Laxmi Narayan Hayaran Vs State of Madhya Pradesh and Another

Court: Madhya Pradesh High Court

Date of Decision: Oct. 29, 2004

Acts Referred: Central Civil Services (Classification, Control and Appeal) Rules, 1965 â€" Rule 19
Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 â€" Rule 19(i)
Prevention of Corruption Act, 1988 â€" Section 13(1), 7

Citation: (2005) 105 FLR 861 : (2004) ILR (MP) 1012 : (2005) 1 JLJ 125 : (2005) 3 LLJ 212 : (2004) 4 MPHT 343 : (2004) 4 MPLJ 555

Hon'ble Judges: R.V. Raveendran, C.J; Shantanu Kemkar, J; K.K. Lahoti, J

Bench: Full Bench

Advocate: S.R. Tamrakar, for the Appellant; Sanjay K. Yadav, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.V. Raveendran, C.J.

The petitioner was working as an Accountant in the Office of the Conservator of Forests, Bhopal Division. He was caught in a bribery trap laid by

the Lokayu,kta Police. A challan (charge-sheet) u/s 173 of the Code of Criminal Procedure, 1973 was submitted before the Special Court,

Bhopal on 9-4-2002 charging him with offences punishable under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988.

Subsequently, he was convicted and sentenced by judgment dated 12-12-2003 in Special Case No. 4 of 2002 to undergo rigorous imprisonment

for a period of three years and pay a fine of Rs. 2000/- on each score in default of which to undergo a further imprisonment of one month for each

default. The petitioner states that he has challenged the conviction and sentence in Criminal Appeal No. 2156 of 2003 wherein this Court by order

dated 26-12-2003, has suspended the execution of sentence of imprisonment.

When the charge-sheet was filed in the Special Court, the petitioner was placed under suspension on 24-4-2002. When he was convicted, on the

basis of such conviction on a criminal charge, the petitioner was dismissed from service without holding any enquiry, by order dated 16-4-2004 in

exercise of power under Rule 19 (i) of the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 ("State CCA Rules", for short).

Feeling aggrieved, the petitioner has filed this petition on 26-4-2004 and has sought quashing of the order of dismissal dated 16-4-2004. He has

also sought a direction to the respondents to take him back in service, revoke the suspension and permit him to discharge his duties.

The petitioner contends that no order under Rule 19 (i) of the State CCA Rules can be passed without a summary enquiry giving a hearing to the

delinquent employee or at least an opportunity to make a representation in regard to the penalty proposed. Reliance is placed on the decision of

the Supreme Court in Union of India and Others Vs. Sunil Kumar Sarkar, and the Division Bench decisions of this Court in Tikaram Windwar v.

Registrar Co-operative Societies (1978 MPLJ 57) and State of M.P. v. Dr. Sheetal Kumar Bandi [2003 (2) MPLJ 485].

1. In Sunil Kumar Sarkar (supra), dealing with Rule 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (''Cen- tral

CCA Rules'', for short), the Supreme Court observed thus :-

.....The Division Bench did not take into consideration Rule 19 of the Central Rules which contemplates that if any penalty is imposed on a

Government servant on his conviction on a criminal charge, the Disciplinary Authority can make such order as it deems fit (dismissal from service is

one such order contem- plated under Rule 19) on initiating disciplinary proceedings and after giving the delinquent officer an opportunity of making

a representation on the penalty proposed to be imposed. As a matter of fact, this type of disciplinary procedure is contem- plated in the

Constitution itself as could be seen in Article 311(2)(a). Rule 19 of the Central Rules is in conformity with the above provision of the Constitution.

This, as we see, is a summary procedure provided to take disciplinary action against a Government servant who is already convicted in a criminal

proceeding .....All that a disciplinary authority is expected to do under Rule 19 is to be satisfied that the officer concerned has been convicted of a

criminal charge and has been given a show-cause notice and reply to such show-cause notice, if any, should be properly considered before making

any order under this Rule. Of course, it will have to bear in mind the gravity of the conviction suffered by the Government servant in the criminal

proceedings before passing any order under Rule 19 to maintain the proportionality of punishment.

