
(1960) 04 AHC CK 0025
In the Allahabad High Court
Case No : Special Appeal No. 27 of 1958

Abul Hasan

APPELLANT

Vs

Works Manager, Northern Railway, Lucknow

RESPONDENT

Date of Decision : 13-04-1960

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)
Railway Establishment Code — Rule 172

Citation : AIR 1961 All 338 : (1961) 1 LLJ 424

Hon'ble Judges : R.A. Misra, J;J.K. Tandon, J

Bench : Division Bench

Advocate : S.D. Singh, for the Appellant; B.N. Mulla, for the Respondent

Final Decision : Allowed

Judgement

Misra, J.—This is a special appeal against the judgment of a learned Judge of this Court dismissing the writ petition filed by the appellant Abul Hasan under Article 226 of the Constitution.

2. The appellant was a permanent class IV employee in the Loco workshop of the Northern Railway at Lucknow where he was posted for several years. He was departmentally charged for being found unlawfully in possession of railway property on the 18th November, 1953, and as a result of the inquiry which followed he was held guilty of the charges and also asked on the 8th April, 1954, to show cause why he should not be removed from service. Admittedly while sending him the above show cause notice the punishing officer failed to supply him a copy of the findings of the Inquiry Committee.

On the 24th April, 1954, the appellant wrote to the Works Manager who was the punishing authority to supply him a copy of the findings to enable him to furnish his reply to the show cause notice. This request of his was turned down on the 3rd of May, 1954, on the pretext that the findings of the Inquiry Committee was a record intended for office and could not be of any help to him. The appellant

then sent his reply on the 10th May 1934, in which he once again stressed his innocence. On the 15th of June, 1954, the Works Manager removed him from service, The relevant portion of the order which, he sent to the appellant provided thus :

"As your services are no longer required by the administration you are hereby removed from service by Works Manager's order in terms of your agreement and conditions of service, and you are

hereby given one month's notice with effect

from

one month's pay in lieu of notice

16th June 1954 forenoon as provided for therein. Your services will accordingly terminate on the afternoon of the 15th June, 1954."

As a result of this order the appellant's services were put an end to after paying him a month's pay in lieu of notice.

3. Some further facts are that the appellant filed an appeal against the order of the Works Manager dated the 11th June, 1954, to the Deputy Chief Mechanical Engineer, Delhi who on the 16th April, 1956, informed him that his appeal had been dismissed. On the 20th May, 1956, the appellant submitted a representation to the General Manager, Northern Railway. This was replied to by the Works Manager on the 21st of June, 1956, to the effect that since his appeal had been considered by the competent authority and also disposed of, on the 16th April, 1956, no further appeal lay and that the representation had been withheld in his office.

The appellant was not satisfied with this reply and wrote to the Works Manager that he had made a representation to the General Manager and not filed any appeal intending thereby to state that it deserved to be forwarded to the latter. This was replied to by the Works Manager on the 5th of September 1956 to the effect that there was nothing further to add to his letter of the 21st of June, 1956. On the 12th November, 1956, the petitioner then filed the writ petition in this Court under Article 226 of the Constitution which has given rise to this appeal, One of the reliefs asked in it was a writ of certiorari to quash (1) the order dated the 11th June, 1954, discharging from service, and (2) to quash the order or the appellate authority dated the 19th May, 1956, rejecting his appeal. He also prayed that a writ of mandamus also be issued directing the Works Manager, Northern Railway Locoshops, Charbagh, Lucknow to reinstate him on his post with retrospective effect, to pay the appellant the arrears of wages for the suspension period and to pay full wages from the date of his removal from his service i.e. from 15th June, 1954, upto the date he is put back on duty.

4. The learned Judge who disposed of the appellant's writ petition dismissed it on several grounds. Firstly, the learned Judge found that the petition had been

filed with delay and that therefore it was barred by time. Secondly, he held that the order of removal passed by the Works Manager at Lucknow merged in the order of the appellate authority who had affirmed the order of removal passed by the original authority and as the office of the appellate authority was located at Delhi, beyond the territorial limits of this Court, no orders quashing) the order of the appellate authority could be passed by the Court.

