

**(1971) 01 AHC CK 0021**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 81 of 1968**

Kandhai

APPELLANT

Vs

The District Operating Superintendent (Safety) N.E. Railway,  
District Offices, Hazratganj, Lucknow

RESPONDENT

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**Date of Decision :** 25-01-1971

**Acts Referred:**

Constitution of India, 1950 — Article 311

**Citation :** AIR 1971 All 323

**Hon'ble Judges :** K.B. Srivastava, J

**Bench :** Single Bench

**Advocate :** B.C. Saxena, for the Appellant; B.N. Roy, for the Respondent

**Final Decision :** Dismissed

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## Judgement

K.B. Srivastava, J.—In his petition under Article 226 of the Constitution, the petitioner Kandhai prays for the issue for a writ of prohibition directing the District Operating Superintendent (Safety), N. E. Railway, Lucknow, the opposite party, to refrain from holding departmental proceedings against the petitioner.

2. The facts giving rise to this petition may now be stated. The petitioner was in the employment of the North Eastern Railway and was posted as a Gateman at Level Crossing Gate No. 6 at the Daliganj Railway Station. He failed to close the Level Crossing Gates at 4.28 A. M. on the night between 31st May/1st June, 1963 during the passage of 441 Parcel Express and thereby caused a collision between it and a truck, with the result that several persons received serious injuries and five of them died. He was arrested on June 1, 1963 and on being released on bail, was placed under suspension. His services were terminated with effect from August 28, 1963 under Rule 149, Railway Establishment Code, Volume I. However, he was subsequently re-instated and again placed under suspension with effect from September 24, 1964. In the meantime, a charge-sheet u/s 304-A, Indian Penal Code and 101, Railways Act was submitted in the Court of a Magistrate. The petitioner and some others were tried u/s 304-A,

Indian Penal Code alone and were acquitted on May 16, 1967. In spite of the acquittal, he was served with a charge by the opposite party for violation of paragraphs 6 and 7 of the Station Working Rules. This charge was accompanied by a statement of allegations which reads thus:--

"On 1-6-1963 Shri Kandhai, s/o Shri Parwan while functioning as Gateman at Level Crossing Gate No. 6 of Daliganj Station failed to keep the Gates closed against the road traffic during the passage of 441 Up Parcel Express after exchanging the alight signals, thereby causing collision between 441 Up Express and Motor Truck No. USQ 2670".

The petitioner made a representation asking the opposite party to allow him to inspect a document, namely, the findings of the District Officers' Joint Enquiry, but he was not allowed that facility on the ground that the document was confidential. Thereafter he filed the present petition for the issue of a writ of prohibition, referred to earlier. The writ petition has been opposed by a counter-affidavit.

3. The learned counsel for the petitioner has urged two points only before me. His first contention is that if a Government servant is prosecuted on a charge and acquitted, then a subsequent departmental proceeding on the same charge is incompetent; and that being so, the present disciplinary proceedings must either be quashed or the disciplinary authority commanded not to proceed further with it. He has placed reliance on some case law and it is necessary, therefore, to refer to these. The first case relied upon is Qamarali Wahid Ali Vs. State of Madhya Pradesh, In that case, Qamarali, a Sub-Inspector of Police, along with some others, was prosecuted for offences under Sections 304, 331 and 201 of the Indian Penal Code but was acquitted honourably. He was then proceeded against department-ally and dismissed from service. In these circumstances, it was urged before the High Court that the departmental authorities had no power or authority to hold a departmental inquiry in respect of a matter regarding which, the Law Court had acquitted him. Tare, J., held thus:--

"In the present case the very elementary principle of natural justice had been violated, namely, that as per verdict of a Court of Law, the appellant had been held innocent of the crime, while the departmental authority purported to sit in judgment over the law Court, as if it were an appellate authority. If this were permitted, the very foundation of the administration of justice would tumble down. It is true that this Court cannot sit in judgment over the departmental authority as an appellate Court. But it is equally true that a departmental authority cannot be permitted to sit in judgment over a law Court, as if it were an appellate authority. Therefore the charge framed in the departmental enquiry could not at all be framed. The further proceedings in the departmental enquiry were just a nullity. They can as well be ignored by this Court. The conclusion of guilt could not be arrived at in the departmental enquiry, as no such enquiry could be held. If no conclusion of guilt could be arrived at, the appellant could not be called upon to show cause against the action proposed to be taken on the

basis of the conclusion arrived at in the departmental enquiry,"

The next case relied upon is Banta Singh Vs. National Coal Development Corporation and Another, It was urged that after acquittal by a competent Criminal Court of Banta Singh on the charge of theft tinder Section 379 and also of the offence u/s 411 of the Indian Penal Code, it was not open to the department to hold, subsequent to that acquittal, the departmental inquiry on identical charges and record a finding against him and dismiss him thereupon. The charge sheet in the departmental enquiry showed that the charges that were framed against Banta Singh were the same as were the subject-matter of the Criminal Trial against him. Mahapatra, J, observed thus:--