2. The decision in Sunil Kumar Sarkar (supra) was followed by a Division Bench of this Court in Dr. Sheetal Kumar Bandi. In that case, Dr.

Sheetal Kumar Bandi was prosecuted on a charge of negligence in performing an operation and convicted by a Magistrate on the said charge and

sentenced to six months'' rigorous imprisonment with fine of Rs. 500/-. On appeal, the conviction was confirmed but the sentence of imprisonment

was set aside leaving the sentence of fine undisturbed. Following the said conviction, the State Government imposed a major penalty of removal

from service on him, by taking recourse to Rule 19 (i) of the State CCA Rules. That was challenged before the State Administrative Tribunal,

which allowed the application and set aside the order of removal. The order of the Tribunal was challenged by the State before this Court. The

Division Bench upheld the order of the Tribunal. The Division Bench held that the concerned authority had not considered the facts and

circumstances of the case which led to the conviction of Dr. Sheetal Kumar Bandi and had instead acted with a pre-determined mind while

imposing the penalty of dismissal. The Division Bench, therefore, held :-

A bare reading of Rule 19 of the State Rules i n the context of the proviso (2) (a) of Article 311, will make it abundantly clear that these

provisions are merely enabling and do not enjoin the disciplinary authority to impose the extreme penalty of dismissal or removal in every case of

conviction, say for trivial offences or technical offences not involving ''moral turpitude''. Principle of natural justice and fair play, therefore, required

that the authority concerned should apply its mind to the facts and circumstances of a particular case so as to decide what penalty, if at all, is

required to be imposed on the delinquent employee and in order to deter- mine this question, the delinquent employee should also be heard and his

view point should be taken into consideration.....So, even if the respondent may not be held entitled to be heard on the question of penalty, then

also his removal was liable to be set aside as the penalty of removal from service imposed upon him is whimsical.

The decision in Sheetal Kumar Bandi (supra) is thus based on the following two premises :-

(a) A delinquent employee should be heard and his submis- sions should be taken into consideration before passing any order under Rule 19 (i) of

the State CCA Rules, even though the said rule does not provide for grant of such hearing or opportunity.

(b) Even if no hearing is necessary in regard to the penalty proposed, if the penalty imposed is excessive or dispro- portionate to the gravity of the

charge or whimsical, it can be interfered with.

The learned Single Judge who heard this petition was of the view that the first premise in Sheetal Kumar Bandi (supra) ran counter to the decision

of the Constitution Bench of the Supreme Court in Union of India and Another Vs. Tulsiram Patel and Others, and therefore required reconsidera-

tion. An order of reference dated 6-5-2004 having been made in that behalf, the matter is placed before the Full Bench. The question that arises

for our consideration is:-

Whether an order under Rule 19 (i) of the State CCA Rules should be preceded by a hearing or opportunity to the Govern- ment servant, to

make submissions regarding quantum of pen- alty.

The portion of Rule 19 of the State CCA Rules which is relevant, reads thus:-

19. Special procedure in certain cases.- Notwithstanding anything contained in Rule 14 to Rule 18 :-

(i) Where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) Where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in

the manner provided in these rules; or

(iii) Where the Governor is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in

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

Rule 19 of the Central CCA Rules is on the same lines but for the significant and material addition of the following Proviso (made on 11-3- 1987):

Provided that the Government servant may be given an oppor- tunity of making representation on the penalty proposed to be imposed before any

order is made in a case under clause (i).

