
(1958) 11 AP CK 0019
In the Andhra Pradesh High Court
Case No : Writ Petition No. 561 of 1955

Prasada Rao (J.V.)

APPELLANT

Vs

South Eastern Railway, Waltair (By Dist. Traffic
Superintendent and Another)

RESPONDENT

Date of Decision : 17-11-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)
Railways Act, 1989 — Section 57

Citation : (1959) 1 LLJ 551

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satyanarayana Raju, J.—This is a petition under Art. 226 of the Constitution, for issuing a writ certiorari to quash the order of the District Traffic Superintendent, Waltair, removing the petitioner from service.

2. In the year 1954, the petitioner was employed as the assistant stationmaster at the Waltair Store Depot Station, situated on the South Eastern Railway. There was at the said station a head-on collision between two goods-trains, Nos. 513-Up and 538-Down, on the night of 8 May 1954 at 0-55 hours, resulting in serious loss to the railway. Immediately after the accident at 1-50 a.m., the District Tariff Superintendent made an on the-spot investigation. On 10th and 11th, a committee of senior officers held an enquiry into the cause of the accident. At the enquiry seventeen witness in all were examined. The petitioner was placed under suspension on 12 May 1954. This was followed by a notice, dated 14 May 1954, issued by the District Tariff Superintendent to the petitioner. The contents of the notice, so far as they are material for the purpose of this petition, are as follows :-

"(1) You are charged with the following offences or failures and you are hereby called upon to show why you should not be punished with the penalty specified in

item four of the list below (reduction in rank) or punished with the lesser punishments specified in the list. The facts and circumstances whereon the charges have been based are as related below.

(2) You are allowed three clear days from the date of receipt hereof to give your explanation. Any representation that you may make in this connexion will be taken into consideration by the competent authority before passing orders"

3. On 19 May 1954, the petitioner sent his written explanation wherein he asked for a personal interview. The petitioner was subsequently posted as a relieving clerk at the Kottavalasa railway station. On 31 May 1954, the District Traffic Superintendent issued a fresh notice to the petitioner calling upon him to show cause why he should not be punished with the penalty specified in item six of the list appended thereto, viz., removal from service. On 9 June 1954, the petitioner again submitted his explanation and reiterated his request for a personal hearing. A personal hearing was granted to the petitioner on 15 June 1954, at which he was defended by an advocate. On 21 June 1954, the following notice was given to the petitioner by the District Traffic Superintendent :

"After considering the finding of the First-class Joint Enquiry Committee which was held on 10 and 11 May 1954 and also the result of the personal hearing given to you on 15 June 1954 read with your explanation to the charge-sheet No. A-160/5/54, dated 31 May 1954 issued to you, I have provisionally formed the opinion that you should be removed from service.

You are hereby given seven clear days" time from the receipt hereof, to show cause why the proposed penalty should not be inflicted on you. Any representation that you may make in this connexion, will be taken into consideration before passing final orders."

4. On 28 June 1954, the petitioner submitted his representation. On 3 July 1954, the following order was passed by the District Traffic Superintendent :- "Please note that your explanation to the show-cause notice No. A-160/5/54, dated 21 June 1954 is not satisfactory. The presence of conflicting badges is sufficient to indicate that badge system was not implemented. You are found guilty of the offences you have been charged with. You are therefore, removed from service on and from 4 July 1954 on a month's pay in lieu of notice in terms of the service agreement signed by you." Against the order directing his removal from service, the petitioner preferred an appeal on 4 August 1954 to the appellate authority, viz., the Regional Traffic Superintendent, Bilaspur. Before the appellate authority, the petitioner asked for a personal hearing which was granted. At the hearing, he was represented by an advocate. By an order, dated 7 September 1954, the appellate authority confirmed the removal of the petitioner from railway service. The validity of these orders is the subject-matter of this writ petition. The contention of the petitioner is that the initial notice, dated 14 May 1954, mentioned "reduction to a lower post" as the proposed punishment but the second notice, dated 31 May 1954, mentioned "removal from service" as the

proposed punishment without indicating any new charges and that the issue of the second notice varying the punishment proposed, to the disadvantage of the petitioner, is violative of the principles of natural justice. In a case governed by Art. 311, there will be two stages : firstly, an enquiry after notice into the charges against the civil servant, and this is the rule of natural justice that no person should be condemned without a hearing; and secondly, after the enquiry is over and punishment decided upon, a subsequent notice informing the civil servant of the action proposed to be taken and giving him an opportunity to show cause against that action, and this is a statutory requirement. At the initial stage, the civil servant concerned should be informed about the charge or charges levelled against him so that he should be afforded an opportunity to deny his guilt and establish his innocence. At this stage he is to be given an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witness in support of his defence. It is admitted that the petitioner had been given these opportunities. What is, however, urged is that the competent authority had no jurisdiction to withdraw the earlier charge-sheet which mentioned "reduction" as the proposed punishment and to substitute in its stead a charge-sheet indicating "removal from service." Learned counsel for the petitioner has not been able to place before us any statutory rule or binding precedent that the competent authority had no jurisdiction to do so. It must be initially pointed out that the charge-sheet served on the civil servant need not indicate the proposed punishment. But rule 1707 of the rules made under S. 57E of the Railway Act, governing the conduct of Railway Servants (Discipline and Appeal Rules for non-gazetted staff), provides the procedure for holding an enquiry in a case where a railway servant is charged with an offence, the maximum penalty for which is dismissal, as follows :- "A charge-sheet shall be presented to the railway servant detailing the charge or charges against him and calling upon him to show cause why he should not be dismissed or removed from service or punished with any of the lesser penalties specified in rule 1702."The charge-sheet served on the petitioner followed the procedure indicated in the above rule.

5. It is not shown that a show-cause notice issued by the competent authority cannot be cancelled nor is it shown that the authority is precluded from issuing a fresh notice. The civil servant has a right to be informed of the charge or charges levelled against him and must be given a reasonable opportunity, and so long as the opportunity given to the petitioner is not illusory, it cannot be said that the petitioner had suffered any prejudice by reason of the cancellation of the original charge-sheet and the issue of a fresh one.

6. As supporting his contention counsel for the petitioner has relied upon a decision of the Nagpur High Court in *Gopalarao v. State Government of Madhya Pradesh* AIR 1954 Nagpur, 90. There it was found that the competent authority took into consideration the record of the civil servant's past service in order to determine the quantum of punishment without affording him access to the record of his service and without giving him reasonable time to show cause against the

adverse remarks contained therein. On this finding, it was held that the requirements of Art. 311(2) were not fulfilled and consequently the order terminating his services could not be maintained. This decision is clearly distinguishable and has no application to the facts of the present case. From the facts stated above, it is clear that the petitioner had been afforded every reasonable opportunity of defending himself and of showing cause against the action proposed to be taken in regard to him. Therefore the petitioner had the full benefit of the constitutional protection and hence is not entitled to invoke the jurisdiction of this Court under Art. 226.

7. The writ petition fails and is dismissed with costs. Advocate's fee Rs. 100.