Lastly, on merits the learned Judge was of opinion that no prejudice had been caused to the appellant by the non-supply of the copy of the findings of the Enquiry Committee; therefore, he was not entitled to any relief. He held that there was no violation of the principles of natural justice as the appellant was throughout present and represented by a counsel during the departmental enquiry and that even if the copy of the findings had been supplied to him it would not have materially affected the petitioner's ability to show cause to any appreciable extent against the notice issued to him for his removal. In this view of the matter the learned Judge dismissed the appellant's writ petition.

5. We have heard the counsel for the parties and we are of the opinion that this appeal should be allowed.

6. The learned Judge held that the appellant was removed from service in June 1954 and he was informed on 16th April, 1956, that his appeal had been dismissed by the Deputy Chief Mechanical Engineer, Delhi, further the writ petition was presented in this Court on 12th November 1956, much beyond three months, it was, therefore, not within time. Rule 1725 of the Indian Railway Establishment Code provides that the General Manager, or the officer named by him, has the power on his own motion or otherwise to revise any order passed by any authority subordinate to them.

In substance these are the revisional powers of the General Manager or the Officer appointed by him. After the dismissal of his appeal, it is admitted, the appellant had made a representation to the General Manager. Obviously the representation so made was in the nature of a petition for revising the order passed by the Works Manager and incidentally of the Deputy Chief Mechanical Engineer also. This was submitted on the 20th of May, 1956. It will be noted that the order dated 16th April, 1956, dismissing the petitioner's appeal was communicated to him on the 19th of May, 1956.

The representation which he, therefore, made to the General Manager was by way of revision under the above provision. On the 21st June, 1956, the appellant was informed by a communication from the office of the Works Manager, Northern Railway, Charbagh, Lucknow, that there was no provision for a second appeal; accordingly the representation sent by him which was treated by the Railway authorities as a second appeal was not forwarded to the General Manager but had been filed in the office of the Works Manager, Northern Railway, Charbagh, Lucknow.

7. When the appellant by his letter dated 15th July, 1956, wrote to the Works

Manager, Loco Workshops, Northern Railway, Lucknow, that he had) not filed a second appeal but that it was a petition sent to the General Manager, he clearly meant that he had submitted the same for the reconsideration of his case under the revisional powers of the General Manager and that it would have been forwarded by the Works Manager, Locoshops, Lucknow, to the General Manager.

To this last letter he receives a reply on the 5th of September, 1956; it is marked Annexure "X" to his petition. The Works Manager, Locoshops, Lucknow, wrote therein that he had nothing further to add to his letter of 21st of June, 1956. It will thus appear that the appellant asked relief from the General Manager under the latter's revisional powers but his petition which he called as representation and which the Works Manager, Locoshops, Lucknow, nevertheless treated as a second appeal was not forwarded to the former.

8. Rule 1725 empowers the General Manager to exercise his revisional powers on his own motion or otherwise. The word "otherwise" does cover cases of petitions being moved to the General Manager to exercise his revisional powers. By his representation to the General Manager he was pursuing his remedy departmentally against the Order complained of. Indeed, it was very proper also on his part to do so, lest he is accused later of not following this alternative remedy.

Having received the last reply on the 15th September, 1956 that his petition would not be forwarded to the General Manager, Northern Railway, his writ petition which was moved by him on the 12th of November, 1956, in this Court cannot be held to be belated. It was filed much before three months from the 5th of September 1956. We, therefore, find ourselves unable to agree with the opinion of the learned Judge that the appellant's writ was barred by time.

9. On the next finding that the order of the original authority who dismissed the petitioner merged in the appellate order passed by the Deputy Chief Mechanical Engineer, Northern Railway, Delhi, the learned Judge has referred to several cases decided by this Court as also by other High Courts. He was of opinion that the decision by a Bench of this Court reported in *Hafiz Mohammad Yusuf Vs. The Custodian General, Evacuee Properties, New Delhi and Others*, was binding on him and that in view of the principles laid down in that decision, the office of the Deputy Chief Mechanical Engineer being beyond the territorial jurisdiction of this Court, this Court could not issue any order or writ against the latter's order.

The facts of this case were that one A was a tenant along with his brother of a shop situate at Banaras. A carried on the business of selling fruits in the shop to which he later admitted the petitioner in the said case as a partner. After some time A left for Pakistan and the property came to be declared an evacuee property. A notice u/s 7, of the Administration of Evacuee Property Act was also issued.

