

(1971) 12 KL CK 0002
In the High Court Of Kerala

S. Krishnan Nair

APPELLANT

Vs

The Divisional Superintendent (P.B.), Southern Railway and
Others

RESPONDENT

Date of Decision : 03-12-1971

Acts Referred:

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 9

Citation : (1972) 2 LLJ 288

Hon'ble Judges : P. Subramonian Poti, J

Bench : Single Bench

Judgement

P. Subramonian Poti, J.—The petitioner challenges Ext. P-11 order passed by the Divisional Superintendent, Southern Railway, Olavakode who is the first respondent in the original petition, removing the petitioner from the service of the Southern Railway Administration with effect from 18-11-1969. This order, Ext. P-11, was confirmed by the Chief Personnel Officer, Madras in the appeal filed before him, by Ext. P-12 order and it was further confirmed by Ext. P-14 order passed by the General Manager considering the revision petition filed before him. These orders are also challenged in the original petition.

2. In January, 1967, the petitioner was working as a clerk in the Olavakode division of the Southern Railway. When the petitioner was on leave and had been to Madras, he is said to have met, at the Madras Central Station, the Divisional Electrical Engineer, Sri P. D. Taneja. This was on 6-1-1967. The next day Sri Taneja is said to have called the petitioner to his room and seized the family privilege pass issued to the petitioner. Apparently the matter was taken to the Employees' Sangh. But the complaint to the Sangh was made not by the petitioner but by his wife. The Secretary of the Employees' Sangh is said to have prepared a petition addressed to the "Superintendent and the General Manager" of the Railway and got it signed by the petitioner's wife. The complaint in the petition was one of illegal seizure by Sri Taneja of the pass issued to the petitioner. It would further appear that in the complaint, mention was made that

Sri Taneja was a person, who was detected by the travelling ticket checking staff to be taking his father-in-law without a ticket in the Nilgiri Mountain Railway, sometime earlier. The petitioner disowns any responsibility for the petition written by his wife. Whether it be as a result of the petition prepared by the secretary of the Employees' Sangh or not, the petitioner got back his pass within 10 days. The case of the petitioner is that ever since that time Sri Taneja was inimical towards the petitioner.

3. Nearly more than one and a half years later, on 7-9-1968, the petitioner received a charge-sheet from the first respondent, the Divisional Superintendent, alleging that the petitioner had made a false statement on 12-6-1967, "damaging a senior scale officer." Ext. P-1 is the copy of the charge. In Ext. P-2 reply, dated 14-9-1968, the petitioner refuted the charge. I will have to refer to the charge in due course, because there is dispute as to whether there was an admission of having written the letter, dated 12-6-1967, as alleged in the charge. On 10-12-1968, a penalty of withholding the increment for two years was passed against the petitioner by Ext. P-3 order. Ext. P-3 order became final so far as the petitioner was concerned as he did not challenge the order by way of appeal.

4. The matter did not rest there. Apparently someone in authority must have felt that the punishment imposed on the petitioner was not sufficient considering the gravity of the charges against him. Apparently consequent on that, a notice proposing to enhance the penalty was issued to the petitioner. Ext. P-4 is the copy of that notice, dated 27-3-1969. That notice mentioned that the Divisional Superintendent was reviewing the case of the petitioner in terms of Rule 25 of the Railway Servants (Discipline and Appeal) Rules, 1968, considering that the gravity of the charge was such as to warrant a more severe penalty. Accordingly it was proposed to hold an enquiry against the petitioner under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The notice, Ext. P-4, called upon the petitioner to submit a list of documents to which he wanted access for the purpose of the enquiry. He was further required to submit a written statement of his defence within 10 days of the date of notice and also to state whether he desired to be heard in person and desired to examine witnesses on his side. He was further asked to furnish the names and addresses of the witnesses, if any, whom he wished to call in support of his defence and a list of documents which he wished to produce. The petitioner was further asked to admit or deny each of the charges and the imputations contained in the statement of imputations so that enquiry may be held into such of those charges as were denied. Along with Ext. P-4 a statement of allegations and the facts on which such allegations were founded were also enclosed. The charges were that while functioning as a clerk, the petitioner "committed serious misconduct in that he had made a statement, dated 12-6-1967, regarding misuse of pass privileges by Sri P. D. Taneja, an officer of the Railway Administration, which could not be established." The statement of allegations contains nothing more. There again reference is made to a representation made by the petitioner on 12-6-1967, which mentions that Sri Taneja travelled with his father-in-law in the year 1962

with a time expired card pass on OJA OMD section and was excessed. Neither in the charge nor in the statement of allegations is any mention made as to whom the statement was given by the petitioner and to whom the representation was made. Whether the statement or representation (as it is differently referred to) was a statement given to any authority before whom petitioner was called for such purpose is also not evident from the charge or statement of allegations. I am referring to this because it will appear in due course that it is of relevance for the purpose of this case. By reply, dated 19-4-1969. the petitioner sought some information. Information on three points was sought for. He wanted a copy of statement, dated 12-6-1967. The reply to Ext. P-4 "notice is apparently Ext. P-6 sent by the petitioner on 25-5-1969. Therein he complains that the information required by him was not fully furnished. Then follows a paragraph in Ext. P-6 which really makes no sense and it is very difficult to understand what the petitioner really meant. I am extracting the paragraph here:

