
(1976) 04 PAT CK 0014

In the Patna High Court

Case No : C.W.J.C. No. 43, 44, 45 and 1735 of 1975

Ramchandra Sharma and Others

APPELLANT

Vs

Union of India(UOI) and Others

RESPONDENT

Date of Decision : 15-04-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 309, 311

Income Tax Act, 1961 — Section 127

Penal Code, 1860 (IPC) — Section 323, 332, 353

Citation : (1977) 25 BLJR 6 : (1977) 10 PLJR 133

Hon'ble Judges : S.K. Choudhuri, J;H.L. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. These four applications under Articles 226 and 227 of the Constitution of India, on agreement amongst the counsel for the parties, have been heard together, as the main point involved in all the cases is the same. We, accordingly, propose to dispose four cases by one common judgment, however, indicating the facts of each case separately wherever necessary.

2. The petitioner in CWJC No. 1735 of 1975 was, at the relevant time, working as a Traveling Ticket Examiner (herein-after referred to, for the sake of brevity, as T.T.E.) under Chakradharpur Division of the South Eastern Railway and posted at Rourkela, On the 16th July 1975, while the petitioner was on duty as T.T.E. I/C of a two tier coach, No. 5902, of 457 Up from Rourkela Railway Station, the Vigilance Branch of the Railway Administration detected that the petitioner had failed to man the coach from Rourkela and entered the same at Rajgangpur Railway Station. As many as 14 passengers were found travelling in the said coach without tickets. On the following day, that is, on the 17th. July, 1975, while the petitioner was conducting the downward journey of the said train and was in charge of the same coach, it was found by the said Vigilance Branch that the petitioner had failed to collect reservation fees from 22 passengers on a false

plea that he had no folios in his "E.F.T. Book". The Vigilance Branch, accordingly, made a report to the Divisional Commercial Superintendent, Chakradharpur on the 26th July, 1975 stating the above facts of serious misconduct, negligence and dereliction of duty on the part of the petitioner. On receipt of the said report, the Divisional Commercial Superintendent (respondent No. 4) purported to pass an order under Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the "Rules"), and, on a consideration of the facts and the circumstances obtaining against the petitioner, held that it was not reasonably practicable to hold an inquiry into the case under the normal rules and procedure as embodied in the Rules for various reasons mentioned in the order dated the 26th July, 1975, a copy of which has been made Annexure "A" to the counter affidavit filed on behalf of the Railway. Taking this view, the said respondent, acting as the disciplinary authority and exercising the powers under the aforesaid provision of Rule 14, dismissed the petitioner from service. The petitioner is said to have learnt of this order from a notice pasted on the wall of his quarter. A copy of the said notice is Annexure "1" to this writ application.

3. The facts of the other three writ applications, namely, CWJC Nos. 48, 44 and 45 of 1975, are slightly different. All the three petitioners in these writ applications were working, during the relevant period, at Gaya Junction Railway Station as Class III railway servants. An F.I.R. was lodged by the Assistant Mechanical Engineer, Gaya (respondent No. 3) with the Gaya Government Railway Police Station against all the three petitioners, along with several others, alleging, inter alia, that, on the 1st December, 1974, the petitioners, along with their associates, wrongfully confined respondent No. 3 and some other officers, including the Head Train Examiner of Gaya Junction Railway Station, and assaulted him. A copy of the said F.I.R. is Annexure T to the writ applications. It appears that the matter was reported to the Divisional Superintendent, Dinapore (respondent No. 2). The Divisional Superintendent, on receipt of the aforesaid report of the Assistant Mechanical Engineer, purporting to act under the provisions of the aforesaid Rule 14(ii) of the Rules, took a view that it was not reasonably practicable to hold an inquiry in the manner provided for in the Rules. Thereupon he passed an order of removal of all the three petitioners by his order, dated the 2nd December, 1974. A copy of the said composite order is Annexure "2" to CWJC Nos. 43 and 45 of 1975 and Annexure "3" to CWJC No. 44 of 1975.

