

(1975) 11 OHC CK 0014
In the Orissa High Court

Mahendra Ram

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-11-1975

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1976) 42 CLT 70 : (1977) 1 LLJ 74

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Judgement

R.N. Misra, J.—Petitioner was appointed as a ticket collector by order dated 9-9-1971 made by the Divisional Personnel Officer of the South Eastern Railway at Khurda Road and with effect from that date he was posted in such capacity at the Cuttack Railway Station. On 6-8-1975, petitioner was served with an order dated 2 8-1975 passed by the Divisional Commercial Superintendent "opposite party No. 2) to the following effect:

As you are guilty of serious misconduct in that you have demanded and accepted Rs. 5 from a passenger travelling without ticket from Kendrapara Road to Cutlack by 8 UP while working as a Ticket Collector on duty at the South Gate at Cuttack on 15-7-1975 at 5.40 hours without issuing any receipt for the same, I have decided that under Rule 14 ii of the Railway Servants (Discipline & Appeal Rules, 1968, you should be removed from service with effect from the date of receipt of this letter.

Petitioner impugnes the said order in this application for a writ of certiorari on the ground that the order founded upon misconduct warranted a proceeding under the Railway Servants (Discipline & Appeal) Rules, 1968 and having been made without complying with the provisions thereof is vitiated in law.

2. The opposite parties have made a return to the rule issued from this Court and opposite party No. 2 has given the counter affidavit. In paragraph 5 thereof, the following assertion has been made:

That the averments made in paragraph 8 of the petition are correct in so far as it states that the petitioner was removed from service by the appointing authority (opposite party No. 2 without holding any inquiry by virtue of the power vested in him under Rule 14(ii) of the Rules. It is humbly submitted that the petitioner was guilty of serious misconduct of accepting bribe from a passenger, consequently he was removed from service.

In paragraph 8 of the said counter affidavit, it has been further stated:

In the interest of Administration and Public Service, the Disciplinary Authority considered that it would not be expedient to expose the members of the Vigilance staff, who has to keep watch over the activities of staff secretly to detect the commissioning of offences, viz., accepting illegal gratification, etc. It was also considered by the Disciplinary Authority that by the existing Rules it would not be possible to compel the outsiders and or passengers from whom the said money was taken illegally to be a witness in a departmental inquiry. In the said circumstances, it was considered by the Disciplinary Authority that it would not be possible or expedient to hold an inquiry against the petitioner under the provisions of Rules 9 to 13 of the said Rules.

In paragraph 10 of the said counter affidavit, it has been further stated :

....It is humbly submitted that the Divisional Commercial Superintendent, S.E. Railway, Khurda Road, who is the disciplinary authority in case of the Ticket Collector of Class III of the Railways was convinced from the materials on record before him, especially the report of the Vigilance staff and the statement of the passenger that it would not be possible to hold the inquiry under the provisions of the Rules. In the present context of promulgation of the Emergency condition in India, the Railway Administration is determined to wipe out corruption at all levels and on a finding that it would not be reasonably practicable to hold inquiry to go into the charges against the petitioner , the disciplinary authority invoked the power vested in him under Rule 14 in of the Rules and passed the order impugned. The order was given in writing after application of mind by the competent authority and it was felt that initiation of regular proceeding, finalisation of which would take a considerable time would be detrimental to the interest of the country as a whole. Hence it was considered that this was a fit case where an inquiry cannot be held according to the Rules 9 to 13 of the Rules and in view of the seriousness of the offence, it was decided by the opposite party No. 2 that the petitioner was not a fit person to be retained in service and summary procedure provided under Rule 14(ii) of the Rules will be made applicable to him.

3. It is not disputed that petitioner is holder of a civil post under the Union of India. Therefore, he is entitled to the protection under Article 311(2) of the Constitution. There is also no dispute before us that the rules contained in Rule 14 of the Railway Servants (Discipline & Appeal) Rules of 1968 which provide similar protection to railway employees are applicable to him. Indisputably the

order by which petitioner is aggrieved is one which removes him from service for misconduct. Therefore, an inquiry was warranted in which petitioner was to be informed of the charges against him; if the petitioner did not accept the charges the same had to be established by evidence and petitioner was entitled to an opportunity of leading evidence in support of his defence and be heard in the matter. The ambit and content of protection available to a holder of a civil post under Government has been laid down in clear terms in the case of Khem Chand Vs. The Union of India (UOI)and Others, .