In reply to the notice the petitioner appeared and objected against the particular property being declared as evacuee property. His objection was dismissed by the

Assistant Custodian. Later his appeal to the Additional Custodian also failed. A revision too which he ultimately filed to the Custodian General u/s 27 of that Act remained unsuccessful. The petitioner then presented the petition which came up for decision before the learned Judges in the above case.

It was in these circumstances that the learned Judges came to the conclusion that the order of the Assistant Custodian and of the Additional Custodian merged in the order passed by the Custodian General and since the office of the Custodian General was located in New Delhi being outside the territory of this Court it was not possible to issue any writ of certiorari quashing the order made by the Custodian General which held the field.

It was thus a case of judicial order which to our minds stands on a substantially different footing than an administrative order with which the instant petition is concerned. The distinction between decrees and orders passed in civil suits and orders of dismissal passed on a departmental inquiry and those passed by some higher officer dismissing an appeal therefrom was considered¹ by their Lordships of the Supreme Court in the case of *State of U. P. v. Mohammad Nooh* AIR 1958 SC 86. It was held :

"An order of dismissal passed on a departmental enquiry by an officer in the department and an order passed by another officer next higher in rank dismissing an appeal therefrom and an order rejecting an application for revision by the head of the department can hardly be equated with any propriety with decrees made in a civil suit under the CPC by the Court of first instance and the decree dismissing the appeal therefrom by an appeal Court and the order dismissing the revision petition by a yet higher court because the departmental tribunals of the first instance or on appeal or revision are not regular courts....."

The learned Judge further observed:

"While it is true that a decree of a court of first instance may be said to merge in the decree passed on appeal therefrom or even in the order passed in revision, it does so only for certain purposes, namely, for the purposes of computing the period of limitation for execution of the decree....."

In view of the above decision it will not, in our opinion, be correct to hold in the instant case that the order of the Works Manager merged in the order passed on appeal by the Deputy Mechanical Engineer which being an administrative order cannot be equated with a judicial order to which entirely different considerations are applicable. The order passed by the Works Manager at Lucknow stands by itself and cannot be said to have merged in the order passed on appeal by the Deputy Mechanical Engineer, New Delhi.

It may be true that this Court cannot issue a writ to the Deputy Chief Mechanical Engineer at Delhi, but there is no bar to issuing any writ or direction quashing the order passed by the Lucknow Railway authorities which are within the

jurisdiction of this Court. We further consider that our inability to issue a writ or other direction to the authorities at Delhi cannot in this case render the remedy which the petitioner is granted against the order for his removal made by the Works Manager ineffective.

If it does not merge in the order of the Deputy Mechanical Engineer, as it does not, the latter has no larger effect than that it was pursuing a remedy provided by law against the order complained of. It is precisely the order of the Works Manager which is challenged and if that is within our reach it will not matter that the Deputy Mechanical Engineer happened to be outside the territory of Uttar Pradesh. We, therefore, find ourselves unable to agree with the opinion of the learned Judge that a writ of certiorari or a mandamus as prayed for by the appellant cannot be issued to the Works Manager, Locoshops, Northern Railway, Lucknow, also.

10. The last argument addressed to us on behalf of the appellant is that the non-supply of a copy of the findings has materially prejudiced his case as he could not return a proper answer to the notice issued to him to show cause why he should not be removed from service. The appellant's argument is that the non-supply of the copy of the findings in the circumstances of the case amounts to a violation of the constitutional guarantee contained in Article 311(2) of the Constitution as also of the principles of natural justice.

The above constitutional provision has required that a civil servant shall not be removed, etc. until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. An opportunity to show cause has, therefore, to be an opportunity as will enable the civil servant concerned to show cause against the action proposed to be taken in regard to him. It has further to be a reasonable opportunity.

Unless, therefore, he knows what the findings against him on which the punishment is proposed are and how they have been reached because they are the material which is being used against him, he is not given the opportunity assured to him by Clause (2) of Article 311. In the present case it is true that the appellant was present during the enquiry and was represented by a counsel as well, but during the course of the proceedings it is not always possible for the party or his counsel to know exactly what are the points that weigh with the Tribunal in his favour or against him.

That can only be ascertained after the Tribunal has returned its findings after hearing the case of the parties. The law provides that the party shall be given another opportunity to show cause against the proposed action resulting from the findings of the Tribunal. The findings returned by the Tribunal clearly indicate the point or points which have weighed with it for proposing action against the party. It would, therefore, be only proper for the party concerned to try to meet the adverse conclusions reached by the Tribunal against him if he can successfully do so. The penalty proposed against him may be completely

remitted or at least relaxed, depending on the answers given by him to the findings.

