
(1959) 02 AHC CK 0003
In the Allahabad High Court
Case No : Civil Misc. Writ No. 3292 of 1956

Harbans Lal Arora

APPELLANT

Vs

Divisional Supdt. Central Railway, Jhansi and Others

RESPONDENT

Date of Decision : 20-02-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 4
Constitution of India, 1950 — Article 226, 310, 311
Evidence Act, 1872 — Section 115

Citation : AIR 1960 All 164

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : Ali Raza Osmani, S.N. Misra, for the Appellant; B.L. Gupta, for the Respondent

Final Decision : Allowed

Judgement

S.S. Dhavan, J.—This is an application under Article 226 of the Constitution praying for the quashing of an order removing the petitioner from service as a Ticket Collector in the employ of the Central Railway. The petition was amended during the pendency of the case, of which fact a detailed mention will be made hereafter. The petitioner has made the following allegations in his affidavit in support of the petition.

He was employed on the date of the incident which led ultimately to his removal, as a Ticket Collector at Mathura Junction on the Central Railway. He was appointed as a clerk in 1948. On 6-9-1955 he was on duty at Mathura Junction Station. On that date the incident in dispute happened as a result of which he was charged with two offences -- first, that he assaulted a parcel porter called Nathi, and secondly, that he made certain false allegations accusing the Assistant District Commercial Inspector of having uttered threats against him.

In his affidavit the petitioner gave no details of the incident or his version of it. But he alleged that he was served with a charge-sheet a copy of which he filed

as annexure "A" to his affidavit. He also made the grave allegation that the Officer conducting the enquiry was the Assistant Commercial Superintendent, Jhansi who happened to be "a close relation" of the Assistant District Commercial Inspector who was an interested party in the case as the petitioner was charged with the offence of having hurled false accusations against this Inspector.

The petitioner states that this man would have got into trouble if his (the petitioner's) case against him was found to be true. The Enquiry Officer therefore, was interested in protecting the interests of his own relations. He deliberately avoided giving the petitioner opportunity to defend himself during the proceedings. The petitioner states, by way of illustration, that no information was sent to the petitioner as to when the alleged enquiry was made (presumably this is a reference to the preliminary fact-finding enquiry as a result of which the petitioner was served with a charge-sheet).

The petitioner further alleges that, even after the service of the charge-sheet, his requests for being supplied with relevant information and copies of the record were deliberately refused. He also alleges that difficulties were placed in the way of his conducting his defence effectively. For example (according to him) he had obtained the consent of one B. S. Ramaswamy, a conductor guard on the same railway, to be his defence "counsel" during the enquiry. He sent a formal request that Ramaswamy be given facilities as provided by the rules to enable him to function as defence counsel but the request was refused by the Divisional Commercial Superintendent.

This "obstruction", as the petitioner calls it, was placed in his way with the "special ulterior object that the applicant may not have the services of the suitable defence counsel". The petitioner had no choice but to select another person, one Mrs. Varma, as his defence counsel but as he was not relieved he too could not defend the petitioner. All this was done in defiance of the rule and with the object of depriving of all opportunity of defence. The petitioner alleges that he was not given time to nominate a third defence counsel with the result that he, to use his own words, "had to go undefended at the enquiry."

He further states that, during the enquiry itself he asked for certain relevant records and papers but his request was turned down. He was materially prejudiced, in the absence of defence counsel and relevant papers, and could not properly cross-examine the witnesses. It is further alleged by him that one of his witnesses, B. R. Rudra, who had earlier made a report of the incident supporting the petitioner's version, was threatened and served with a charge-sheet, with the result that he changed his version at the enquiry and gave a statement favouring the prosecution.

The Officer holding the enquiry did not permit the petitioner to confront B. R. Rudra with the aforesaid earlier statement contained in a diary maintained by him. This was done because the Assistant Commercial Superintendent was interested in the Assistant District Commercial Inspector and did not permit any

matter to be brought on the record which might prove injurious to the aforesaid Inspector. The petitioner also states that the Assistant Commercial Superintendent was the chairman of the Enquiry Committee.

At the conclusion of the enquiry, a show cause notice was served on the petitioner a copy of which has been filed as annexure "E" to his affidavit. In response to this notice the petitioner made a request for copies of the evidence and of the finding of the Enquiry Officer, but the respondent refused this request. A copy of the letter of the authorities containing the refusal has been filed as annexure "G" to the petitioner's affidavit.

He further alleges that though handicapped and deprived of a reasonable opportunity of making a proper explanation, he did send a reply to the show cause notice, which is filed as annexure "H" to his affidavit. In it the petitioner alleged that the Assistant District Commercial Inspector, P. T. Manjre, had persuaded one of the porters under him to file a false complaint against him (the petitioner).

He also alleged that this P. T. Manjre was related to the Assistant Commercial Superintendent, who, under the influence of Manjre sent an adverse report against the petitioner. He also complained that the Enquiry Committee which investigated the charges against him included the Assistant Commercial Superintendent Sri Moholkar though this officer was related to the Inspector Manjre whose interest in the enquiry was adverse to that of the petitioner.

He alleged that the enquiry against him was not free from bias or prejudice and violated all canons of justice. In support of this grievance, he cited the following acts and omissions of the Enquiry Committee. (1) They put undue pressure on a railway employee by the name of B. R. Rudra, one of the witnesses supporting the petitioner, that he should not support him and when Rudra hesitated he was transferred to Bina. The pressure, however, continued to be exerted against him with the result that Rudra made a complete somersault and went back on his own previous statement made in the preliminary enquiry and "told a heap of lies" against the petitioner. (2) The petitioner was not given any opportunity or facility for engaging a defence counsel. (3) He was not supplied with copies of the statements of witnesses, the report of the fact-finding committee, and other relevant papers. He, therefore, contended in his reply to the show-cause notice that he could not be removed from service.

2. On 19th May, 1956 the Divisional Commercial Superintendent passed an order rejecting the petitioner's explanation and removing the petitioner from service with effect from 21st May 1956. He was informed that an appeal lay against the order of removal to the Chief Commercial Superintendent. The petitioner preferred an appeal against his removal which was rejected on 9th July 1956. Aggrieved by the order of removal the petitioner filed the present petition which was admitted on 23rd October 1956 by V. D. Bhargava, J.

3. It is necessary at this Stage to make a Few comments on the allegations made

by the petitioner in support of his case. He alleged, in effect, in his affidavit that the enquiry against him was a farce because the dice was loaded against him by the inclusion of Mr. Moholkar, "a close relation" of the Inspector Manjre, who was deeply interested in the result of the enquiry. He being the petitioner's principal accuser, and against whom the petitioner had made serious allegations.

In paragraph after paragraph of his affidavit the petitioner alleges how this relationship weighed heavily against him throughout the enquiry. In paras. 7 and 8 he states that "the Enquiring Officer was to protect the interest of his own relation" and "deliberately therefore avoided giving of opportunity to the applicant during the period of enquiry". In paragraph 9 he alleges that the copies of the record were deliberately refused to him. In paragraph 10 he complains that he was completely disabled in his defence.

In para 13 he alleges that "obstruction was placed" in his way of obtaining defence counsel "with the special ulterior object that the applicant may not have the services of a suitable defence counsel." In para 17 he asserts that "the enquiry was completed with the greatest prejudice to the applicant." In para 18 he alleges that the members of the Enquiry Committee did not permit him to confront the witness Rudra, who according to him had changed sides during the enquiry, and to confront him with his previous statement recorded in his diary which contradicted his subsequent statement.

