

(1968) 12 KL CK 0008
In the High Court Of Kerala

Perumal Goundan (R)

APPELLANT

Vs

Divisional Personnel Officer, Southern Railway and Another

RESPONDENT

Date of Decision : 04-12-1968

Acts Referred:

Citation : (1970) 1 LLJ 270

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Judgement

V. Balakrishna Eradi, J.—The petitioner was in the service of the Southern Railway as a second fireman attached to the loco-shad in Mettupalayam station. He was removed from service by the order Ex. P. 5 dated 30 June 1965 passed by the Divisional Personnel Officer, Olavakkot on his having been found guilty of the charge of absenting from duty unauthorizedly from the afternoon of 8 September 1964 onwards. The petitioner filed an appeal before the Divisional Superintendent, Olavakkot, but the appeal petition was reject-ed by the latter authority by his proceedings dated 22 October 1965 evidenced by Ex. P. 7. A further representation was made by the petitioner before the same authority in the nature of a review application, but that was also rejected as per Ex. P. 9 order dated 14 March 1966. The petitioner has thereupon come up to this Court seeking to quash the aforesaid orders evidenced by Exs. P. 5, P. 7 and P. 9.

2. The main contention advanced before me by the learned Counsel for the petitioner is that the enquiry held against his client was vitiated by clear contravention of the principles of natural justice and that the consequential order passed by the disciplinary authority based on the result of such enquiry must, therefore, be quashed. It is farther contended that there has not been a proper consideration of the report at the enquiry and an independent appreciation of the evidence by the disciplinary authority after applying his mind to the relevant factors as is required by Rule 171.3 of the Conduct and Discipline Rules governing the railway establishment.

3. Exhibit P. 1 is the statement of charge framed against the petitioner and it is

seen there from that the crux of the charge was that the petitioner while functioning as a second fireman at Mettupalaym absented from duty unauthorizedly on 8 September 1964 and was continuing to absent himself from that date onwards until the date of framing of the charge, namely, 31 October 1964. In the statement of allegations contained in Ex. P. 1 it is stated that the petitioner was to pick up his duties on 8 September 1964 at 15-15 hours but had failed to turn up for duty and was absenting himself from duty from that date onwards. It is further stated that even though a notice was issued to the petitioner directing him to resume duty and it was tendered to him by a messenger, the petitioner deliberately refused to accept it. An oral enquiry was conducted by the Assistant Personnel Officer on 13 April 1965 after due notice to the petitioner. At this enquiry five witnesses were examined in the petitioner's presence, namely, head train examiner, timekeeper, loco khalasi, one shunter and one call boy, all attached to the Mettupalayam Railway Station. The petitioner was given due opportunity to cross-examine all these witnesses. Exhibit P. 3 is the report of enquiry drawn up by the inquiry officer and therein he has recorded a finding that it had been proved that the petitioner was absenting himself from duty unauthorizedly from the afternoon of 8 September 1964 onwards. The disciplinary authority to whom the report had been submitted by the inquiry officer tentatively agreed with the finding of guilt arrived at by the latter and issued to the petitioner the notice Ex. P. 4 dated 31 May 1965 calling upon him to show cause why he should not be removed from service. The petitioner submitted his explanation in response thereto and after considering the point raised therein the disciplinary authority passed the order Ex. P. 5 removing the petitioner from service.

4. The principal contention urged before me by the learned Counsel for the petitioner is that a serious irregularity had been committed by the inquiry officer in having put a number of questions to the petitioner at the commencement of the oral inquiry even before any of the prosecution witnesses had been examined and that this has resulted in a violation of the principles of natural justice. He relied very strongly on the observations contained in two decisions of the Supreme Court in *Meenglas Tea Estate Vs. Its Workmen, and Associated Cement Co. Ltd. Vs. The Workmen and Another*; their lordships have pointed out that it is not fair that in domestic inquiries against industrial employees the employee should be, at the very commencement of the enquiry, closely cross-examined even before any evidence is led against him. But, as pointed out in the subsequent decision of the Supreme Court in *Firestone Tyre and Rubber Company, Ltd. v. their workmen* 1967 II L.L.J. 715, this cannot be regarded as an invariable rule of law applicable to all cases; where the accusation is based on a matter of record or where the basic facts are admitted it is permissible to draw the attention of the delinquent to the evidence on record against him which if he cannot satisfactorily explain must lead to a conclusion of guilt. In the ultimate analysis, the question reduces itself to one as to whether there has been a denial of justice and fairplay. Applying this principle to the present case, what we find is

that the only charge against the petitioner was that he had absented himself from duty unauthorizedly from a particular date. The records maintained by the station and in the looo-shed had been produced during the inquiry. It has also to be remembered that it was not the defense of the petitioner that he had not absented himself or that his absence from duty was with leave or permission. That being so, this is a case where the basic facts were all admitted and unless the petitioner was able to explain satisfactorily his conduct in thus absenting himself the only passable conclusion was one in affirmation of the charge of guilt. In these circumstances, I do not think that the procedure adopted by the enquiry officer in questioning the petitioner at some length at the commencement of the inquiry, can be said to have resulted in any prejudice, injustice or unfairness. The first point raised by the petitioner, has therefore, to fall.

5. The only other contention that is urged is that the disciplinary authority had not independently applied its mind to the evidence adduced at the enquiry and come to its own conclusion on the question of the petitioner's guilt. I am unable to accept this, because it is clearly seen from the show cause notice Ex. P. 4 issued to the petitioner that the Divisional Personnel Officer, who issued it, had considered the evidence adduced at the inquiry and agreed with the inquiry officer's finding that the petitioner was guilty of the charge.

6. In the result, the original petition falls and is dismissed, but in the circumstances, without any order as to costs.