

(1968) 10 AHC CK 0023
In the Allahabad High Court

Bhagwan Das

APPELLANT

Vs

Northern Railway (by Chief Mechanical Engineer,
Headquarters) and Others

RESPONDENT

Date of Decision : 07-10-1968

Acts Referred:

Uttar Pradesh General Clauses Act, 1904 — Section 16

Citation : (1970) 1 LLJ 237

Hon'ble Judges : Jagdish Sahai, J;Gursharan Lal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Jagdish Sahai, J.—This special appeal by Bhagwan Das is directed against the Judgment of B.N. Nigam, J., dated 23 March 1966, dismissing Writ Petition No. 379 of 1964, filed by the appellant.

2. The appellant was in the service of the Union of India in the capacity of storekeeper in the Northern Railway. He was posted at Lucknow in the year 1951. A shortage of white metal in his charge was discovered in that year. He was departmentally chargesheeted on 9 June, 1951, but, before the departmental enquiry could proceed any far, a criminal prosecution was launched against him the Court of Sessions. On 29 October 1954 he was acquitted by the Sessions Judge of Lucknow. On 6 April 1955 the appellant received a show case notice issued by the works manager, Workshops, Alambagh Northern Railway, Lucknow, in connexion with the departmental proceedings that were going on against him. He submitted an explanation, but the same was rejected by means of an order dated 30 May 1955. In this order it was stated inter alia, that the

explanation not accepted, your next increment falling due on 23 June 1953 is withheld for due year. This will have effect on your subsequent further increment.

The effect of the aforesaid order was that the appellant did not get an increment on 23 June 1956 which would have been due to him had not the order aforesaid

been passed. The period of one year expired on 22 June 1957 end on that date the bar against the payment of increment to the appellant was automatically removed, and the appellant became entitled to get the increment. Nothing was done by the railway authorities up to 23 July 1957. However, the appellant received an order dated 24 July 1957 issued by the Deputy Chief Mechanical Engineer calling upon him (the appellant).

to show canoe in writing why the enhanced penalty of removal from service should not be imposed upon you.

It is admitted by Sri Nigam, the learned Counsel for the railway, that this order was passed under the provision of Rule 99 of the Northern Railway Discipline and Appeal Rules for Non-gazetted Railway Servants. The appellant submitted his explanation on 27 August 1957 (annexure 9). An order dated 21 January 1958 was served upon the appellant. This order related to appellant's reply dated 27 August 1957 in reply to notice of proposal to enhance the penalty already imposed in order No. 14ACU/39 of 24 July 1957 issued by the Deputy Chief Mechanical Engineer (W), New Delhi. The appellant was informed by means of the above order that

an enquiry consisting of the Assistant Works Manager and the Assistant Personnel Officer will be held in connexion with the above at 9:30 hours on 30 January 1958 in this office.

and he was called upon to state if he wanted

to be assisted, by any defence counsel.

The appellant submitted a representation against the letter aforesaid on 27/28 January 1958. In September 1959 the appellant received an order dated 9 September 1959 requesting him "to nominate a panel of three persons in order of priority to act as your defence counsel." It appears that the petitioner objected to the proposed enquiry and submitted an application to that effect on 30 October 1959. By means of the order dated 16/18 December 1959 the appellant was

finally told that the enquiry in the above case will be held to the A.W.M. (P)'s office on 28 December 1959 in which you are requested to attend.

3. In November 1960 the appellant received an order addressed to himself and dated 10 November 1960. This order reads:

With reference to your application dated 23 December 1959 this is to inform you that a fresh enquiry was ordered by the headquarters office(italicized by us) on the examination of your case, wherein they had discovered that the enquiry held previously did not record your statement nor you were subject to any cross-examination to establish the charges brought against you or otherwise. This has therefore been taken as if you were not given a reasonable opportunity to establish your innocence.

Under these circumstances, you are, therefore, advised to comply with the request made in this office letter No. CON/SPL/MDC, dated 16/18 December 1959, by giving a panel of three persons in order of priority to act as your defence counsel. You are also hereby warned that in case you do not participate in the enquiry that will be fixed on hearing from you, the administration will proceed with the case on the information available.

Kindly acknowledge and reply given so as to reach the undersigned by 14 November 1960 at the latest.

This fresh enquiry was held on several dates. On 16 March 1962 the appellant appeared before the enquiry committee. The order-sheet of that date as maintained by the enquiry officer reads:

Bhagwan Das, timekeeper, appeared before the enquiry committee on date along with his defence counsel Sri U.N. Kapur and the above charges were again read out to him.

Bhagwan Das in reply stated as below:

1. (a) That the abovementioned charges are the repetition of the charges framed against me by the chairman of the first enquiry committee on 9 August 1951, and show-cause notice No. CON/SPL/MDC of 6 April 1955.

(b) The second enquiry was ordered for the same charges by the Deputy C.M.E. (W) after considering my response to his notice of proposal to enhance a penalty already imposed (Works Manager, C and W, Alambagh, Lucknow, letter No. CON/SPL/MDC, dated 30 March 1955). The enquiry was held on 30 March 1959."

By means of the covering letter dated 20 March 1962 the chairman of the second enquiry committee served upon the appellant a copy of the finding of the second enquiry committee (annexure 33. The finding of the second enquiry committee reads:

We, after having carefully considered all the evidence on record, do find that Bhagwan Das clerk, is response of the charge as mentioned in this office show-cause notice CON/SPL/MDC, dated 6 April 1955.

