur by his order dated September 9, 1970. The Magistrate, however, instead of sentencing him ordered him to be released on probation under the provisions of the Probation of offenders Act. The Assistant Mechanical Engineer by his order dated February 3, 1971, removed the respondent from service on the ground of his conviction by a criminal court and the departmental appeal against this order filed by the respondent was rejected on March 2, 1971. Thereafter the respondent moved the Rajasthan High Court under Art. 226 of the Constitution and the High Court quashed the order by which the respondent was removed from service-hence the appeal by special leave by the Union of India against the judgment of the Rajasthan High Court.

A close analysis of the facts of the cases of each of the respondents would doubtless reveal that the points involved in the three cases are almost identical, though the grounds on which the respective High Courts leave proceeded may be slightly different. Mr. S. N. Prasad appearing for the appellants in all the three cases raised three points before us: H

(1) That s. 12 of the Probation of offenders Act con templates an automatic disqualification attached to the conviction and not an obliteration of the misconduct

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of the accused so as to debar the Disciplinary Authority from imposing penalties under the Rules against an employee who has been convicted for misconduct.

(2) Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968, is in terms similar to proviso (a) to Art. 311(2) of the Constitution and confers power on the appointing authority to pass an order of dismissal against an employee who is found guilty of a criminal offence without giving any further notice to the delinquent employee. further, r. 14 does not in terms contemplate that the appointing authority will consider the penalty after either hearing the accused or after ordering special inquiry.

(3) That in the absence of any provision similar to r. 14 the Government is entitled. in the exercise of its executive power, to terminate the services of. the employee who has been convicted of a criminal charge without any further departmental inquiry.

Learned counsel appearing for the respondents in Civil Appeal No. 891 of 1975 as also Civil Appeal No. 892 of 1975 contested the contentions raised by the counsel for the appellants and submitted that the judgment of the High Court laid down the correct law and that the mere fact that the delinquent employee has been convicted of a criminal charge cannot ipso facto result in his automatic dismissal from service.

We have given our earnest consideration to the arguments advanced before us by counsel for the parties. To begin with, the Kerala High Court appears to have allowed the writ petition solely on the ground that the order of the Magistrate releasing the respondent T. R. Challappan on probation did not amount to imposition of penalty as contemplated by r. 14 of the Railway Servants (Discipline

and Appeal) Rules, 1968-hereinafter called 'the Rules of 1968', and therefore the order passed by the Disciplinary Authority was illegal. In order to understand it, it may be necessary to examine the scope and object of r. 14 of the Rules of 1968 which will also throw a great light on the second point which has been dealt with at great length by the Rajasthan High Court, namely the import of the closing part of r. 14 where the disciplinary authority has to consider the circumstances of the case before making any order

In the instant case we are concerned only with clause (1) of r. 14 of the Rules of 1968 which runs thus:

"Notwithstanding anything contained in rules 9 to 13 .-

(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,

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

The word penalty imposed on a railway servant, in, our opinion, does not refer to a sentence awarded by the Court to the accused on his conviction, but, though not happily worded it merely indicates the nature of the penalty impossible by the disciplinary authority if the delinquent employee has been found guilty of conduct which has led to his conviction of a criminal charge. Rule 14 of the Rules of 1968 appears in Part IV which expressly contains the procedure for imposing penalties. Further more, r. 14 itself refers to rr. 9 to 13 which contain the entire procedure for holding a departmental inquiry. Rule 6 of Part III gives the details regarding the major and minor penalties. Finally r. 14(1) merely seeks to incorporate the principle contained in proviso (a) to Art. 311(2) of the Constitution which runs: thus

"(2) No such person as aforesaid 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 o, those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given reasonable opportunity of making representation of the penalty proposed, but only on the basis of the evidence adduced during such inquiry:

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; "