In Sheetal Kumar Bandi (supra), the State contended that the decision in Sunil Kumar Sarkar (supra) will not apply as that decision was rendered

with reference to the Proviso to Rule 19 of the Central CCA Rules, which specifically contemplated giving of an opportunity to the employee, to

make a representation against the proposed penalty, whereas the State CCA Rules did not contain such a provision. The State''s contention was

negatived by the Division Bench on the following reasoning :-

Shri Khan, learned Additional Advocate General strenuously urged that Rule 19 of the State Rules, unlike Rule 19 of the Central Rules does not

provide for giving second opportunity of making representation at the stage of imposing penalty. He, thus, submitted that this Rule 19 read with

proviso (2) (a) of Article 311 of the Constitution makes it clear that no such second opportunity is now required to be given to a delinquent official

who has either been held guilty after enquiry or convicted on a criminal charge by some Court. We are not persuaded by the argument. It is true

that although Rule 19 of the State Rules does not in terms provide for any such second opportunity of making representation against the proposed

penalty, as is available under the Rule 19 of the Central Rules, nevertheless, as held by the Supreme Court in Sunil Kumar (supra) ""this type of

disciplinary procedure is contemplated in the Constitution itself as could be seen in Article 311(2)(a)"". So any State Rule has to be in conformity

with the above provision of the Constitution. The Apex Court seems to have resiled from the earlier view expressed in Tulsiram (supra) and

reverted back to the view taken in The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, . Relying on

the decision in Challappan (supra), Division Bench of this Court in Tikaram (1978 MPLJ 57), dealing with the same Rule 19 of the State Rules,

held :-

''Conviction on a criminal charge does not necessarily mean that the employee concerned should be removed or dismissed from service. The

nature of penalty will naturally depend upon the gravity of the offence for which the employee is convicted. It is, therefore, necessary for the

disciplinary authority to decide even in such case, whether in the facts and circumstances of a particular case, what penalty, if at all, should be

imposed on the delinquent employee. In determining this question, delinquent employee should be noticed to put forward his point of view and the

circumstances of the case, why no penalty or a lesser penalty should be imposed on him.''

Although decision in Challappan was over-ruled in Tulsiram, however, the Apex Court, as already pointed out, in SunilKumar has reaffirmed the

view taken in Challappan. This Court''s deci- sion in Tikaram would also therefore, hold ground."" The decisions in Sheetal Kumar Bandi and

Tikaram (supra) no doubt support the case of the petitioner.

In The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, a three Judge Bench of the Supreme Court

dealing with a provision of Rule 14 (1) of the Railway Servants (Discipline and Appeal) Rules, 1968, which is similar to Rule 19 of the State CCA

Rules, held thus:-

.....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.....In other

words, the position is that the conviction of the delinquent employee would be taken as sufficient proof of misconduct and then 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 ..... We must, however, hasten to add that we should not be understood as laying down that the last part of Rule 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.

The decision in T.R. Challappan (supra) to the extent it holds that the delinquent employee should be heard before imposing the penalty, was over-

ruled by the Constitution Bench of Supreme Court in Tulsiram Patel. The Supreme Court held :-

It was submitted on behalf of the Government servant that an inquiry consists of several stages and, therefore, even where by the application of

the second provision, the full inquiry is dispensed with, there is nothing to prevent the disciplinary authority from holding atleast a minimum inquiry

because no prejudice can be caused by doing so. It was further submitted that even though the three clauses of the second proviso are different in

their content, it was feasible in the case of each of the three clauses to give to the Government servant an opportunity of showing cause against the

penalty proposed to be imposed so as to enable him to convince the disciplinary authority that the nature of the misconduct attributed to him did

not call for his dismissal, removal or reduction in rank. For instance, in a case falling under clause (a), the Government servant can point out that the

offence of which he was convicted was a trivial or a technical one in respect of which the Criminal Court had taken a lenient view and had

sentenced him to pay a normal fine or had given him the benefit of probation. Support for this submission was derived from The Divisional

Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, ... It was further argued that though under clause (a) of the

second proviso an inquiry into the conduct which led to the conviction of the Government servant on a criminal charge would not be necessary

such a notice would enable him to point out that it was a case of mistaken identity and he was not the person who had been convicted but was an

altogether different individual. It was argued that there could be no practical difficulty in serving such charge-sheet to the concerned Government

servant because even if he were sentenced to imprisonment, the charge-sheet or notice with respect to the proposed penalty can always be sent to

the jail in which he is serving his sentence.....

