

(1973) 02 AHC CK 0041

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 6030 of 1970

Cheda Lal Jha

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 07-02-1973

Acts Referred:

Railways Act, 1890 — Section 121

Railways Act, 1890 — Section 121

Railways Act, 1890 — Section 121

Citation : (1973) 02 AHC CK 0041

Hon'ble Judges : R.L. Gulati, J

Bench : Single Bench

Advocate : S.N. Misra and S.K. Tewari, for the Appellant;

Final Decision : Allowed

Judgement

R.L. Gulati, J.—The Petitioner is a Railway employee. On 23rd February, 1962, he was confirmed on the post of Ticket Examiner and since then has been working in that capacity at various places. On March 24, 1968, he was put on duty as the Conductor/Travelling Ticket Examiner of two tiers Compartment of 40 Down Janta Express, starting from Railway Station Delhi. It is alleged by the Petitioner that while on duty, the fourth Respondent Sri O.P. Sharma asked him to take two passengers without ticket to Kanpur in the Luggage cabin in the two tiers compartment. On his refusal Sri Sharma felt hurt and injured and became very much annoyed with him and threatened him with serious consequences. Sri Sharma is alleged to have used abusive language and obstructed the Petitioner in the discharge of his duty. Thereupon the Petitioner issued a memo u/s 121 of the Indian Railways Act against Sri Sharma and handed over the same to the Station Superintendent, Delhi junction. Petitioner goes on to allege that at the instance of Sri Sharma he was medically examined at Tundla Station but was not found to drunk. When he reached Kanpur station, the third Respondent the Superintendent Kanpur Area, Kanpur called him to his office and put him under suspension. A charge sheet was issued to him on 12th April, 1968 containing the

following two charges:

1. That Sri C.L. Jha TTE/Kanpur while functioning as TTE 2 Tier Coach No. 4703 of (sic) Dn. Ex. on 24-3-68 was in civil to some passengers in the coach and behaved rudely with Sri O.P. Sharma, SAO (TA) Delhi Kishanganj (now DAO/Delhi) and used abusive language towards him.

2. That the said Sri C.L. Jha crossed all limits of official decorum and discipline by maliciously issuing Memo No. 276164 dt. 24-3-68 against Sri O.P. Sharma, SAO (TA/Delhi Kishanganj) (now DAO/DLI) u/s 121 of Indian Railways Act and thus he contravened Rule No. 3 of the Railway Service (Conduct) Rules, 1966.

2. In due course an enquiry was held and he was found guilty by the Enquiry Officer. The third Respondent thereupon issued a notice to the Petitioner requiring him to show cause as to why he should not be reduced in rank for a period of two years. The Petitioner submitted his reply but the same was not accepted and on March 5, 1970 the impugned order was passed whereby the Petitioner was reduced in rank. The Petitioner then filed an appeal, which was rejected by the Chief Commercial Superintendent. The Petitioner has now approached this Court Under Article 226 of the Constitution.

3. In reply to the writ petition two counter-affidavits have been filed, one by the fourth Respondent, Sri O.P. Sharma and the other by the third Respondent Sri B.C. Srivastava. According to the counter-affidavit of Sri O.P. Sharma what happened on 24th March, 1968 was altogether different from the version given by the Petitioner. It has been stated that Sri Sharma had gone to Delhi Railway Station on official work and happened to be on plat-form No. 13 where the Janta Express was standing. He noticed that the Petitioner was behaving rudely towards some passengers and Sri Sharma in his capacity as a senior Railway Officer advised the Petitioner not to behave in that fashion towards the public. Thereupon the Petitioner lost his temper and abused and insulted him. He wanted to contact some other railway official but the Petitioner followed him on the railway platform and continued to abuse him and then finally issued a memo u/s 121 of the Indian Railways Act. Shri Sharma has stoutly denied the story put forward by the Petitioner that he had asked the Petitioner to carry two passengers without ticket to Kanpur.

4. The Petitioner has challenged the impugned order passed by the 3rd Respondent as well as by the second Respondent, the Chief Commercial Superintendent, Northern Railways, on various grounds. He has also challenged the enquiry held against him as being contrary to the rules aid against the principles of natural justice. However, it is not necessary to enter into any of these questions as this petition, to my mind, can be disposed of on a very short ground.