An analysis of the provisions of Art. 311(2) extracted above would clearly show that this constitutional guarantee contemplates three stages of departmental inquiry before an order of dismissal, removal or reduction can be passed, namely, (1) that on receipt of a complaint against a delinquent employee charges should be framed against him and a departmental inquiry should be held against him in his presence; (ii) that after the report of the departmental inquiry is received he appointing authority must come to a tentative conclusion regarding the penalty to be imposed on the delinquent employee; and (iii) that before actually imposing the penalty a final notice to the delinquent employee should be given to show cause why the penalty proposed against him be not imposed on him. Proviso (a) to Art. 311(2), however, completely dispenses with all the

three states of departmental inquiry when an employee is convicted on a criminal charge. The reason for the proviso is that in a criminal trial the employee has already had a full and complete opportunity to contest the allegations against him and to make out his defence. In the criminal trial charges are framed to give clear notice regarding the allegations made against the accused, secondly, the witnesses are examined and cross-examined in his presence and by him; and thirdly, the accused is given full opportunity
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to produce his defence and it is only after hearing the arguments that the Court passes the final order of conviction or acquittal. in these circumstances, therefore, if after conviction by the Court a fresh departmental inquiry is not dispensed with, it will lead to unnecessary waste of time and expense and a fruitless duplication of the same proceedings all over again. it was for this reason that the founders of the Constitution thought that where once a delinquent employee has been convicted of a criminal offence that should be treated as a sufficient proof of his misconduct and the disciplinary authority may be given the discretion to impose the penalties referred to in Art. 311(2), namely, dismissal, removal or reduction in rank. It appears to us that proviso (a) to Art. 311(2) is merely an enabling provision and it does not enjoin or confer a mandatory duty on the disciplinary authority to pass an order of dismissal, removal or reduction in rank the moment an employee is convicted. This matter is left completely to the discretion of the disciplinary authority and the only reservation made is that departmental inquiry contemplated by this provision as also by the Departmental Rules is dispensed with. In these circumstances, therefore, we think that r. 14(1) of the Rules of 1968 only incorporates the principles enshrined in proviso (a) to Art. 311(2) of the Constitution. The words 'where any penalty is imposed' in r. 14(1) should actually be read as 'where any penalty is impossible', because so far as the disciplinary authority is concerned it cannot impose a sentence. it could only impose a penalty on the basis of conviction and sentence passed against the delinquent employee by a competent court. Furthermore the rule empowering the disciplinary authority to consider circumstances of the case and make such orders as it deems fit clearly indicates that it is open to the disciplinary authority to impose any penalty as it likes. In this sense, therefore, the word 'penalty' used in r. 14(1) of the Rules of 1968 is relatable to. the penalties to be imposed under the Rules rather than a penalty given by a criminal court.

Another important aspect of the matter is that a criminal court after. conviction does not impose any penalty but passes a sentence whether it is one of fine, or imprisonment or whipping or the like. The Penal Code has been on the statute book for a large number of years and the rule-making authority was fully aware of the significance of the words 'conviction' and 'sentence' and if it really intended to use the word 'penalty' as an equivalent for 'sentence' then it should have used the word 'sentence' and not 'penalty. In these circumstances we are satisfied that the word 'penalty' has. been used in juxtaposition to the other connected provisions of the Rules appearing in the same Part The view of the Kerala High Court, there fore. that as the Magistrate released the delinquent employee on probation no penalty was imposed as contemplated by r. 14(1) of the Rules of 1968 does not appear to us to be

legally correct and must be overruled Nevertheless we would uphold the order of the Kerala High Court. On the ground. that the last Dart of r. 14 of the Rules of 1968 which requires the' consideration of the circumstances
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not having been complied with by the disciplinary authority, the A order of removal from service of the delinquent employee was rightly quashed.

This brings us to the consideration of two inter-connected questions, namely, as to what is the effect of the order of the Magistrate releasing the accused on probation and the effect of s. 12 of the Probation of Offenders Act. It was suggested by the respondents that if the Magistrate does not choose, after convicting the accused to pass any sentence on him, but releases him on probation then the stigma of conviction is completely washed out and obliterated and, therefore, r. 14(1) of the Rules of 1968 will not apply in terms. We are, however, unable to agree with this somewhat broad proposition. A perusal of the provisions of the Probation of offenders Act, 1958, clearly shows that the mere fact that the accused is released on probation does not obliterate the stigma of conviction. The relevant portion of the Probation of offenders Act, 1958, hereinafter referred to as 'the Act' runs thus .

