
(1996) 07 MAD CK 0119
In the Madras High Court
Case No : S.A. No. 1158 of 1987

G.T. Jayaraman

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 10-07-1996

Acts Referred:

Citation : (1996) 07 MAD CK 0119

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : G. Justin, for the Appellant; P.B. Krishnamurthy, for the Respondent

Final Decision : Allowed

Judgement

Srinivasan, J.—This Second Appeal has to be allowed on a very short ground and a decree lies to be passed in favour of the appellant.

The relevant facts are as follows: The plaintiff was working as Rakshak in the Railway Protection Force Loco works, Paramour. He was served with a charge memo on 29.10.1978 that he was guilty of dereliction of duty as he was found lying on the cement bench and sleeping at about 2:50 hours on 11.10.1978. He sent his reply on 2.11.1978 explaining that he had severe stomach pain at 02:00 hours and therefore, was lying on the bench. An enquiry was held and punishment was awarded withholding the increment of the appellant for a period of one year. The appellant did not prefer any appeal against the said order.

2. However, the Security Officer, who is the next higher authority, took up the matter sue mote and purporting to exercise his power under R. 60 of the Railway Protection Force Rules, 1959 (hereinafter referred to as "the Rules") passed an order on 24.4.1979 quashing the order of the First Authority and directing the issue of a charge Sheet under Rule 44 of the Rules. In that order, he had observed that the appellant did not submit his explanation to the charge sheet and the Assistant Security Officer passed orders on 13.3.1979. He had also observed that he had gone through the proceedings and found that a lenient

view had been taken by the Assistant Security Officer.

3. The Security Officer had not given any notice to the appellant before passing of the said order on 24.4.1979. It must also be noted that the original proceeding was under R. 45, which prescribes the procedure for imposing minor penalty. The Security Officer, however, directed fresh charge sheet under R. 44, which prescribes procedure for imposing major penalty.

4. Thereafter, a fresh charge sheet was issued on 2.6.1979 and the appellant gave his reply. An enquiry was held by an officer nominated by the Security Officer, who submitted a report that the appellant was guilty of the charge framed against him. The Security Officer sent a notice to the appellant calling upon him to show cause why the penalty of removal from service should not be imposed on him and after getting a reply from the appellant, passed the order removing the appellant from service.

5. Thereupon, the appellant filed a suit in O.S. No. 6157 of 1980 on the file of the City Civil Court, Madras, praying for a declaration that the penalty order dated 23.10.1979 passed by the Security Officer was unjust, improper, illegal and void and that he should be deemed to continue in service with all benefits.

6. The trial court as well as the appellate court held that the Security Officer had the jurisdiction to order a fresh enquiry under R. 60 of the Rules and what has been done is in accordance with the said Rules. Consequently, the suit was dismissed by the trial court and the appellate court confirmed the said dismissal.

7. In this Second Appeal, four contentions are raised by learned counsel for the appellant.

(1) Another Rakshak of the same rank, as the appellant, was also found sleeping at the same time during the duty hours, but he was let off with a minor penalty whereas the appellant alone was punished with a major penalty of removal from service and thus, Art. 14 of the Constitution of India is violated.

(2) The Security Officer has no power to frame charges himself, as he is the Appellate Authority and he ought to have, if at all, directed the First Authority, viz., Assistant Security Officer to frame charges.

(3) No opportunity was given to the appellant to contest the proposed framing of fresh charge by the Security Officer and therefore, the entire proceeding is vitiated.

(4) The punishment awarded is highly disproportionate to the misconduct of the appellant and the same ought not to have been ordered contentions. It is unnecessary for me to consider contention Nos.1 and 4.

9. R. 60 of the Rules provides that any Authority superior to the Authority making the order may, on its own .

8. In my opinion, it is enough to deal with contentions 2 and 3, as the appellant

will succeed on those two motion, or otherwise revise the order (whether original or appellate) passed by such lower Authority. Sub Rule (2) thereof provides that the Revising Authority may remit, vary or enhance the punishment imposed, or may order a fresh enquiry or the taking of further evidence in the case as it may consider necessary. Sub R. (3) makes the provisions of R. 58 applicable to orders in revisions.

10. Under R. 58, in an appeal against an order imposing any of the penalties specified in R. 41, the Appellate Authority shall consider whether the procedure prescribed has been complied with, whether the findings are justified and whether the penalty imposed is excessive, adequate or inadequate and pass orders accordingly. Under the proviso, the Appellate Authority is prevented from imposing any enhanced penalty, which, neither such Authority, nor the Authority which made the order appealed against, is competent to impose. Secondly, no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representations which he may wish to make against such enhanced penalty.

11. In this case, we find that the Appellate Authority has himself not only exercised the powers of revision, but also framed fresh charges under a different provision of law, viz., R. 44. The Authority being an Appellate or Revisional Authority, is not entitled to frame charges himself. He could have, it at all, remitted the matter for fresh enquiry to the First Appellate Authority, viz... Assistant Section Officer, so that the appellant will have an opportunity of challenging the prejudicial order, which may be passed by the said Authority by filing an appeal to the Appellate Authority. Apart from that, when the Revisional Authority chose to frame fresh charge under a different provision of law, that itself shows that he had already made up his mind to impose a major penalty. While R. 45 deals with the procedure for imposing minor penalty, R. 44 deals with the procedure for imposing major penalty. When the Appellate Authority chose to frame charges under R. 44, that itself proves that he wanted to impose a major penalty to the appellant. Though the Revisional Authority had not actually enhanced the penalty by passing an order at that stage, the order framing a fresh charge under R. 44, would itself amount to an enhancement of penalty, though it was not specified at that stage. In such a situation, as per Rule 58, the Revisional Authority ought to have issued a notice to the Appellant and given him an opportunity of making any representation which he may wish to make against such change of procedure and framing of charges under R. 44, instead of R. 45. In the absence of such a notice, there is no doubt whatever that the principles of natural justice have been violated.

12. Even otherwise, in my opinion R. 60(2) of the Rules does not exclude the applicability of the principles of natural justice to the Revisional Authority, when he chooses to set aside the order of the First Authority and remits the matter, varies or enhances the punishment imposed or orders a fresh enquiry. He shall issue notice to the person concerned and give him an opportunity to make his

representation against such procedure being adopted. In this case, that has not been done admittedly. Consequently, the order passed by the Security Officer dated 24.4.1979 canceling the earlier order of penalty passed against the appellant is held to be null and void and all the subsequent proceedings, which followed that are also null and void, in the eye of law. Hence, the penalty order passed on 23.10.1979 is declared to be illegal and void. However, the original order dated 13.3.1979 imposing the penalty of withholding of increment for one year on the appellant by the First Authority shall stand. Consequently, the appellant is declared to be deemed to have continued in service with all the benefits attached thereto, monetary or otherwise. It is needless to say that the appellant will be entitled to all monetary benefits as well as other benefits, as if he was in service even after the date 23.10.1979. The Second Appeal is allowed on the above terms; judgment and decree of the courts below are set aside and the suit O.S. No. 6157 of 1980 will stand decreed in the he above terms. The appellant will be entitled to his costs throughout.