
(1975) 08 KL CK 0008
In the High Court Of Kerala

Natarajan

APPELLANT

Vs

Divisional Superintendent, Southern Railway and Others

RESPONDENT

Date of Decision : 12-08-1975

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 19, 311

Citation : (1977) 1 LLJ 387

Hon'ble Judges : T. Chandrasekhara Menon, J;P. Subramonian Poti, J

Bench : Division Bench

Judgement

Chandrasekhara Menon, J.—The petitioner was an employee working in the Southern Railway?an Assistant Station Master. He was removed from service by Ext. P. 9 order on the ground that he contravened Rule 3 of the Railway Servants Conduct Rules, 1966. An enquiry was conducted against him on the basis of three charges detailed below:

Charge No. 1.

That he while functioning as Assistant Station Master, Coimbatore Junction, S. Rly. committed misconduct and failed to maintain absolute integrity and devotion to duty and did acts which were unbecoming of a railway servant inasmuch as he, while acting as secretary-cum-treasurer of the S. Rly. Employees Consumers Co-operative Stores, Coimbatore, some time before 29-6-1968 induced a money lender Sri Sadharam Daulatram of Coimbatore to lend him Rs. 350 by falsely representing that the money was required for the said S. Rly. Employees Consumers Co-operative Stores, Coimbatore and gave as security a post dated cheque bearing No. AO 60990 dt. 29-6-1968 for Rs. 350 drawn on Coimbatore District Co-operative Central Bank, knowing fully that there was no necessity for the said Rly. Co operative Stores to have this loan arid knowing fully well that there was no sufficient funds in the said bank to honour this cheque. In lieu of this cheque which was not honoured. Sri S Natarajan gave to the said Sri Sadharam Daulatram three cheques drawn on Canara Banking Corporation bearing No. 586639. 586673 and 74 and out of these three only the first cheque,

viz. No. 586639 dated 31.5-1969 for Rs. 150 was honoured. He had issued the cheques No. 366673 and 586674 knowing fully well that there were not sufficient funds in the Bank to honour these two cheques. He has thereby contravened Rule 3 of the Rly. Service (Conduct) Rules, 1966

Charge No. 2.

That he while functioning as Assistant Station Master, Coimbatore June, 1969, S. Rly. committed misconduct and failed to maintain absolute integrity and devotion to duty and did acts which were unbecoming of a Railway servant inasmuch as he while acting a Secretary-cum. Treasurer of the S. Rly Employees Consumers Co-operative Stores, Coimbatore, some time in the of 1969 induced Shri Ari Gowder, Railway Contractor, Coonoor to give him a loan of Rs. 3,000 by falsely representing that the money was required for the S Rly. Employees Consumers Cooperative Stores, Coimbatore and which amount was arranged to be paid to him by the said Sri Ari Gowder through Sri K.M. Madha Gowder of Coonoor, with no intention of paying the amount. He also issued a cheque No. 292024 dated 21-7-1969 drawn on Canara Bank Ltd., Coimbatore for Rs. 100 to the said Ari Gowder towards interest for the said loan of Rs 3,000 knowing fully well that there were no sufficient funds in the bank to honour this cheque. He has thereby contravened Rule 3 of Railway Servants (Conduct) Rules, 1966.

Charge No. 3.

That he while functioning as Assistant Station Master, Coimbatore Junction S. Rly. committed misconduct and failed to maintain absolute integrity and devotion to duty and acts which were unbecoming of Railway servant inasmuch as he while acting as Secretary. cum-Treasurer of the S. Rly. employees Consumers Co-operative Stores. Coimbatore, induced one Sri Doraiswami of Mettu-palavam to give him Rs. 10,000 some time in August 1969, for starting a joint enterprise in dealing with scrap saying that he could use his influence to purchase scrap from Olavakkode. This amount of Rs. 10000 some time was obtained by the said Doraiswamy from his sister Rukkammal, who mortgaged her property with Sri K. Chinnappan of Coimbatore. He also gave a cheque No. 292042 dated 20-10-1969 for Rs. 10,000 drawn on Canara Bank Coimbatore to the said Shri K. Chinnappan as security for the said amount, signing the said cheque as Secretary-cum-Treasurer of the S. Rly. Employees Consumers Co-operative Stores, when he had no authorisation to issue such a cheque and when there was no necessity for such an amount for the said stores, when he had no authorisation to issue such a cheque and when there was no necessity for such an amount for the said stores and knowing fully well that there was no sufficient funds in the Bank to honour the cheque. He has thereby contravened Rule 3 of the Railway Services (Conduct) Rules, 1966.