> " .... 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."

Similarly the relevant part of s. 4(1) of the Act runs thus:

> " .... 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 mean, time to keep the peace and be of good behaviour."

Sections 9(3) & (4) of the Act read as under:

> "9. (3) If the Court, after hearing the case is satisfied that the offender has failed to observe any of the conditions of the bond or bonds entered into by him, it may forthwith-
>
> (a) sentence him for the original offence; or
>
> (b) where the failure is for the first time, then, without prejudice' to the continuance in force of the bond, impose upon him a penalty not exceeding fifty rupees.
>
> (4)If a penalty imposed under clause (b) of sub-section (3) is not paid within such period as the Court may fix, the Court may sentence the offender for the original offence :"

These provisions would clearly show that an order of release on probation comes into existence only after the accused is found guilty
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and is convicted of the offence. Thus the conviction of the accused or the finding, of the Court that he is guilty cannot be washed out at all because that is the sine qua non for the order of release on probation of the offender. The order of release on probation is merely in substitution of the sentence to be imposed by the Court. This has been made permissible by the statute with a humanist point of view in order to reform youthful offenders and to prevent them from

becoming hardened criminals. The provisions of s. 9(3) of the Act extracted above would clearly show that the control of the offender is retained by the criminal court and where it is satisfied that the conditions of the bond have been broken by the offender who has been released on probation, the Court can sentence the offender for the original offence. This clearly shows that the factum of guilt on the criminal charge is not swept away merely by passing the order releasing the offender on probation. Under ss. 3, 4 or 6 of the Act, the stigma continues and the finding of the misconduct resulting in conviction must be treated to be, a conclusive proof. In these circumstances, therefore we are unable to accept the argument of the respondents that the order of the Magistrate releasing the offender on probation obliterates the stigma of conviction.

Another point which is closely connected with this question is as to the effect of s. 12 of the Act which runs thus:

> "Notwithstanding anything contained in any other law, person found guilty of an offence and dealt with under he provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law."

It was suggested that s. 12 of the Act completely obliterates the effect of any conviction and wipes out the disqualification attached to a conviction of an offence under such law. This argument, in our opinion, is based on a gross misreading of the provisions of s. 12 of the Act. The words "attaching to a conviction of an offence under such law" refer to two contingencies: (1) that there must be a disqualification resulting from a conviction; and (ii) that such disqualification must be provided by some law other than the Probation of offenders Act. The Penal Code does not contain any such disqualification. Therefore, it cannot be said that s. 12 of the Act contemplates an automatic disqualification attaching to a conviction and obliteration of the criminal misconduct of the accused. it is also manifest that disqualification is essentially different in its connotation from the word 'misconduct'. Disqualification cannot be an automatic consequence of misconduct unless the statute so requires. Proof of misconduct may or may not lead to disqualification, because this matter rests on the facts and circumstances of a particular case or the language in which the particular statute is covered. In the instant case neither Art. 311(2) proviso (a) nor r. 14(1) of the Rules of 1968 contain any express provision that the moment a

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person is found guilty of a misconduct on a criminal charge he will have to be automatically dismissed from service. Article 311 (2) proviso (a) is an enabling provision which merely dispenses with the various stages of the departmental inquiry and the show cause notice. Rule 14 despite incorporating the principle of proviso (a) to Art. 311(2) enjoins on the discriplinary authority to consider the circumstances of the case before passing any order. Thus, in our opinion, it is a fallacy to presume that the conviction of a delinquent employee simpliciter without any thing more will result in his automatic dismissal or removal from service.

