

(1976) 09 OHC CK 0002
In the Orissa High Court
Case No : O.J.C. No. 289 of 1976

Pramod Chandra Mohanti

APPELLANT

Vs

Divisional Superintendent, Khurda Road Division, South
Eastern Railway and Others

RESPONDENT

Date of Decision : 21-09-1976

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 10, 11, 12, 13, 14
Railway Services (Conduct) Rules, 1966 — Rule 3

Citation : (1976) 42 CLT 1250

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : S.C. Mohapatra and A.K. Patnaik, for the Appellant; B.K. Pal and B. Pal, for the Respondent

Judgement

R.N. Misra, J.—This is an application for a writ of certiorari and is directed against a disciplinary order of removal from service.

2. In 1975 Petitioner was working as a First Class Coach Attendant under the South Eastern Railway. On 13-12-1975, he was served with the following order:

Removal/Dismissal Notice

Shri P.C. Mohanty. s/o Laxman Mohanty, employed as F.C.C. Attendant under T.T.E. "A" I/C., K.U.R. is hereby removed from service with immediate effect in accordance with the Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968.

This order was made by the Divisional Commercial Superintendent of the South Eastern Railway, Khurda Road, who was the disciplinary authority.

The Petitioner preferred an appeal to the Divisional Superintendent which was dismissed on 12-5-1976 (Annexure-10). Thereupon this writ application has been preferred.

3. The Petitioner alleges that he was the holder of a civil post. An inquiry in which he would have an opportunity to deny his guilt and establish his innocence was a condition precedent to the order of removal from service and in the instant case, the inquiry has been avoided by reference to Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the "Disciplinary Rules"). The impugned order of removal from service is accordingly contrary to law and is vitiated.

4. In the counter affidavit, it has been disclosed that in course of a special checking by the Assistant Commercial Superintendent of the South Eastern Railway of Khurda Road at Jajpur Keonjhar Road Railway station on 5-12-1975, it was detected that two passengers got down from a first class coach of the 4 Dn. Madras-Howrah Mail without tickets. The passengers on being confronted stated that they had arrived at the Cuttack Railway Station at the last moment and could not purchase ticket and the Attendant (Petitioner) approached the passengers and gave them a free lift in the train after accepting illegal gratification of Rs. 10/ -. The two passengers had, therefore, travelled without ticket from Cuttack to Jajpur-Keonjhar Road railway station. They identified the Petitioner before the Assistant Commercial Superintendent as the person who had accommodated them on payment. On the basis of the report of the Assistant Commercial Superintendent, the disciplinary authority was satisfied that it was not reasonably practicable to hold any inquiry into the matter and in consideration of the circumstances, he recorded an order in the relevant file that the disciplinary inquiry should be dispensed with in exercise of powers under Rule 14(ii) of the Disciplinary Rules. It was further averred in the counter affidavit:

.... This deponent craves this Hon'ble Court's attention to the grave situation prevailing in the country where it is essential that every effort should be made to root out corruption from all spheres and the speedy finalisation of the case by invoking Rule 14(ii) in such circumstances will have desired effect of achieving efficiency and rooting out corruption and for these reasons, this deponent passed the order impugned on the materials on record and in the manner necessary by the rules as the charge against the Petitioner was very grave, that is to say that the charge was for accepting illegal gratification from two passengers and thereby failing to maintain absolute integrity and devotion to duty. Accordingly the Petitioner was served with the order impugned though the reasons for the order impugned have not been served on the Petitioner along with Annexure-5 (the order of removal).

5. At the bearing, Mr. Pal for the Railway Administration has placed before us the speaking order dated 11-12-1975, passed by the Divisional Commercial Superintendent (Disciplinary Authority). After stating the facts, the disciplinary authority indicated the following as the justification for invoking Rule 14(ii) of the Disciplinary Rules to avoid the inquiry:

In the present context of emergency, according to Government Directives, it is

an imperative need to improve the quality of service. Any delay in finalisation of the enquiry is detrimental to the interest of the country. In this connection, it is very essential that every effort should be made to root out corruption in all spheres. Quickest finalisation of the will have the desired effect in achieving efficiency and rooting out corruption. It is, therefore, considered that the powers vested under Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules be exercised in removing Sri P.C. Mohanty, FCCA/KUR from service on the charge of accepting illegal gratification from two passengers and thereby falling to maintain absolute integrity and devotion to duty as laid down in Rule 3 of the Railway Services (Conduct) Rules, 1966.

6. Mr. Mohapatra for the Petitioner relies upon a Bench decision of this Court in the case of Mahendra Ram v. Union of India and Ors. ILR 1976 Cutt 19, in support of his stand that there was no justification for waiving the inquiry and the removal of the Petitioner is accordingly vitiated for non-compliance of Article 311(2) of the Constitution. The requirements of Article 311(2) of the Constitution have also been incorporated in Rules 9 to 13 of the Disciplinary Rules.