In the enquiry the petitioner had been given due show cause notice On his denial of the charges the enquiry was conducted during the period between 19-6-1972 and 11-7-1971 The report in the enquiry is produced in the original petition

marked at Ext. P 1. After a detailed discussion of the evidence in the matter the enquiry officer came to the conclusion that charge Nos. 1 and 3 are true while in respect of charge No. 2, the petitioner was found not guilty. The petitioner submitted statement of defence on 26-7-1972, wherein he contended that Rule 3 of the Railway Servants Conduct Rules, 1966, is not sustainable as the said rule is not applicable to the private conduct of the Railway servant outside his duty hours. After consideration of his defence statement, the Division 1 Superintendent, Southern Railway, Olavakkode the first respondent came to the conclusion provisionally that the petitioner is not a fit person to be continued in service and that he should be removed from service. On that basis on 4-12-1972 a show cause notice was issued to the petitioner. The petitioner's reply to the same was sent on 20-12-72. The show cause notice and the reply are respectively marked in the proceedings as Exts.P. 3 and P 4. On 13-1-1973 the order was passed by the first respondent removing the petitioner from service. Though, it is stated by the petitioner, that he has not been served with the order he has produced the same alleging that some persons under the Olavakkode Division had received a copy of the same. Ext. P 5 is the copy of the order.

2. Though various grounds are urged in the original petition for invalidating the order Ext. P 5, the main contention that the petitioner took up was that Rule 3 of the Railway Servants Conduct Rules is not applicable to dealings of the railway servant outside his duty hours. As the irregularities alleged to be committed by the petitioner is in respect of his dealings in a purely private capacity it is urged that Rule 3 could absolutely have no application to such conducts and, therefore, the entire proceedings are without jurisdiction. It is pointed out that this objection of jurisdiction has been raised in the first instance itself by the petitioner. Rule 3 is also said to confer an unguided and arbitrary power to punish a railway servant which might be used to suit the whims and fancies of his superiors. No guiding principles are said to be indicated in the Rule. The said rule is capable of an interpretation that "at all time" mentioned in the rule will include outside duty hours also. The petitioner contends, the rule then would be violative of Article 19(1)(g) and Article 14 of the Constitution. In regard to the enquiry, the petitioner takes up the position that the proceedings Ext. P 1 would reveal the bias of the enquiry officer against the petitioner. It is also submitted that the findings are really based on no evidence at all. In regard to the punishment imposed also the petitioner takes up the stand that it is highly drastic in the circumstances of the case. One of the major penalties provided for under the Rules has been imposed in this case which ordinarily is imposed only in cases of gross negligence of railway servants resulting in collusion of trains.

3. When this came up before one of us sitting single, the question whether Rule 3 could be attacked as violative of the constitutional provisions on the ground of vague, arbitrary and unfettered powers being given to the superior officers and also whether the said rule could be made applicable to dealings of railway servant outside his duty hours were considered of sufficient importance for reference to a Division Bench. It is in this manner that the matter has come

before us.

4. Mr. Ramakumar, learned Counsel for the petitioner, attacked the findings and enquiry as based on no evidence at all. It was contended by him that questions that were incriminating in nature were freely put by the enquiry officer to witnesses. He pointed out that questions that take in answers also were put to various witnesses which resulted in gross prejudice to the petitioner. He referred in particular to Bit. P4, where some of these questions were extracted. We have gone through the enquiry report in full. We find it difficult to agree with the petitioner that the enquiry officer has based any of his findings on evidence not on record nor could it be said that the findings are based on no evidence or any material evidence has been disregarded. The jurisdiction vested in this Court under Arts 226 and 227 is only supervisory and not appellate. When the conclusions recorded in the enquiry is based on some legal evidence it will neither be proper nor legal for the High Court to intervene. Therefore, we find no basis for the petitioner's contention that the enquiry is in any way vitiated by any error of law apparent on the face of the record.

5. The next and the important question raised by the learned Counsel for the petitioner is that Rule 3 of the Railway Service (Conduct) Rules is not applicable to the dealings of the railway servant outside his office hours. He also urged that Rule 3 is illegal and invalid as it confers an unguided and arbitrary power to punish a railway servant to suit the whims and fancies of the superiors. The relevant provision is as follows:

3. (1) Every railway servant shall at all times.

(i) maintain absolute integrity ;

(ii) maintain devotion to duty; and

(iii) do nothing; which is unbecoming of a railway or Government servant.