Referring the above charge memorandum, I have to state that my statement which is referred in the charge memorandum is one of the series of statements addressed to DS/OJA regarding Sri P.D. Taneja has stealthily engaged in taking his father-in-law on without a ticket on the Nilgiri Mountain Railway and was excessed. For which I confirmed that the above officer admits as I did not receive any response on this subject from the administration after an enquiry conducted by a Vigilance Officer of the Railway Board.

Next follows a request by him for the presence of the father-in-law of Sri Taneja as he was said to be a material witness. This, in brief, is the reply to the charge. Paragraph 2 is now said to have been understood by the railway department as an admission of the charge against the petitioner. If that be the case, no enquiry was called for. But, all the same, an enquiry was purported to be held and even in the counter-affidavit the stand taken is that an enquiry was held. Apart from this, because of the language used in the reply, Ext. P-6, it is impossible to say whether there was an admission that any representation was made on 12-6-1967. Besides, it is necessary to consider under what circumstances the representation was made to ascertain whether making such representation could be considered as a misconduct on the part of the railway servant. That I will consider in due course. Ext. P-6 was followed by a notice Ext. P-7, by which the petitioner was notified that an enquiry would be held under Rules 9 and 10 of the Railway Servants (Discipline and Appeal) Rules, 1968. One Sri K. Venkateswara Rao was appointed as inquiry officer. The inquiry officer referred to Ext. P 6 explanation and wanted to know whether the petitioner was accepting the charge. Even assuming that there was some acceptance involved in the language in Ext. P-6, when, by Ext. P-8, the petitioner was specifically asked whether he was accepting the charge or not, and in the reply it is stated that "I denied the charge of giving a statement as mentioned in the charge memo", it is quite apparent that thereafter the inquiry officer has to proceed as if the charge had been denied.

5. Strangely enough Sri K. Venkateswara Rao who was appointed as the inquiry officer adopted a procedure not prescribed under the Railway Servants (Discipline and Appeal) Rules, 1968, and not one which could be found acceptable. He did not think it necessary to call for any evidence in support of the charge so much so there is no evidence to show that any statement or representation was given on 12-6-1967. There is no knowing to whom such a statement was given, under what circumstances this statement was given, whether it was a petition or whether it was a statement taken by the Vigilance Officer. I am referring to the last possibility only because it appears to me that there was some vigilance enquiry and in that vigilance enquiry the petitioner was asked to give a statement. I do not want to speculate on this, as it is not for me to do so. It is for the Railway to state unequivocally, in view of the denial of the charge, as to how a statement marked as Ext. R-2 has been taken. I wanted to peruse the file of the respondents. But counsel for the respondents has no file available with him to enable me to peruse the same. The counter-affidavit is of no assistance in this matter. What is stated there is contained in paragraph 3 in these terms:

He gave a statement on 12-6-1967, a true copy of which is produced herewith marked Ext. R-2.

Ext. R-2 does not show to whom it was given and one would have expected the respondent to disclose this at least in the counter-affidavit. Possibly there may be sufficient reason why this is not disclosed.

6. The inquiry consisted merely of calling the petitioner to the presence of the inquiry officer and cross-examining him so thoroughly as to bring out that the statement was written by the petitioner. I find such thoroughness in the cross-examination by the inquiry officer. He has taken considerable pains to bring out that the statement was written by the petitioner, and the petitioner's stand apparently at that time was that it was no doubt written by him, but was not handed over to anybody. After asking 25 questions by way of cross-examination of the petitioner, the inquiry concluded by a question "Have you got anything further to say?" as if all the answers given were answers anxiously explaining what the petitioner had to say. But one thing is seen from Ext P-9, the statement by way of questions and answers, and that is that the petitioner scrupulously avoided admitting that he had ever given a statement to any authority or having published it in any manner. The result apparently was that if it be taken that the charge was denied, as apparently it was, as could be seen from Ext. P-7, then there was no evidence that the statement was given. The inquiry officer has taken elaborate pains to prepare the report. In the report in one portion of the discussion of the evidence certain statements are made which, to say the least, are quite unintelligible. It is not for me to comment here on the language used in the report. Certainly it would be a considerable strain for anyone to read and understand what really the officer had in his mind. But it can be seen from the report what the stand taken by the petitioner at the inquiry was. The report

states:

The charged employee unconditionally accepted that the document to be relied upon at the enquiry, i.e., the statement given by Sri Krishnan Nair, Rly material clerk, on 12-6-1967, as the one written by him and signed by him, after a perusal of the original document at the enquiry, but denied having given this statement to anybody.