.....Where a situation envisaged in one of the three clauses of the second proviso to Article 311(2) or of an analogous service rule arises, it is not

mandatory that the major penalty of dismissal, removal or reduction in rank should be imposed upon the concerned Government servant. The

penalty which can be imposed may be some other major penalty or even a minor penalty depending upon the facts and circumstances of the case.

In order to arrive at a decision as to which penalty should be imposed, the disciplinary authority will have to take into consideration the various

factors set out in Challappan''s case. It is, however, not possible to agree with the approach adopted in Challappan''s case in considering Rule 14

of the Railway Servants Rules in isolation and apart from the second proviso to Article 311(2), nor with the interpretation placed by it upon the

word ""consider"" in the last part of Rule 14. Neither Rule-14 of the Railway Servants Rules nor a similar rule in other service rules can be looked at

apart from the second proviso to Article 311(2).....The Court in Challappan''s case was, therefore, in error in interpreting Rule 14 of the Railway

Servants Rules by itself and not in conjunction with the second proviso (at that time the only proviso) to Article 311(2). It appears that in

Challappan''s case the Court felt that the addition of the words ""the disciplinary authority may consider the circumstances of the case and make

such orders thereon as it deems fit"" warranted an interpretation of Rule 14 different from that to be placed upon the second proviso. This is also

not correct.....It is also not possible to accept the interpretation placed upon the word ""consider"" in Challappan''s case. According to the view

taken in that case a consideration of the circumstances of the case can not be unilat- eral but must be after hearing the delinquent Government

servant. If such were the correct meaning of the word ""consider"", it would render this part of Rule 14 unconstitutional as restricting the full

exclusionary operation of the second pro- viso. The word ""consider"", however, does not bear the meaning placed upon it in

Challappan''s''case.....It is thus obvious that the word ""consider"" in its ordinary and natural sense is not capable of the meaning assigned to it in

Challappan''s case. The consideration under Rule 14 of what penalty should be imposed upon a delinquent railway servant must, therefore, be ex

parte and where the disciplinary authority comes to the conclusion that the penalty which the facts and circumstances of the case warrant is either

of dismissal or removal or reduction in rank, no opportunity of showing cause against such penalty proposed to be imposed upon him can be

afforded to the delinquent Government servant. Undoubtedly, the disciplinary authority must have regard to all the facts and circumstances of the

case as set out in Challappan''s case. As pointed out earlier, consideration of fair play and justice requiring a hearing to be given to a Government

servant with respect to the penalty proposed to be imposed upon him do not enter into the picture when the second proviso to Article 311(2)

comes into play and the same would be the position in the case of a service rule reproducing the second proviso in whole or in part and whether

the language used is identical with that used in the second proviso or not.....

..... To recapitulate briefly, where a disciplinary authority comes to know that a Government servant has been convicted on a criminal charge, it

must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty

should be. For that purpose, it will have to peruse the judgment of the Criminal Court and consider all the facts and circumstances of the case and

the various factors set out in The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, . This, however,

has to be done by it ex parte and by itself. Once the disciplinary authority reaches the conclusion that the Govern- ment servant''s conduct was

such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on

him. This too it has to do by itself and without hearing the concerned Govern- ment servant by reason of the exclusionary effect of the second

proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal,

removal or reduction in rank of the concerned Government servant. Having decided which of these three penalties is required to be imposed, he

has to pass the requisite order. A Government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the

case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is

not the Government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in all the

departmental remedies and still wants to pursue the matter, he can invoke the Court''s power of judicial review subject to the Court permitting it. If

the Court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service.

Where the Court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence

committed or not warranted by the facts and circumstances of the case or the requirements of that particular Government service the Court will

also strike down the impugned order. Thus, in Shankar Dass Vs. Union of India (UOI) and Another, this Court set aside the impugned order of

penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service

with full back wages. It is, however, not necessary that the Court should always order reinstatement. The Court can instead substitute a penalty

which in its opinion would be just and proper in the circumstances of the case.

