

(1957) 02 PAT CK 0009
In the Patna High Court
Case No : Misc. Judl. Case No. 167 of 1956

Kartick Chandra Dutta

APPELLANT

Vs

District Traffic Supdt. Pandu Region, N.E. Rly.

RESPONDENT

Date of Decision : 28-02-1957

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2), 313, 320
Government of India Act, 1935 — Section 266(3)

Citation : AIR 1957 Patna 676

Hon'ble Judges : Ramaswami, C.J.;Kanhaiya Singh, J

Bench : Division Bench

Advocate : B.C. Ghose and Shreedeo Misra, for the Appellant; P.K. Bose, for the Respondent

Final Decision : Dismissed

Judgement

Kanhaiya Singh, J.—This application has been presented by Kartick Chandra Dutta under Article 226 of the Constitution for a writ in the nature of certiorari for calling-up and quashing the order of the District Traffic Superintendent, North Eastern Railway, Katihar, dated 17-1-1955 by which he was removed from service with effect from 19-1-1956 with one month's pay in lieu of notice. On the relevant date the petitioner was employed as a ticket collector on the North Eastern Railway and was posted at Katihar.

The allegations against him were that on 14-10-1954 for a child travelling from Jaynagar to Galsalia he demanded and realised from his relations Rs. 5/5/- on account of railway fare for the entire journey, but passed to them a ticket only from Katihar to Galsalia for Rs. 1/5/-, retaining the balance of Rs. 4/- with himself, with a motive to misappropriate it, and when two of his relations, namely, Bharat Chandra Kerola and Ram Prasad Bhungana, along with railway officers complained to the Government Railway Police at Katihar, he, on the intervention of railway officers, hurriedly issued a receipt for Rs. 3/13/- to the mother of the child.

It is said that even on this calculation, though wrong, annas three were refundable to the child's mother, but the petitioner misappropriated this amount. The further allegation was that he admitted these facts before the railway officers. The petitioner went so far as to issue one chargesheet against the child u/s 113/132 of the Railway Act without even mentioning the amount realised by him from the party, but the officer-in-charge of the railway police, Katihar, did not accept the charge sheet. Accordingly, on 4-1-1955 a proceeding was drawn up against him charging him with serious misconduct involving misappropriation of money and cheating of the railway administration under Rule 1706 (ii) of the Indian Railway Establishment Code, Volume I, and he was called upon to show cause within 7 days why he should not be removed from the service.

The charge-sheet is Annexure A to the petition. He showed cause on 17-1-1955 admitting miscalculation of three annas and pleading innocence in respect of other charges. A departmental enquiry was instituted, and the Assistant Traffic Superintendent who held the enquiry submitted his report on 9-7-1955. On a consideration of the evidence, the District Traffic Superintendent accepted the report of the enquiring Officer and tentatively decided that the proper punishment to be inflicted upon the petitioner should be removal from service, and accordingly on 3-12-1955 the petitioner was served with a notice to show cause why the proposed punishment should not be awarded.

This notice is Annexure B to the petition. On 2-1-1956 the petitioner showed cause. The District Traffic Superintendent did not accept his explanation, and on 17-1-1956 he passed orders removing him from service, with effect from 19-1-1956 with one month's pay in lieu of notice.

2. A counter-affidavit has been filed on behalf of the opposite party, who is the District Traffic Superintendent, Katihar.

3. The facts leading up to this application, as set forth above, are not much in dispute. There is further no dispute that the departmental proceedings were properly conducted in accordance with the rules. The contention put forward by Mr. B.C. Ghose on behalf of the petitioner is that the order of removal of the petitioner from service is vitiated by the fact that the copy of the report of the enquiring officer was not supplied to him along with the notice to show cause against the proposed penalty. This contention cannot be accepted for two reasons: In the first place, there was no violation of any statutory rule,

There is no rule making it obligatory upon the punishing authority to furnish the petitioner with a copy of the report of the enquiring officer. In the second place, there is no foundation in fact for this contention. The enquiry was conducted in the presence of the petitioner, and he was fully conversant with what transpired in course of the enquiry. There was nothing which was kept secret from him, and he cannot legitimately complain that there was infraction of the principle of natural justice. In fact, when he was served with a notice as required by Article 311 of the Constitution to show cause against the action proposed to be taken in

regard to him, he did not demand a copy of the report of the enquiring officer and at no stage he made a grievance that he had been prejudiced in his defence for want of the said report.