4. The common ground of attack on behalf of the petitioners to be above orders passed by the Divisional Commercial Superintendent, Chakradharpur and the Divisional Superintendent, Dinapore is that the principles of natural justice have been violated. In other words, the contention is that the aforesaid disciplinary authorities were bound to issue a notice to the petitioners before passing the ultimate order of dismissal and for removal.

5. In order to appreciate the question raised for our consideration, it would be necessary to refer to a few provisions of the Rules. These Rules have been made by the President of India in exercise of the powers conferred on him under Article

309 of the Constitution of India. Part IV deals with the procedure for imposing penalties. Rule 9 lays down a comprehensive (sic) penalties on the railway servants specified in Clauses (v) to (ix) of Rule 6 and that the penalties could be imposed only after an inquiry was held, as far as may be, in the manner provided in Rules 9 and 10. Rule 9 consists of as many as 19 clauses laying down a complete procedure for holding inquiry by the inquiring authority Rule 10 prescribed the procedure for taking action on the inquiry report. Rule 11 is with respect to the procedure for imposing minor penalties, and Rule 13 prescribes that a common proceeding can be taken where two or more railway servants are concerned in any case. After laying down an exhaustive procedure for holding an inquiry and imposing penalties in appropriate cases, Rule 14 lays down a special procedure and reads as follows:

14. 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,

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit-

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

6. The disciplinary authorities in both the groups of cases have purported to act under the special procedure contained in Clause (ii) of Rule 14 of the Rules extracted above, and have recorded the reasons justifying their decision for not holding the inquiry, they shall refer to a subsidiary argument raised in the second group of cases arising out of the Gaya incident a little later, but would like to indicate it here and that is that the reasons for not holding the inquiry were not communicated to the petitioners either earlier or in the order of dismissal and/or removal, but were recorded separately. On this ground, Mr. Tarkeshwar Dayal, appearing for this group of the petitioners, contended that this omission was also sufficient for setting aside the impugned order.

7. The first point that was argued at some length by Mr. B.C. Ghose, appearing for the petitioner in CWJC No. 1735 of 1975, need not have detained us at all in view of a Bench decision of this Court in D.N. Singh v. Divisional Superintendent, Dhanbad Division, Eastern Railway ILR Pat 623, where a similar question was answered against the petitioners of that case. The difficulty, however, arises on account of a later decision of the Supreme Court in The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, . We

propose to deal with both these cases in brief.

8. In D.N. Singh's ILR 54 Pat 623 case, the petitioner was working as a fire-man and was being prosecuted under Sections 323, 332 and 353 of the Indian Penal Code on the allegation of assaulting a Loco Foreman. When he was released on bail during the course of investigation and reported for duty, he was not allowed to do so, and a written order terminating his services was, in very much similar circumstances, found pasted on the floor of his quarter. One of the contentions raised before this Court was that the provisions contained in Rule 14(ii) only intended to avoid the following of the lengthy and regular procedure mentioned in Rules 9 to 13, but it did not, on its terms, avoid an inquiry in any other manner such as providing the delinquent officer a chance of hearing, although that might be very summary in nature. This Court negatived the contention on the view that that would be bringing the principles of natural justice through a back door, the effect of which had been banned by Rule 14. It was then specifically observed that there was no scope for the play of the rules of natural justice in such a case and, therefore, it was wholly within the jurisdiction of the disciplinary authority to take a decision, for reasons to be recorded, as to whether it would be expedient to hold an inquiry or not, and, once such a decision was taken, there was an end of the matter. We are informed at the Bar that the points decided in D.N. Singh's ILR Pat 623 case are already pending before the Supreme Court on a certificate of fit-ness for appeal to the Supreme Court granted by the Court. Be that as it may, if the matter is decided by the Supreme Court taking a view different from the view taken by this Court, we feel ourselves bound to follow the decision of the Supreme Court.