The reason for this refusal, according to the petitioner, was "that the Assistant Commercial Superintendent (Mr. Moholkar) who was chairman of the Officer Committee was interested in the Assistant District Commercial Inspector and did not permit matter to be brought on record which would prove "injurious to the said Inspector". In ground No. 5 of his petition the petitioner states:

"(5) Because in any event of the case as the applicant had no opportunity and the enquiry was made by a person interested against the applicant the enquiry was a complete farce and the applicant had no opportunity to avail of the protection guaranteed under the Constitution and thus the order of removal is absolutely illegal and unsustainable in law."

4. It is thus clear from the petition and the affidavit that the allegation that Mr. Moholkar, one of the members of the Enquiry Committee, was related to the Inspector Manjre and deliberately fouled the proceedings with the object of shielding his relation was the foundation of the petitioner's case. On the faith of this allegation, this Court admitted his petition and issued notice to the respondents.

5. After the respondents had entered appearance and shown cause against the petition, they filed an affidavit completely denying the allegation that Mr. Moholkar is related to the Inspector Manjre. In paragraph 5 of the affidavit of Sri K. G. Dandekar it is stated "that in reply to para 6 of Sri Arora's affidavit the correct facts are that the then Assistant Commercial Inspector, Sri P. T. Manjre was in no way related to the then Superintendent Commercial Sri L. N. Moholkar.

They belonged to different castes". In his affidavit in rejoinder the petitioner re-asserted his allegation and stated that the denial of the respondents was incorrect. Para 5 of the rejoinder affidavit runs thus :

"(5) That the allegations contained in paragraph 5 of the counter affidavit are denied being incorrect and the content of paragraph 6 of the original affidavit may be re-asserted"

The petitioner's allegation as to the relationship between Mr. Moholkar and the Inspector Manjre in para 6 of his original affidavit was sworn as true to his "personal knowledge". This categorical relationship has been emphatically denied by the respondents and re-asserted by the petitioner in his rejoinder. At the first hearing of the case, I felt that, as one side or the other had obviously made a false statement, there should be a further probe into the matter.

I, therefore, directed the petitioner to be present in Court at the next hearing and I told learned counsel that I expected him to prove the grave allegation against Mr. Moholkar made in the petition under counsel's signature. On 5-1-1959 when the case was reheard, learned counsel, Mr. S. N. Misra made a statement that the petitioner had informed him that Mr. Moholkar and Inspector Manjre were related to this extent that their wives were distant cousins. On that date, learned counsel for the Railway, Mr. Brij Lal Gupta, too made a statement that he had been instructed to state that the allegation that Mr. Moholkar and the Inspector Manjre were relations was false.

I asked him whether Mr. Moholkar was prepared to file an affidavit to this effect and Mr. Gupta undertook to obtain such an affidavit from that officer. (An affidavit was subsequently filed though after the hearing of the case had concluded. As it was filed after the hearing, I have not taken it into consideration for the purpose of this judgment though I have allowed it to remain on the record). It states, inter alia,

"I emphatically deny that Sri Manjre, Assistant District Commercial Inspector referred to in the above writ petition is any relation of mine. In fact, Sri Manjre and myself belong to different castes. Mrs. Manjre and my wife Mrs. Moholkar are not related at all. Much less they are distant cousins."

6. After counsel for the Railway had stated that the petitioner's allegation in regard to the relationship between Mr. Moholkar and Inspector Manjre was false, I told Mr. S. N. Misra learned counsel for the petitioner that there should be a further probe into the matter, as it appeared likely that one or the other side must be guilty of perjury. I pointed out to him that the petitioner had not specified the relationship in his original affidavit and that even he (learned counsel) had stated at the first hearing of the petitioner that he had no instructions in regard to the precise relationship between these two railway officials.

I also pointed out that the original allegation of Mr. Moholkar being "a close

relation" had been modified by the petitioner to one of distant cousin-hood between the wives of these officers. All this, I pointed out to Mr. Misra, raised a suspicion in the mind of the Court which necessitated an enquiry. I warned both learned counsel that proceedings for perjury might have to be taken against the person whose allegation was proved to be false. I asked Mr. Misra to take instructions from his client as to whether he was sticking to his allegation, and Mr. Misra obtained an adjournment to consult his client.

At the next hearing he made a statement that he had been instructed to state that it was not possible for his client to prove the allegation of relationship and that therefore he was prepared to withdraw it. I thereupon asked him to file an application supported by an affidavit to that effect. At the next hearing, Mr. Misra filed an application in which it was stated that the allegation as to relationship was true but the petitioner was withdrawing it as directed by the Court.

I informed learned counsel that the statement that the Court had directed the withdrawal of the allegation was incorrect, and that the affidavit would not be treated as an unconditional withdrawal of the allegation and that the enquiry as to the truth of the allegation regarding relationship would have to be held. Thereupon another affidavit was filed in which it was stated that the petitioner was withdrawing the allegation because he had been asked by the Court to do so, but the previous assertion that the allegations against Mr. Moholkar were correct was omitted.

The affidavit was accompanied by an application signed by learned counsel. I rejected this affidavit and the application, too, and returned it to Mr. Misra as it contained an incorrect statement that the Court had directed the petitioner to withdraw his allegation. Learned counsel was told that it was open to the petitioner to prove his allegation of relationship between Mr. Moholkar and Inspector Manjre and that the Court would give him every facility in this matter and that, if the allegation was proved correct, it would take action against the respondents for falsely denying a fact; but I warned counsel that if the allegation was proved to be false, suitable action would be taken against every one responsible.

Thereupon, after a final consultation with his client Mr. S. N. Misra filed an application in which it was stated that the petitioner was unconditionally withdrawing the allegation of relationship between Mr. Moholkar and Inspector Manjre. The application contains an unconditional and unreserved apology to the Court for having made this allegation. The application is supported by an affidavit. It is in the interests of justice that both the application and the affidavit should form part of this order. The former runs as follows ;

"To

The Hon^{ble} the Chief Justice and his Companion Judges of the aforesaid Court.

The humble petition of the above named applicant most respectfully sheweth :

1. That a notice has been issued to the applicant to appear in respect of the allegation of relationship of Mr. Manjre and Mr. Moholkar as the said relationship has been denied only at this stage by Mr. Dandekar who has filed the counter-affidavit.

2. That as the assertions are objectionable the applicant unconditionally withdraws the allegations of relationship between Mr. Manjre and Mr. Moholkar.

3. That the applicant unreservedly and unconditionally apologises to this Hon''ble Court for the same.

Sd/- S. N. Misra, 7-1-1959 Counsel for the applicant.

Sd/- Harbans Lal Arora (Harbans Lal Arora)."

The text of the petitioner's affidavit runs as follows: "I Harbans Lal, the above named deponent solemnly affirm and state as follows :

1. That I am applicant in the above case and am fully acquainted with the facts of the case deposed to below.

2. That as advised the deponent unconditionally withdraws assertions regarding the relationship between Mr. Manjre and Mr. Moholkar as the said relationship has at this stage been denied by Mr. Dandekar.

3. That the applicant unconditionally withdraws the allegations of relationship.

4. That the deponent unreservedly and unconditionally apologises to this Hon''ble Court."

7. It will be noticed that the application states that "the said relationship has been denied only at this stage by Mr. Dandekar who has filed the courtier affidavit." The word "only" contains the obvious insinuation that the belated denial of relationship must have some significance.

