
(1969) 07 CAL CK 0030
In the Calcutta High Court
Case No : C.R. No. 1174 (W) of 1965

Kshetra Mohan Nath

APPELLANT

Vs

District Controller of Stores, E. Rly. Halishahar and Others

RESPONDENT

Date of Decision : 17-07-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 245, 311
Railway Services (Conduct) Rules, 1966 — Rule 2

Citation : AIR 1970 Cal 131

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : Noni Coomar Chakrabarty, S.K. Sen Gupta and K. Banerjee, for the Appellant; Ajoy Kr. Basu, for B.N. Bose, for the Respondent

Judgement

D. Basu, J.—The petitioner, who entered Into the service as Khalasi under the Eastern Railway, was, at the material time, working as Clerk, Grade III. By the letter at Ann. B., dated the 31st May, 1962, the Controller of Stores (Respondent no. 3) asked the petitioner to submit a complete statement of his assets, movable and immovable by the 15th June, 1962. Another letter was issued by respondent no. 3 to the same effect on the 28th June, 1962 (Ann. C), but on the 26th December, 1962, the charge-sheet at Ann. G was Issued against the petitioner to show cause why he should not be punished for "disobedience of order" for having failed to submit his statement of assets by the 15th June, 1962, even though he was reminded of his obligation by a second letter.

2. In his answer to the charge-sheet (Ann. H), the petitioner stated, inter alia that in course of a proceeding started by the Special Police Establishment, the statement of assets had been called for by them from the petitioner and the petitioner had submitted to them such statement. The petitioner had, by his letter of 4th July, 1962 (Ann. D) requested the Controller to refer to the statement which the petitioner had filed before the Police.

Notwithstanding all this, the Controller appointed the Assistant Controller as the

Inquiry Officer, on the 21st May, 1963. The Inquiry Officer submitted his report on the 28th October, 1964, finding the petitioner guilty (Ann. T.), and, agreeing with that finding, the District Controller (respondent no. 1) issued the second show cause notice at Ann. U, proposing removal from service as the tentative punishment. In pursuance thereof, the petitioner was removed from service by the order of the 8th December, 1964 at Ann. W. made by the District Controller (respondent 1). The petitioner's appeal to the Controller (respondent 3) filed on the 23rd December, 1964, not having been disposed of in a year, the petitioner moved this Court on the 21st December, 1965 and obtained this Rule, challenging the validity of the charge-sheet, show cause notice and the removal order.

3. The petition is opposed by a joint affidavit on behalf of respondents 1-3, by the Assistant Controller, respondent 2.

4. I. Before going into the points raised by the petitioner, it is to be noted at the outset that the appeal referred to in the petition has since been rejected on the 27th December, 1965, by the Deputy Controller, who is stated in the appellate order as the proper authority. Since this is subsequent to the Rule, the petitioner has not amended the petition to challenge its validity, but has nevertheless urged that his appeal has not been disposed of by the proper authority. The District Controller is, admittedly, the punishing authority of the petitioner. In para 23 of the counter affidavit, it was categorically stated that the appellate authority from orders of the District Controller is the Deputy Controller and not the Controller. Nothing has been said in reply or at the hearing to show that this is not correct. Hence, it cannot be said that appellate order was without jurisdiction. But since the disposal of the appeal took place after the issue of the Rule, the petitioner is entitled to challenge the validity of the disciplinary proceedings culminating in the removal, regardless of the order at Ann. III of the counter-affidavit.

5. II. Since the charge was one of violation of orders of a competent authority to submit a statement of assets, at the hearing the petitioner first seeks to cut at the root by urging that it was the General Manager and not the Controller who was competent to ask for such a statement and that accordingly, the order on the basis of which the disciplinary proceeding was founded was without jurisdiction.

6. Mr. Chakravarty, appearing on behalf of the petitioner, relies on Rule 15 (4) of the Railway Service (Conduct) Rules, 1956, which says --

"(4) The Government or any authority empowered by it in this behalf may, at any time, by general or special order, require a railway servant to submit, within a period specified in the order, a full and complete statement of such movable or immovable property held or acquired by him or by any member of his family as may be specified in the order."

