

(1952) 02 CAL CK 0008
In the Calcutta High Court
Case No : Civil Rule No. 2020 of 1951

Pulin Behari Chakraborty

APPELLANT

Vs

The Divisional Superintendent, Sealdah East Indian Rly. and
Others

RESPONDENT

Date of Decision : 11-02-1952

Acts Referred:

Civil Service Regulation and State Railway Establishment Code — Rule 11
Constitution of India, 1950 — Article 311
Criminal Procedure Code, 1898 (CrPC) — Section 68
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : AIR 1953 Cal 45 : 57 CWN 201

Hon'ble Judges : Bose, J

Bench : Single Bench

Advocate : Sanat Kumar Mukherjee and Subodh Kumar Bhattacharyya, Sitaram Banerjee and Samriti Kumar Rai Choudhury, for the Appellant; Bhabesh Narayan Bose, for the Respondent

Judgement

Bose, J.—This is an application under Article 226 of the Constitution of India for an appropriate writ for directing the opposite parties to forbear from giving effect to an order of suspension passed on 28-9-1950, and also for quashing of certain criminal proceedings pending against the petitioner in the Special Court at Alipore.

2. The petitioner is an employee under the East Indian Railway and was at all material times officiating as Chief Inspector, East Indian Railway grain depot Chitpore. The petitioner joined the East Indian Railway Administration on or about 1-10-1927 as an assistant and since his appointment he has been awarded several promotions in service.

3. On 18-8-1950, the petitioner was served with a summons dated 1-8-1930, directing the petitioner to appear before the Special Judge of the Special Court at Survey Buildings (Alipore) Calcutta, on 13-9-1950. This summons was issued u/s 68, Criminal P. C. and directed that the attendance of the petitioner was

necessary to answer a charge of an offence u/s 420/120B, Penal Code in State v. A.C. Khanna, case No. 33 of 1950 (cal.).

4. In compliance with the said summons, the petitioner, appeared before the Special Judge, Alipore, and the Special Judge granted him bail on that day and directed the petitioner to appear again on 16-11-1950.

5. In the meantime on or about 28-9-1950, the petitioner received a letter from the Assistant Controller (G.S.) SDA who is opposite party No. 2, intimating that the petitioner was placed under suspension with effect from 29-9-1950.

6. It is alleged in the petition that before this order of suspension was passed no opportunity was given to the petitioner to offer an explanation nor was any charge sheet given to the petitioner, nor was he called upon to show cause in respect of such charges. It is further alleged that the petitioner was never put under arrest or committed to prison and, therefore, the order of suspension that was issued was an illegal order.

7. In the petition, the petitioner has also challenged the jurisdiction of the Special Court to try the case of the petitioner that is pending there. At the hearing, however, the learned Advocate appearing for the petitioner has not pressed this point.

8. In the counter affidavit, which has been affirmed by opposite party No. 2, it is stated that inasmuch as a case was started against the petitioner, and he was undergoing trial before the Special Court at Alipore, there was no alternative left to the Railway Administration but to put him under suspension because of the specific provisions in the Civil Service Regulations and State Railway Establishment Code to that effect (para 4). In para. 6 of the said counter affidavit it is stated that the fact that the petitioner was granted bail by the Magistrate or the Special Court at Alipore implies that he had been arrested beforehand and as such the order of suspension was properly made.

9. Mr. Mukherjee, appearing on behalf of the petitioner, has drawn my attention to Rule 11 (a) of the Regulations regarding disciplinary action against non-gazetted staff including removal from service, dismissal and rights of appeal, published under the authority of the East Indian Railway. Rule 11 (a) runs as follows:

"SUSPENSION--A Railway servant shall be placed under suspension when he is arrested or committed to prison pending trial by a Court of law, and he shall remain under suspension until judgment is delivered by the Court unless, in the event of his release on bail, the authority competent to suspend him decides to allow him to resume duty pending decision of the Court and

(b) A railway servant whose conduct is undergoing investigation on a charge maximum penalty for which is dismissal or removal from the service may, at the discretion of the competent authority, be kept under suspension until his case has been finally decided. The period of suspension under this sub-rule should not

normally exceed 4 months except with the approval of the authority next above that imposing the penalty."

10. Mr. Mukherjee argues that as he was not at any point of time placed under arrest or was committed to prison, the railway authorities had no power to pass an order of suspension against the petitioner in exercise of the power conferred under this n. 11 (a).