8. The facts narrated above prove beyond any shadow of doubt that the allegation that Mr. Moholkar and Inspector Manjre are related is incorrect. The question before me is whether I should direct the prosecution of the petitioner for perjury. I examined the petitioner (not on oath) and asked him why he had made this allegation which was obviously incorrect and which had been unconditionally withdrawn by him. He told me that, after the incident at Mathura Junction Railway Station, he had been told by several people that the two Railway officials were related.

When I asked him why he had not made sure of his facts before stating them on oath, he replied that both the Railway officials were Maharashtrians and that he (the petitioner) was too poor to incur the expenses which such an enquiry would involve. But he assured me that he had not invented this allegation for the purpose of this writ petition. In proof of his innocence he pointed out that, even in the enquiry proceedings he had mentioned this relationship. He referred to para 4 of annexure "H" of his affidavit which is his reply to the "show-cause"

notice served on him. It begins thus :

"That the A. C. S. who is related to Sri P. T. Manjre it seems was approached and influenced by the latter submitted his report against him to you....."

The petitioner also pointed out that Mr. Moholkar had never denied the aforesaid allegation during the enquiry proceedings and this omission persuaded him (the petitioner) that the information given to him by the local people about the relationship was not without substance. He had, therefore, included it in his affidavit.

9. After hearing the personal explanation of the petitioner, I am inclined to believe him that he did not intend to utter a deliberate falsehood when he made the allegation in regard to the relationship and that he was possibly misled partly by others and partly by Mr. Moholkar's omission to deny the allegation of relationship contained in para 4 of Annexure "H". In this view of the matter, I think that the Court should accept the petitioner's apology and permit him to withdraw unconditionally his allegation. I would, however, like to point out that the allegation was made recklessly and should not have been made without a proper investigation by the petitioner.

10. I am compelled to make a few observations on conduct of counsel in this case. The allegation that Mr. Moholkar Assistant District Commercial Superintendent misconducted himself in that, being related to Inspector, he deliberately fouled the enquiry against the petitioner to shield his alleged relation is not confined to the petitioner's affidavit: it is also included in the petition which is signed only by Mr. S. N. Misra as "Advocate for the applicant". I regret to observe that ordinary care was not observed to verify the truth of the client's charges against the officer before signing the petition and thus associating counsel's name with a false allegation. Para 5 of the petition, signed by learned counsel, states that the Assistant District Commercial Inspector happened to be a close relation of the Assistant Commercial Superintendent.

Then follow allegations describing how the Officer fouled the enquiry against the petitioner to shield his relation. Thus learned counsel made himself personally responsible for a grave allegation against a responsible officer which, if found true by this Court, would justify the officer's removal from service on the ground that he had proved unfit for the responsibilities of his office. I have to consider whether the material placed by the client before learned counsel was sufficient to justify the inclusion of this allegation in the application. I must state with deep regret that it was not.

11. In para 5 of the application signed by counsel it is stated, "Inspector happened to be a close relation of the Assistant Commercial Superintendent". But the precise relationship is not stated. Even after the respondents had denied the relationship in their counter-affidavit, no details are given. At the first hearing I asked learned counsel if he could inform the Court as to the exact relationship between the two officials. Learned counsel replied that he could

supply the information only after taking instructions from his client.

This is a significant statement, for it proves that counsel had not taken the precaution, at the time of filing the petition containing this grave accusation, of asking the client for particulars of the alleged relationship. The allegation as to relationship is sworn as true to the "personal knowledge" of the client. It is well known that clients are guided by counsel in the matter of verification of the affidavit and it is deplorable that an allegation which was incorrect was made without ascertaining whether the client was telling the truth or not and was permitted to be sworn as true to the personal knowledge of the client.

12. Even after the allegation had been proved to be incorrect there was not the slightest indication of any feeling or realisation by learned counsel that a great wrong had been done to the officer concerned. As detailed above, the first application and affidavit contained a statement that the charge was true but was being withdrawn on the direction of the Court -- a statement which was not correct. Even the final application contains a "sting" that Mr. Moholkar had made a belated denial of the allegation as to relationship. There is considerable force in the submission of learned counsel for the railway that, in these circumstances, the apology is not worth the paper on which it is written.

However, I have decided to accept the petitioner's apology as he has satisfied me that his conduct does not amount to perjury and that he was to some extent misled by Mr. Moholkar's denial of the relationship. As regards learned counsel there is neither apology nor expression of regret, for he stated, on a question from the Court whether he would care to make any statement about himself, that he had none to make. I am therefore compelled to enunciate what I believe should be the code of conduct for learned counsel who may receive instructions from a client accusing an official of misconduct in the discharge of his duties.

13. There are occasions when it becomes necessary for counsel to discharge his duty to the client and point out to the Court that the action taken against him is vitiated by personal prejudice, malice, or even misconduct of the Officer. It is to the credit of the bar that it has never shirked from this duty, however unpleasant it may become at times. The bar and the Bench are the joint guardians of the rule of the law. It is their joint duty to create an atmosphere which will enable the citizens of the Republic to enjoy that freedom from fear which can only come from an assurance that the two guardians of freedom are always on the look out for any temptation for arbitrary action which may be lurking in the darker recesses of the all-too-human executive mind, and from a feeling of confidence that whenever and wherever in the Republic any act of Zabardasti or Zulum takes place, the long arm of the law will reach forth and crush it.

This atmosphere of complete freedom from fear can be achieved only if the bar itself is fearless in assisting a judiciary which is equally independent in enforcing the rule of the law. As stated above, the bar of this country has never shrunk from doing its duty of exposing any arbitrary action on the part of the executive.

(In fairness, it must be pointed out that the executive, on the whole, has cheerfully submitted to any order or comment or even censure passed by the judiciary in the enforcement of the rule of law.)

To enable the bar to perform its duties effectively, both the law of the land and the conventions of the Court have surrounded it with immunities and privileges. By way of illustration, a statement which, if made outside the Court would be actionable as defamatory, is privileged if made in Court by counsel in good faith, even if it turns out to be incorrect. But these privileges carry with them a corresponding obligation on counsel not to abuse them but to take every possible care and precaution to ensure that the allegations of misconduct made by his client against an official are true.

It is the duty of counsel to be satisfied beyond all reasonable doubt that the charge is true. The very immunity enjoyed by counsel places upon him a self-imposed standard of care much higher than in normal cases just as a gentleman is supposed to pay off his debts of honour before he satisfies those enforceable in law. The code of chivalry at the bar must be higher, and never lower than that prevailing elsewhere.

14. However, if self-imposed discipline fails, it becomes the duty of the Court to protect officials against unfair attacks and insinuations of this kind. As cases of reckless allegations like the present are not as rare as I would like them to be, I suggest that the rules of the Court ought to be amended and the Court should insist that in every case where a serious allegation of misconduct against an official or person in authority has been made in a writ petition, learned counsel moving the petition should certify that he has satisfied himself that the accusation appears to be true. This is particularly necessary in writ petitions which are decided by affidavits and there is scope for mud flinging with impunity and without incurring the risk of cross-examination. It is not a very pleasant experience for a Judge of this Court who has been elevated from the bar to comment upon the conduct of learned counsel who has always shown him the utmost courtesy and respect in every case and who has advanced effective and unanswerable arguments in this case. But this Court has its own code of duty to do justice without fear or favour and protect innocent officials from the consequences of mud-flinging.