(2)(i) Every railway servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all railway servants for the time being under his control and authority;

(ii) no railway servant shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior and shall, where he is acting under such direction, obtain the direction in writing, wherever practicable, and where it is not practicable to obtain the direction in writing, he shall obtain written confirmation of the direction as soon thereafter as possible.

Explanation.? Nothing in Clause (ii) of Sub-rule (2) shall be construed as empowering a railway servant to evade his responsibilities by seeking instructions from or approval of, a superior officer or authority when such instructions are not necessary under the scheme of distribution of powers and responsibilities.

It is contended that an examination of the charges in Exp. P I will indicate, without doubt, that the irregularities, if any, committed by the petitioner is in respect of his dealings in a purely private capacity. His conduct as a Secretary of a Co-operative Stores of railway servants also come into the picture. It is submitted that Rule 3 could have absolutely no application to such conduct and, therefore, the entire proceedings are without jurisdiction. It is alleged lack of jurisdiction has been raised in the objection tiled by the petitioner before the enquiry officer which he has reiterated subsequently also. Another contention is that Rule 3 in any view confers unguided and arbitrary powers to punish a railway servant, in accordance with the whims and fancies of the superiors. No guiding principle is said to be in the said rule in the matter of enforcing disciplinary action against the railway servant. The rule is also capable of interpretation that "at all times" mentioned in the rule will include outside duty hours also. If that be so, the said rule is alleged to be likely to be abused in a capricious manner by disciplinary authorities under the rules. On that basis Rule 3 is sought to be declared invalid.

6. We have examined this question in detail. We find we cannot agree with the petitioner. The learned Counsel for the petitioner referred us to the decision in *Golam Mohiuddin Vs. State of West Bengal and Others*, . In that case Rules 3 and 4 of the West Bengal Government Servants Conduct Rules came up for consideration. The said rules are as follows :

Rule 3. Every Government Servant shall at all times maintain a very high standard of integrity, impartiality and devotion to duty.

Rule 4. No Government servant shall behave in a manner which is improper and unbecoming of a public servant and derogatory to the prestige of the Government.

The Court said that Rule 3 relates to the discharge of official duty by public servant. Rule 4, it was said, deals with the behaviour of a public servant not only in his official life but also in his private life. The complaint against the officer in that case was that he used to take food and drinks at a hotel in company with two girl receptionists in the hotel. The enquiry officer had come to the conclusion that these two girls were of questionable character ; which finding, the Court said, was a mere conjecture, as there was a complete lack of evidence as to their character. The occupation of a receptionist in a hotel is not by itself a degrading occupation for females. It was also said that girls who like alcoholic drinks are not invariably bad or Immoral. It was further stated therein that girl receptionists, who accept offer of drinks from customers with whom they are friendly, may be much too forward a type of girls but only because of that they need not be characterised as girls of questionable character. The Court said in that case that the finding of the enquiry officer that spirituous drinks used to be served at Biltmore Hotel ("surreptitiously") is against the weight of evidence. The Court said that it is difficult to understand which aspect of the conduct of the petitioner in that case, the enquiry officer meant to condemn as unbecoming,

namely, (a) drinking in a hotel, or (b) drinking in a hotel like Biltmore, where drinks were surreptitiously served. Or (c) drinking in company with girls, who were receptionists at Hotel Biltmore. The learned Judge said:

The Court is not a Court of morals. But because it is a Court of law and because it is required to decide whether the conduct of the petitioner was unbecoming or improper, from what is commonly known as the moral point of view, that this Court has to pronounce its views on the point. In so doing, this Court need remember that it is not either the views of private or public morality of the Enquiring Officer or the fanciful morality of persons who happen to be propounding a new sociology or advanced philosophy of morals or becoming conduct that can be allowed to operate as the test. This Court has to go by the ordinary normal standards of morality and propriety of conduct prevailing and accepted by the society. By adopting that test, I need say that participation in drinking orgies at public place, with or without the company of girls, is not a becoming conduct for any body, fireless for a person holding a public office. But mere taking of alcoholic drink is not improper or unbecoming, although indulging in disorderly conduct under influence of drink is. Then again, consumption of spirituous drinks in a public hotel or restaurant is not per se condemnable even in this country. This Court is in a position to take judicial notice of the fact that there are many reputed hotels, clubs and restaurants in this country, all licensed by Government authorities, where such drinks are served to and are consumed by customers and members. It has not been established by evidence that built more hotel U a disreputable hotel or a den of drunkards and disorderly people. Therefore, taking of alcoholic drinks in such a hotel may not be by itself bad. The question that remains for my consideration is whether drinking in a hotel, in company with female receptionists of the hotel, should always be condemned. In my opinion such a conduct would amount to indiscretion, however innocent the company may be. Public officers in the interest of their own reputation, should avoid such conduct. But, as Thomas Paine rightly observed? Reputation is what men and women think of us; character is what God and angels know of us. A man may be better than his reputation and I am not prepared to say that mere drinking in company with girl receptionists of a hotel, without accompanying disorderly or unseemly behaviour, must be immoral or unbecoming.

