

(1953) 06 CAL CK 0004
In the Calcutta High Court
Case No : (Sic) on Case No. 3221 of 1952

Gopimohan Chakravorty

APPELLANT

Vs

Deputy Chief Mechanical Engineer (Shops), Eastern Railway

RESPONDENT

Date of Decision : 01-06-1953

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 68
Penal Code, 1860 (IPC) — Section 120B, 409, 420
Prevention of Corruption Act, 1947 — Section 5(2)
Railway Fundamental Rules — Rule 53
Railways Act, 1890 — Section 417(1)
Railways Board Act, 1905 — Section 2

Citation : (1955) 1 ILR (Cal) 456

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : R. Choudhury and Anil Kumar Das Gupta, for the Appellant; Bhabesh Narayan Bose, for the Respondent

Judgement

Sinha, J.—The Petitioners are two clerks employed in the (Sic) he deputy mechanical engineer (shops), Kanchrapara. application they are questioning the validity of to order (Sic) a passed upon them on January 2, 1951. The facts (Sic)s follows: In the latter part of 1960, the administration of the East Indian Railway (now the Kastorn. Railway) had occasion to suspect that some of its employees were currying on an illicit trade in the unlawful selling of railway privilege passes to outsiders. The matter was referred to the Special police establishment of the Government of India who started investigation.

2. On December 27, 1950, a letter was received by the General. Manager, E.I. Railway, from the superintendent of police, special police establishment, Ministry of Home Affairs, Government of India, to the effect that on December 16, 1950, Subodh Ghakravorty, a clerk working in the pass section of the office of the Deputy Chief Mechanical Engineer (Shops), Kanchrapara, was caught red-handed in a test purchase, while he made over a third-class valid foreign-pass for 3 1/2

persons for the journey from Kanchrapara to Rameswaran and back in the name a railway employee without his knowledge, for an illegal remuneration of Rs. 60. The Petitioners, together with another clerk, were alleged to be guilty of complicity in the offence. A case had been started against the guilty persons under Sections 409/420 of the Indian Penal Code, and it was requested that they might be placed under immediate suspension. On January 2, 1951, the Respondent passed an order placing five persons, including the Petitioners, under suspension with effect from January 3, 1951, until further orders. It was clearly stated that the order had been made on the basis of the report received from the superintendent of police, mentioned above. It is not disputed that the suspension order had been passed under Rule 1711 of the Discipline and Appeal Rules (Non-gazetted) as contained in Chapter XVII of the Indian Railway Establishment Code Vol. I. It is, however, a question to be decided as to whether it was passed under Sub-rule (a) or (b). I shall presently, revert to It.

3. On July 21, 1951, the Petitioners were served with summons issued by the Special Judge, Alipore, to answer a charge of having committed an offence u/s 120 of the Indian Penal Code, Teal with Section 5(2) of Prevention of Corruption Act (II of 1947).

4. Pursuant to the summons, the Petitioners appeared before the Special Judge and were granted bail. Thereafter, they appeared, several times before him until May 4, 1952, when the Special Judge ordered the case to be filed as he had ceased to (Sic) further jurisdiction to proceed with the trial. On May (Sic) the Petitioners applied to the railway authorities, to a (Sic) to resume work, but they were told that nothing could (Sic) the trial was pending. On July 5, 1952, fresh such (Sic) served upon the Petitioners who again appeared and (Sic) bail. On August 13, 1952 the Petitioner sent a rep(Sic) claiming that the suspension order was without jurisdiction that they should be allowed to resume work. On. August 21, 1952, the Respondent wrote, back to say that nothing could be done as the matter was sub judice. On August 26, 1952, the Special Judge again filed the case as he had no jurisdiction to continue the trial. On September 22, 1952 the Petitioners again demanded to resume work but were not allowed to do so. This rule was issued on December 19, 1952.

5. Rule 1711 of the Discipline and Appeal Rules (Non-gazetted) is as follows:

Suspension?(a) A railway servant shall be placed tinder suspension when he is arrested or committed to prison pending trial by a court of law and he shall remain under suspension until judgment is delivered by the court, unless, in the event of his release on bail, the authority competent to suspend him, decides to allow him to resume duty pending decision of the court.

(b) A railway servant whose conduct is undergoing investigation on a charge, the maximum penalty for which is dismissal or removal from service, may, at the discretion of the competent authority, be kept under suspension until his case has been finally decided. The period of suspension under this sub-rule should not

normally exceed four months except with the approval of the authority next above that imposing the penalty.