5. As has been? pointed out by the Supreme Court in the case of Bachhittar Singh Vs. The State of Punjab, , a departmental enquiry against a Government Servant it is judicial in nature and must contain reasons for the findings recorded

against him as also for the order of punishment, ii the instant case, so far as the Enquiry Officer is concerned, he has, in his report, set out the entire evidence and the reasons for his finding that the Petitioner as guilty. The order of the Punishing Authority, namely, the Superintendent, Kanpur Area, however, is a laconic order and contains no reasons whatsoever. This is what it says:

I have carefully considered your defence dated 26-11-69 do the Memorandum (show cause notice) No. SCA/Z/Comml./68/31 dated 6-11-69. I do not find your defence to be satisfactory and I hold you guilty of the charges (i) behaving rudely with Shri O.P. Sharma, the then SAO (TA) Delhi-Kishanganj and (ii) abusing your powers by maliciously issuing and handing over memo u/s 121 of the Indian Railways Act for prosecution of Sri O.P. Sharma, the then SAO (TA), Delhi-Kishanganj, which have been substantiated against you. I, therefore, impose upon you the following penalty:

Reduced in rank to the post of Ticket Collector in scale of Rs. 110-180 (AS) on a salary of Rs. 175/- per month for a period of two years with immediate effect. On restoration, this period of reduction shall operate to postpone future increments and affect seniority.

6. Now in reply to the show cause notice issued by the 3rd Respondent, the Petitioner raised large number of objections. In substance, the Petitioner had challenged the authority of the person who had conducted the enquiry and the findings recorded by him. Another objection raised by him was that an offence u/s 121 of the Indian Railways Act was a cognizable offence, which was triable only by a Magistrate First Class, as provided for u/s 133. He having issued a memo against Sri Sharma u/s 121, the same could only be tried by a Magistrate. It was not open to the Respondents to ignore the memo and to hold that the Petitioner was guilty of having issued a memo u/s 121 against a railway officer maliciously. He says that such a finding could only be recorded by a Magistrate. In other words, he challenged the jurisdiction of the enquiry officer to go into his contention. The 3rd Respondent has not dealt with either of the two contentions. The Petitioner appealed but the appellate order is up better. This is how the appellate Order reads:

The proceedings in respect of charge No. 1 are not warranted on record. The other charges are supported by evidence. The procedure laid down in D.A.R. Rules has been complied with. The penalty imposed is adequate.

7. It is of course true that where the Punishing Authority agrees with the findings of the Enquiry Officer, it need not record reasons of its own but where serious objections have been raised against the enquiry report and the jurisdiction of the Enquiry officer itself is challenged, it is necessary for the punishing authority to deal with such objections. Of course it was not necessary to pass a detailed order like the one passed by a court but nevertheless brief reasons had to be stated in the order as to why objections raised by the Petitioner were not acceptable. It is an essential requirement of an order of a judicial or quasi-judicial nature. The

same is true about the appellate order. It was incumbent upon the appellate authority to have dealt with the objections raised by the Petitioner which can not be said to be frivolous.

8. Yet another question that has been raised before me is that when the appellate authority had absolved the Petitioner of the charge No. 1, there was no foundation left for charge No. 2 unless it can be said that issuing of a memo u/s 121 of the Indian Railways Act against a Railway officer itself is a misconduct. On the plain language of Section 121, it is clear that there is no such exception in favour of a Railway Officer. However, a question might arise as to whether Mr. Sharma caused obstruction to the Petitioner in the discharge of his duties and as to whether the Petitioner could be said to be on duty while the train was still standing on the Railway platform. These are also questions which deserve serious consideration. It is not necessary, however, for me to decide these questions, as in my opinion, the impugned orders can be quashed on the ground already indicated. However, if the authorities concerned proceed to decide the matter afresh, it may be proper for them to deal with this aspect of the case also.

9. The petition is accordingly allowed. The orders of the Superintendent, Kanpur Area, Kanpur dated 5-3-1970 (Annexure to the petition) as also of the Chief Commercial Superintendent dated 1-9-1970 (Annexure 1 to the petition) are quashed. The Petitioner is entitled to the costs of this petition.