Rule 14 of the Railway Servants (Discipline & Appeal) Rules (hereinafter referred to as the "Disciplinary Rules") applicable to petitioner provides:

14. Special procedure in certain cases:

Notwithstanding anything contained in Rules 9 to 13 (which specify the requirement of Article 311(2) of the Constitution):-

(i) Where any penalty is imposed on a railway servant on the ground of 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 inquiry in the manner provided in these rules;

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

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

4. Mr. Pal appearing on behalf of the Railway Administration takes the stand that in the special facts of the case, the inquiry referred to under Rules 9 to 13 which are in consonance with the mandatory provisions of Article 311(2) of the Constitution was not possible. He produced before us the reasons recorded by the Disciplinary Authority to do away with the inquiry. The note of the Disciplinary Authority dated 29-7-1975 may be extracted :

While keeping a watch by the Vigilance staff at the South Gate at Cuttack at the time of arrival of 8 UP on 15-7-1975 at 5.40 hrs,, it was noticed that Sri M. Ram Mahendra Ram , Ticket Collector, Cuttack, on duty at the South Gate detained one passenger aged about 42 years and allowed him to pass the Gate only after collecting some money. After the passenger went out of the Gate to a little distance, he was contacted by the Vigilance staff. The passenger, Sri Madhu Swain disclosed to the Vigilance staff that he got a ticket upto only Kendrapara Road and he slept in the train and came all the way to Cuttack. Hence the T.C. demanded Rs. 5 from him and allowed him to go out of the Gate only after payment of the same, but he was not given any money receipt to this effect.

From the statement of the passenger Sri Madhu Swain and the Vigilance Report, I find that the Ticket Collector Mahendra Ram on duty has collected Rs. 5 from him while going out of the Gate and no money receipt was granted to him for the said amount.

I am also convinced from what the passenger has stated that he will not be able to appear before any inquiry if held by the Railway due to fear of harassment by the Railway staff. I am convinced that it will not be practicable to hold an inquiry under the normal Discipline and Appeal procedure in this case as it will be difficult to procure evidence of the witnesses to substantiate the charges against the employee in an inquiry. In an inquiry it will be difficult to prove the charges against Sri Ram although it is a fact that he has accepted money from the passenger and has not given any receipt for the same. In the present context of Emergency which is of paramount importance and in order to root out all corruption and to ensure the absolute integrity of Government employees, any delay in the finalisation of inquiry will be detrimental to the interest of the country. It is, therefore, a fit case where I consider that inquiry cannot be held in accordance with the extant rules to prove the case against Sri Ram. In view of the seriousness of the offence and in the public interest I have decided that Sri Mahendra Ram is not a fit person to be retained in service and, therefore, decided that he should be dealt with under Rule 14(ii) of the Railway Servants (Discipline & Appeal)(Rev.) Rules, 19"8 and he be removed from service forthwith.

5. In Khem Chand's case, (supra) the learned Chief Justice enumerated the protection under Article 311(2) of the Constitution to include:

- (a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegation on which such charges are based ;
- (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence: and finally
- (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposes to inflict one of the three punishments and communicates the same to the Government.

One of the established canons of rules of natural justice is that no person shall be condemned without being heard. The exceptions provided under Article 311(2) of the Constitution or under Rule 14 of the Disciplinary Rules referred to above are Exceptions to the aforesaid dictum. As Rule 14 contemplates of exceptional situations, strict compliance is necessary to impose a major punishment as contemplated in the Rules without instituting appropriate inquiry.

