

(1969) 07 CAL CK 0038
In the Calcutta High Court
Case No : Civil Rule No. 1173 (W) of 1965

M.M. Dutta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-07-1969

Acts Referred:

Citation : AIR 1969 Cal 604

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : Madhusudan Banerjee, for the Appellant; Ajay Kr. Basu, for the Respondent

Judgement

D. Basu, J.—Having been appointed as Assistant Inspector of Works in 1934, the Petitioner was, at the material time, working as Inspector of works at the Kanchrapara workshop of the Eastern Railway. There was a raid on the workshop by dacoits in November 1961, after which it was discovered that 657 steel lees were missing. After a fact-finding inquiry, the Divisional Engineer (Respondent No. 3) issued against the petitioner the charge-sheet at Ann. A to the petition, dated the 25th March, 1964 asking him to show cause why he should not be punished with removal or any lesser penalty for negligence of duty-

(i) for failure to ensure the proper locking and sealing of the godown under his charge, which caused loss of Rs.6600 approximately to the Railway;

(ii) for failure to verify the stock every 6 months;

(iii) for failure to exercise casual check of the stock.

2. After the petitioner submitted his explanation to this charge, however, no inquiry was held but by the ex parte order at Annexure C, dated the 27th July, 1965, respondent No. 2, the Divisional Superintendent held the petitioner guilty of the charge and ordered that Rs. 6600 should be recovered from the petitioner "for the pecuniary loss caused to the Railway Administration by your negligence".

3. On the 2nd September, 1965, the petitioner preferred an appeal against the aforesaid order to the Chief Engineer, but, without disposing of that appeal, the order at Annexure D has been issued on the 16th September, 1965 for the recovery of the sum by monthly installments of Rs. 125 from the salary bill of the petitioner commencing from August 1965.

4. In the present Rule, obtained on the 21st December, 1965, the petitioner challenges the validity of the order for recovery at Annexures C.D. The petition is opposed by an affidavit filed by respondent 2, on behalf of all the respondents.

5. The primary contention advanced on behalf of the petitioner is that having issued the charge-sheet at Annexure A, the respondents could not impose the penalty of recovery of a pecuniary penalty without holding an inquiry upon the charge in accordance with the Rules contained in the relevant Discipline Rules.

6. The various penalties which may be imposed upon a Railway servant, under Rule 1707 of the Railway Establishment Code, volume I, are divided into two categories, for procedural purposes; major and minor, and the two different sets of procedural rules applicable to the two categories of penalty are laid down in Sections V and VI, respectively, of Chapter XVII of the Code. Now, while removal is a "major" penalty, recovery of pay of any pecuniary loss caused to the Government by negligence (Clause III of Rule 1707 (1)) is a "minor" penalty.

7. The result is that while for a major penalty, the procedure includes a charge followed by a full-fledged inquiry as laid down in Rule 1712, the procedure laid down in Rule 1716, for a minor penalty, such as recovery of loss, is-

(a) the railway servant must be informed in writing of the allegations against him and the action proposed to be taken against him;

(b) he must be given an opportunity to make any representation he wants to make against such notice;

(c) such representation must be taken into consideration by the Disciplinary Authority;

(d) the Disciplinary Authority must write an order, with the reasons therefore (Rule 1716 (2) (e)).

In this case, the requirements of Rule 1716 appear to have been complied with. Though the order reproduced at Annexure C is brief, the punishing authority gave a reasoned judgment as is to be found at Annexure R/2 to the counter-affidavit. Admittedly, there was a fact-finding inquiry anterior to the charge and several witnesses, including the petitioner (Annexure R/I) were examined there. The punishing authority has held the petitioner guilty of negligence on the basis of the evidence collected at that inquiry and the value of the materials lost was Rs. 6600 according to the petitioner's own initial report after the dacoity (Annexure R). The punishing authority held him guilty except on the third item of the charge.