He raised this objection for the first time in this application. This is obviously an afterthought. Mr. Ghose referred, however, to the letter of the railway administration which is Annexure C to the petition. This letter does not relate to the present proceeding. It is a reply to a letter of the petitioner in connection with another proceeding against him. It appears that according to certain circular the railway administration refused to give him copies- of the report of the enquiring officer. This has absolutely no relevance in the present case.

It is manifest that in the present case the petitioner did not demand the copy of the said report after the notice required under Article 311(2) of the Constitution was served upon him. Mr. Ghose contended that it was wholly unnecessary for him to make another request in this proceeding when a similar request had already been turned down. I do not think that this contention is valid. It will be wrong to assume that in all cases the railway administration will refuse to furnish copies of relevant documents. This contention, therefore, has no merit and must be overruled.

4. The second argument advanced on behalf of the petitioner is that the allegations made against him do not justify his removal from service as contemplated by Rule 1708 of the Indian Railway Establishment Code. It appears that the railway administration has made a distinction between dismissal from the service and removal from the service. The circumstances in which a railway servant shall be liable to be dismissed from the service are set forth in Rule 1706, and those justifying removal are enumerated in Rule 1708. The submission of Mr. Ghose is that none of the circumstances specified in Rule 1708 is present in the instant case, and, therefore, the removal of the petitioner from the service was invalid and illegal.

This contention is based upon mis-conception as to the nature of the charge against the petitioner. As will appear from the charge-sheet which forms part of Annexure A to the petition and also from paragraph 2 of the petition, the petitioner was charged with serious misconduct. "Serious misconduct" comes under Rule 1706 and entails dismissal from the service. The penalty of removal from the service, as envisaged, in Rule 1706, is imposed in respect of offences which are less serious than those laid down in rule 1706 for dismissal. The District Traffic Superintendent adjudged the petitioner guilty of serious misconduct but he thought it proper to impose upon him the lesser penalty of removal from the service.

If a person for being guilty of a serious misconduct for which the prescribed punishment is dismissal from the service is simply removed from the service, it cannot be reasonably argued that there was violation of the statutory rule 1708. The imposition of a lesser punishment in respect of an offence for which a higher

punishment is prescribed is not at all illegal. The submission on behalf of the petitioner on this aspect of the case must, therefore, fail.

5. It was next contended that there was a violation of Article 311 of the Constitution in that the District Traffic Superintendent was not the appointing authority and was, therefore, not competent to order removal of the petitioner from the service. Article 311 no doubt provides that no Government servant shall be dismissed or removed by an authority subordinate to that by which he was appointed. No such ground was taken by the petitioner in his petition.

The authority of the District Traffic Superintendent to remove him from the service was questioned for the first time in his rejoinder to the counter-affidavit on behalf of the opposite party, For this reason alone, this argument must be rejected. Any way, there is no dispute that the District Traffic Superintendent had under the rules power to appoint persons to Class III service to which the petitioner belongs. Mr. Ghose, however contended that this rule was in force in 1946, but it has not been shown that this rule has been amended or was not in force on the date on which the order of removal was passed by the District Traffic Superintendent. This contention, there fore, must be overruled.

6. Lastly, it was contended that the order of removal from the service was illegal because the Public Service Commission was not consulted before removing the petitioner from the service. Article 320(3) of the Constitution provides that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted, inter alia,

"on all disciplinary matters affecting a person serving under the Government of India or the Government of State in a civil capacity, including memorials or petitions relating to such matters".

The proviso to C. (3) of Article 320, however, empowers the President as respect the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor or Rajpramukh, as the case may b"e, as respects other services and posts in connection with the affairs of a State, to make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted. In 1937 a notification was issued by the Governor-General under the provisions of Section 266(3) of the Government of India Act providing that it shall not be necessary to consult the Commission before an order is passed in any disciplinary case imposing the penalties enumerated therein which include penalty of removal from the service.

By virtue of Article 313 of the Constitution this notification continues to be in force. This notification came up for consideration in J. N. P. Sinha v. Eastern Rly., Misc. Judl, Case No. 153-of 1955, D/- 27-7-1956 (Pat) (A), wherein the facts were identical and, a Division Bench held that consultation with the Public Service Commission was not necessary when the penalty imposed was removal from the service. Therefore, this argument is not well-founded and cannot be

accepted as correct.

7. In the result, this application is dismissed. In the circumstances of the case, I make no order for costs.

Ramaswami, C.J.

8. I agree.