

(1976) 05 PAT CK 0012

In the Patna High Court

Case No : C.W.J.C. No's. 1393 and 1394 of 1974

Dinesh Prasad Sah and Ramundit Mandal

APPELLANT

Vs

Divisional Suprintendent and Others

RESPONDENT

Date of Decision : 14-05-1976

Acts Referred:

Citation : (1977) 25 BLJR 40

Hon'ble Judges : S.K. Choudhuri, J;H.L. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Choudhuri, J.—These two writ applications are filed for quashing the order of removal of the respective petitioners from service dated 18th May, 1974, passed by the Divisional Superintendent, Eastern Railway, Dinapur, respondent No. 1. The said order is contained in Annexure "6" in C.W.J.C. 1393 of 1974 whereas the order relating to the petitioner of C.W.J.C. 1394 of 1974 is made Annexure "5" to that writ application. As the facts and the points raised are common, they have been heard together and this judgment will govern both the cases. I may briefly state the relevant facts necessary to appreciate the common Points raised in the two writ applications. The petitioners of each of the two writ applications were appointed as labourers under the railway department. They were ultimately transferred in November, 1972 to Kiul station where they were serving under the In-charge Train Examiner, respondent No. 4. It is stated in the petition that for the improper behaviour of respondent No. 4 a complaint was filed by the Carriage and Wagon Staff of which the petitioners were also employees, to the Divisional Mechanical Engineer, a copy of the said Complaint is made Annexure "1" to the respective writ applications. It is stated that this action of filing a complaint enraged respondent No. 4 who in collusion with the Assistant Mechanical Engineer, Carriage and Wagon (respondent No. 2) falsely implicated the petitioners in a criminal case and first information report was lodged against them and others on 25.4.1974, by respondent No. 2 which was registered as Kiul

G.R.P. Case No. 6(4)74. A copy of the said first information report is made Annexure "2" to each of the writ applications. It is further stated by the petitioners that on 26.4.1974, respondent No. 4 gave slips to the petitioners sparing them to report to the officer incharge of Kiul G.R.P. Accordingly the petitioners and others went to the officer incharge, waited there till 4 p.m. but the officer incharge did not record their statements and directed them to come on the next day. It is stated that on the next day also they went to the said officer incharge but nothing was done and ultimately Respondent No. 4 directed them to go to court at Lakhisarai as requisition had already been sent to court. The petitioners stated that they accordingly went to the court, surrendered and took bail on 3.5.1974. It has been further stated by the petitioners that is the mean time a letter of suspension dated 29th April, 1974 was issued by the office of the Divisional Superintendent, Dinapur, by order of respondent No. 1 suspending the petitioners with effect from 26.4.1974 (Annexure 4 to each of the writ applications).

2. The said suspension order was followed by charge sheet against the petitioner of C.W.J.C. 1393 of 1974, which is dated 1.5.1974 and a copy of which is made Annexure "5" to the said writ application. It has been stated by this petitioner that the suspension order (Annexure "4") and the charge-sheet (Annexure "5") were sent purposely to the home address of this petitioner though he was at the head quarter at Kiul as per direction of the authority concerned.

3. The petitioners of both writ applications thereafter removed from service by order dated 18.5.1974 contained in Annexures "6 and 5" respectively of the aforesaid two writ applications which were pasted in the Notice Board at Kiul Junction railway station T.X.R. Office.

4. The petitioners of both the writ applications asserted that no notice of removal from service was served upon any of the petitioners nor the said order was communicated to them personally, though, it was known to the authorities a concerned that the petitioners were living at Kiul. It has been further stated by the petitioners that on the alleged date of occurrence, that is on 2.5.1974 at 11.25 A.M. neither of the petitioners were at Kiul but they had gone to Mokamah junction to bring certain articles by 39 up train which left Kiul at 5.58 A.M. and they returned by the down train which arrived at Kiul junction at 2.40 P.M. They left the station by order of the Incharge Train Examiner, respondent No. 4. A copy of the said order is made Annexure "7" in C.W.J.C. 1393 of 1974 and Annexure "6" in the other writ application. Under these set of facts the writ petitioners have challenged their respective orders of removal from service aforesaid.

5. A counter affidavit has been filed by respondent No. 3 in each of the writ applications. He has denied the allegation of collusion between respondents No. 2 and 4 and false implication of the writ petitioners. He has stated that F.I.R. was lodged not by respondent No. 2 but by respondent No. 3 himself who is the deponent which is apparent from the F.I.R. (Annexure 2f itself. On that day

