
(1993) 04 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No. 4318 of 1987

A. Palani

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-04-1993

Acts Referred:

Citation : (1994) 1 LLJ 764

Hon'ble Judges : Janarthanam, J

Bench : Single Bench

Advocate : D. Peter Francis, for the Appellant; A. Venugopal, for the Respondent

Final Decision : Allowed

Judgement

Janarthanam, J.—The petitioner, namely A. Palani, it is said, had been appointed as Rakshak in Railway Protection Force. He was stated to

be performing the duty from 21.30 hours to 06.00 hours on July 15/16, 1982 at Villivakkam railway yard along with another Rakshak by name

Krishnamurthy. He, along with the said Rakshak Krishnamurthy, was stated to have committed theft of two small wooden folding dining tables,

two cushion pillows covered with brown colour rexine, two mirrors and seventeen numbers of small rolls of copper tubes from AC Coach No. SR

2685 found stationed there by using a false key for opening the said coach. For the said act of theft, charges, it is said, had been framed against

them and a disciplinary enquiry had been instituted by the appointment of an Enquiry Officer. After complying with the requisite formalities and

procedure, the Enquiry Officer, on consideration of the materials available on record, found the petitioner guilty of the charges framed against him

and submitted his findings to the disciplinary authority and the disciplinary

authority, in turn, ordered his removal from service.

2. The petitioner, aggrieved by the removal, it is said, preferred appeal before the competent authority, who, in turn, it is said, exonerated him of

the charges and allowed the appeal by ordering his reinstatement in service. The petitioner, it is said, had been accordingly reinstated in service by

Office Order No. 81/83 dated May 12, 1983. As respects reinstatement, the entry reflected in his service register, as produced today for perusal

of court, is couched in the following terms:

Sri. A. Palani Ex. RK/GPD who was removed from service w.e.f. February 20, 1983 on appeal is reinstated as Rakshak and posted to TNPM

without prejudice to the DAR action to be taken against him.

3. The respondents railways, without resorting to filing any revision under Rule 60 of the Railway Protection Force Rules, 1959 (for short "the

Rules") reopened the enquiry for the same cause of action on the same facts and framed a charge against him for his failure to prevent theft of

railway materials on the night of July 15/16, 1982 while he was on duty along with Rakshak Krishnamurthy. The Enquiry Officer, on consideration

of the relevant materials produced, found him guilty of the charge and the Disciplinary Authority, in his proceedings M/XP/227/5-84 dated

December 30, 1984 ordered his removal from service.

4. The aggrieved delinquent petitioner preferred appeal before the Chief Security Officer, Southern Railway, Madras, who, in his proceedings No.

M/XP/227/5/85 dated August 26, 1985 dismissed the appeal and the operative portion of the appellate order is couched in the following terms:

In the result, I find the charges against the appellant/delinquent have been amply proved and the order of penalty imposed by the Sr.SOR/MAS as

disciplinary authority in removing the appellant from service is valid, proper and commensurate with the gravity of the charge. The appellant who

was deputed to prevent theft, allowing and involving in the theft of railway materials are very serious charges and unbecoming of a member of

disciplined force. Such delinquents deserve to be punished deterrently so as to maintain the morale and discipline of the Force. Therefore I confirm

the penalty of removal from service imposed by the Sr. SOR/MAS on the appellant/delinquent.

The aggrieved delinquent petitioner resorted to the present action praying for

issuance of a writ of certiorarified mandamus to quash the said order

and to direct the respondents to reinstate him in service with backwages and other attendant benefits.

5. Mr. D. Peter Francis, learned Counsel appearing for the petitioner, would press into service the lone and sole submission that once a

departmental enquiry is over and the delinquent petitioner had been exonerated, no second departmental enquiry on the same facts can be

ordered, unless there is a specific provision for reviewing the earlier order of exoneration and in this view of the matter, the punishment of removal

from service inflicted upon the petitioner in the second departmental enquiry had no legs to stand and consequently, the writ petition has to be

allowed by setting aside the penalty of his removal from service and ordering his reinstatement with backwages and other attendant benefits.

6. Mr. A. Venugopal learned Counsel appearing for the respondents would however repel such a submission and further submit that the delinquent

petitioner did not at all whisper a word or raise his little finger as to the utter untenability of holding a second enquiry, when especially he had been

exonerated on the enquiry instituted earlier either during the enquiry or before the appellate authority. That apart, he would further submit that he

had not exhausted the remedy of revision, as had been provided under the salient provisions adumbrated under Rule 60 of the Rules and that in

such circumstances, it goes without saying the writ petition is liable to be dismissed.

7. The tenability or otherwise of the rival submissions of either counsel may now fall for consideration in the arena of discussion.

There is no pale of controversy that the petitioner, along with another Rakshak by name Krishnamurthy, had been charged for alleged commission

of theft of railway materials whilst they were on duty at Villivakkam Railway yard on July 15/16, 1982. Yet another fact, about which there is no

dispute, is that in the disciplinary enquiry instituted for the charge of theft against them resulted in the punishment of removal from service. It is also

not in dispute that in the appeal before the competent authority, the petitioner had been exonerated of the charge and he had been reinstated in

service, by making the relevant entry in the service register, as stated earlier. It is only in the second enquiry, on the same cause of action instituted

against the petitioner, a fresh charge had been framed, different from the one earlier framed and on the charge so framed, he was found guilty by the Enquiry Officer and on the report so submitted by the Enquiry Officer, the Disciplinary Authority inflicted upon him punishment of removal from service, which was also laterly confirmed on appeal. The moot question that arises for consideration is as to whether it is legitimately permissible for a second enquiry to be instituted, when especially in the original enquiry instituted, the delinquent petitioner had been exonerated of the charge framed against him.