Rule 4 it was said is the decision "is in a sense elliptic, in that it does not lay down a proper and a becoming standard of behaviour for public servants although it requires them to avoid impropriety or unbecomingness in behaviour. Behaviour runs through the general course of life, in conduct, in deportment in manners, in dress, in speech and also in association. To leave the standard of behaviour pattern of public servants to the subjective satisfaction of the disciplinary authority has its dangers. A public servant, who is unconventional in his conduct and deportment, unconstrained in his manners, original in his dress, free stated in his speech and liberal in his association, may shock the conscience of a disciplinary authority, if that authority be either a conservative or a conventional. It would be wrong to think that Rule 4 of the West Bengal

Government Servants" Conduct Rules, 1859 was framed in order to introduce regimentation in the day to day life of public servants, according to a pattern. However undesirable it may be for a public servant to live a life of shame, disorderliness or immorality, it is equally undesirable to leave the appraisal of his behaviour to the subjective satisfaction of the Government or the disciplinary authority. Rule 4 suffers from the infirmity that it requires public servants to behave properly and becomingly in accordance with standards which may vary according to opinion".

7. What we have to consider here, is whether the provisions in Rule 3 of the Railway Service (Conduct) Rules, which says that every railway servant shall at all times maintain absolute integrity, maintain devotion to duty and do nothing which is unbecoming of a railway or Government servant is bad, on the basis of the Calcutta decision. It might be stated here that it may not be correct to state that a Government servant is not answerable to Government for misconduct committed in his private life as long as he is a Government servant. The result of such a contention being accepted,, would be that, however reprehensible or abominable a Government servant's conduct in his private life may be, the Government will be powerless to dispense with his services, unless and until he commits a criminal offence or commits an BCE which is specifically prohibited by the conduct rules. It might clothe Government servants with an immunity which would place the Government in a position worse than that of an ordinary employer. The power of the State to dispense with the services of any Government servant, though hedged with safeguards contained in Article 311 and other constitutional provision, is a real one No doubt as pointed in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, where a person appointed substantively to a permanent post in Government service he normally acquires a right to hold the post until under the rules he attains the age of superannuation or is compulsorily retired, and in the absence of a contract, express or implied, or a service rule he cannot be turned out of the post unless the post itself is abolished or unless he is guilty of misconduct, negligence, or inefficiency or other disqualifications and appropriate proceedings are taken under the service rule read with Article 311(2). However, that does not mean that the Government could have no right to control the conduct of its servants to a certain extent even in private life or that Government servants could under no circumstances will be answerable to Government for an act not connected with (their official duties unless it is punishable by law? See *Lakshmi Narain v. District Magistrate AIR 1960 AIL 53*.

8. In the Calcutta case itself what the learned Judge pointed out was that emphasis on the becoming and proper conduct of a Government servant, even in his private life was laid only in 1959 by the Rules framed, that year as far as West Bengal Civil Service was concerned and prior to that, their private life was not governed by any code of conduct. The Judge B N. Banerjee J., was cautious to point out "I do not intend to lay down, as a proposition of law, that an officer guilty of improper or unbecoming conduct could not be proceeded against, by

way of disciplinary action, prior to the promulgation of the Conduct Rules of 1959. The word "misconduct" is a sufficiently wide expression and covers any conduct which in any way renders a man unfit for his office or is likely to tamper or embarrass the administration. In this sense grossly improper or unbecoming conduct in public life may also become misconduct and may render an officer liable to disciplinary action therefore. It will also be interesting and pertinent in this context to note what the same Judge said about Rule 3 of the Central Civil services (Conduct) Rules in *Sripati Ranjan Biswas Vs. Collector of Customs and Others*, "

"Rule 3 of the Central Civil Services (Conduct) Rules is set out below :

3. General. ? Every Government Servant shall at all times maintain absolute integrity and devotion to duty.

9. Integrity is uprightness, honesty or purity. Devotion to duty is faithful service. Modern approaches to life have changed many ideals, which used to be held sacred. Such approaches have also worked a change in our sense of the sublime. But even then the idea of right and wrong has not been forgotten and the difference between honesty and dishonesty, fidelity and faithfulness wholly lost. It is sometimes argued with sophistry that it is difficult to prescribe the outside limits of integrity in a complex system of modern administration, in which considerations of expediency occasionally outweigh other considerations. Considerations of expediency may be irresistible at times but their evils are merely to be put up with and not to be extolled or pre-scribed as standards of life and work. If a public officer is required to maintain integrity and to be devoted to duty, he is merely asked to keep within the bounds of that administrative decency, which goes by the name of civilized administration. In my opinion, no vagueness or indefiniteness attaches to the language used in Rule 3 above quoted.