I feel that it is singularly regrettable that learned counsel should have lent his name to the allegations, and even more unfortunate that he should not have withdrawn the allegations at the earlier possible opportunity in view of the fact that after the case had taken a new turn on the reinstatement of the petitioner during the pendency of the case, it was no longer necessary for counsel to rely on any allegation of relationship. The point which was effectively urged by Mr. S. N. Misra in this case appears to me to be unanswerable, and it was not necessary for learned counsel to rely on any allegation of relationship.

15. I shall now resume the thread of my judgment on merit.

16. I have stated above that the petitioner was removed from service with effect from 21st May, 1956, that his appeal against this decision was rejected on 9th July 1956 and that the present petition was admitted by V. D. Bhargava, J. on 25th October, 1956. On 5-1-1957 the case took an unexpected turn. On that date the Divisional Superintendent, Jhansi wrote a letter to the petitioner stating that, on a reconsideration of his case, it had been decided to reinstate him to his former post of Ticket Collector on the same pay and grade treating the intervening period of absence as leave due. He was asked to resume his duty at Agra Cantt. Station at an early date and a third class pass was enclosed with the letter. This letter has been filed as an annexure "I" of the petitioner's supplementary affidavit dated 12-3-1958. As the fate of this petition will turn on the interpretation contained in this letter it is essential to quote it verbatim. It runs as follows :

"Central Railway. OFFICE OF THE No. P/PF/HLA/CA. DIVISIONAL SUPDT Jhansi, 5th January, 1957" To Shri. Harbanslal Arora, Ex. Ticket Collector, T. C. X 66 North, Gandhi Dham (Kutch), Ref. : -- Charge Sheet dated 12-11-1955 for removal from service issued against you. Ref. : -- DCS Jhansi letter No. GB. 379/55 off 19th May, 1956. "On a reconsideration of your case, it has been decided to re-instate you in your former post of Ticket Collector, on the same pay and grade, treating the intervening period of absence as leave due.

"2. Please therefore resume your duties at Agra Cantt. Station at an early date. A third Class Pass No. A-25861 dated 5-1-1957 ex. Gandhi Dham to Agra Cantt. for your journey is enclosed. "

3. Please acknowledge receipt.

Sd/- Illegible. DIVISIONAL SUPERINTENDENT, JHANSI.

Encl. : Pass."

17. On receipt of this letter the petitioner wrote to the Divisional Superintendent asking for clarification of certain points. This letter is filed as annexure "II" of the supplementary affidavit and its text is as follows :

"I have received your letter No. P/PF/HLA/CA of 5-1-1957, but the contents of the letter are not clear to me. Will you please be kind enough to clear the following points to enable me to join the duty as early as possible.

"1. You are treating the absence period as leave due. Will I be getting the full payment of all this period and on whose account it will be debited.

"2. What about the remaining payment of my suspension period?

"3. Will I be having the continuous service and the same old date for seniority?

"4. Will the Railway pay me Writ expenses filed in the High Court at Allahabad.

"5. I was insured for Rs. 2,000/- in the Oriental Life Insurance Company and had paid three

premiums of 36/12/- each, i.e. Rs. 110/4/-. Due to the suspension and removal from service, I could not pay the premium, hence my policy lapsed. Will the Railway indemnify for this loss of Rs. 110/4/- to me?

"Hoping for an early and favourable reply.

Thanking you,

Yours faithfully, Sd/- (Harbans Lal Arora)".

18. In answer to this query the office of the Divisional Superintendent wrote back that the original letter dated 5th January containing the decision to reinstate him was self-explanatory and required no elucidation. However, he was told that the words "leave due" mean "leave due to you" and that there would be no break in his services which would count for all purposes from the date of the original appointment -- 19-1-1948. He was asked to note that he was again in Railway service and directed to report himself for duty to the Station Master Agra Cantonment within ten days of the receipt of the letter. This letter is annexure "III" of the supplementary affidavit and its text is as follows :

"Your letter dated 16th January, 1957

Ref. : Shri. H. L. Arora, T.C. Mathura.

"Please re-refer to this office letter No. P/PF/HLA/CA dated 5-1-1957, in which you were informed that on reconsideration of your case, it has been decided to reinstate you in your former post of Ticket Collector on the same pay and grade treating the period of absence as "Leave Due". This letter is self-explanatory and requires no elucidation except that the words "Leave due" used therein means "leave due to you" is no break in your services and that your services will count for all purposes from the date of your original appointment viz. 19-1-1948.

2. "Please note that you are now in Railway service and you are again advised to report yourself to duty on S. M. Agra Cantt. within 10 days of the receipt of this letter. A third class pass ex. MTJ to Agra Cantt. (No. 42933 dated 26-2-57) is enclosed for your journey in lieu of one in your possession (No. 25861 of 5-1-1957) which may please be returned. In case the old pass is used it will be debited to your pass account for the current year.

3. "Please acknowledge receipt.

Sd/- Illegible. For Divi. Supdtt.,

End. 1. Jhansi."

19. Thereupon the petitioner on the faith of this letter resumed service and worked without any untoward incident till the 9th of April, 1957 -- that is, from the date of his resumption of duty till the receipt by him of the second show cause notice. He must have worked for a period of not less than one month. On that date the petitioner received a letter purporting to resume the enquiry against him from the stage immediately after the submission of the written

defence. It informed him that his written defence dated 12-11-1955 (submitted nearly 17 months previously) has been considered and a provisional decision had been made that he should be removed from service.

He was asked to show cause within seven days why the proposed penalty should not be imposed upon him. Enclosed with this notice was a copy of the proceedings of the Officer's Enquiry which had been held nearly two years ago. A copy of this show-cause notice is attached as annexure "IV" to petitioner's supplementary affidavit and its text is as follows :

"Shri. Harbanslal Arora, Ticket Collector, C/o. Station Master, Agra Cantt.

Ref: Charge Sheet date 12-11-1955 for removal from service issued against you.

"I have considered your written defence in reply to charge sheet No. GB/379/55 dated 12-11-1955 and the report of the Departmental Enquiry Committee set up by me to enquire into the matter and hold that you are guilty of the offences of serious misconduct, mentioned in R. No. 8(ii) and 6(ii) as detailed in the said charge sheet.

2. I have therefore come to the provisional decision that you should be removed from service.

3. You are hereby directed to show cause in writing not later than the end of seven days from the date of receipt of this notice by you, why the proposed penalty should not be imposed upon you.

4. Your reply should be submitted to my office through your immediate superior.

5. Your reply should be given on a separate sheet of paper, quoting the number and date of this notice.

6. If you do not submit your reply within the specified time, the case will be dealt with on the basis of the information available.

7. A copy of the proceedings of the Officer's Enquiry is attached herewith. You are required to acknowledge receipt of this notice on the form attached.

Encl. : 49. Sd/- Illegible.

Divisional Commercial Supdt. Jhansi."

20. The petitioner says that he was stunned at this notice. He had, not unnaturally assumed) that he had been reinstated unconditionally and that the charges against him had been dropped, but the show-cause notice evidently re-opened the case. He sent a letter of protest in which he pointed out that he had not been reinstated conditionally and that no question of re-opening the old case arose. He requested the authorities "to drop the matter once for all". A copy of this protest is filed as annexure V to the petitioner's supplementary affidavit. On 1-8-1957 the Divisional Commercial Superintendent wrote a letter to the petitioner informing him that he was removed from the service with effect from

5th August 1957 for serious misconduct as mentioned in the charge sheet issued against him on 12th November 1955, that is, more than a year prior to his reinstatement. His appeal against this second removal was dismissed On 21-12-,1957.

