

(1984) 08 RAJ CK 0050
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1986 of 1976

Mahavir Singh

APPELLANT

Vs

Union of Indai (UOI) and Others

RESPONDENT

Date of Decision : 07-08-1984

Acts Referred:

Probation of Offenders Act, 1958 — Section 3
Railway Protection Force Act, 1957 — Section 17

Citation : (1984) WLN 291

Hon'ble Judges : Dwarka Prasad Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dwarka Prasad Gupta, J.—The petitioner's case in short is that he was working on the post of Sub-Inspector, Railway Protection Force at Anand, where he fell sick on March 23, 1974. He reported back on duty on May 7, 1974 but he again fell ill on May 9, 1974 and he went for private medical treatment. The petitioner resumed his duties on September 11, 1974. A complaint was filed by the Assistant Security Officer against the petitioner u/s 17(1) of the Railway Protection Force Act, 1957, alleging that he remained absent from duty from May 9, 1974 without any reasonable excuse and that he willfully disobeyed the lawful orders of his superiors. The Magistrate, First Class Anand, found the petitioner guilty by his order dated November 13, 1975 of remaining absent without reasonable cause and of willfully disobeying the orders of his superiors. He was, however, allowed the benefit of Section 3 of the Probation of Offenders Act and was ordered to be released after admonition. Soon after the aforesaid order was passed by the learned Magistrate, First Class, Anand, convicting the petitioner on a criminal charge u/s 17(1) of the Railway Protection Force Act, the Deputy Chief Security Officer, Western Railway by his order dated February 5, 1976 removed the petitioner from railway service. An appeal was filed by the petitioner which was dismissed by the Chief Security Officer by his order dated April 7, 1976.

2. The main contention of the learned Counsel for the petitioner is that the Railway Authorities could not have passed the order of removal of the petitioner from Railway Service without affording the petitioner an opportunity of hearing. Reliance has been placed on a decision of this Court in *Kuldeep Singh v. Union of India* 1974 RLW 171 and on a decision of their Lordships of the Supreme Court in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*,

3. In the aforesaid cases relied upon by the learned Counsel for the petitioner, it has been held that the competent authority ought to have considered the matter objectively before proceeding to impose a punishment upon the employee concerned. Their Lordship of the Supreme Court observed as under in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*,

The position is that the conviction of the delinquent employee would be taken as sufficient, proof of misconduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction. This is a very salutary provision which has been enshrined in these Rules and one of the purposes for conferring this power is that in cases where the disciplinary authority is satisfied that the delinquent employee is a youthful offender who is not convicted of any serious offence and shows poignant penitence or real repentance he may be dealt with as lightly as possible.... The statutory provision referred to above merely imports a rule of natural justice in enjoining that before taking final action in the matter the delinquent employee should be heard and the circumstances of the case may be objectively considered. This is in keeping with the sense of justice and fair-play. The disciplinary authority has the undoubted power after hearing the delinquent employee and considering the circumstances of the case to inflict any major penalty on the delinquent employee without any further departmental inquiry if the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude and, therefore, it is not desirable or conducive in the interests of administration to retain such a person in service.

4. The question raised in the present case is squarely covered by the aforesaid two decisions. The Deputy Chief Security Officer, before proceeding to pass the order of removal, should have given an opportunity of hearing to the petitioner so as to explain his conduct. It was incumbent upon the Disciplinary Authority to make an objective consideration of the circumstances of the case, in order to decide the nature and extent of the penalty which should be imposed on the delinquent employee on the basis of his conviction on a criminal charge. In the present case, it may not be lost sight of that the offence for which the petitioner was prosecuted was his absence from duty and for which the petitioner's explanation was that he remained ill during the period of his absence. In any

view of the matter, the Deputy Chief Security Officer should have given an opportunity of hearing to the petitioner before proceeding to pass the order of removal of the petitioner, because it is possible that the petitioner could have satisfactorily explained the circumstances which led to his absence from duty and the same might have weighed with the competent authority to award a lesser punishment upon the petitioner.

5. In view of the decision of their Lordships of the Supreme Court in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, and the decision of this Court in *Kuldeep Singh's* case the order passed by the Deputy Chief Security Officer dated February 5, 1976 and the order passed by the Chief Security Officer dated April 7, 1976 are quashed and the order of removal of the petitioner from Railway service is set aside and the writ petition is allowed. The Deputy Chief Security Officer is directed to give an opportunity of hearing to the petitioner before proceeding to decide the question of imposition of penalty upon him. The petitioner shall also be entitled to reinstatement and to all consequential benefits, monetary or otherwise, to which he might be entitled.