Rule 19 of the Central CCA Rules was amended in 1987 after the decision in Tulsiram Patel providing for an opportunity of making a

representation in regard to the penalty proposed to be imposed. After such amendment, Rule 19 of the Central CCA Rules came up for

consideration before a three Judge Bench of the Supreme Court in Sunil Kumar Sarkar (supra). Having regard to the amended provisions of Rule

19 of the Central CCA Rules, the Supreme Court held that a show-cause notice should be given to the employee in regard to the proposed

punishment giving an opportunity to the delinquent employee, to make a representation. The decision did not refer to either Challappan (supra) or

Tulsiram Patel (supra). The decision in Sunil Kumar Sarkar (supra) can not, therefore, be said to be a reiteration of the principle in Challappan

(supra), which was specifically over ruled by the Supreme Court in Tulsiram Patel (supra). It only exposits Rule 19 as it stands after amendment

subsequent to the decision in Tulsiram Patel (supra). The Court neither re-considered the principles laid down in Tulsiram Patel (supra), nor

expressed any view contrary to Tulsiram Patel (supra). In fact a three Judge Bench could not re-affirm a view which has been expressly overruled

by a Constitution Bench. Therefore, the conclusion in Sheetal Kumar Bandi (supra) that the view expressed in Challappan (supra), though over-

ruled in Tulsiram Patel (supra) has been re-affirmed in Sunil Kumar Sarkar (supra) and, therefore, the decision of this Court in Tikaram Windwar

v. Registrar, Co-operative Societies, M.P. (1978 MPLJ 57) still holds ground, is wholly erroneous.

Rule 19 of the State CCA Rules is similar to Rule 14 of Railway Rules considered in Challappan (supra) and unamended Rule 19 of Central CCA

Rules considered in Tulsiram Patel, which did not provide for any opportunity of hearing in regard to the penalty to be imposed. In Tulsiram Patel

(supra), the Supreme Court has categorically held that no opportunity need be given to the employee concerned, but the disciplinary authority, on

consideration .of the facts and circumstances (in the manner set out in Challappan and Tulsiram Patel) may impose the penalty. It was also clarified

that if the penalty imposed was whimsical or disproportionately excessive, the same was open to correction in judicial review. The subsequent

decision of the Supreme Court in Sunil Kumar Sarkar (supra) dealt with the amended Rule 19 of the Central CCA Rules which provided for a

hearing. Therefore, the principle laid down in Sunil Kumar Sarkar (supra) can not be of any assistance in interpreting Rule 19 of the State CCA

Rules in the absence of an amend- ment in the State CCA Rules corresponding to the amendment made in the Central CCA Rules. As the State

CCA Rules stand today, the law applicable is as laid down in Tulsiram Patel (supra) and not as laid down in Sunil Kumar Sarkar.

We accordingly overrule the decisions of the Division Bench in Tikaram (supra) and Sheetal Kumar Bandi (supra), in so far as they hold that the

delinquent employee should be given a notice giving an opportunity to put forth his views as to the penalty proposed to be imposed.

The second premise in the Sheetal Kumar Bandi (supra) that in exercise of the power of judicial review, the Court can examine whether there was

consideration of the relevant facts and circumstances by the disciplinary authority in imposing the penalty and correct the penalty if it is excessive, is

in consonance with the decisions of the Supreme Court in Challappan, Shankar Dass, Tulsiram Patel and Sunil Kumar Sarkar (supra). If the

conviction is for any minor offence which does not involve any moral turpitude, a punishment of removal or dismissal from service will certainly be

excessive. But where the conviction is on the ground of corruption, as in this case, there can be no two views that imposition of punishment byway

of dismissal is just and proper and not excessive.

The order dated 16-4-2004 passed under Rule 19 of the State CCA Rules imposing the penalty of dismissal on the petitioner can not be said to

be excessive. The order does not suffer from any infirmity. In view of the aforesaid, the writ petition is dismissed.