It was, however, suggested that r. 14(1) of the Rules of 1968 is the provision which contains the disqualification by dispensing with the departmental inquiries contemplated under rr. 9 to 13 of the said Rules. This cannot be the position. because as we have already said r. 14(1) only incorporates the principle of proviso (a) to Art. 311(2). If

s. 12 of the Probation of offenders Act completely wipe out the disqualification contained in Art. 311(2) proviso (a) then it would have become ultra vires as it would have come into direct conflict with the provisions of the proviso (a) to Art. 311(2). In our opinion, however, s. 12 of the Act refers to only such disqualifications as are expressly mentioned in other statutes regarding holding of offices or standing for elections and so on. This matter was considered by a number of High Courts and there is a consensus of judicial opinion on this point that s. 12 of the Act is not an automatic disqualification attached to the conviction itself.

In R. Kumaraswami Aiyar v. The Commissioner Municipal Council, Tiruvannamalai and another(1) Rajagopala Ayyangar, J., as he then was, observed as follows.

> "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 S. 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 S. 12-A of the Probation of offenders Act."

The same view was endorsed by the Full Bench of the Punjab and Haryana High Court in Om Prakash v. The Director Postal Services (Posts and Telegraphs Deptt.) Punjab Circle, Ambala and other(2) where it was observed:

> "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" 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."

(1) 1957 Cri. L, J. 255, 256. (2) A. T. R. 1973 Punjab 1, 4

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It was further observed by the High Court:

> " 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. ..... 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.

A Full Bench of the Delhi High Court in Director of Postal Services and Anr. v. Daya Nand(1) held the same view and observed thus:

> " Firstly, the ordinary meaning of 'qualification' is the possession of some merit or quality which makes the possessors 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 he 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 licences to disfavour an applicant a convict. Such a disqualification is removed by section 12. This meaning of disqualification does not include the reason who 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 '

(1) 1972 S.L.R., 325.341

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The decision in R. Kumaraswami Aiyar's case (supra) was followed in a later case in Embaru v. Chairman, Madras Port Trust.(1)

The Andhra Pradesh High Court in Akella Satyanarayana Murthy v. Zonal Manager, Life Insurance Corporation of India, Madras(2) appears to have taken the same view where it was observed thus:

" .. 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 89(4) ."

The Madhya Pradesh High Court also took the same view in Premkumar v. Union of India and others(3) where it was observed:

" We have heard the learned counsel at some length but we find ourselves unable to agree with the above contention. The relevant words of the section are 'shall not suffer disqualification, if any, attaching to a conviction of an offence under such law'. The words can only be read so as to remove the disqualification which under some law may attach to a person on account of his conviction. For instance, if a person is convicted of an offence, he is disqualified from standing for election to the Central or State Legislatures. But if such a person is given benefit under the Probation of offenders Act then by virtue of Section 12 of that Act the disqualification for that purpose (standing for election) will stand removed."

A Division Bench of the Delhi High Court in Iqbal Singh v. Inspector General of Police, Delhi & Ors.(4) took a contrary view but that decision has been overruled by a later decision of the Full Bench of the same High Court in Director of Postal Services v. Daya Nand (Supra) to which we have already referred to.

Even the Rajasthan High Court in its judgment concerning Civil Appeal No. 891 of 1975 has endorsed the view taken by the Madras High Court and followed by the other High Courts. We find ourselves in complete agreement with the view taken by the Madras High Court as referred to above and as endorsed by the Delhi, Rajasthan, Punjab, Andhra Pradesh and Madhya Pradesh High Courts.

We now come to the third point that is involved in this case, namely, the extent and ambit of the last part of r. 14 of the Rules of 1968. The concerned portion runs thus:

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

(1) [1963] I L. L.J.49. (2) AIR. 1969 A.P. 371,373
(3) [1971] Lab. & Ind. Cases 823,824 (4) A.1. R.1970 M.P.-240(1971) 2 S.L.R 257