9. In the case reported in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, two cases from Kerala and one from Rajasthan were heard together and decided by a common judgment. In all the three cases the railway employees concerned were convicted by the Criminal Court but were released on probation. One of the questions that arose for consideration was as to whether, on account of release of those, employees on probation, Clause (i) of Rule 14 could still apply to their case they could be held to be convicted on a criminal charge. Fazl Ali, J., who delivered the judgment for the Court, on a consideration of a large number of authorities of different High Courts, repelled the argument that the release of the employees completely obliterated the effect of their conviction, and held that the order of release on probation comes into existence only after the accused is found guilty and is convicted of the offence, and that finding was *sine qua non* for the order of release on probation of the offenders, the order of release on probation, therefore, was merely in substitution of the sentence to be imposed by the Court on various humanitarian considerations. It is not necessary for us to dilate upon this aspect of the matter considered in great detail in that judgment.

10. The other argument that was advanced before the Supreme Court in that (sic) Rule 14(ii) (sic) was contended on the basis of this provision by the learned

Counsel for the appellants that the said provision does not contemplate a full dress or a fresh inquiry after hearing the accused but only requires the disciplinary authority to impose a suitable penalty once it is proved that the delinquent employee has been convicted on a criminal charge. It is again not necessary for us to address ourselves to the reasons given by the learned Judge for his decision, suffice to come to the conclusions recorded by him. It was observed that the word "consider" merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge, and that this matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In order to clarify the matter, it was further observed that term "consider" postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person, and, although it was not at all necessary for the disciplinary authority to order a fresh departmental inquiry which was dispensed with under Rule 14 of the Rules, yet, in order to make up the mind as to what penalty should be imposed upon the delinquent employee, if at all, the disciplinary authority would have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features if any present in the case and so on and so forth. Proceeding further, the learned Judge clarified the matter by further observing as follows:

The statutory provision referred to above merely imports rule of natural justice in enjoining that before taking final action in the matter the delinquent employee (sic) circumstances of the case may be objectively considered. This is in keeping with the sense of justice and fair play.

11. Mr. S.C. Ghose, appearing on behalf of the respondents, however, invited our attention to paragraph 22 of the judgment where it was observed:

In none of the cases has the disciplinary authority either considered the circumstances or heard the delinquent employees on the limited point as to the nature and extent of the penalty to be imposed if at all.

Mr. Ghose laid emphasis that, by consideration of the two alternative circumstances indicated above, namely, that the disciplinary authority did not consider the circumstances or hear the delinquent employees, it was intended that, if either of the two requirements was complied with, that would mean compliance of the requirement of Rule 14(ii). Proceeding further, learned Counsel contended that, in as much as on the facts of the cases in hand it was manifest that the disciplinary authority had considered the circumstances of the petitioners, the alternative of hearing the delinquent employees was not attracted. It is difficult to accept this contention. We have discussed in great detail the long and continued observations from the judgment of the Supreme

Court to emphasise the real crux of the decision. The use of the word "or", in our considered opinion, cannot be construed in the manner Mr. S.G. Ghose wanted us to do, namely, that by use of the word "or", both the requirements became disjunctive and it was optional for the disciplinary authority to follow either of the two alternatives. This contention cannot be supported by reading the judgment as a whole.

12. Mr. Tarkeshwar Dayal, appearing for the petitioners in the Gaya cases, also raised an additional point. He contended that the grounds for the satisfaction of the disciplinary authority for dispensing with the inquiry must be communicated to the delinquent employees, (sic) order will be vitiated on this ground also. This point has been answered against "the employees in the above mentioned Patha case. On a consideration of a large number of decisions, this point was answered in paragraph 13 of the report against the employees and it was observed that this argument was not available on the very face of the provisions contained in Rule 14(ii) of the Rules. Mr. Tarkeshwar Dayal, however, cited a decision of the Supreme Court in *Ajantha Industries v. Central Board of Direct Taxes*, New Delhi (3). In that case the Supreme Court was considering a similar provision contained in Section 127 of the Income Tax Act (1961), after its amendment in the year 1967. This section reads as follows:

(1) The Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from any Income Tax Officer or officers subordinate to him to any other Income Tax Officer or Income Tax Officers also subordinate to him and the Board may similarly transfer any case from any Income Tax Officer or Income Tax Officers to any other Income Tax Officer or Income Tax Officers.