This admission, according to the enquiry officer, was significant because he says-

Thus he accepts that he himself has made out this case and kept with him for his own purpose.

Then he refers to the explanation, dated 26-5-1969, which is Ext. P-6 here and particularly referring to the paragraph which I have extracted in this judgment mentions-

It is pertinent to know here that he has not stated anything about his having written, signed and kept that statement in his custody for future reference and was mislaid, etc. Hence he puts this plea now at the enquiry only to come out of the charge and its gravity.

Then follows a paragraph which, it is more difficult to understand. But what I make out of it is that the petitioner has not been successful in proving that Taneja misused his pass privileges. Then he says-

He also stated that he had written, signed and kept this statement within him for making further enquiries and sending complaint against Mr. Taneja, DEE. Thus there is no dispute about the charged employee having in his mind the allegation against Mr. Taneja of taking his father-in-law without ticket and also having written and signed the statement to this effect.

Possibly he thinks that to have such an idea in his mind is itself sufficiently bad as to deserve an enhancement of the penalty originally imposed. I need not go into the report further.

7. The ultimate result was that the Divisional Superintendent who considered the reply to the show cause notice passed Ext. P-11 order, dated 17-11-1969, finding that the petitioner is guilty. Of course, no discussion whatsoever is seen in Ext. P-11 order and it contains nothing more than an indication that the petitioner is found to be guilty. Neither Ext. P-12 nor Ext. P-14 suffers from the virtue of being speaking orders. It is these which are now attacked before me.

8. There are several attacks to the validity of Ext. P-11 order and those which confirmed it in appeal and revision. The procedure relating to enquiry is very seriously challenged as being violative of the rules relating to holding of such inquiry and also of rules of natural justice. It is said that on the material before the inquiry officer and naturally before the authority who imposed the penalty there was no scope for imposition of a punishment of removal from service. In fact, the case is that there is no evidence to hold that the charge was proved.

There is a further contention that Rule 25 of Railway Servants (Discipline and Appeal) Rules, 1968, which has been apparently invoked does not empower the first respondent to review the order passed earlier imposing the penalty of withholding the increment. That is because according to the petitioner's counsel Sri M. M. Cherian, the second proviso to the rule specifies that no review shall be made by a reviewing authority unless it is higher than the appellate authority. It is said that in Ext. P-3 it is mentioned that if appeal against that order is to be taken, it must be to the divisional superintendent, who is the first respondent and, therefore, as appellate authority it was not competent for the first respondent to review the order passed. Violation of Sub-rules 11 to 16 of Rule 9 is also complained of.

9. I will first advert to the attack made against the procedure adopted by the inquiry officer. The charge against the petitioner evidently was that he had made a statement on 12-6-1967, which contained untrue allegations about his superior. It cannot be said that there has been an admission of the charge in Ext. P-6. At any rate that is unimportant when, in Ext. P-8 the inquiry officer has asked the delinquent officer whether he denies the charge and the officer has endorsed that he denies the charge. That necessarily presupposes that the inquiry officer was going into the question of the truth or otherwise of the charge and if that be the case he cannot assume that there was an admission and so no proof was required. He has to proceed as in a case where the charge has to be proved. The admission of the petitioner at the time of the inquiry that the statement shown to him was signed by him does not prove the charge. That is because, if the petitioner's case is that he had not handed it over to anyone is accepted he cannot be found guilty since merely to write adversely about a superior officer and keep it in one's pocket cannot amount to misconduct. The inquiry officer seems to think that if the subordinate harbours ill-will against a superior officer in his mind that by itself is misconduct. That cannot be the case. It is the outward manifestation of the feelings of the person concerned against his superior officer that could be considered to be objectionable. So if there is no evidence that the statement which is said to have been written and kept by the officer has been published, in the sense handed over or conveyed to some one else, there cannot be any scope for action. There is no evidence to show that the petitioner handed over the statement to someone. I have already stated the thoroughly unsatisfactory state of affairs as to the evidence relating to the circumstances under which and the person to whom the statement is said to have been handed over. This is relevant because if the statement had been made, say, for example, to the vigilance officer or any police officer in connection with some enquiry at their request, it cannot be said that the petitioner must, therefore, be held guilty of making a complaint against a superior officer. Therefore, the propriety of proceeding against the petitioner will depend upon the ascertainment of these facts and circumstances which in the circumstances it is not possible for want of material in support of the charge. As I have indicated earlier, the counter-affidavit also does not in any way help in this matter. This

being the state of affairs, I do not think that there was any material for the first respondent to come to a decision against the petitioner on the charge framed. That would be sufficient for the purpose of this case.