21. During this period, the present petition remained pending. In fact, it has become in fructuous in view of the petitioner's reinstatement as the first order of removal had been set aside on reconsideration, and the petitioner could get no relief from this Court unless he filed a fresh petition or asked for a fresh relief by amending this petition. He chose the latter course and on 8-3-1958 made an application for the amendment of his prayer. He now asked for an order quashing the second order of removal dated 1-8-1957 and for permission to file a supplementary affidavit containing an account of the new developments. This Court granted both prayers and the petition was accordingly amended.

22. Mr. S. N. Misra argued that the second order of removal was illegal on the following grounds : (1) The letter dated 5th January 1957 together with subsequent clarification dated 26th February 1957 conveyed to him a decision for his unconditional re-instatement and the dropping of the case against him. The petitioner had joined on the faith of this decision and had worked for sometime during which he received no suggestion or even a hint that the case against him would be reopened. In this situation, it was not open to the railway authorities to pass an order of removal on the basis of an enquiry which bad taken place before his reinstatement and which had already ended in an order of removal which had been set aside unconditionally.

Secondly, Mr. Misra contended that any further enquiry into the old matter was barred by Rule 1725 (a) of the Railway Establishment Code. This rule invests the Railway Board or the General Manager or any officer not below the rank of Divisional Superintendent with the power, subject to certain limitations to be hereinafter specified, to revise any order passed by any authority subordinate to them. Unfortunately, Mr. Misra argued the second point on the basis of the old unamend-ed rule and it was not brought to the notice of the court that Rule 1725 (a) had been recently amended.

After the hearing was concluded, Mr. Brij Lal. Gupta, counsel for the Railway, furnished to the Court a copy of the rule as amended, which is materially different from the old rule. In the circumstances I think it is futile to consider Mr. Misra's argument based on the old rule, but I shall examine the amended rule myself and decide whether it prohibits the re-opening of the case after the petitioner's re-instatement. Thirdly, Mr. Misra argued that if the proceedings initiated by the letter of 9-4-1957 are, as indeed according to him, they must be, deemed to be -fresh proceedings against the petitioner, they are entirely illegal as the provisions of Article 311 were not complied with before removing the petitioner.

23. Before considering Mr. Misra's argument on merits, it is necessary to

consider an objection by Mr. Brij Lal Gupta that the petitioner has disentitled himself to be heard on merits in view of his conduct in having made false statements in his affidavit and thus misled the court. Mr. Gupta relied on the principle laid down in *Asiatic Engineering Co. Vs. Achhru Ram and Others*, , in which it was held that a petitioner who misleads the Court by making false or misleading statements renders himself disentitled to be heard on merits. Mr. Gupta contended that the petitioner's conduct has been reprehensible and that he falsely accused the Enquiry Officer of having misconducted himself in the interests of a relation.

He also emphasised that the petitioner's apology to this Court is not sincere and, though it may have saved him from prosecution for perjury, it cannot save his petition from being dismissed on the ground of misconduct. I have given the most anxious consideration to this objection. This Court has always taken a strict view of any misconduct by a petitioner who obtains a rule or interim stay order by misleading the Court. If the petition, as it stood before the amendment, had been before me I would have had no hesitation in disentitling the petitioner to be heard on merits.

But I have to take into consideration the fact that, during the hearing of the petition, it became in fructuous by reason of the reinstatement of the petitioner. As I have indicated above, after his second removal it was then open to the petitioner to file a fresh petition challenging the legality of the order of removal dated 1-8-1957. Instead of doing this, he applied for the amendment of the old petition and asked for a new relief.

It is obvious that, if a fresh petition had been filed, the Court would have heard it on merits and his misconduct in the earlier petition would not have disentitled him to relief unless the incorrect statements were repeated in the affidavit supporting the new relief or the old mis-representations were relied on. Mr. Brij Lal Gupta very fairly conceded that the petitioner's misconduct in the present petition would not have followed him into the new petition, if he had filed any.

In accordance with the principles of equity, any misrepresentation in a petition by a petitioner is relevant only when considering his right to relief under that petition, and cannot dog his footsteps for the rest of his life. I think the petitioner's application for permission to add a new relief is virtually a new petition seeking a new relief against a fresh order which was not even in existence on the date when the old petition was filed.

It should therefore be treated, for the purpose of any application of the principle penalising a petitioner for mis-representation, as a fresh petition. The misrepresentation in the original affidavit should not be considered unless it is repeated or relied on in the application for fresh relief. I find that the petitioner's application dated 18-3-1958 contains no allegation of relationship between Mr. Moholkar and Inspector Manjre nor does it rely on any alleged bias of Mr. Moholkar.

The petitioner simply pleads in the new application that, after his unconditional reinstatement, the authorities had no jurisdiction to reopen the matter or, at any rate, remove him on the basis of an enquiry held prior to his reinstatement. I, therefore, hold that the petitioner should not be penalised for his misrepresentations in the original affidavit when considering his prayer for the quashing of a new order which was passed during the pendency of this writ petition and was, therefore, not in existence when the offending affidavit was filed.

24. On merits, as stated above, Mr. Misra raised two contentions before me. The first is based on his claim that the petitioner's reinstatement under the letter dated 5-1-1957 was unconditional. If his interpretation of this letter is accepted by the Court, it would inevitably follow that the case against him had been closed and could not be reopened on the basis of the old charge-sheet. The question, therefore, turns on the interpretation of the action of the Railway as revealed by the two letters dated 5th January and 22nd February 1957 respectively.

25. The first letter informed the petitioner that on a re-consideration of his case, it had been decided to re-instate him in his former post of Ticket Collector on the same pay and grade treating the intervening period of absence as leave due. He was asked to resume his duties at Agra Cantonment Station at an early date. It is noteworthy that the letter gives no indication whatsoever that his reinstatement was conditional or that the Railway had not closed the case against him.

He was reinstated, but not suspended. This is a most significant omission, for during the proceedings leading to the first order of removal with effect from 21-5-1957 he remained under suspension (see para 3 of annexure "J" to the petitioner's affidavit which is copy of his appeal against the order of removal to the Chief Commercial Superintendent). On 5-1-1957 he was reinstated but the suspension order was not revived. On the contrary, he was asked to resume duty "on the same pay and grade" and was assured that the intervening period of absence would be treated as leave due. Any lingering doubt in the petitioner's mind must have been removed when he received the reply dated 26-2-1957 to his enquiry. He had asked whether he would get full payment for the period of absence, whether he would enjoy continuous service and the old date for seniority, whether the Railway would pay him the expenses incurred in the writ petition and also indemnify him for the loss incurred by the lapse of his Insurance Policy due to non-payment of premium which in turn was caused by his suspension and removal from service.

He also asked a pointed question about being paid the balance of his salary for the period of suspension. In reply he was told that the letter informing him that on reconsideration it had been decided to reinstate him in his former post of Ticket Collector on the same pay and grade was "self-explanatory and" required "no elucidation". Para 2 of this letter clearly stated "please note that you are now in Railway service and you are again advised to report yourself to duty to Station

Master Agra Cantonment within ten days of the receipt of this letter."