(Sd.) Pratap Singh, 5 June 1962. Assistant Works Manager (p), Alambagh. (Sd.) V.S. Saxena, 5 June 1962, Assistant personnel Officer, Alambagh.

The appellant submitted a written defence dated 20 April 1963 (annexure 35). On 6 March 1963, the Deputy Chief Mechanical Engineer issued show-cause notice to the appellant stating that he had

come to the provisional decision that you should be reduced to the next lower grade, viz., Rs. 105-135 (AS) on its maximum pay for a period of five years. On restoration, the period of reduction shall operate to postpone your future increments.

The appellant's explanation dated 20 April 1963 was found unsatisfactory by the

Works Manager. Thereafter, an order dated 19 June 1963 was passed reducing the appellant to a lower grade of pay for five years. The appellant appealed to the Chief Mechanical Engineer, but without success. Thereafter, the appellant filed the writ petition giving rise to this special appeal.

4. The writ petition was heard, as already said earlier, by B.N. Nigam, J., who dismissed it.

5. Having heard Sri B.K. Dhaon for the appellant and Sri Nigam for the railway administration, we are of the opinion that the order passed by the Deputy Chief Mechanical Engineer illegal and without jurisdiction. Our reasons are as follows:

(1) It is the admitted case of the railway administration that the second enquiry was held under the provisions of Rule 99 of the Northern Railway Discipline and Appeal Rules for Non -gazetted Railway Servants. This rule reads:

99 Revision of punishment orders:-(a) The Railway Board, a General Manager, and any officer not below the rank of a Divisional Superintendent, specified in this behalf by the General Manager shall have the power, on their/his own motion or otherwise to revise any order passed by an authority subordinate to them/him and shall also have the power to reconsider an earlier order passed on an appeal by them/him or by a predecessor, if on a subsequent date either fresh light is thrown upon the case or by his subsequent conduct the employee has established a case for mitigation of the penalty imposed.

(b) When an authority referred to in (a) above proposed to enhance the penalty imposed on a railway servant otherwise than as the result of an appeal preferred to him, he shall communicate his intention to the railway servant concerned, with the reasons therefore, and call upon him to show cause why the enhanced penalty should not be imposed. After considering the reply of the railway servant to this communication, he shall pass such orders as he thinks fit.

6. In our judgment all that this rule permits the General Manager or the other officers mentioned in the rule to do is to revise an order passed by an authority subordinate to them. This rule does not authorize the General Manager or other officers mentioned in the rule to start fresh proceedings after a regular, competent and bona fide enquiry has been held, punishment inflicted, and served out by the delinquent official. In the instant case the order dated 30 May 1955 was fully complied with and it exhausted itself on 22 June 1957. The appellant, had not appealed nor any notice contemplated by Clause (b) of Rule 99 had been served upon him up to 23 July 1957. In other words, the proceedings culminating in the order dated 30 May 1955 were fully completed and the aforesaid order had exhausted itself on 22 June 1957 after operating fully. That being the position, it must be held that that proceedings that were started by means of the notice dated 24 July 1957 were proceedings for a fresh enquiry and were not in any way connected with the enquiry culminating in the order dated 30 May 1955. It is not necessary to dilate on this aspect of the matter because the railway administration itself admits that the enquiry started by the notice

dated 24 July 1957 was a new or fresh enquiry (vide order dated 11 October 1960). In our judgment the fresh enquiry is neither contemplated nor protected by Rule 99. We express no opinion on the question whether while exercising revisional powers in a case where the order has not exhausted itself the revising authority can direct a further enquiry, because that is not the case before us.

7. Sri Nigam contends that under the law of master and servant and inherent powers the second enquiry was permissible. It is further submitted that it was necessary to do so because the earlier enquiry was defective, inasmuch as the statement of the appellant had not been recorded. This may be a ground of convenience, but is not one of law. It is well-settled that an employer cannot fall back upon the so-called inherent powers or upon the general principles when the matter is governed by statute. In *Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur*, , the learned Judges of the Supreme Court observed:

The defendants were a board created by statute and were invested with powers which of necessity had to be found within the four corners of the statute itself. The powers of dismissal and suspension given to the Board are defined and circumscribed by the provisions of Sections 71 and 90 of the Act and have to be called out from the express provisions of those sections. When express powers have been given to the Board under the terms of these sections. it would not be legitimate to have resort to general or implied powers under the law of master and servant or u/s 16, Uttar Pradesh General Clauses Act.

8. We are, therefore, unable to accept the submission of the learned Counsel for the railway administration that it had any inherent or general powers to start the fresh enquiry in the circumstances of the present case.

9. Another ground on which we feel that the appeal must be allowed is that even though Rule 99 does not provide a period of limitation, the railway administration could exercise their powers only within a reasonable time, on the assumption that, Rule 99 applied to the facts of this case (we have held to the contrary). Rule 99 did not confer on the authorities mentioned in that rule the power to revise the order any time they wished. We could also like to point out that it is a settled rule of public policy not to allow decisions taken honestly by Government officers duly competent and duly authorized in that behalf to be reopened. [See AIR 1937 27 (Privy Council)]

10. For the reasons mentioned above we allow this special appeal with costs, set aside the judgment of B.N. Nigam, J., dated 23 March 1966, and quash the order passed by the Deputy Chief Mechanical Engineer stopping the appellant's increment for a period of five years.