The satisfaction of the Disciplinary Authority for directing the avoiding of an inquiry and yet imposing a punishment has got to be objective as indicated by the Calcutta High Court in the case of *Jyoti Prasad v. Union of India* (1975) 1 S.L.R. 80. The learned Judge has pointed out:

Requirements of Rule 14(ii) are two-fold: (1) satisfaction of the disciplinary authority that it is not reasonably practicable to hold an inquiry and (2) recording of reasons in writing. The words "for reasons to be recorded" postulate that such reasons must have a relevancy or nexus to the satisfaction arrived at, upon consideration of relevant materials that it is not reasonably practicable to hold an enquiry in the manner provided in these rules. So in my view, "satisfaction" contemplated in Rule 14(ii) is objective, that is, based on objective facts. There must be existence of objective facts, as for example when the delinquent is absconding; his whereabouts are not known or prevailing circumstances are such that no officer at the risk of his life could hold an enquiry or for fear of life no witness would come forward to depose.

* * * But satisfaction referred to in Rule 14(ii) is not the subjective satisfaction of the disciplinary authority. It is the satisfaction which is to be based upon objective materials. The condition precedent to the formation of such "satisfaction" is the actual existence of certain facts which persuaded the authority to take recourse to the extraordinary measure provided in Rule 14(ii)...

The Gujarat High Court in the case of *Bhnlath v. Union of India* (1975) 1.S.L.R. 277, has also taken the same view of the law. Therein, it has been stated :

....A right to make a representation to the disciplinary authority that even if he is found guilty of the fault alleged against him, there are extenuating circumstances which would justify imposing of a different or lesser penalty than the penalty proposed by the authority concerned, is an invaluable right. The railway servant may be able to show that having regard to the nature of the fault, the attendant circumstances, his length of service, the nature of the service put in, the personal circumstances of the servant concerned and having regard to other penalty a lenient view deserves to be taken. This right has been conferred on the servant concerned in terms by Rule 10(5)(b) of the rules. If the disciplinary authority is of the opinion that the fault if established he has to serve the servant concerned with a notice to show cause why the tentative penalty proposed by him should not be imposed. Now, the disciplinary authority would not show all the relevant circumstances as regards the meritorious service that may have been rendered by the servant concerned in the past or as regards his family circumstances or several other extenuating circumstances or as regards the circumstances in which the servant concerned happened to commit the fault. The disciplinary authority cannot, therefore, render any decision on the question of quantum of punishment unless he avails of the opportunity of obtaining the reaction of the servant concerned. On the one hand, the railway servant concerned cannot be robbed of his right conferred by the statutory rule; on the other hand, the disciplinary authority cannot deprive himself of the benefit of the

relevant material, from the only source from which it can be gathered. It must be realized that quantum of punishment is a very delicate question which requires to be resolved by the competent authority, be it a judge presiding over a criminal Court or a disciplinary authority exercising disciplinary jurisdiction. The punishment imposed must neither be too excessive nor too lenient. It must be just, proper, adequate; at the same time not too harsh nor too lenient. It has either to be deterrent or reformative. And in the absence of a representation of the other side, it would be impossible for the disciplinary authority to take a just decision on the question of quantum of sentence...

6. We have no doubts in our mind that receiving illegal gratification at the check gate is a serious delinquency and if the punishment of dismissal is given, it would not normally call for any interference. Undoubtedly corruption should be rooted out and the sooner it be done the better in the interest of the country. Yet, while working in that direction, the mandate of the law cannot be thrown to the winds. Ours is a country wedded to the Rule of Law and if administrative action is allowed to operate in gross breach of law, it is bound to lead to chaos. The ultimate result would be more dangerous than the evil intended to be eradicated. The reasons given to attract Rule 14(ii) of the Disciplinary Rules do not stand any objective scrutiny and, however much well-meaning the disciplinary authority's intention may have been, we find it difficult to sustain the punishment meted out without inquiry. The considerations which weighed with the disciplinary authority to avoid the inquiry are not germane and Rule 14(ii) of the Rules would not cover the case. The punishment of dismissal meted out to petitioner in the circumstances is unsustainable and has got to be quashed. We make it clear that it is open to the disciplinary authority to suitably deal with petitioner by complying with the appropriate provisions of the Disciplinary Rules.

7. The writ application is allowed and the impugned order imposing punishment is quashed. We do not make any order as to costs of the proceeding as we accept Mr. Pal's submission that disciplinary authority acted bona fide.

K.B. Panda, J.

8. I agree.