"Sometimes both the criminal trial and departmental enquiry go on. There is no bar against that. But if a departmental enquiry is withheld till the decision of the criminal trial, then that decision should be taken into account and cannot be overridden by continuing the departmental enquiry thereafter on the identical charges. Furthermore, if a departmental enquiry is instituted and that ends in acquittal of the accused, it will not be proper for the department again to proceed on the same charges. The judgment in the criminal trial in the present case was certainly admissible in the Civil Court under the Evidence Act for the purpose that there was a criminal case of identical charge and it ended in acquittal of the accused. The other findings or the evidence led in the criminal trial are irrelevant, but the conclusion of the trial is admissible in evidence. In that view and following the principle laid down in the case mentioned above (the reference is to Jerome D'Silva Vs. The Regional Transport Authority, South Kanara and Another, .... I am inclined to accept.... that the departmental enquiry on the charges of the identical nature in the criminal .trial, was not justified."

In P. Ekambaram Ponnurangam v. Mysore Govt. Road Transport AIR 1962 Mys. 84 a view to the same effect was taken. Assuming, though not deciding, this view to be correct, I am of the view that all these cases are clearly distinguishable. The ratio decidendi of these cases is that if a Government servant is prosecuted on the criminal side on a particular charge and is acquitted, he cannot be proceeded against departmentally on the same facts and on the same charge. These cases do not lay down that if several charges arise out of the same facts and he is acquitted on one of these charges, he cannot be proceeded against departmentally on a second charge which was not the subject-matter of his criminal trial. In the instant case, the judgment of the criminal Court (Annexure 4) shows that the petitioner was tried u/s 304A simpliciter and was acquitted of that charge. u/s 304-A, Indian Penal Code, whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. This section, therefore, punishes a man for (1) causing the death of any person (2) by doing any rash and negligent act. The petitioner at best cannot be departmentally

proceeded against on a charge which comprised the ingredients of Section 304-A. However, there will be no bar if on the same facts he is proceeded against on some other charge which may amount to negligence in the performance of duties endangering life, or on a charge in respect of breach of Working Rules for Gateman. Obviously, he did not stand his trial in the Criminal Court on these latter type of charges. Section 101, Railways Act says that if a Railway servant, when on duty, endangers the safety of any person (a) by disobeying any general rule made, sanctioned, published and notified under the Act, or (b) by disobeying any rule or order which is not inconsistent with any such general rule and which such servant was bound by the terms of his employment to obey, and of which he had notice, or (c) by any rash or negligent act or omission, he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees, or with both. A comparison of Section 101, Railways Act with Section 304-A, Indian Penal Code, will make them clearly distinguishable. u/s 101, Railways Act, causing death is wholly immaterial; and it is enough if the safety of any person is endangered by the reasons mentioned in Sub-clauses (a), (b) or (c). It is only Sub-clause (c) which furnishes one of the ingredients of Section 304-A, Indian Penal Code. Sub-clauses (a) and (b) have no relevance to a case u/s 304-A, Indian Penal Code. Besides, the petitioner, as a Railway servant was bound to obey statutory or administrative rules regarding the closure of Level Crossing Gates in given contingencies. Non-closure may prove to be wholly harmless, because even if a train is passing, no accident may take place and yet there will be a breach of the rule. No Railway servant can say that he cannot be proceeded against departmentally for breach of the rule. Paragraphs 6 and 7 of the Working Rules may have been violated by the failure to close the gates, in case these were not closed. That is a matter for the departmental authorities to go into. I am of the view, therefore, that no case has been made out for the issue of a writ of prohibition.

4. The second point urged before me is that the statement of charges included a list of "documents liable to inspection at the petitioner's application. This list includes the findings of the District Officers' Joint Enquiry. The memorandum that was served with the charge mentions that the petitioner if he so desired could inspect and take extracts from the documents mentioned in the list. It is apparent, therefore, that the departmental authority intended to place reliance upon this document and said it categorically in the statement of allegations and, therefore, the petitioner was entitled to inspect this document and take extracts therefrom, if he so desired, but the departmental authority, in the circumstances, was not entitled to refuse inspection or taking of extracts therefrom. Even though, no specific prayer has been made for the quashing of the order refusing inspection or taking of extracts on the ground that the document is confidential, it appears proper to direct the opposite party to let the petitioner inspect and take extracts therefrom.

5. The writ petition is dismissed subject to the observations about the inspection

and taking of extracts of the document in question. Costs shall be easy.