7. Rule 14 of the Disciplinary Rules provides:

14. Special procedure in certain cases.

Notwithstanding anything contained in Rules 9 to 13:

(i) where any penalty is imposed on a railway servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules;

Provided that the Commission shall be consulted, where such consultation is necessary before any orders are made in any case under this rule.

In the reported decision of this Court (*supra*) a Ticket Collector of the South Eastern Railway had been removed from service by the same disciplinary authority by waiving" the inquiry on the basis of Rule 14(ii) of the Disciplinary Rules. This Court indicated that in the case of Khem Chand Vs. The Union of India (UOI)and Others, , the learned Chief Justice enumerated the protection under Article 311(2) of the Constitution to include:

(a) an opportunity to deny his guilt and establish his innocence which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his

defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant.

This Court also relied upon a decision of the Calcutta High Court in the case of *Jyoti Prasad v. Union of India* 1975 (1) S.L.R. 80, and the decision of the Gujarat High Court in the case of *Bholanath v. Union of India* 1975 (1) S.L.R. 277" and came to hold:

We have no doubts in our mind that receiving illegal gratification at the check-gate is a serious delinquency and if the punishment of dismissal is given, it would not normally call for any interference. Undoubtedly, corruption should be rooted out and the sooner it be done the better in the interest of the country. Yet, while working in that direction, the mandate of the law cannot be thrown to the winds. Ours is a country wedded to the Rule of Law and if administrative action is allowed to operate in gross breach of law it is bound to lead to chaos. The ultimate result would be more dangerous than the evil intended to be eradicated. The reasons given to attract Rule 14(ii) of the Disciplinary -Rules do not stand any objective scrutiny and, however much well-meaning the Disciplinary Authority's intention may have been, we find it difficult to sustain the punishment mated out without inquiry. The considerations which weighed with the Disciplinary Authority to avoid the inquiry are not germane and Rule 14(ii) of the Rules would not cover the case. The punishment of dismissal mated out to Petitioner in the circumstances is unsustainable and has to be quashed....

8. Mr. Pal on behalf of the Railway Administration brings it to our notice that the Single Judge decision of the Calcutta High Court on which reliance had been placed by us on the earlier occasion was reversed by a Division, Bench of that Court in the case of *Chief Mechanical Engineer, E. Railway II Ors. v. Jyoti Prasad Banerjee and Ors.* 1975 (2) S.L.R. 437. The learned Chief Justice pointed out that the scheme in Rule 14 of the Disciplinary Rules is similar to the Proviso in Article 311(2) of the Constitution and when the Disciplinary Authority is satisfied that it is not reasonably practicable to hold the inquiry contemplated by Article 311(2) or the Rules and makes a record of his reasonings in writing considering the circumstances of the case, there is no warrant in law that order must be communicated to the delinquent. If the order of penalty communicated does not contain the reasons for dispensing with the inquiry, it will be incumbent on the Disciplinary Authority of the Railway Administration to supply the same to the railway servant on demand as such disclosure is essential for enabling the railway servant to prefer an appeal against the order as may be provided in the Rules or to approach the Court for its scrutiny of such order to the extent permissible in law. The Court found that in the reasoned order, cogent

circumstances had been indicated. At page 464 of the Reporter, it has been stated:

II These reports - were forwarded by the superior officer of the place to the disciplinary authority wherein the reports of the controlling" officers were endorsed. It was further stated that in view of the turbulent mood of the staff, no staff would come forward to depose against hem for establishing the charges in the D. and A. proceedings if brought against them and accordingly action" under Rule 14(ii) was suggested for removal of such staff.

The disciplinary authority considered the above reports and satisfied himself of the truth of the allegations made against the staff and also about their sole object which was alleged to create a reign of terror in the mind of loyal and innocent staff who were not willing to join the illegal strike as would appear from the extract of this order quoted earlier. He also considered the question of taking suitable disciplinary action against them but it appeared to him that in view of their turbulent mood no staff would be able to depose against them for establishing the charge against them in D. and A proceedings for fear of their lives or of severe bodily hurt. He also apprehended that an inquiry under the Rules would give the hooligans an opportunity and time to arginase unlawful demonstration leading to stoppage of normal working of the administration. The disciplinary authority in the circumstances was satisfied that it was not reasonably practicable to hold any D and A inquiry against such staff namely the Petitioners.

