

(1960) 07 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1818 of 1957

Kailash Nath Seth

APPELLANT

Vs

Division Superintendent Railway, Allahabad and Another

RESPONDENT

Date of Decision : 26-07-1960

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : AIR 1961 All 276

Hon'ble Judges : J.K. Tandon, J

Bench : Single Bench

Advocate : S.C. Khare, for the Appellant; J. Swarup, for the Respondent

Final Decision : Allowed

Judgement

J.K. Tandon, J.—This is a writ petition by one Kailash Nath Seth who is employed in a permanent capacity as Trains Clerk in one of the offices of the Northern Railway administration. The following facts are necessary for a correct appreciation of the matters in dispute.

2. The petitioner was employed, according to him, in a permanent capacity in the office of the Superintendent Printing & Stationery, U. P. prior to his appointment in the Railway administration. There is some controversy as regards the petitioner's claim that he was a permanent employee under the State Government in the Office of the Superintendent Printing and Stationery as the respondent Railway has not admitted the fact in so many words, but this may not detain us in this petition as the relief with which this particular allegation is concerned is being granted on agreement of the parties as shall ultimately appear.

The petitioner joined the Railway administration on 9-7-1943. In due course a release order by the Superintendent Printing and Stationery, U. P. was also made in his case with the result that his services thereafter were placed at the disposal of the Railway department. A copy of the release order shows that his lien in the

Printing and Stationery Department had been continued. The next fact is that in January, 1952 the petitioner was confirmed on the post of Trains Clerk under the Railway administration which made it necessary to refix his salary in accordance with the rules applicable to him.

It was in this matter, that is, the relaxation of his salary, that differences arose between him on the one hand and the staff of superior officers of the office in which he was employed on the other. According to the petitioner since he claimed to be a permanent employee in the Printing and Stationery Department his services rendered in that Department required to be counted in granting him increments in fixing the initial salary as Trains Clerk.

The Railway officers did not see eye to eye with him and it seems that a series of representations and demands for interview etc., started. It is unnecessary for the same reason namely, that the relief in regard to refixation of his salary is being granted on the consent or parties to state further details in that behalf; suffice to mention that the fixation done by the officers of his department was Rs. 73/- while according to him it should have been Rs. 84/-.

3. While this controversy was continuing between him and his office staff, he complained to the Divisional Superintendent. The exact words as stated by him in this connection are thus :

"I am appealing to your good self since long; but I am not getting any satisfactory reply and on previous occasions I have also sought for a personal interview with your honour, but I do not know why the same has not yet been granted to me. Therefore I have no way but to see you outside the office, and I apprehend that my case has not been put up to your honour by the personal branch."

As might be noticed this contained an insinuation to the effect that although lie had been representing repeatedly the lower staff had failed to put up the case to the Divisional Superintendent. The respondents do not dispute the fact that an interview took place in this manner between the petitioner and the Divisional Superintendent as appeared from para 17 of the counter-affidavit, but it is added on their behalf that at the time of receiving the complaint the Divisional Superintendent warned the petitioner that if his above allegation was not found to be correct severe action would be taken against him and that the petitioner accepted this condition. The Divisional Superintendent then asked the papers to be put up to him by the Divisional Personal Officer. After perusing that record he directed a charge sheet annexure "D" dated 26-7-1,956, (it was actually issued on 6-8-1956) to be served upon the petitioner. It will be worth while to quote in brief from this document :

"You are hereby required to submit your explanation for which you are given three clear days from the date of receipt of this notice for making fake statement before the Divisional Superintendent, Allahabad, while making over your representation dated 24-5-1956 that although papers were called for by him on

your original application they had not been put up for months and when told that severe action would be taken against you if this statement was found incorrect you accepted it. On examination of papers your statement is found to be false and to show cause why the penalty of stoppage of increment for one year temporarily or any lesser penalty under the rules Regulating Discipline and Rights of Appeal of non-gazetted railway servants should not be imposed on you."

4. On 17-8-1956 the petitioner submitted his reply to the above notice. In this he did not admit that he ever accented to welcome punishment if his allegation was held to be incorrect. According to him two persons, one a Chaukidar and another himself had interviewed the Divisional Superintendent on that date and the allegation that he had showed his willingness to be punished was due to some misapprehension which might have been created by what the Chaukidar said with respect to his case.