8. It is not as if such a question had not arisen before Courts of superior jurisdiction and such a question in fact had arisen before Rajasthan High

Court in *Dwarkachand Vs. State of Rajasthan*, wherein a Division Bench consisting of Wanchoo, CJ and Dave, J., laid down the law in clear

terms as to the permissibility of the second enquiry when once the delinquent had been exonerated in the earlier instituted departmental enquiry.

Their Lordships expressed at page 41-

On a careful consideration, therefore, of the entire matter, we are of the opinion that once a departmental enquiry is over and a public servant has

been exonerated, no second departmental enquiry on the same facts can be ordered unless there is a specific provision for reviewing an order of

exoneration of this kind in the Service Rules or any law to that effect.

9. The view, as expressed by the Division Bench, was laterly followed by the same High Court in *Shikhar Chand Sethi Vs. The Divisional*

Mechanical Engineer (E), Western Railway, Kota Division, Kota and Others, I respectfully agree with the view, as expressed by learned Judges of

the said High Court.

10. The apex Court of this country had the occasion to consider such a question in *State of Assam v. J.N. Roy Biswas* 1976-II-LLJ-17 Their

Lordships expressed thus at page 19:

We may however make it clear that no government servant can urge that if for some technical or other good ground, procedural or other, the first

enquiry or punishment or exoneration is found bad in law that a second enquiry cannot be launched. It can be; but once a disciplinary case has

closed and the official reinstated, presumably on full exoneration, a chagrined Government cannot re-start the exercise in the absence of specific

power to review or revise, vested by rules in some authority. The basis of the rule of law cannot be breached without legal provision or other

vitiating factor invalidating the earlier enquiry. For the present, this is theoretical because no such deadly defect is apparent on the Record.

11. The next question that calls for consideration is as to whether the delinquent petitioner is estopped from raising such a question for the first time

here without raising the same before the Enquiry Officer/Disciplinary Authority or before the competent Appellate Authority. The answer to such a

question cannot be anyone other than an emphatic "yes". Such a question is after all, a question of law, which can be raised at any point of time.

12. The further question requiring consideration is as to whether the extraordinary remedy, as provided under Article 226 of the Constitution is

barred, when especially the delinquent petitioner had not exhausted the remedy of revision, as provided under Rule 60 of the Rules. It is rather

well-settled that the jurisdiction of this Court under Article 226 of the Constitution is very wide and there can be no fetters for the exercise of such

a power when the circumstances warrant by resortment to such a power, in the interests of justice. The non-resortment to writ jurisdiction, when

there is an alternative remedy, is by way of self-imposed restriction on the Court, in the exercise of power under Article 226. That does not mean

that the Court is denuded of its power to resort to such a jurisdiction in extraordinary circumstances, even in the case of an alternative remedy not

having been exhausted. The writ petition having been filed in the year 1986, to say at this juncture that the delinquent petitioner has to utilise the

alternative remedy of filing a revision, as contemplated under the relevant rule and then come before this Court, cannot at all be countenanced.

Such a question did arise for consideration before a Division Bench of this Court in K. Venkataraman and K. Arumugham v. The Regional Chief

Engineer, Tamil Nadu Electricity Board, Madras, 1988 WLR 379 and their Lordships M.N. Chandurkar, CJ and Srinivasan, J. expressed in

paragraph 28 (at page 396) thus:

Learned counsel for the respondents submitted: It cannot be therefore contended that the appellants had an alternative remedy by way of appeal

to the Chairman of Electricity Board and the writ petition filed by them ought not to have been entertained. We do not find any justification for

accepting this submission. The writ petitions having been entertained and the Chairman of the Electricity Board being the second respondent therein

having taken a definite stand against the appellants, it will not be just at this stage to direct the appellants to complete the formality of filing an

appeal before the Chairman and approach this court at a later point of time. Mr. Pai has drawn our attention to the following observations of the

Supreme Court in *Ram and Shyam Company Vs. State of Haryana and Others*, : -

Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 where the party

invoking the jurisdiction had an effective, adequate, alternative remedy. More often, it has been expressly stated that the rule which requires the

exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate, it does not oust the jurisdiction of the

Court.

Hence, we reject the contention raised by learned counsel for the respondent.

13. Learned counsel for the respondents, on the question of alternative remedy, cited two decisions in *C.A. Abraham, Uppotttil, Kottayam Vs.*

The Income Tax Officer, Kottayam and Another, and Ghan Shyam Das Gupta and another Vs. Anant Kumar Sinha and others, . Those decisions,

if read in the light of the facts of the case, would throw flood of light that they are not of any help in advancing the case of the respondent to any

extent whatever.

14. For the reasons, as above, it goes without saying that the writ petition deserves to be allowed and is accordingly allowed with costs. Rule Nisi

issued is made absolute.