11. Section 46 (I), Criminal Procedure Code provides as follows;

"In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action."

12. So the mode in which an arrest can be effected is laid down in this section. It is clear that no such thing happened in this case.

13. Section 65, Criminal Procedure Code, states that any Magistrate may at any time arrest or direct the arrest in his presence within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant. It does not appear that the Magistrate of the Special Court at Alipur in the present case purported to act under this section.

14. Section 496, Criminal Procedure Code, is as follows:

"When any person other than a person accused of a non-bailable Offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such court to give bail, such person shall be released on bail.

Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided,"

The proviso, however, need not be set out here as it is not material for the purpose of this case. This section sets out the various circumstances under which a bail can be granted and a clear distinction has been drawn between cases of arrest and detention and cases where the accused appears pursuant to or in answer to a summons issued by the Court. The section makes it quite clear that appearance in answer to a summons and appearance under arrest are not the same thing. As I have pointed out before, the petitioner was in the present case directed to appear before the Special Court by a summons issued u/s 68, Criminal Procedure Code. As is well known, a summons is a milder form of process and is issued either for appearance (Section 68) or for producing documents or things (Section 94). In this case, the Magistrate granted bail to the petitioner for the purpose of securing his future attendance in Court. It does not appear that at any stage the petitioner was deemed to be under arrest or as being in police custody. It appears to me that the railway authorities had no

power in. the facts and circumstances of this case to issue any order of suspension under Rule 11 (a) of the Regulations.

15. Mr. Mukherjee also submitted that even if RULE 11 (b) is applicable in this case, it does not appear that the order of suspension of the petitioner in this case was approved by the authority next above that imposing the penalty and as the period of suspension has exceeded four months in the present case the order must be deemed to be bad. But as is pointed out by Mr. Bose, appearing for" the railway administration, this rule is only applicable in the case of disciplinary or departmental proceeding that might be started against the petitioner on a particular charge. It has no reference and cannot apply to any proceeding pending before a court of law. The question of applicability of Rule 11 (b) may, therefore, be ruled out of consideration.

16. It was pointed out by Mr. Bose on behalf of the opposite parties that the service agreement, which was entered into between the petitioner and the railway administration, provides inter alia, in Clause (3) as follows:

" that the Administration has full power and authority at any time, for any reason that it may consider sufficient, to suspend or dismiss or otherwise punish the railway servant according to the rules of the service in which he is for the time being employed."

17. It is submitted that the railway administration can suspend the petitioner for any reason which they consider as sufficient. It is clear, however, that this suspension, dismissal or any other punishment that may be inflicted upon a railway servant must be in accordance with the rules of service governing the matter. As I have pointed out, RULE 11 (a) and (b) deal specifically with cases of suspension and as a specific rule has been provided relating to this matter, this rule must govern all questions of suspension that may arise between a railway employee and the railway administration. It appears to me that except on the grounds and in the circumstances prescribed in RULE 11 (a) no order of suspension can be passed by the railway administration on its employees.

18. It was further submitted by Mr. Mukherjee for the petitioner that as no opportunity was given to him to show cause before the order of suspension was made, the order is bad. It is clear, however, from Rule 12 of the Regulations that it is only before an order imposing penalties which are specified in items Nos. 2 to 6 of Rule 2 is passed that a railway servant is entitled to be informed of the definite offence with which he is charged and he is entitled to an opportunity to show cause why a lesser penalty should not be imposed. The penalty of suspension is, however, item No. 7 and so outside the operation of Rule 12.

19. It was further contended by Mr. Mukherjee that suspension is reduction in rank within the meaning of Article 311 of the Constitution of India and therefore his client should have been given reasonable opportunity to show cause as is contemplated by that Article before the order of suspension was passed by the railway authorities. I have already held in the case of Kali Prasanna Roy v. State

of West Bengal, Original Side Matter no. 130 of 1951 (cal.) differing from a decision of the Nagpur High Court reported in AIR 1949 118 (Nagpur) , that suspension is not reduction in rank within the meaning of Article 311 of the Constitution of India. In my view, the petitioner was not entitled to have any opportunity to show cause before the order of suspension was made. In view, however, of my finding on the point that as the order of suspension was not passed in compliance with Rule 11 (a) of the Regulations, the order is bad, this petition must succeed in part.

20. The Rule is made absolute to the extent that the order of suspension dated 28-9-1950 is cancelled and the opposite parties are directed to forbear from giving effect to that order.

21. There will be no order as to costs.