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In this connection it was contended by the learned counsel for the appellants that this provision does not contemplate a full-dress or a fresh inquiry after hearing the accused but only requires the disciplinary authority to impose a suitable penalty once it is proved that the delinquent employee has been convicted on a criminal charge. The Rajasthan High Court in (civil Writ Petition No. 352 of 1971 concerning Civil Appeal No. 891 of 1975 has given a very wide connotation to the word 'consider' as appearing in r. 14 and has held that the word 'consider' is wide enough to require the disciplinary authority to hold a detailed determination of the matter. We feel that we are not in a position to go to the extreme limit to which the Rajasthan High Court has, gone. The word 'consider' has been used in contradistinction to the word 'determine'. The rule-making authority deliberately used the world 'consider' and not 'determine' because the word 'determine' has a much wider scope. The word 'consider' merely connotes that there could be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words, the term 'consider' postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employee. It is not at all necessary for the disciplinary authority to order a fresh departmental inquiry which is dispensed with under r. 14 of the Rules of 1968 which incorporates the principle contained in Art. 311(2) proviso (a). This provision confers power on the disciplinary authority to decide whether in the facts and circumstances of a particular case what penalty if at all, should be imposed on the delinquent employee. It is obvious that in considering this matter the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features if any present in the case and so on and so forth. It may be that the conviction of an accused may be for a trivial offence as in the case of the respondent T. R. Challappan in Civil Appeal No. 1664 of 1974 where a stern warning or a fine would have been sufficient to meet the exigencies of service. It is possible that the delinquent employee may be found guilty of some technical offence, for instance, violation of the transport rules or the rules under the Motor Vehicles Act and so on, where to major penalty may be attracted. It is difficult to lay down any hard and fast rules as to the factors which the disciplinary

authority would have to consider, but I have mentioned some of these factors by way of instances which are merely illustrative and not exhaustive. In other words, the position is that the conviction of the delinquent employee would be taken as sufficient proof of misconduct and then
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the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction. This is very salutary provision which has been enshrined in these Rules and one of the purposes for conferring this power is that in cases where the disciplinary authority is satisfied that the delinquent employee is a youthful offender who is not convicted of any serious offence and shows poignant penitence or real repentence he may be dealt with as lightly as possible. This appears to us to be the scope and ambit of this provision. We must, however, hasten to add that we should not be understood as laying down that the last part of r. 14 of the Rules of 1968 contains a licence to employees convicted of serious offences to insist on reinstatement. The statutory provision referred to above merely imports a rule of natural justice in enjoining that before taking final action in the matter the delinquent employee should be heard and the circumstances of the case may be objectively considered. This is in keeping with the sense of justice and fair-play. The disciplinary authority has the undoubted power after hearing the delinquent employee and considering the circumstances of the case to inflict any major penalty on the delinquent employee without any further departmental inquiry if the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude and, therefore, it is not desirable or conducive in the interests of administration to retain such a person in service.

Mr. S. N. Prasad appearing for the appellants submitted that it may not be necessary for the disciplinary authority to hear the accused and consider the matter where no provision like r. 14 exists. because in such cases the Government can, in the exercise of its executive powers, dismiss, remove or reduce in rank any employee who has been convicted of a criminal charge by force of proviso (a) to Art 311(2) of the Constitution. In other words, the argument was that to cases where proviso (a) to Art. 311(2) applies a departmental inquiry is completely dispensed with and the disciplinary authority can on the doctrine' of pleasure terminate the services of the delinquent employee. We however refrain from expressing any opinion on this aspect of the matter because the cases of all the three' respondents before us are cases which clearly fall within r. 14 of the Rules of 1968 where they have been removed from service without complying with the last part of r. 14 of the Rules of 1968 as indicated above. In none of the cases has the disciplinary authority either
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considered the circumstances or heard the delinquent employees on the limited point as to the nature and extent of the penalty to be imposed if at all. On the other hand in all these cases the disciplinary authority has proceeded to pass the order of removal from service straightaway on the basis of the conviction of the delinquent employees by the criminal courts.

For the reasons given above the High Courts of Kerala

and Rajasthan were, in the Circumstances, fully justified in quashing the orders of the disciplinary authorities removing the respondents from service. The appeals therefore fail and are accordingly dismissed but in view of somewhat unsettled position of law on the question involved we leave the parties to bear their own costs.

V.P.S. Appeals dismissed.

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