8. It thus appears that the procedure for minor penalties was complied with. It is, however, contended on behalf of the petitioner that having once issued a charge-sheet in which the major penalty of removal was mentioned, the respondents could not shift to the procedure for minor penalties. From para 3 of the order of the punishing authority, at Annexure R/2 it appears that the Railway shifted to the minor penalty because it was useless to order removal from service inasmuch as the petitioner was already under re-employment and was due to retire from such re-employment in November, 1965.

9. Nevertheless, the question of law raised must be answered, namely, whether it was open to the respondents to resort to the procedure for minor penalty, after having started a proceeding for a major penalty.

(a) On behalf of the petitioner, reliance is placed on the Supreme Court decision in the case of *Dr. Akshaibar Lal and Others Vs. The Vice-chancellor, Banaras Hindu University and Others*, . In that case it was laid down that the general rule when alternative remedies were open to a person or authority was that "one or the other or both can be invoked unless one remedy is expressly or by necessary implication excluded by the other." To this an exception was engrafted by the Court, namely, that where there was a general as well as a special remedy, the authority, if it has initiated action under the special procedure must pursue that course and cannot, in case of failure to comply with that procedure, fall back upon the general remedy. This decision has no application to the instant case where both the remedies, major and minor penalties, -- are provided by the same code.

(b) To the same effect as in *Dr. Akshaibar Lal and Others Vs. The Vice-chancellor, Banaras Hindu University and Others*, is the decision of the Supreme Court in *P. Balakotaiah Vs. The Union of India (UOI) and Others*, . That was also a case of a general and a special remedy, provided by two different laws. Rule 148 of the Railway Establishment Code provides for the termination of the services of non-pensionable employees by notice. The Railway Services (Safeguarding of National Security) Rules, 1949, on the other hand, were made with the specific object of terminating the services of employees engaged in subversive activities, after following the special procedure prescribed therein. The Railway authorities started proceedings against an employee under the Security Rules, in order to punish him for subversive activities, but, after proceeding to some length, eventually terminated the services of the employee by issuing a notice under Rule 148 of the Code. The Court held that the intention of the authorities was to take action against the employee under the special law of the Security Rules and that, accordingly, the validity of the order that was eventually made must be tested by the requirements of the Security Rules.

10. The decision in *P. Balakotaiah Vs. The Union of India (UOI) and Others*, also does not apply to the instant case inasmuch as no special law is involved in the instant case. Apart from that, the language of Rules 1708 and 1716 (1) of the Railway Establishment Code, volume I, shows that under these Rules, it is not

the intention or object of the Railway authorities at the commencement of the proceedings, but the nature of the penalty. Which is eventually imposed, that is to deter mine which procedure must be followed in order to render the order valid. Thus Rule 1708 says:--

"Without prejudice to the provisions of the Public Servants (Inquiry) Act, 1850, no order imposing on a railway servant any of the penalties specified in Clauses (iv) to (vii) of Sub-rule (1) of Rule 1707 shall be passed except after an inquiry held. . .in the manner provided in Rules 1709 to 1715."

11. It is abundantly clear that the procedure prescribed for major penalties has to be followed only if eventually a major penalty is imposed. On the other hand, Rule 1716(1) says-

"No order imposing any of the penalties specified in Clauses (i) to (iii) of Sub-rule (1) of Rule 1707 (sic) shall be passed except after. . . "

12. It is clear that the procedure laid down by the Rules being safeguards prescribed to protect the employees from arbitrary action, the law will demand the more stringent safeguards to be complied with only in the case of the graver punishments. Since, in the instant case, only a minor penalty has been imposed, the respondents cannot be asked to justify the impugned order with reference to the requirements of the procedure laid down for "major penalties". The matter was not dealt with from this point of view by Banerjee, J., in Civil Rule No. 2307 of 1959 D/- 2-8-1961 which was referred to before me.

13. This contention must also fail accordingly.

14. No other point having been urged at the hearing, this Rule is discharged but with out any order as to costs, I should also observe that though no legal relief is available to the petitioner, nothing herein stated will stand in the way of the respondents" giving any relief to the petitioner administratively, having regard to the circumstances of the case and also in view of the fact that he must have left the service by this time.