In this view of the matter we are of opinion that the appellant has been deprived of a valuable right to submit a satisfactory reply to the notice issued against him on the basis of the findings of the Enquiry Committee. We find from the record of the case that since the date when notice was issued to him to show cause as to why he should not be removed from service, the appellant continued to agitate repeatedly before every authority whom he approached that he had been materially prejudiced on account of the non-supply of the copy of the findings of the Enquiry Committee.

This circumstance again confirms the genuineness of his case that it was necessary for him to have a copy of the findings of the Enquiry Committee to satisfactorily answer the notice issued to him. In this view of the matter we are of the opinion that the appellant was not given a reasonable opportunity to answer the notice against him and the removal order following the notice is bad and violated the constitutional guarantee provided by Article 311(2) of the Constitution.

11. It was urged on behalf of the opposite-party that under the terms of the agreement entered into between the appellant and the Railway Administration the Railway authorities were competent to terminate the appellant's service with or without notice after paying him a month's pay in lieu of the notice without assigning any cause whatsoever for the termination of his service. It was contended that in the present case it is admitted that while his services were terminated he was given a month's pay and, therefore, according to the opposite-party the appellant, was not entitled to the: relief Prayed for by him in his writ petition on the ground that the enquiry was not conducted against Mm properly or that his case had suffered on account of the non-supply of a copy of the findings of the Enquiry Committee.

12. On this argument being raised on behalf of the opposite-party we summoned the original agreement which is now on the record. Paragraph 3 of the agreement runs as follows:

"The Railway servant will serve the Railway Administration subject to the condition-

(1) that such service is terminable at any time-

(a) by the Railway Administration on one month's notice in writing or on payment of the equivalent of a month's pay in lieu of notice or without notice or compensation as provided in Sub-clause (iv) hereof

(iv) that the Railway Administration has full power and authority at any time, far any misconduct, insubordination, intemperance, non-observance, breach of this agreement, or on other reason that may to it appear sufficient, to suspend or dismiss without notice the railway servant or otherwise punish him according to

the rules of the service in which he is for the time being employed."

13. We do not think that there is any force in this objection. It is settled law that where the services of a Government servant are terminated by way of punishment for any misconduct, an enquiry has to be conducted against him in accordance with the rules and he has to be given a reasonable opportunity to show Cause against the proposed punishment. In the present case it cannot be said that the services of the appellant were terminated for any other reason except as a punitive measure.

It was certainly open to the Railway Administration to terminate the services of the appellant without assigning any reason and only after giving a month's pay but where the action proposed is the result of an enquiry conducted against him for misconduct, the observance of the mandatory provision given in Article 311(2) of the Constitution is obligatory. Removal from service is one of the penalties enumerated in paragraph 2, East Indian Railway Regulations regarding disciplinary action against non-gazetted staff.

Sub-rule 2 of the same Regulations provides that in accordance with the provisions of Rule 15 every order imposing a penalty on a railway servant under those rules must be communicated to him in writing and that form No. G 138-A is to be used when imposing the penalty of removal from service. Form No. G 138-A is Appendix IV to these regulations. Annexure G attached to the writ petition of the appellant is exactly in the same form as is meant for removal of a railway servant where his removal is intended as a punitive measure.

It is, therefore, clear that the applicant was removed from service not in the discretionary powers vested in the Railway Administration under Clause 3 of the agreement entered into by the appellant with the Railway Administration but as a punitive measure for the appellant's misconduct. Any breach, therefore, in the proper conduct of the enquiry against him for any illegality committed not affording him a reasonable opportunity to reply to the notice of removal against him would, therefore, vitiate the enquiry.

14. For the reasons given above we allow the writ petition of the appellant and quash the order of the opposite party the Works Manager, Loco-shops, Northern Railway, Charbagh, Lucknow, dated the 11th June, 1954 removing the appellant from service. As we have found that the appellant was not given a reasonable opportunity to submit his reply to the notice issued to him to show cause why he should not be removed from service, we direct that it shall be open to the authorities concerned to proceed against him after furnishing him a copy of the findings of the Enquiry Committee on the basis of which it was proposed to remove him from service. The appellant will be paid his costs of this appeal and before the learned single Judge by the respondents.