6. It is quite clear that Sub-rule (a) is attracted only when there is proceedings in a court of law and Sub-rule (b) is attracted in the case of departmental proceedings. Mr. Bose argues that Sub-rule (b) is not necessarily confined to departmental proceedings because under Rule 1706, a railway servant is liable to dismissal from service if there is a conviction by a criminal court or a court martial. There is, however, no substance in this argument. The "charge" mentioned in Sub-rule (b) must be a departmental charge because a criminal charge can never have any such penalty as dismissal or removal from service. On the other hand, if we are considering Rule 1706, then also the word "charge" in Sub-rule (b) cannot mean the offence with which a man is charged in a criminal court. But the fact that a person has been tried in a criminal court and convicted might result in departmental proceedings being taken against him resulting in his dismissal from service. During such proceedings, he might be suspended under this sub-rule. In this particular case, there has been no departmental enquiry. It is true that the railway administration set the ball rolling, but it did so by informing the police and the investigation and subsequent trial cannot, by any stretch of imagination, be called departmental. Hence, Sub-rule (a) is applicable and not Sub-rule (b). The condition under (Sic) Sub-rule (a) applies has been laid down in *Pulin Behari Chakravorty v. Divisional Superintendent, Sealdah* (1962) 67 C.W.N. 201. case also, the Petitioner, an employee under the East (Sic) railway, was directed to appear before the special court provisions u/s 68 of the Code of Criminal Procedure and (Sic) granted bail. It was held by Bose, J., that he had neither been arrested, nor committed to prison pending trial by a court of law, and accordingly the railway authorities could not pass an order of suspension upon him under Rule 1711(a). In this case also, no valid order for suspension could be made under Rule 1711(a), since the Petitioners have neither been arrested nor committed to prison pending trial by a court of law. Mr. Bose next draws my attention to the provisions of Section 111 headed "committals to prison", in appendix XXXI of the Indian Railway Establishment Code, Vol. II, as amended by circular No. AE 3063/1 of the Railway Board, dated June 13, 1961. These are rules framed by means of administrative instructions issued in connexion with the Railway Fundamental Rules by the President, Railway Board. For Section 111, the following has been Substituted:

IV.?Suspension during pendency of criminal proceedings or proceedings for arrest for debt.?(1) A railway servant against whom proceedings have been taken either for his arrest for debt or on a criminal charge should be considered as under suspension for any period during which he is detained in custody or is undergoing imprisonment and not allowed to draw any pay and allowances other than any subsistence allowance that may be granted in accordance with the principles laid down in Rule 2043-R (Fundamental Rule 53) for such periods until the termination of the proceedings taken against him. An adjustment of his

allowances for such periods should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or if the proceedings taken against him, were for his arrest for debt), of its being proved that the officer's liability arose from circumstances beyond his control.

(2) A railway servant against whom a criminal charge or a proceeding for a arrest of debt is pending should also be placed under suspension by the issue of specific orders to this effect during periods when he is not actually detained in custody or imprisonment (e.g., whilst released on bail), if the charge made or proceeding taken against him is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties as such or involves moral turpitude. In regard to his pay and allowances, the provisions of paragraph above shall apply.

7. Mr. Chaudhury has not questioned the authority of the railway board to make such rules. Section 417(1)(e) of the Indian Railways Act, 1890, read with Section 2 of the Indian Railway Board Act, 1905 and the delegations made thereunder, appear to invest the Railway Board with the power to make such rules.

8. Mr. Chaudhury, however, says that the rule cannot be retrospective in operation and therefore, it cannot affect an order for suspension made previously. That must obviously be so. Section 111 of app. XXXI of the Railway Fundamental Rules, as it stood before the amendment of June 13, 1951, did not warrant (any more than Rule 1711(a) of the Indian Railway Establishment Code) an order for suspension, unless the railway (Sic) committed to prison.

9. The present case would be governed by Sub-rule ((Sic) Appendix XXXI, of the Railway Fundamental I (Sic) above. But for that purpose a specific order for (Sic) be made, in terms thereof. The rule is not (Sic) operation; and an order for suspension, already made which was invalid and beyond the jurisdiction of the Respondent when it was made, cannot be taken to be an order passed under Sub-rule (2) of Appendix XXXI of the Railway Fundamental Rules; and this validate the suspension order. The result is that there exists no valid suspension order upon the Petitioners who must be restored to the position as if no such order has been made. It will, however, not prevent the Respondent or the Eastern Railway from making an order for suspension in accordance with the law.

10. The Rule is, accordingly, made absolute, the alleged suspension order, dated January 2, 1951, is cancelled, and/or set aside and the Respondent is directed to forbear from giving effect to it.

11. I make no order as to costs.