* * *(2) * * *

It was held in that case that it was essential for the Commissioner of Income Tax to communicate to the assessee the reasons for the transfer, the provision was mandatory and its failure was fatal and could not save the order, although the reasons existed in the file, but were not communicated to the assessee. Mr. S.C. Ghose tried to distinguish this provision of the Income Tax Act from that of Rule 14(ii) of the Rules, on the ground that the provision in the Income Tax Act contemplated a hearing on giving a notice to the assessee in the matter, and if that was so, then the provision that the order must record all the reasons and the communication must disclose those reasons was inevitable. Mr. Tarkeshwar Dayal, however, laid stress up on the provision contained in section 127 of the Income Tax Act quoted above and contended that the obligation to give the assessee a reasonable opportunity of being heard was not absolute, as that was only "wherever it was possible to do so." He, accordingly, contended that in cases where the Commissioner could not find it possible to give the assessee a reasonable opportunity of being heard in the matter, at all he could pass an order transferring any case from one Income Tax Officer to another Income Tax Officer

subordinate to him. There may be force in this contention, but, as the applications can be disposed of on answering the first question itself we do not feel, inclined to decide this question conclusively.

13. We would accordingly, hold that the impugned orders passed by the Divisional Commercial Superintendent and the Divisional Superintendent (Annexures "1" in CWJC No. 1735 of 1975, Annexure "2" in CWJC Nos. 43 and 45 of 1975 and Annexure "3" in CWJC No. 44 of 1975) must be quashed and cancelled on the ground of violation of the principles of natural justice.

14. Mr. S.C. Ghose then referred to the provisions contained in Article 311(3) of the Constitution and contended that the Rules which were framed by the President in pursuance of the provision contained in Article 309 of the Constitution were contrary to the provisions of Article 311(3) and could not prevail over the constitutional provision. In support of his contention, he placed reliance on a decision of the Supreme Court in *N. Ramanatha Pillai v. The State of Kerala* AIR 1073 SC 3641 and referred to the observations made in paragraph 17 of the report, where it is stated:

17. Article 309 provides that subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public service and posts in connection with the affairs of the Union or of any State.

We do not find any force in this contention as in our opinion there is no conflict between the constitutional provision contained in Article 311 and the Rules framed by the President in exercise of powers under Article 309 of the Constitution. If the Rules provide for a hearing, which is not contemplated by the Constitution, in our opinion, it is not a ground for striking out the rules on account of existence of any conflict. Article 309 makes it competent to the President, or such person as he may direct, in the case of services of the Union to make rules regulating the recruitment and conditions of service of persons appointed to such services and posts. In framing the Rules, the President certainly is not authorised to make any such rule which will infringe the constitutional protection envisaged under Article 311, but that does not debar him from providing any further safeguard or privilege to the employees beyond those already provided in the constitution. This contention of Mr. Ghose has got no substance and must be rejected.

15. Now remains a small argument advanced by Mr. S.C. Ghose. He contended that the petitioners have not exhausted the alternative remedy of appeal against the impugned orders passed by the disciplinary authorities as an appeal lay under Rule 17 of the Rules against those orders. We do not find any force in this contention either that, on the failure of the petitioners to exhaust the alternative remedy, this Court should refrain from interfering with the impugned orders. In the case of *State of U.P. v. Mohammad Nooh* AIR 1035 SC 36 the Supreme Court observed that there is no rule with regard to certiorari as there is with

mandamus, that it will lie only where there is no other equally effective remedy. Provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. The rule requiring the exhaustion of statutory remedies before the writ is granted is a rule of policy convenience and discretion, rather than a rule of law.

16. For all these reasons, we allow all these four applications and quash the impugned orders already indicated above. In the circumstances, however, we shall direct the parties to bear their own costs.