We are in agreement with what Justice Dhavan said in the Allahabad decision cited above that Art 311 does not restrict the power of the State to dispense with the services of any Government servant for conduct which it considers to be unworthy or unbecoming of an official of the State, nor does it fetter the discretion of the State as to what type of conduct it shall consider sufficiently blameworthy to merit dismissal or removal from service. The State has been invested with a large discretion in this respect and it can undoubtedly demand a certain standard of conduct from Government servants not only when performing their official duties but in their private lives as well

10. We think the following passage from the decision of the Supreme Court in *Govinda Menon v. Union of India* 2 SCR. 566 , is not only apposite in the contest but should really conclude the matter:

Rule 4(1)(b) merely says that the appropriate Government competent to institute disciplinary proceedings against a member of the service would be the Government under whom such member of the service would be the Government

under whom such member was serving at the time of the commission of such act or omission. It does not say that the act or omission must have been committed in the discharge of his duty or in the course of his employment as a Government servant. It is therefore, open to the Government to take disciplinary proceedings against the appellant in respect of his acts or omission which cast a reflection upon his reputation for integrity or good faith or devotion to duty as a member of the service. It is not disputed that the appellant was, at the time of the alleged misconduct, employed as the First Member of the Board of Revenue and he was at the same time performing the duties of Commissioner under the Act in addition to his duties as the First Member of the Board of Revenue. In our opinion, it is not necessary that a member of the service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject-matter of disciplinary proceedings. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship. To put it differently, the test is not whether the act or omission was committed by the appellant in the course of the discharge of the duties as servant of the Government; The test is whether the act or omission has some reasonable connection with the nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the service for integrity or devotion to duty as a public servant. We are of the opinion that even if the appellant was not subject to the administrative control of the Government, when he was functioning as Commissioner under the Act and was not the servant of the Government subject to its orders at the relevant time, his act or omission as Com. missioner could form the subject-matter of disciplinary proceedings provided the act or omission would reflect upon his reputation for integrity or devotion to duty as a member of the service, In this context reference may be made to the following observations of Lopes, L.J. in *Pearce v. Foster* [17] Q.B.D. 536, 542.

If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on the service or the business. It is sufficient if it is conduct which is pre-judicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant.

11. In regard to the contention that such a wide interpretation of the code of conduct expected of Government servants may result in arbitrary power being placed in the hands of the authorities concerned, we need only state that there are ample safeguards in the Constitution against a wanton abuse of power. Such safeguards are contained in Articles 14, 15 and 16 of the Constitution, besides

the procedural safeguards provided in Article 311 of the Constitution. We also do not consider the rule to be vague or arbitrary as such. As pointed out by Justice Sabyasachi Mukharji in *Hari Prasad Singh Vs. Commissioner of Income Tax, West Bengal and Others*, rules of conduct may and do vary from time to time. They, however, at a particular point of time reflect the enlightened conscience of a society. Simply because, however, such rules are variable from age to age it cannot be said that at a particular point of time they become either nonexistent or vague. They must at all times be judged from a robust commonsense point of view on a reasonable standard,

12. Shri Ramakumar, learned Counsel for petitioner very strongly put forward the plea that the punishment imposed in the case was out of all proportion. In exercising our jurisdiction under Art 226 of the Constitution, ordinarily the severity of punishment would not warrant interference if the punishment imposed was within jurisdiction, and not otherwise illegal. Our opinion that the punishment is harsh or unjust or oppressive may not be very material in such cases. It may be that in cases where punishment is imposed out of all proportion leading to an inference that the power has been exercised mala fide this Court might step in. In a case where for a minor irregularity a Government servant is dismissed, which punishment might shock the conscience of a reasonable manner we cannot say this Court will be overstepping its jurisdiction to interfere with the punishment. However, in cases where for "substantial misdemeanours" an officer is dismissed or removed from service the fact that this Court might view the punishment as harsh will not justify interference. In this case, the facts of the matter in no way persuade us to interfere with the punishment.

13 The original petition is, therefore, dismissed. We make no order as to costs.