26. It is also noteworthy that the petitioner rejoined duty and served for more than a month when, on 9-4-1957, a show-cause notice was served on him. During this period there was no suggestion or hint from the Railway that the old charge against him was still pending.

27. Mr. Brij Lal Gupta contended that, whatever be the impression on the mind of the petitioner, the Railway had no intention of dropping the old charge against him, and there was no warrant for the impression that the petitioner had been absolved of his misconduct. He relied on para 8 of the counter-affidavit of K. G. Dandekar dated 15-4-1958 in reply to the petitioner's supplementary affidavit in which it is stated :

It was decided to reinstate the petitioner and then to proceed with him according to the procedure prescribed." The question, however, is not what the Railway had decided in their own mind but what they communicated to the petitioner. They never told him that he was being reinstated only with the object of recommencing the proceedings against him. There is not a hint of this intention either in the two letters of the Railway or in their conduct and treatment of the petitioner.

On the contrary, all their conduct pointed to an unconditional reinstatement and the closing of the case against him. He was told in the letter dated 22-2-1957, that he was back in Railway service. His suspension was not revived. On the contrary, he was informed that he was reinstated on the same pay and grade as before. Above all, he was informed that the reinstatement had been done on a reconsideration of his case.

This is significant, for the petitioner's appeal had already been dismissed, and any reconsideration of the case could only be done under Rule 1725 (a) by the Railway Board or the General Manager or an Officer not below the rank of the Divisional Superintendent. Even after he had joined service he was not told that the case against him was still pending and had not been dropped.

After a careful consideration of the correspondence which passed between the parties and the conduct of the Railway between 5th January and 5th April, 1957, I have come to the conclusion that the action of the Railway was open to one interpretation only namely that the petitioner had been reinstated unconditionally and that the charge against him had been dropped.

28. There is considerable force in the argument of counsel for the petitioner that he rejoined service on the faith of the two letters and that, had he known that he would be subjected to a fresh enquiry leading to a second removal, he might not have cared to go back. Mr. Misra argued that his client would not have considered it worth his while to resume a job if he had been told that it was to last for two or three months only, and would have preferred to seek permanent employment elsewhere.

There is substance in this contention. Under the first order the petitioner was not dismissed but only removed. He was not removed on the complaint of a member of the public but as the result of an incident between himself and a Railway coolie and later between himself and Inspector Manjre. The ground for his removal was that he had slapped the coolie and later, when Inspector Manjre protested against his conduct he falsely accused the Inspector of having uttered (sic) threats against him.

Thus the reason for his removal was not any offence involving moral turpitude such as embezzlement of funds or bribery or extortion from a member of the public. In these circumstances, the prospects of his permanent employment elsewhere was not completely excluded. As he was only removed, he was eligible for re-employment in state service. Of course he was anxious to retain his present job but he might not have been so keen, if he had been told that he was being called back only to enable the Railway to fill up any gap in the procedure adopted in the enquiry against him. He might have preferred to try his fortune elsewhere.

29. This leads me to another aspect of the conduct of the Railway though it was not included in his argument by counsel for the petitioner (but arises out of it). This relates to the motive of the railway authorities in reinstating the petitioner. In deciding whether his reinstatement was unconditional or not, the Court is entitled to probe into the question: why did the Railway authorities reinstate him without giving him the slightest hint that their object was only to fill up a gap which had been discovered in the procedure adopted in the enquiry against him and that he was to be removed as soon as the formal defect was remedied.

They now state that this was their object (See supplementary affidavit of K. G. Dandekar). But why did they keep the petitioner in the dark of their intentions? Is it because they feared that he would refuse to accept reinstatement if he were told that it would be followed by a second order of removal on the same old charge? On 5-1-1957 -- the date when the order of reinstatement was communicated to him -- litigation was pending between him and the Railway: he had filed this petition impugning the legality of his removal.

It is now admitted by the Railway that "certain errors had crept in in the procedure of removal" (para 4 of K. G. Dandekar's supplementary counter-affidavit dated 14-4-1956). This statement indicates that the Railway apprehended that the petitioner's removal might be held to be illegal. They further state that it was, therefore, necessary to reinstate the petitioner to enable them to remedy the defects in the procedure.

This statement is made in paragraph 8 of K. G. Dandekar's supplementary counter-affidavit which states: "It was decided to "reinstate" the petitioner and then to proceed with him according to the procedure prescribed." But why did they not frankly tell him at the time that his reinstatement was only a step in the enquiry against him and not an unconditional restoration to service? Is it because

that they feared that if the petitioner got an inkling of their motives he might take legal opinion as to how to prevent them from correcting the illegality admittedly committed by them?

Is it because they feared that unless he was within their jurisdiction, control and discipline once again, there might be difficulty in communicating with him and serving on him proceedings of the Officers Enquiry which were enclosed with the show cause notice of 9-4-1957? Is it because they apprehended that, once the petitioner knew that his reinstatement was in fact no reinstatement but only a device to enable the Railway to repair the chink in their case, he might not have accepted the reinstatement or returned to duty so easily?

It is difficult to guess what the petitioner might have done or what the motives of the Railway were? But the Railway has given no explanation whatsoever as to why they gave the petitioner not even a hint or suggestion that his reinstatement was being made with the object of enabling the Railway to remedy the defects which had crept into the enquiry.

Learned counsel for the Railway was compelled to admit that there was nothing in the two letters of the Railway dated 5-1-1957 and 22-2-1957 respectively or in any action of the Railway upto 9-4-1957, to show that they informed the petitioner that his reinstatement was not unconditional.

30. In the absence of any explanation for this vital omission, there can be only three possible explanations for this silence. Either the Railway thought it discreet to bring the petitioner back into their fold, so to speak, and then quietly serve the second show cause notice on him; or, secondly, the order of reinstatement was in fact unconditional and that the decision to resurrect the old charges and revive the old proceedings was made some time after the petitioner had rejoined service on the faith of the reinstatement order dated 5-1-1957; or, thirdly, the decision to reinstate the petitioner was conditional but the Railway authorities forgot or failed to inform the petitioner of this condition.

If the first explanation is the true one, it implies that the Railway sent the letter of 5th January 1957 dressed up as an order of unconditional reinstatement only with the object of luring the petitioner into a trap. I would be most reluctant to impute such sharp practice to the Railway in its dealings with a subordinate employee of inferior rank.

31. Therefore, in the interests of the Railway itself, the Court must fall back upon either of the remaining two explanations -- either that the reinstatement was in fact intended to be unconditional at the time it was decided upon and the decision to resurrect the old charges was made subsequently for reasons never disclosed or that the reinstatement was intended to be conditional but the Railway forgot or failed to inform the petitioner of this fact.

According to the supplementary counter-affidavit of Shri. K. G. Dandekar "it was decided to reinstate the petitioner and then to proceed with him according to the

procedure prescribed" (para 8). This statement is vague. It is in the passive voice -

"it was decided". It does not specify who made the decision and when. It does not state whether the decision to reinstate the petitioner was made simultaneously with the decision "to proceed with him", or whether the two decisions were made at different times.

Mr. Dandekar's statement is consistent with both possibilities. "It was decided to reinstate the petitioner and then to proceed with him according to the procedure prescribed" may mean that there was first a decision to reinstate the petitioner and then another decision to reinstate him. Alternatively, it may mean that there was only one decision -- to reinstate him and then to proceed with him. Everything would depend upon the intention of the authority which passed the order of reinstatement.