5. The other point submitted by him in that reply thus was that he had a right to submit His case for the consideration of the officers while further asking that he should be allowed an opportunity to place the actual facts before him personally. Admittedly no such opportunity was given to him but on 12-9-1956 he was communicated an order punishing him as under :

"Your next increment raising your pay from Rs. 89/- to Rs. 93/- in grade Rs. 55-130/PC) which normally falls due on 8-7-1957 is withheld for one year without affecting future increments."

6. From the above facts it appeared that the petitioner had a double complaint. His first grievance was that his salary had not been properly fixed, and his second grievance was that he had been awarded the penalty of withholding of increment without giving him an opportunity to show cause. The reliefs asked in the petition therefore are: (1) a direction to the respondent to fix his salary as claimed by the petitioner and (2) quashing of the order dated 12-9-1956 imposing the penalty of withholding the increment for one year.

In the matter relating to the fixation of salary, the parties have agreed that the petitioner's case should be sent with the necessary information to the Financial Adviser and Chief Accounts Officer for fixing the salary and no further relief need be granted at the moment in that direction. They have further agreed that this is without commitment by any party who shall be free to support or challenge the fixation advised by tin's officer in accordance with law. The case has thus to be considered on merits on the other grievance only.

7. The petitioner belonged to the non-gazetted staff of railway servants. Para 1702 of the Indian Railway Establishment Code, 1951 Edition (Volume I) prescribes eleven types of penalties which may be awarded to a railway servant for good and sufficient reasons. One of these penalties which is mentioned at No. 4 is withholding of increments or promotion including stoppage at an efficiency bar. There can be no manner of doubt that the order dated 12-9-1956 was a penalty of the above description imposed on the petitioner.

Now Para 1712 which prescribes the procedure for the imposition of the penalties requires that before an order imposing a penalty specified in items (2) to (6) of Rule 1702 is passed against a railway servant he shall be informed of the definite offences or failures on account of which it is proposed to impose the penalty find called upon to show cause why that or any lesser penalty should not be imposed.

He should also be given three days" time in which to submit his explanation and allowed reasonable facilities for the preparation of his defence.

In the instant case it admitted that beyond the charge sheet Annexure "D" which was delivered to the petitioner on 6-8-1956 he had not been supplied any further material on which the charge was held to be established. The charge against him was that although papers were called for by the Divisional Superintendent on his representations he incorrectly stated that they had not been put up to him.

8. It is urged that Rule 1712 in prescribing the show cause notice to be given to the delinquent servant necessarily implies that the servant shall not merely be asked to state his reply but as part of his right to show cause be also furnished the material on account of which it is proposed to punish him. In other words the claim is that the material on which the delinquent servant is held guilty should also be communicated to him as without such material he is not placed in a position to disclose (disprove ?) it effectively.

The rule requires that the delinquent servant shall be called upon to show cause why the pro-posed or any lesser penalty be not imposed upon him. In order that the opportunity given to him is indeed an opportunity as contemplated by para 1712 of the Code the Servant is entitled to know the material as well as other evidence which he has to meet. He is also entitled to an opportunity to disprove that material. Where therefore he is not at all supplied the material against him the so called opportunity given to him is no opportunity in the eye of law.

In the instant case, the petitioner while he had been asked why the penalty of stoppage of increment or any other lesser penalty be not imposed upon him the material on which it was proposed to impose the same was not communicated to him. There is thus contravention of the above provision in Para 1712 of the Code which renders the impugned order to be erroneous and illegal. The petitioner is therefore entitled to an order quashing the same. The jurisdiction to impose penalty arises after a show cause notice has duly been given in accordance with the above para has however failed to be done in this case.

9. In the result therefore the petitioner is entitled to a writ quashing the order dated 12-9-1956 and it is hereby quashed. The quashing, however of the above order will not have the effect of deterring the respondents from delivering to the petitioner a fresh show cause notice on the same charge and to proceed against him in accordance with law.

10. As regards the relief asked by the petitioner in the matter of fixation of his salary, in view of the agreement of the parties the matter shall be referred to

Financial Adviser and Chief Accounts Officer, North Railway, Baroda House, New Delhi for advising the salary to which the petitioner is, in accordance with the rules applicable to him, entitled to get.

11. No order is made as to costs.