7. The case of the respondent is that the Government has, in exercise of the above rule, empowered the General Manager to call for the statement and that

the latter, in his turn, has delegated his power to the Controller, by a circular of 4th June, 1957, which has been produced before me. The petitioner questions the validity of the second delegation, made by the General Manager on the ground that it is only the Government or any other person authorised by the Government, which can make an order calling for such statement; the authority empowered by the Government cannot further delegate his delegated power, according to the maxim "delegatus non potest delegare."

8. This contention cannot, however, succeed in view of the fact that the word "Government" itself has been defined in Rule 2(i) of these rules as meaning the "General Manager", in respect of non-Gazetted staff; if so, there has been nothing wrong in the General Manager, as "the Government", to authorise the Controller to exercise his power by the Circular produced by the respondents. This plea is accordingly rejected.

9. III. The next point taken on behalf of the petitioner is that, in contravention of Rule 1712 of the Railway Establishment Code, Vol. I, the petitioner was interrogated by the Inquiry Officer, at the outset, without taking any evidence in support of the charge. The averments in this behalf in para 19 of the petition are corroborated by the copy of the first day's proceeding at Ann. M, namely, that after the Inquiry Officer read over the charge to the petitioner, he put questions to the latter as to why he did not submit the statement of assets asked for from him. The petitioner said that he had nothing to add to what he had stated in his written explanation.

10. The language of Rule 1712(1), indeed suggests that the normal procedure at the inquiry is that after reading over the charge, the evidence in support thereof, in so far as the charge is not admitted, shall be recorded before the delinquent may be called upon to adduce evidence in his defence.

11. The plea in para 15 of the counter-affidavit is that from the papers on the record, including the petitioner's correspondence, it was evident that statement was called for by the Controller but the petitioner did not comply with his demand and that accordingly, no further evidence was necessary to establish the charge of disobedience to that order and that the only point for the Inquiry Officer was to ascertain from the petitioner if he had any valid excuse for not obeying the order; it was for this reason that the Inquiry Officer interrogated the Petitioner to that effect at the beginning.

12. Though there are no reported Supreme Court decisions relating to disciplinary proceedings against Government servants on this point, the matter has been dealt with in several cases relating to disciplinary proceedings against industrial employees, where the question of natural justice arose.

13. The general principles laid down in these cases, relating to natural justice, will not be out of place in understanding the import of Rule 1712 (1) of the Code. These are :--

(i) It is an elementary principle of natural justice that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. As a general rule, therefore, the delinquent should not be interrogated before some witness or witnesses are examined in support of the charge (*Meenglas Tea Estate Vs. Its Workmen*, ; *Associated Cement Co. Ltd. Vs. The Workmen and Another*,). The reason is that, in order to be consonant with natural justice, a disciplinary inquiry should not be in the nature of an inquisition. *Central Bank of India Ltd. Vs. Karunamoy Banerjee*, .

(ii) To the above general rule, an exception has been engrafted, namely, where an interrogation of the delinquent at the beginning of the inquiry may be to his advantage, by way of explaining an admission made by him or the accusation is based on matters of record (*Central Bank of India Ltd. Vs. Karunamoy Banerjee*, , *ibid*; *Employers of Firestone Tyre and Rubber Co. Ltd. Vs. Their Workmen*,). The exception is based on the principle that the rules of natural justice do not prevent the delinquent being interrogated where the evidence in support of the charge is already known to him or where such interrogation would be beneficial to him; it is only "inquisition" which is prohibited.

14. In the nature of the charge against the delinquent in this case, therefore, there was nothing wrong in asking the petitioner why he did not comply with the order of the Controller, when the materials on the record showed that there was an order and that the petitioner did not comply with it. His plea was that the order was without jurisdiction and that he was not bound to comply with it. Rule 1712(1) of the Code does not lay down anything contrary to the foregoing principle. It only lays down the sequence of the stages at an inquiry and does not lay down that witnesses must be examined in support of the charge even where no such evidence was necessary. In the circumstances of the case, therefore, I hold that the rule relied upon by the petitioner has not been violated and also that there has been no contravention of the requirements of natural justice.