I asked learned counsel for the Railway whether there was anything in writing to show that at the time when the decision to reinstate the petitioner was made, the authority had also decided that the reinstatement was only a prelude to the recommencement of the enquiry against him. Learned counsel replied in the negative. In the absence of any proof of such intention I must go by the plain language of the two letters dated 5-1-1957 and 22-2-1957 and the conduct of the Railway and hold that the order of reinstatement was unconditional at the time when it was made.

32. The alternative explanation is that the order was intended to be conditional but the Railway forgot or failed to inform the petitioner of this fact. This alternative is not open to the Railway and even if it were, it would not help their case. I have already observed that according to the plain language of the two letters dated 5-1-1957 and 22-2-1957 the decision to reinstate the petitioner must be held to be unconditional.

There is no other evidence to show that at that time the decision to reinstate him was intended to be conditional and a prelude to the resurrection of the old enquiry. Even assuming that some such mental reservation existed in the mind of the deciding authority which was not communicated to the petitioner, this fact would not advance the case of the Railway.

The petitioner would not be bound by any mental reservation and would be entitled to rely upon the normal meaning of the two letters dated 5-1-1957 and 22-2-1957 as it might appear to any reasonable person and as it was in fact understood by him at the time. The Railway is estopped from denying the normal meaning of the two letters which is supported by their own conduct from 5-1-1957 till 9-4-1957.

33. In my view, the law of estoppel will prevail against the respondents. It is not open to the Railway to contend now that they had set aside the first order of removal and reinstated the petitioner only with the object of filling up any legal

gap in the previous enquiry. In the first place, it is not proved that the Railway had any such intention at the time when the petitioner was informed that he was being reinstated. No document has been filed to prove that the order of reinstatement was passed by the revising authority with any mental reservations that the petitioner would be retried for the same offence after joining duty. The order of reinstatement must therefore be held to be unconditional with the result that the charge against him was dropped.

Secondly, even if the Railway had any intention to reinstate him with the object of filling up the gaps in their procedure and then removing him once again, they cannot be permitted at this stage to prove an intention which was contradicted by their entire conduct. They created on the petitioner the impression that he was being reinstated unconditionally and that the charge against him had been dropped.

I would not like to believe of the Railway authorities that in reality they were really laying a trap for the petitioner. In any case they cannot be permitted to turn round and say that they never had any intention of permitting him to remain in service for long. They cannot be permitted to do so from any consideration of equity and justice.

They are estopped from denying their intentions as revealed in their two letters dated 5-1-1957 and 22-2-1957 and their entire conduct in dealing with the petitioner between 5th January and 9th April. It is a well-known rule of estoppel that if a person so conducts himself that he creates on another person dealing with him the impression that a certain set of facts do exist and, on the faith of the impression created by him, that other person enters into dealings with him, he cannot afterwards be permitted to deny the existence of those facts. This principle has been incorporated in Section 115 of the Indian Evidence Act, which is as follows:

"115-- When¹ one person has, by his declaration, act or omission, intentionally caused or permitted any person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceedings between himself and such person or his representative to deny the truth of that thing."

34. In the present case the Railway by their two letters and by their conduct caused and permitted the petitioner to believe that he had been unconditionally reinstated and that the charge against him had been dropped. They cannot in these proceedings be permitted to deny the unconditional reinstatement or the dropping of the charge. The contention of learned counsel for the Railway that the authorities had no intention to reinstate him unconditionally is irrelevant for the purpose of applying the rule of estoppel against the Railway.

It is settled law that the word "intentionally" in Section 115 does not mean that the conduct of the person making the representation should have been fraudulent or that it should not have been made under a mistake or

misapprehension. The motive or state of knowledge of the representor is immaterial. It is not necessary in order to create estoppel that the person whose acts or declarations induce another to deal with him must have been under no mistake himself or must have acted with an intention to mislead or deceive.

The law only considers the position of the person to whom the representation was made. If that person was induced, on the faith of the representation to deal with the representor, the rule of estoppel will prevail against the latter.

35. After a careful consideration of the relevant circumstances I hold, that, after the petitioner was reinstated in service, the charge against him must be deemed to have been dropped. I further hold that, the Railway could not reopen the proceedings after a final order had been passed under Rule 1725 of the Railway Code reconsidering his case and reinstating him in service, except within the limited scope of that rule.

36. It may be claimed by the respondents that the petitioner, being a servant of an All-India-Ser-vice, held office during the pleasure of the President and the Union Government could remove him from service at any time even after his reinstatement. This is true, but the power of removal under Article 810 is subject to the control of Article 311, which enjoins in effect that no Government servant shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

If the respondents claim that they could remove him even after reinstatement, they must show that they gave the petitioner a reasonable opportunity of showing cause against his removal. It would not be open to them to rely on the old proceedings which had already concluded in a final order of unconditional reinstatement. They must show that fresh charges were followed by fresh proceedings against him in which he had adequate opportunity to defend himself against the allegation made against him.

This was admittedly not done. The "show-cause" notice of 9th April, 1957, purports to resurrect the old proceedings from the stage of the petitioner's explanation after the enquiry. This was not permissible in view of the fact that the old proceedings had terminated in an order, passed by the Revisional authority under Rule 1725 (a) of the Railway Establishment Code, reconsidering the case and reinstating the petitioner as this Court has held.

The old proceedings having been terminated in a final order, the Railway would be bound by what the Supreme Court has called principles analogous to res judicata.

37. Furthermore, any attempt to resurrect charges or proceedings which had concluded in favour of the petitioner would not be a bona fide exercise of the power to remove the petitioner. It is well settled that any act done in the Mala fide or arbitrary exercise of any power will be invalid. Mala fides or fraud will

vitiating the most solemn proceedings.

In this case, any attempt to revive proceedings which had ended in the petitioner's favour by the letter dated 5-1-1957 would be obviously *Mala fide*. Thus if the letter of 9th April is viewed as fresh proceedings initiated against the petitioner on the basis of the old charges, his removal must be held to be in violation of the provisions of Article 311 of the Constitution and also vitiated by *Mala fides*.

38. In the course of the hearing Mr. S. N. Misra relied on a judgment of a Division Bench of this Court in *Rama Shanker Srivastava Vs. Divisional Supdt., Northern Railway, Allahabad*, . But learned counsel for the Railway contended that this judgment really supports the respondents. In that case a Railway employee was appointed by the Divisional Superintendent, Northern Railway, Allahabad on 6-9-1949. On 20-7-1950 a charge sheet was served on him specifying seven forms of punishment and calling upon him to show cause why the penalty of dismissal or any lesser penalty be not imposed on him on the grounds mentioned in the charge sheet.

The petitioner submitted an explanation which was considered. On 14/16-9-1950 intimation was sent to the employee that he had been removed from service. He filed an appeal before the Divisional Superintendent which was dismissed on 23/28-11-1950. After this four years elapsed. On 10-4-1954 the petitioner received a communication that he was restored to duty. He was restored on 23-4-1954 but again suspended and the order of suspension stated that he would be allowed subsistence allowance and other admissible allowances during the period of suspension.

On 14-6-1954 the petitioner filed an appeal to the Divisional Superintendent against his suspension, On 8-2-1955 the Divisional Commercial Superintendent wrote to the petitioner that, after considering his explanation to the charge sheet dated 12-7-1950, he (the Superintendent) had provisionally formed the opinion that he should be removed from service. The petitioner was given seven days time to show cause against the proposed penalty.

