
(2001) 11 RAJ CK 0072

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4040 of 1999

Kedar Nath through L.Rs.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-11-2001

Acts Referred:

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 14, 9

Citation : (2002) 4 RLW 2359 : (2002) 1 WLC 571

Hon'ble Judges : A.R. Lakshmanan, C.J.;K.S. Rathore, J

Bench : Division Bench

Advocate : R.K. Mathur, for the Appellant;

Final Decision : Dismissed

Judgement

Lakshmanan, C.J.—Heard Shri R.K. Mathur for the petitioner.

2. This writ petition is directed against the order passed by the Central Administrative Tribunal, Jaipur (for short "the Tribunal") dated 3.11.1997 confirming the major penalty/punishment imposed on the petitioner Kedar Nath. Vide Annexure-5, the order dated 26.11.1985 a penalty of removal from service was imposed. Before the Tribunal, the petitioner challenged the order of punishment dated 26.11.1985 and the order dated 16.12.1994, rejecting his appeal filed against the order of punishment with the prayer that the above orders be declared as illegal and the same may be quashed with all consequential benefits. The Tribunal vide impugned order, rejected the prayer made by the petitioner made in the Original Application.

3. Shri R.K. Mathur, learned counsel for the petitioner submitted that the Tribunal had fallen into serious error in upholding the order dated 16.12.1994 passed by the appellate authority rejecting the appeal of the petitioner and that the petitioner did not commit any misconduct and he remained absent from duty due to his sickness, which was beyond his control. According to Mr. Mathur, mere absence itself is not a misconduct and, therefore, the action taken by the

respondents is illegal, arbitrary and the impugned orders deserve to be quashed. It is further contended by the learned counsel for the petitioner that there was no reason for dispensing with the enquiry as per the procedure laid down under Rule 9 of the Railway Servant (Discipline & Appeal) Rules, 1968 (hereinafter referred to as "the Rules") and no punishment could have been imposed upon the petitioner without giving him reasonable opportunity to defend him. Our attention was also drawn to Annexure-5 among other annexures.

4. We have perused Annex.-5. Before proceeding to consider Annexure-5 the order dated 26.11.1985 we would like to deal with Rule 14 of the Rules, which reads as under:-

"14. Special Procedure in Certain Cases:-

Notwithstanding anything contained in Rules 9 to 13:-

(i) where any penalty is imposed on a Railway servant on the ground to conduct which has led to his conviction on a criminal charge; or

(ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an enquiry in the manner provided in these rules;

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deem fit:

Provided that the Railway servant may be given an opportunity of making representation on the penalty proposed to be imposed before only an order is made in a case falling under Clause (i).

Provided that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule."

5. The disciplinary authority under the above rule may consider the circumstances of the case and make such orders thereon as it deems fit as provided under Rule 14(i) to (iii). Sub-rule (ii) of Rule 14 of the Rules is relevant for deciding the dispute in this case. According to Mr. Mathur, no opportunity was given to the petitioner to contest his case and that the authorities have unauthorisedly and illegally did not hold the inquiry in the manner as provided under Rule 9 of the Rules. Rule 14(ii) of the Rules states where the disciplinary authority is satisfied for reasons to be recorded by it is writing, that it is not reasonably practicable to hold an inquiry in the manner as provided under the rules. The disciplinary authority may consider the circumstances of the case for making such order as it deems fit. A perusal of Annexure-5 the order dated 26.11.1995 would go to show that the that the authority is satisfied rather fully convinced that it is not reasonably practicable to conduct enquiry into the matter

against the petitioner herein according to the normal procedure as laid down under Rule 9 of the Rules. In this case, the petitioner, who was officiating Coach Attendant was absent from duty from 14.1.1984. In this connection he was served with SF 5 No. ET/308/84/43 (sa) dt. 1.10.1984. This letter was sent at his home address at Bandikui under registered AD but the same received back undelivered with the remarks "Not Known". Under these circumstances, the AOS-II-JP DRM Office, Jaipur after going through the relevant papers, documents, record placed before him and on the basis of all these documents and after applying him mind to all the facts available on record, came to the conclusion that the petitioner had been absenting from 14.1.1984 in an unauthorised manner without observing the rules and regulations laid down in this context so much so his whereabouts were also not known. Thereby the petitioner has conducted himself in a manner no becoming of a Railway servant and has failed to maintain absolute integrity and devotion to duty tantamounting to serious misconduct thereby violating Rule 3 of the Railway Services (Conduct) Rules, 1966.

6. We have perused the order passed by the Tribunal. The tribunal considering the points for determination as to whether services of a railway servant can be terminated by invoking the provisions of Rule 14(ii) of the rules by dispensing with the enquiry envisaged under Rule 9 of the Rules on the ground of continued absence and his whereabouts being not known despite best efforts to hold the enquiry answered the question raised in the OA in affirmative. The OA was dismissed as there being no merit. The Tribunal has considered Rule 9 and also Rule 14 of the Rules and was of the view that according to Rule 14 the requirement to dispense with the enquiry by the disciplinary authority are two namely, (i) the subjective satisfaction of disciplinary authority about the holding or not holding the disciplinary enquiry; and (ii) recording the reasons in writing to the effect that ,it is not reasonably practicable to hold an enquiry in the manner as provided under the Rules. If the aforesaid two ingredients are fulfilled then only the disciplinary authority instead of adopting the procedure under Rule 9 to impose the major penalty can follow the special procedure as laid down under Rule 14(ii) of the Rules. In the instant case it has been clearly made out that all efforts were made by the respondents to furnish to the petitioner the memo of chargesheet but the same failed. Repeated efforts were made to trace out and serve the memo of chargesheet upon the petitioner who was allegedly fallen ill on 14.1.1984 and did not report for duties thereafter. All the communications sent to him were addressed at his last known address as is evident from the postal endorsements on the envelopes Annexures R/1 and R/2 submitted in the Original Application.

7. Under these circumstances, we are of the opinion, that the Tribunal is justified in rejecting the prayers made by the petitioner in the original application and in our opinion since the petitioner himself has absented from duty for a long period without any justifiable cause, he had rightly been removed from service by the orders impugned in the writ petition. Accordingly the writ petition fails and is,

dismissed.