
(1985) 04 RAJ CK 0008
In the Rajasthan High Court
Case No : C.W. No. 847 of 1984

Nathulal

APPELLANT

Vs

R.S.R.T.C. and Others

RESPONDENT

Date of Decision : 22-04-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1985) WLN 78

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.C. Jain, J.—Heard learned counsel for the parties. By order dated 21-10-1982 Anx. 3 the petitioner's services were terminated by the Divisional Manager and the same order upheld in appeal by the Appellate Authority and his appeal was dismissed on 3-6 1983 Anx. 6.

2. Counsel for the respondents raised preliminary objections. First of all he submitted that the writ petition was filed with inordinate delay. The appellant order was passed on 3-6-1983 and the writ petition was filed on 20-2-1984. When he referred to paras 6 and 7 he urged that it is strange that the petitioner did not receive the letters said to have been sent to him by his counsel, although the petitioner's letters were received by his counsel. From paras 6 and 7 it appears that there was some exchange of communications between the petitioner and his counsel but it was on account of non-communication that the petitioner could not present the petition and the petitioner had to come himself to the counsel for filing of the writ petition. There is no reason to disbelieve the averments made by the petitioner in paras 6 and 7. Apart from that, I do not find such a delay on the part of the petitioner which may deny him to seek relief under Article 226 of the Constitution.

3. It is further urged by the learned counsel for the respondents that the

averments made by the petitioner in para 9/II/C/iii are false. It is untrue that the petitioner was not given opportunity to defend himself. The petitioner examined himself and some witnesses were also examined and thereafter he did not examine any witness. In view of the facts stated in the above said paras which are false, the petitioner is not entitled to any relief and the petition should be dismissed on this ground alone.

4. The petitioner has filed a rejoinder in which he has stated that the petitioner wanted to examine in all five witnesses and two witnesses have been examined. It is in this light that the ground has been taken in the aforesaid paras, the language used no doubt is to the effect that an opportunity of leading any evidence was not allowed to the petitioner which is incorrect. The petitioner in fact did examine some witnesses and he examined himself in his defence. A bare perusal of the aforesaid paras shows that they are some what misleading. It may be stated that the ground has not been taken in that sense in which the language leads the reader to, when it is read along with the appellate order. The appellate order specifically stated that the petitioner was examined on 20-5-82 and thereafter he did not produce any other witness That shows an opportunity to adduce evidence was given to the petitioner in his defence. In a writ petition filed under Article 226, it is of course the duty of the petitioner to state the facts precisely and accurately and no such statement of fact should be made which may be misleading. However, in the circumstances of the case, I am ignoring the objection taken on behalf of the respondents.

5. It is next urged by the learned counsel for the respondents that the petitioner had an alternate remedy of raising an industrial dispute. The petitioner should have availed that alternate remedy instead of approaching this Court in its extraordinary jurisdiction. This Court has taken the view that remedy by way of raising an industrial dispute is available to the dismissed workmen or workmen against whom disciplinary action has been taken under the standing order. The question is, even when there is an alternate remedy available whether the petitioner should be denied the relief which he seeks in the writ petition. This Court had decided number of cases of conductors based on common ground and the writ petitions have been allowed by this Court. The usual ground which has been taken in the writ petitions by the conductors is that the orders passed by the Disciplinary Authority as well as by the Appellate Authority are not speaking orders and without application of mind and without dealing with the evidence & findings have been based on no evidence and such orders of the Authorities have been set aside by this Court under Article 226. When such matters have been dealt with by this Court in the aforesaid manner, it would not be proper to deny relief to the petitioner on the ground that the petitioner has not availed the alternate remedy of raising an industrial dispute.

6. Coming to the merits of the matter on behalf of the respondents it has been urged that the only ground which has been advanced by the petitioner before the Appellate Authority was that the petitioner was not afforded an opportunity to

lead evidence in defence. That point was duly considered by the appellate authority in sufficient details and was negatived and the appellate authority affirmed the finding on merits. As no other point was urged before the appellate authority it is not open to the petitioner to urge any new point before this Court. In order to meet such an objection taken by the respondents, the petitioner has filed a rejoinder stating therein that the petitioner had raised all other grounds as well before the Appellate Authority which were taken by him in the memo of appeal and those grounds have not been dealt with at all by the appellate authority. Apart from that on behalf of the petitioner it is urged that even when some grounds have not been urged before the appellate authority that will not debar the petitioner to raise legal grounds against the order of the disciplinary authority. The order of the disciplinary authority is ab initio void in as much as it is not a speaking order. It does not deal with the evidence recorded by the Enquiry Officer. This disciplinary authority has simply stated that he has reached to the conclusion that the report of the enquiry is correct and he agrees with the same. According to the learned counsel for the petitioner simple expression of such a view is insufficient. He has to arrive at the finding on the charges levelled against the petitioner and the finding has to be based on evidence recorded by the Enquiry Officer. Counsel for the petitioner submitted that this Court is taking consistently this view that the order which is not speaking, is no order in the eye of law and such an order deserves to be set aside. Even if such a ground is not raised before the appellate authority, this Court cannot ignore it as the order is ab initio bad. Thus in my opinion the order of the Disciplinary Authority deserves to be quashed solely on this ground and the order of the appellate authority also falls on that basis.

7. Learned counsel for the petitioner also submitted that the previous record of the petitioner could not have been taken into consideration by the disciplinary authority without giving an opportunity to the petitioner. The petitioner should have been informed that for purpose of considering the quantum of punishment, his previous conduct can also be taken into consideration. I need not examine this question presently in view of the fact that on the aforesaid ground. I am quashing both the orders. In the light of the aforesaid discussion the orders Anx. 3 and Anx. 6 deserve to be quashed.

8. Accordingly the writ petition is allowed and both the orders are quashed & set aside. However, it would be open to the Disciplinary Authority to produce against the petitioner in the proceedings initiated against him, keeping in view, the observations made above.