The petitioner received this letter on 9-2-1955 and on 15-2-1955 he sent a reply, in which he claimed that he was entitled to a full enquiry in accordance with the amended Rule 1709 of the Railway Establishment Code. On 4-3-1955 the petitioner received a communication that he was being removed from service with effect from 7-3-1955. He then filed a writ petition on the ground that he had been deprived of his right to a full enquiry.

The petition was allowed by the Division Bench on the ground that the employee had not been given a reasonable opportunity of showing cause - Mr. Brij Lal Gupta, however, relied upon the fact that the Division Bench appeared to have noticed no illegality in the action of the Railway in reconsidering the petitioner's case after four years, restoring him to duty and then removing him on the basis of the old charges.

Mr. Gupta argued that the very fact that the Division Bench made no comment on this aspect of the case shows that they did not consider anything improper or illegal in an employee being restored to duty and then removed on the basis of an old charge. I do not agree that this case supports the Railway in the present case. In the first place, the facts of the two cases are materially different. In that case the employee appears to have been suspended at the time of his restoration to duty.

Thus, the Northern Railway did not unconditionally restore the employee or withdraw the old charges against him. There was nothing in their conduct to create an impression in the mind of the employee that he was being unconditionally restored to duty. But in the present case the two letters of the Railway dated 5-1-1957 and 22-2-1957, are capable of one interpretation only -- that the petitioner was being restored to duty unconditionally.

As pointed out by me above, the omission to suspend the petitioner while restoring him to duty is a vital fact in this case. The letter of the petitioner, after he had been told that his case had been reconsidered, must have left the Railway under no doubt that the petitioner regarded the restoration as unconditional. He was even asking the Railway to compensate him for his expenses incurred in the writ petition and demanding the balance of his salary during the period of suspension.

In reply to this query, the Railway told him that the letter of restoration was self-explanatory and required no clarification. He was once again told that he was being restored to duty and was asked to join within seven days. Even after he had joined, the Railway did nothing for over a month to show that his restoration was not unconditional. I am, therefore, of the opinion that this case is of no help to the Railway.

39. As stated in an earlier part of this judgment, I directed that the record of the enquiry proceedings against the petitioner be produced before the Court. I have perused the record and discovered nothing in it which would show that the decision to reinstate the petitioner was not unconditional. Learned counsel for the Railway was not able to point out any order of the Railway authorities signifying that, even in their mind, the reinstatement was only a prelude to his second removal.

40. Another feature of the case which was not raised by counsel for the petitioner but noticed by the Court is the vagueness of the original charge against the petitioner. The charge is contained in Annexure "A" of the original affidavit of the petitioner. It contains two accusations against him in the following words:

"(1) While on duty at Mathura in on 6-9-1955 you assaulted Parcel Porter Nathi.

(2) You made false allegations against ADCI Mathura Jn. that the ADCI threatened you on 6-9-1955."

41. During the hearing I drew the attention of the learned counsel for the Railway that the second charge is vague. It gives no particulars of the false allegations alleged to have been made by the petitioner against the assistant District Commercial Inspector. It merely states in effect, "You made false allegations against him that he threatened you." No particulars of the threat which he is supposed to have imputed to the Inspector are given, nor the time and place or occasion when the threat is supposed to have been made.

I pointed out to Mr. Gupta that an employee would be handicapped in his defence by lack of particulars or details of this charge. Mr. Gupta addressed a long argument in which he tried to show that, even if the language of the second charge was somewhat vague, the petitioner was not misled by it, because he knew perfectly well what it meant. I am not quite convinced by this explanation, for I find that the particulars of the threat are not described in identical language at various stages of the enquiry.

On page 47 of the record, the Assistant Commercial Superintendent, in his fact-finding report to the Divisional Commercial Superintendent described this charge in these words, "Rude behavior of the ADCI when he visited the T. C.'s Office early in the morning and threatening T. C. Shri. H. L. Arora that he will be beaten by the Parcel Porters." On page 39, witness B. R. Rudra described the alleged threat of the Inspector in these words,

"After about half an hour ADCI came to our office and began to threat Shri. H. L. Arora without enquiring anything about the case from him or from H. L. Arora. He told us that I will see that this picture will be colored and H. C. Arora will be no more in service and we kept silent."

Thus, the nature of the threat which the petitioner is supposed to have imputed to the ADCI was different according to different versions. However, as this point was not raised by the petitioner and the Railway has had no opportunity of meeting it properly, it is not necessary for me to decide it.

42. I shall now deal with the last point raised by Mr. Misra. He contended that the Railway had no power under Rule 1725 of the Railway Establishment Code to reopen the old proceedings against him after his reinstatement following a reconsideration of his case under that rule. Unfortunately, as stated by me in an earlier part of this judgment, Mr. Misra based his argument on the old rule before it was amended. Mr. Brij Lal Gupta placed before the court the text of the amended Rule 1725 (a), which is as follows:

"1725--(a) The Railway Board, a General Manager and any officer not below the rank of Divisional Superintendent, specified in this behalf by the General Manager shall have the power, on their/ his own motion or otherwise, to revise any order passed by an authority subordinate to them/him and shall also have the power to reconsider an earlier order passed on an appeal either by them/him or by a predecessor, if on a subsequent date either fresh light is thrown upon the case or by his subsequent conduct the employee has established a case for mitigation of

the penalty imposed."

43. This rule empowers the Railway Board or the General Manager or any officer not below the rank of Divisional Superintendent to revise any order passed by an authority subordinate to him. The reconsideration of the petitioner's case and his re-instatement was obviously done under this rule. It further states that these three authorities shall also have the power to reconsider any earlier order passed on appeal either by themselves or by any predecessor if fresh light is subsequently thrown on the case, or if the employee by his subsequent conduct made out a case for mitigation of the penalty imposed.

Thus, this rule gives a two-fold power to the Railway Board, General Manager or the Divisional Superintendent. They can revise any order passed by a subordinate authority. This may be called the revisional power. They can also review their own orders or those of any predecessor. This may be called the power of review, which however, can be exercised only if some fresh facts come to light or if the employee by his subsequent conduct has proved that he deserves a mitigation of the penalty imposed on him.

44. This amended rule appears to be fatal to the case of the Railway. The petitioner's appeal against the second order of removal had been dismissed. Subsequently a higher authority reconsidered his case under Rule 1725 (a) and directed his reinstatement. In pursuance of this decision he rejoined duty. The revisional power under Rule 1725 exhausted itself as soon as the petitioner rejoined duty.

Any subsequent review of the unconditional reinstatement of the petitioner and revival of the old charges and resurrection of the old inquiry could only be done if fresh facts came to Sight. But it is the Railway's own case that, after the petitioner's reinstatement, he was served with a show cause notice on the basis of the facts established by the old enquiry. Therefore no fresh facts had come to light, and there could be no reconsideration of the unconditional order of reinstatement passed by the revising authority under Rule 1725 (a).

45. After giving my most anxious consideration to all the facts and circumstances of this case, I have come to the conclusion that the order of the respondents removing the petitioner from service, after they had reinstated him, is illegal.

46. I, therefore, allow the petition and quash the order of the Divisional Commercial Superintendent No. C/GB 379/55 dated 1-8-1957 removing the petitioner from service and the order of the Divisional Superintendent, Jhansi, No. Bo. P128/1/11/CA dated 21-12-1957 dismissing the petitioner's appeal. In the result the decision to remove the petitioner from service is quashed.

47. In the circumstances of the case, the parties shall bear their own costs.