

(1960) 11 CAL CK 0018
In the Calcutta High Court

Phanindra Chandra Shome

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-11-1960

Acts Referred:

Citation : (1961) 2 LLJ 457

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Judgement

D.N. Sinha, J.—The petitioner entered service in 1928, in Eastern Bengal Railway. In 1929, he became an assistant station master and in 1957, he was posted as a station master at Port Canning. On 29 July 1957 the petitioner was served with a charge-sheet signed by the Divisional Commercial Superintendent, Sealdah, a copy whereof is annexure A to the petition. There were five charges. Some of these charges were quite serious, for example, charge 1 was that he was carrying on a straw business under the fictitious name of his brother-in-law. The second charge was one of forgery. The third charge, although not so serious, is also of some gravity. The fourth charge is one of giving undue preference to his brother-in-law and the fifth charge seems to be a minor charge, namely, that he granted a money receipt in respect of a consignment to a person other than the consignor. The petitioner gave his explanation. On 27 August 1957 the order for a Joint enquiry was made by the Divisional Superintendent, and some kind of enquiry did take place by the A.C.S., A.P.O. and A.O.S. Then it was felt that this enquiry was not in accordance with the rules and on 21 September 1957 a second charge-sheet was issued containing the same charges. The petitioner did object to the fresh charges but gave his explanation. On 18 October 1957 an order for enquiry was made by the D.C.S. acting for the D.S., a copy whereof is annexure E to the petition. Thereupon, an extensive enquiry followed. Witnesses were called and cross-examined and the enquiring officer completed the enquiry and made a report. In this report, the petitioner was exonerated completely from the charges 1, 2, 3 and 4 and was found guilty only of charge 5, which, as I have stated, was a comparatively minor charge. This matter then went to the Chief

Commercial Superintendent and the way he dealt with it is contained in annexure I to the petition, at p. 34. He did not agree with the findings of the enquiry committee. Thereupon he made an order, in which he stated that he did not agree with the findings of the enquiry committee and further took a technical point, namely, that the D.C.S. before serving the charge-sheet should have Obtained prior consent of the Chief Commercial Superintendent.

2. In my opinion, this was extremely technical point, inasmuch as the Chief Commercial Superintendent had always contemplated such an enquiry, and if the result was to his liking, nothing further would have been said. He further ordered a joint enquiry, after serving a new charge-sheet. Thereupon, a new enquiry was made and on 17 December 1958 there was a report and finding of the enquiry committee. On 16 February 1959 a second show-cause notice was issued by the Chief Commercial Superintendent. The petitioner showed cause and asked for a personal hearing which was not granted. On 10 September 1959 there was an order made by the Chief Commercial Superintendent removing the petitioner from service. An appeal was preferred against this order but failed. Thereafter the petitioner has come to this Court.

3. Mr. Chakravarty appearing on behalf of the petitioner has taken three points. The first point is that Rule 1707(b) of the Indian Railway Establishment Code, Vol. 1, p. 180, has not been followed in this case. This rule lays down that after the charge-sheet was served and explanation received from the delinquent, a particular procedure should be followed. The rule runs as follows:

The charge-sheet with the explanation furnished by the railway servant shall be considered by the officer competent under these rules to pass an order of dismissal who, unless he takes steps for holding a departmental enquiry, shall thereupon pass such orders as he thinks fit.

4. As I have stated above, the third charge-sheet was issued and an explanation was received, but the Chief Commercial Superintendent did not at any stage act under Sub-rule (6) of Rule 1707. Actually, even before he ordered the charge-sheet to be issued, he made an order constituting the departmental enquiry and it is under that authority that the departmental enquiry was held. In fact, Mr. Bose appearing on behalf of the respondents admits that it is not possible for him to urge that the provisions of Rule 1707(b) were followed in this case. In my opinion, this point ought to succeed. The Second point taken is that after being served with the charge-sheet, the petitioner asked for copies of the record in relation to the enquiries that has already been held. He was met with the answer that the enquiry having been set aside, the records cannot be made available. In my opinion, this was absolutely wrong. It will be remembered that the self-same charges were issued for a third time and on the previous occasions, important charges were found not to have been proved. What happened was that most of the witnesses who had already been examined were recalled. Under such circumstances, no delinquent could successfully conduct his case if he had no access to the record of the infructuous departmental enquiries. The record would

be useful to him in a variety of ways. He would be able to confront witnesses with statements already made by them and he would be assisted in his cross-examination from the statements already on record. It seems to me that without looking into that record he could not satisfactorily conduct his case, again. I must also draw attention to the fact that some of these witnesses who had already given evidence were not called at the second enquiry. Some are said not to be available, and others although available, were not called, because it was said that their evidence was not necessary. If the authorities were going to pick and choose their evidence in this manner, the least that they could do was to make available to the delinquent the records of the previous proceedings, particularly the evidence of witnesses already on record. In my opinion, by not giving inspection of the records, there has been a failure of justice. I could have understood if the authorities took the decision that they would grant inspection of records but would not give copies and that might have been sufficient. But they absolutely barred any access to the record, and as I said, this was not at all a fair thing to do. This point also should be held In favour of the petitioner. The third point is that at the stage of the second show-cause notice, the petitioner gave an explanation and asked to be heard personally. By this, he did not mean a de novo enquiry but he wished to address the tribunal. In my opinion, he is entitled to ask for a personal hearing and the punishing authority, in refusing to hear him, acted contrary to the practice followed in departmental proceedings. I am not holding that in every kind of show-cause notice, a personal hearing is essential. But in departmental proceeding, a delinquent should always be given a personal hearing, if he wants one. Particularly, as he had originally been exonerated of many charges which had subsequently been held against him, at a repetition of the proceedings. In my opinion; these three points which must all be held in favour of the petitioner, have rendered the departmental proceedings invalid.

5. The result is that this rule is made absolute and there will be a writ in the nature of certiorari quashing the departmental proceedings and particularly the order of removal, dated 10 September 1959 and the appellate order therefrom. The respondents, however, if they so wish, can continue the proceedings In accordance with law from the stage of the charge-sheet and explanation thereto. There will be no order as to costs.