Having stated these particulars, at page 465 of the Reporter, the Court concluded:

It is further to be seen that the decision of the disciplinary authority dispensing with the holding of the inquiry in such situation cannot also be said to be a decision which is not bona fide or perverse or a reason able man could not have arrived at. There is in our opinion a clear and sufficient nexus between the attending circumstances referred to above and the conclusion arrived at by the disciplinary authority that it was not reasonably practicable to hold the inquiry in respect of the Petitioners. It is to be noted that the Constitution requires that the disciplinary authority must be satisfied that the holding of the inquiry is not reasonably practicable nor impossible. The decision for not holding the inquiry in the context of the aforesaid circumstances appears to us to be based on relevant consideration and not on expediency or extraneous matters and a reasonable man would have, in our opinion come to the same decision on the materials before him.

It is relevant to indicate that the learned Chief Justice referred to the decisions of the Supreme Court In the case of The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, , and Rohtas Industries Ltd. v. S.D. Agarwal AIR 1964 S.C. 2249, as also Rohtas Industries Vs. S.D. Agarwal and Others, , and observed:

The Court accordingly can thus review an administrative decision or order

affecting rights of persons on the following principles:

(a) Where the existence of circumstances is a condition precedent to and the basis for the formation of the opinion, satisfaction or decision though such opinion, satisfaction or decision is subjective, the Court can go behind the recitals of the existence of such circumstances in the order and can determine whether such circumstances did in fact exist.

(b) The administrative authority is to form its opinion, satisfaction or decision in good faith and on relevant consideration and not on expediency or on extraneous matters. The Court can inquire if the opinion, satisfaction or decision satisfies the above conditions and also if a reasonable man could have formed the opinion or come to the decision in question on the materials before him.

(c) If there are reasonable grounds for the opinion, satisfaction decision and the opinion, satisfaction or decision is free from the vices indicated above the Court has no further duty to decide whether it would have framed the same belief as the Court does not sit in appeal against such administrative opinion, or satisfaction or decision.

We do not find anything in the Bench decision of the Calcutta High Court which runs counter to the decision of this Court in the case of Mahendra Ram v. Union of India and Ors. ILR 1976 Cutt 19. In fact, the very Bench of the Calcutta High Court in the case of Union of India and Ors. v. N.K. Chand Roy and Ors. 1976 (1) S.L.R. 800 while dealing with a case of waiver of inquiry under Rule 14(ii) of the Disciplinary Rules on the ground that the delinquent was absent from his work without reasonable excuse and, therefore, it was not possible to hold the inquiry, upheld the decision of the learned Single Judge setting aside the removal.

9. We have already extracted the reasons of the disciplinary authority for invoking Rule 14(ii) of the Disciplinary Rules for the purpose of avoiding the inquiry. We reiterate our anxiety that corruption be rooted out quickly and discipline be restored into administration as also life in general. We also endorse the anxiety of the disciplinary authority that cases should be finalised quickly. But all these are certainly no considerations to do away with the protection provided in the Disciplinary Rules in terms of the Constitutional protection in Article 311(2) of the Constitution. While there is imperative need to Improve the quality of service; while delay in finalisation of an inquiry would be detrimental to the interest of the country and while it is very essential that every effort should be made to root out corruption in all spheres and while it is true that quickest finalisation of cases will have desired effect in achieving efficiency and in rooting out corruption, it is equally appropriate that all these steps should be taken in accordance with law. The emergent situation which was relied upon to justify action under Rule 14(ii) of the Disciplinary Rules in the Bench decision of the Calcutta High Court does not exist in the instant case. There is no basis for the statement of the disciplinary authority in another part of his order which we have not quoted that if an inquiry would be held, the two passengers who had gone

without tickets and had paid illegal gratification to the delinquent would never come to support their statements given before the detecting authority and to that extent that does not appear to be a germane ground. The rest of it which we have extracted certainly does not justify the avoiding of the inquiry. An inquiry can be held with due haste and promptitude. Complete control can be exercised over the disciplinary proceeding so that it does not protract. Justice can be done in accordance with law and yet all the noble objectives indicated by the disciplinary authority in his speaking order can be achieved. When we have wedded to a system of Rule of Law and if the rules indicated are possible to be followed, there is no justification to avoid enforcement of the Rules. When Rules cover the field and if followed result in justice and efficient administration, there is no warrant for avoiding the same. It must always be remembered that beyond a point lies the field of chaos and any efficient administration must steer clear of that field.

10. We would accordingly conclude that the avoidance of inquiry provided for under the Disciplinary Rules was not justified and though the disciplinary authority bona fide proceeded to make the impugned order, the same cannot be upheld. The writ application succeeds. The impugned penalty is quashed. It is however, made clear that it is open to the disciplinary authority to proceed in accordance with law and impose such punishment as the delinquency warrants. We make no direction for costs.

K.B. Panda, J.

11. I agree.