
(1956) 12 MAD CK 0007
In the Madras High Court
Case No : Appeal No. 866 of 1952

Dominion of India

APPELLANT

Vs

Arulappan

RESPONDENT

Date of Decision : 18-12-1956

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Government of India Act, 1935 — Section 240(3)

Citation : AIR 1957 Mad 356

Hon'ble Judges : Rajamannar, C.J; Panchapakesa Ayyar, J

Bench : Division Bench

Advocate : C. Govindarajan and C. Sampath, for the Appellant; K. Narayanaswami Mudailar and Muthuswami, for the Respondent

Final Decision : Dismissed

Judgement

Rajamannar, C.J.—This is an appeal against the decree and judgment of the learned Subordinate Judge of Tiruchirapalli in O. S. No. 134 of

1950 on his file That was a suit filed by the respondent against the appellant, the Dominion of India owning the South Indian Railway represented

by its General Manager, for a declaration that the order dated 24-12-1948 dismissing the plaintiff, was void, wrongful and illegal and for the

recovery of Rs. 8000, as compensation for injuries suffered by the plaintiff.

2. The plaintiff was employed as a fitter in the mechanical department in the Golden-rock workshop of the South Indian Railway on and from the

13th October 1941. On 3rd November 1948 the following charges were framed against him, viz., that he extracted four pears (worth two annas)

from a consignment from Kodaikanal Road to Pondicherry in the course of transit at Villupuram at about 9:35 p.m. on 28th August 1948, when

the consignment was lying on the platform and that he gave wrong information about his identity in the statement given by him to the Subedar,

Watch and Ward, Villupuram, with a view to evade responsibility. He was called upon to show cause why he should not be removed from

service, or punished with any of the lesser penalties specified in Rule 1702 of the Discipline and Appeal Rules.

He was also called upon to submit a written explanation within 7 days of receipt of the charge-sheet. Apparently the respondent submitted an

explanation on 11th November 1948. But neither the original, nor a copy of it, was produced at the trial. On 15th November 1948, the railway

authorities acknowledged the explanation dated 11th November 1948, and intimated to him that he was given an opportunity to show cause

against the imposition of the penalty, viz., removal from service, within 7 days of the receipt of the letter.

On receipt of this communication, the respondent wrote back denying all allegations contained in the charge-sheet and requesting an impartial

enquiry into the matter. Admittedly no enquiry was made; but he was served with an order of the General Manager, whereby his services with the

railway were terminated from 30th December 1948. On 7th January 1949 the respondent again requested that an impartial enquiry may be made,

and that he may be given an opportunity of disproving the charges levelled against him.

His request was, however, not granted. Thereupon he filed the above suit out of which this appeal arises. He alleged that the railway authorities

had ignored the provisions of the Discipline and Appeal Rules and had not followed the proper procedure before removing him from service and

that therefore the order of dismissal passed against him was wrongful.

3. The defendant-railway contended that the plaintiff had been caught red-handed by the Watch and Ward staff while extracting the pears and that

when, the charge was intimated to him, he admitted the charge but it was only when a further opportunity was given to him to show cause why he

should not be removed from service that he went back on the previous admission of guilt and denied the charges.

The plea was that the plaintiff had been removed from service on the basis of his own admission of guilt and therefore there was no necessity to

hold an enquiry.

4. The learned Subordinate Judge who tried the suit held that the officer" who passed the order of dismissal had failed to observe the mandatory provisions of the statute, viz., Section 240(3) of the Government of India Act, 1935, and also rule 1707 framed by the South Indian Railway, In that there was no judicial trial and enquiry before the order of dismissal was passed.

As there was non-observance of statutory provisions, the termination of the plaintiffs services was illegal and wrongful. He therefore, granted a declaration that the order dated 24th December 1948 terminating the services of the plaintiff was void and inoperative. He dismissed the other part of the plaintiff's claim for recovery of damages. The defendant-railway is the appellant before us.

5. There can be no doubt whatever that there was no enquiry ever conducted by the officer who had the authority to impose the punishment and there was no finding of guilt as a result of any such enquiry. The only plea of the railway on this matter is that there was no necessity for an enquiry because the plaintiff had admitted his guilt.

This admission is supposed to be contained in the explanation submitted by the plaintiff on 11th November 1948. That communication was not produced by the railway. Nor was the statement alleged to have been made by the plaintiff produced. We may also add that even the statements alleged to have been taken from the Subedar and others at the time when the plaintiff was caught red-handed with the pears were not produced.

The railway authorities stated that the file relating to the plaintiff could not be traced in their office. Mr. Govindaraja Aiyangar, counsel for the appellant, i.e., the railway, contended that as the original was lost, secondary evidence of the contents of the documents could be adduced. We agree. But we have no hesitation in saying that no secondary evidence such as is contemplated under the provisions of the Evidence Act was ever adduced by the defendant.

The personal officer to the Chief Mechanical Engineer at the material time was examined as D. W. 3. But he did not depose that he had actually read the explanation submitted by the plaintiff and that he recollected its contents. Indeed, all that he could say was ""I think he sent in an

explanation.

He said that Ex. B. 3 made a reference to the explanation; but surely the statement in Ex. B. 3 "cannot be substantive secondary evidence.

Learned counsel conceded that there is no other evidence on record which can be said to be secondary evidence of the contents of the explanation

within the meaning of the Evidence Act.

It must therefore be held that there is no proof of any admission on the part of the plaintiff that he was guilty of the charges levelled against him. If

there is no proof of such admission, it is obvious that it was incumbent on the officer to have conducted an enquiry and arrived at a finding on the

materials placed before him at the enquiry. This was not done.

6. It cannot be denied that no order of dismissal can be passed against an employee of the railway without a departmental enquiry conducted in

accordance with the Discipline and Appeal Rules. As such an enquiry was admittedly not held In this case, the order of dismissal was wrongful.

7. We agree with the learned Judge in the decree which he has passed. The appeal is therefore dismissed with costs.