15. IV. In para 20 of the petition, the complaint is made that at the second sitting of the inquiry on the 10th April, 1964, the defence helper of the petitioner, Sri Monoj Bose, could not attend because he was not spared by the Railway Administration and the Inquiry Officer also did not grant the petitioner's prayer for adjournment on that ground. In para 16 of the counter-affidavit, it is contended, with reference to Annexure II thereto that the said defence helper was indeed spared by the respondents but that he did not turn up on the date in question for private reasons, namely, that he had to attend trade union or like meetings.

16. Under Rule 1712(2) it has been held by this Court that the defence helper being a Railway servant, the respondents must take all reasonable steps for enabling him to appear so that the provision in Rule 1712(2) may not be rendered nugatory. The obligation of the Railway, however, ends as soon as the officer in question is spared from his duties for the purpose. They cannot be held responsible if the defence helper does not attend for any reason of his own. The

petitioner has not been able to establish in the instant case, that the respondents did not spare the defence-helper. Hence, the petitioner cannot complain of any violation of the Rule referred to.

17. As to the petitioner's request for adjournment, the respondents contend that adjournments had been sought for and granted to the petitioner on two previous occasions (Annexure I) and on one of those occasions (I) the ground stated by the petitioner was that the said defence helper had to attend a meeting of the Railwaymen's Federation. If, in these circumstances, the Inquiry Officer refused to allow adjournment on the third occasion, though the defence-helper had been spared, it cannot be held that such refusal was arbitrary.

18. This point must also be rejected, accordingly.

19. V. The next point urged on behalf of the petitioner is that the report of the Special Police Establishment (if any) which was called for by the petitioner's letter dated the 9th January, 1964 (Annexure L) was not shown to him. The plea in para 19 of the counter-affidavit is that there was no such report and, secondly, that the instant charge was independent of any other proceeding held against the petitioner. This plea of the respondents must be upheld. The present charge was one of disobedience to the order to submit statement of assets. That offence had nothing to do with any adverse report of the Special Police against the petitioner, even if any such report had been received. For the same reason, the non-examination of the officer in charge of such proceeding by the Police by the prosecution caused no irregularity or prejudice in the present disciplinary proceeding against the petitioner. One of the pleas raised by the petitioner for non-submission of the return as asked for by the Controller was that he had already submitted such return to the Police (para 10 of the Petition). This is, however, no excuse for non-submission of return as asked for under the Railway Establishment Code.

20. The present plea must also fail

21. VI. One of the points raised by the petitioner is that he had previously submitted a return of his assets at the verbal order of Mr. Sambully, the District Controller and that if the latter had been examined, as requested by the petitioner he would have proved this fact. It is to be noted that the District Controller had no jurisdiction, under the Rule, read with the Circular, to ask for such a statement. The petitioner's story on this point seems to have been an afterthought and, in the circumstances, it cannot be said that the petitioner has been prejudiced in any way by the non-examination of Mr. Sambully. As I have said in another case, if a Criminal Court has the power to withhold examination of a witness who does not appear to the Court to be relevant to the charge, an Inquiry Officer at a disciplinary proceeding cannot lack that power and Rule 1712 does not lay down anything to the contrary.

22. VII. The most Important point raised on behalf of the petitioner was that the Inquiry Officer was a witness against the petitioner in a Civil suit instituted by

the petitioner against the respondents in the matter of stoppage of his increment which was pending at the Baraset Court at the time of the instant proceedings. This objection was, however, rejected by the Inquiry Officer on the ground that the Civil suit at the Baraset Court related to an issue different from that involved in the instant charge (Annexure N). It has been rightly argued by Mr. Basu on behalf of the Railway that the petitioner has not shown that the Inquiry Officer had any personal grudge against the petitioner if he had deposed against the petitioner in an official capacity regarding another matter, it cannot be said that the Inquiry Officer had any bias against the petitioner at the present inquiry for non-compliance with the order for submitting return of assets, which was to be established by documentary evidence. The deposition of the Inquiry Officer at that suit has also not been produced before me. Nor is any actual malice shown by the Inquiry Report where the Inquiry Officer did not go out of his way in suggesting any particular punishment

23. It cannot, therefore, be held that the petitioner was in any way prejudiced by any bias on the part of the Inquiry Officer.

24. All points having failed, this Rule must be discharged. But I make no order as to costs.