
(1977) 05 KAR CK 0002
In the Karnataka High Court
Case No : WA. 578 of 1975

Andrew Sachidananda

APPELLANT

Vs

Divl Supdt. S. Rly and Another

RESPONDENT

Date of Decision : 31-05-1977

Acts Referred:

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 14(1)

Citation : (1978) 1 KarLJ 352

Hon'ble Judges : Tewatia, J;Venkataswami, J

Judgement

Tewatia, J.-The appellant was employed as a Fireman in the Railways. He was charge-sheeted by the Railway Police for offences under Secs. 332 & 426 of the IPC and under Sec. 120 and 121 of the Indian Railways Act on the allegation that he had assaulted a co-worker. He was tried and found guilty of the offences under Secs. 323 and 426, IPC. and under Sec. 20 of the Indian Railways Act. But he was released under Section 4(1) of the Probation of Offenders Act (hereinafter referred to as the Act). The Divisional Personnel Officer, S. Rly, Mysore, by his order d. 6-4-74 (Ext B) removed the appellant from service with effect from 15-4-74 without either holding a departmental enquiry to establish the misconduct of the appellant or affording him an opportunity of hearing regarding the nature of the penalty that could be imposed for the misconduct in question. An appeal against that order was rejected by the appellate authority by order dt. 15-3-1975 (Ext. C).

2. The appellant impugned the aforesaid two orders (Exts. B & C) in WP. 4255 of 1975. The point canvassed by the petitioner before the learned single Judge was that since he was released under Sec. 4(1) of the Act, so in view of the provisions of Sec. 12 of the said Act his conviction lost all sting, and therefore, the penalty of removal could be imposed on him by the disciplinary authority only after establishing the misconduct in a regular departmental enquiry and after affording him an opportunity of hearing regarding the nature of the penalty. The learned single Judge overruled the contention aforesaid, in view of the Rule 14(i) of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter

referred to as the Rules).

3. There is no dispute regarding the fact that no departmental enquiry for establishing the guilt of the appellant was held. Nor is there any dispute regarding the fact that the order of removal (Ext.B) was passed without affording any opportunity of hearing to the appellant, as is clear also from the perusal of the said order which is in the following terms.

"Southern Railway No. Y/P/227/V/6-70-775.

Divisional Office, Personnel Branch, Mysore, 6-4-1974.

Penalty Order

Whereas Sri Andrew Sachidananda, Fireman, Yeshwantapur, has been convicted on a criminal charge under S. 251A(12) of CrIPC for offences under Secs. 323 and 426 of IPC and Sec. 120 of the Indian Railways Act in CC. 2155/70 by the Special First Class Magistrate, Shimoga.

And whereas it is considered that the conduct of the said Sri Andrew Sachidananda, Fireman, Yeshwanthpur, which has led to his conviction is such as to render his further retention in the public service, undesirable.

Now, therefore, in exercise of the powers conferred by Rule 14(1) of the Railway Servants (Discipline and Appeal) Rules, 1968, the undersigned hereby removes the said Sri Andrew Sachidananda from Railway service with effect from 15-4-1974.

Sd/-Divl Personnel Officer."

The questions that arise for determination are:

(1) Whether the Departmental Authority ought to have held a departmental enquiry to establish the very misconduct of which the appellant had been found guilty by the Criminal Court? and (2) If it is held that by virtue of the provisions of Rule 14(i) of the Rules it would not be necessary to hold any departmental enquiry to establish the very misconduct involved in the criminal proceedings and for which the Criminal Court found the appellant guilty and convicted him, then, whether the conviction by the Criminal Court of the said misconduct would automatically attract the penalty of removal, or whether the delinquent officer should be heard in regard to the nature of the penalty that could be imposed in the light of the conviction and the circumstances of a given case?

4. Before proceeding to deal with the two aspects aforesaid, for ease of reference, the provisions of Rule(i) of the Rules deserve to be noticed. They are in the following terms:

"14(i). 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 the circumstances of the case and make such orders thereon as it deems fit."

5. The Supreme Court in a recent decision in the Divil Personnel Officer, S. Rly v. T.R. Challappan, AIR. 1975 SC. 2216, had an occasion to deal with a situation almost identical on facts and the proposition of law that arises in the present case. Their Lordships after an elaborate discussion, held that from the mere fact that a conviction in a criminal court is not followed by a sentence it cannot be said that the finding of the Criminal court on the misconduct loses its impact. Hence, by virtue of the provisions of sub-rule (i) of Rule 14 of the Rules, once a criminal court records a conviction, then, the departmental authority is not required to establish the very misconduct by holding a regular departmental enquiry. Their Lordships, however, were further of the view that the penalty of removal or dismissal is not straightaway attracted from the factum of the conviction in a criminal court. As to what penalty ought to be imposed, shall have to be determined by the disciplinary authority by considering the circumstances of the case and the consideration would not be effective or complete unless the delinquent officer is afforded an opportunity of hearing. The following observation of Fazal Ali, J, who delivered the opinion for the Bench, can be noticed with advantage:

"21.....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 fairplay. 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.

22. 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 Rule 14 exists, because in such cases the Govt 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) of 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 rule 14 of the Rules of 1968 where they have been removed from service without complying with the last part of Rule 14 of Rules, 1968 as indicated above. In none of the cases has the disciplinary authority either 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."

In view of the aforesaid authoritative pronouncement by the Supreme Court, it has to be held that the provisions of sub-rule (i) of Rule 14 of the Rules would not be satisfied if before imposing the penalty in question the disciplinary authority did not objectively consider all the circumstances of the case and afford an opportunity of hearing to the delinquent officer. As already observed, the impugned order (Ext. B) removing the appellant from service does not show any such objective application of mind and the affording of opportunity of hearing to the appellant. Hence, the impugned orders (Exts. B and C) are clearly illegal, as the same have been passed in violation of the provisions of rule 14(i) of the Rules, and, therefore, are liable to be quashed.

6. We accordingly allow the appeal, set aside the judgment of the learned Single Judge and quash the impugned orders (Exts. B and C). The appellant shall be deemed to be in service and shall be entitled to such emoluments and benefits as are admissible to him under law. No order as to costs.