respondent No. 2 was not at all at Kiul but was at Dinapur. It has been further averred that it is absolutely wrong and incorrect to say that the writ, petitioners along with others went to respondent No. 4 who asked the petitioners to go to court. It is further averred that Is order of suspension was passed by the Assistant Mechanical Engineer, respondent No. 2 and not by Divisional Superintendent, respondent No. 1. It has further been asserted that the writ petitioners were not at the head quarters at the relevant time and therefore notices were sent to their home address by registered post. They unauthorisedly absented themselves and were not found. There is no violation of principle of natural justice. The order of removal of the writ petitioners were pasted on the Notice Board for the reasons mentioned in the said removal order and for the reasons recorded by the Divisional Superintendent, Eastern Railway, Dinapur, respondent No. 1. A copy of the reasons recorded by respondent No. 1 is made Annexure "A" to the Counter affidavit. It has been further averred in the counter affidavit that notice of removal of the writ petitioners could not be served upon them as they were not available and in fact the writ petitioners were absent from the head quarters and their whereabouts were not known to the railway authorities. It has further been stated that on 25.4.1974 at 11.25 A.M. the petitioners were present at Kiul as would appear from their T.A. journal, a copy of which has been made Annexure "B" to each of the writ applications. It has been asserted that the petitioners returned Kiul from Mokamah at 8.5 hours by 8 Down train as would be evidenced from their T.A. journal (Ext. B). In these set of facts pleaded in the counter affidavit it has been asserted that the orders of removal passed by respondent No. 1 were legal and valid in law and the principle of natural justice has not been violated by the authorities concerned.

6. A rejoinder in each of the writ case filed by the petitioners. They have reiterated to what they have stated in the writ petitions and while denying the allegations of the counter affidavit re-asserted their stand taken in the writ petitions.

7. Mr. B.C. Chose, learned Counsel, appearing on behalf of the petitioners contended that the order of removal of the writ petitioners are bad in Jaw as there has been violation of principle of natural justice, Ht contended by referring Rule 14 of the Rail way servants (Discipline and Appeal) Rule, 1968 (hereinafter called the Rules) that before passing an order of punishment by terminating the services of the petitioners the authorities concerned should have followed the principle of natural justice. It will be relevant therefore, to quote Rule 14 (leaving the proviso) at this stage which reads thus:

Special procedure in certain cases--Notwithstanding anything contained in Rules 9 to 13.

(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 or

(ii) Where the disciplinary authority is satisfied for reasons to be recorded by it in

writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) Where the President is satisfied that in the interest of Security of the State, it is not expedient to hold an inquiry in the manner provided in these rules:

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.

He stressed upon the word "may consider the circumstances of the case and make such orders thereon as it deems fit" and intended that for these words there was no scope for dispensing with the principle of natural justice. Mr. S.C. Ghose on the other hand contended that in the present case the facts and circumstances clearly show that sufficient opportunities were given to the writ petitioners before passing the final order of termination of their services. He contended that in spite of the best efforts notices could not be served upon the writ petitioners and as such it was competent for the authority concerned to proceed further in the matter and pass order *ex parte*. In support of the contention raised by Mr. B.C. Ghose, he relied upon a Supreme Court decision in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, where in dealing with Rule 14 of the Rules and while interpreting the later part of Rule 14 namely "disciplinary authority may consider the circumstances of the case and make such orders thereon as he thinks fit" has held as follows:

...The word "consider" has been used in contradistinction to the word "determine". The rule making authority deliberately used the word "consider" and not "determine" because the word "determine" has a much wider scope. The word "consider" merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employees on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words the term "consider" postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employee.

This decision has been recently referred to by us in C.W.J.C. 1735 of 1975 which was heard with three other writ cases and disposed of by common judgment dated the 15th April, 1976. Following the said decision we have accepted a similar contention raised in those cases. Thus it has to be held that before passing a final order of termination of Service of the writ petitioners the authorities concerned while acting under Rule 14 should have followed the principle of natural justice.

6. In the present case as already indicated above Mr. S.C. Ghose, strenuously

contended that the principle of natural Justice has been followed j] is true that in the counter affidavit statements have been made pointing out that the writ petitioners were not at Kiul and as such their suspension orders were sent to their home address by registered post. But it appears that the registered letters were returned unserved. It has not been asserted in the counter affidavit that the registered letters were presented to the writ petitioner who refused to take them. It is also not the case of the petitioners that they were absconding. It is true that in the order of removal of the writ petitioners it has been mentioned that the writ petitioners could not be contacted at the address on the record of the office and their whereabouts were not known to the office. Even if the said position is accepted as true the authorities before passing the final order of termination would have taken care to serve notice in accordance with law, namely, that where a person could not be found the notice could have been served by adopting the mode of substituted service. The notice in such circumstances therefore could have been served by the authorities by publishing in the gazette or any news paper or in any other suitable manner which would have been proper in the facts and circumstances of the Case. It was the duty of the authorities concerned to act in a prudent manner before passing the final order of termination of the services of the writ-petitioners by attempting to serve notice upon them instead of acting hastily in terminating the services of the writ petitioners on return of the registered covers unserved. In that view of the matter it is difficult to uphold the impugned order of removal of the writ petitioners from service.

7. In the result, both the writ applications are allowed. The order of removal contained in Annexure "6" of "5" C.W.J.C. 1393 of 1974 and Annexure "5" of C.W.J.C. 1394 of 1974 are quashed. There will however be no order as to costs.