10. But I do not consider it desirable to leave this matter without noticing the very irregular nature of the inquiry and the conduct of the inquiry officer which would be abhorrent to any judicial conscience. The inquiry officer has apparently misunderstood his role. He is not the prosecutor in the case. It is not his duty to somehow prove the charge. It is not for him to assume that the delinquent officer is guilty and try to bring out admissions from the delinquent officer so that the charge against him may be proved. Such an approach would apparently indicate bias on the part of the inquiry officer and so must certainly be avoided. I am referring to this because what the inquiry officer has apparently done in this case is to prepare a series of questions intended to cross-examine the petitioner with a view to bring out from him that the statement was written, signed and handed over by him, so much so, the charge stands proved. It is not an attempt at elucidation of facts by the inquiry officer. It is true that any officer holding an enquiry could put questions to the delinquent officer so as to elucidate answers from him to explain the facts appearing in the case against him. This is more for the purpose of giving the officer concerned an opportunity of explaining the case against him than to fix him with the guilt. When the inquiry officer forgets his role and instead of putting questions with a view to elucidate answers for a proper understanding of the facts before him and begins a searching cross-examination, the object of which is apparently evident, he ceases to be an inquiry officer any more and his action is liable to be attacked successfully by the officer who is prejudiced by the consequent action. I will just, in brief, refer to the cross-examination evidenced by Ext. P-9, After ascertaining whether the statement referred to earlier was given by the petitioner (to which the petitioner replied that it was written and signed by him but not given by him) the inquiry officer further questioned him as to what was the occasion for writing and signing that document. He would further ask why, if it was not given, should such a statement have been prepared. When the answer is given, the next question is an attempt to contradict the answer. The further questions are by way of cross-examination on the answers given by him by way of confrontation with contradictions. Then a reference is made to Ext. P-6 explanation and an attempt is made to show that in Ext P-6 explanation there is an admission that the charge is true. The cross-examination proceeds in this strain and I need not refer to it any further. Suffice it to say that there is nothing but the manifestation of the ingenuity of the officer in the role of a cross-examiner attempting to bring out the guilt of the person examined.

11. Any enquiry into charges against a civil servant or any domestic enquiry into the conduct of an employee must necessarily be in conformity with rules of fair-play. It has been noticed time and again by Courts that when the officer holding the enquiry takes a role different from that of a person who is to adjudicate on the dispute impartially and without bias, he becomes disqualified and it could no

longer be said that the result of the enquiry is fair. If, in such circumstances, the Court is called upon to interfere, it will only be too willing to find that there has not been a fair-deal to the person against whom the enquiry is held.

12. The Supreme Court, as early as in the decision in *Meenglas Tea Estate Vs. Its Workmen*, , said thus:

The Tribunal held that the enquiry was vitiated because it was not held in accordance with the principles of natural justice. It is contended that this conclusion was erroneous. But we have no doubt about its correctness. The enquiry consisted of putting questions to each workman in turn. No witness was examined in support of the charge before the workman was questioned. It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him. In the present case neither was any witness examined nor was any statements made by any witness tendered in evidence. The enquiry, such as it was, was made by Mr. Marshall or Mr. Nichols who were not only in the position of Judges but also of prosecutors and witnesses. There was no opportunity to the persons charged to cross-examine them and indeed they drew upon their own knowledge of the incident and instead cross-examined the persons charged. This was such a travesty of the principles of natural justice that the Tribunal was justified in rejecting the findings and asking the company to prove the allegation against each workman *de novo* before it.

Justice Gajendragadkar in the decision of the Supreme Court in *Associated Cement Co. Ltd. Vs. The Workmen and Another*, , said at page 399 thus:

It is true that domestic enquiries need not be conducted in accordance with the technical requirements of criminal trials, but they must be fairly conducted and in holding them, considerations of fair-play and natural justice must govern the conduct of the enquiry officer.

Again at page 400 the learned Judge said thus:

The other infirmity in the present proceedings flows from the fact that the enquiry has commenced with a close examination of Malak Ram himself. Some of the questions put to Malak Ram clearly sound as questions in cross-examination. It is necessary to emphasize that in domestic enquiries the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should workman be asked whether he wants to give any explanation about the evidence led against

him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact that in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings. Therefore, we are satisfied that Mr. Sule is right in contending that the present enquiry proceedings by which Malak Ram was elaborately cross-examined at the outset constitutes another infirmity in this enquiry.

These decisions of the Supreme Court have been referred to by This Court in the decision in *Rajappa Menon v. Union Government* 1965 KLT 554. But of course, on the facts of that case, the learned Judge held that since the delinquent officer against whom the enquiry was made had given a statement in which he did not challenge the nature of the enquiry, he would be precluded from complaining later.

13. Counsel for Railway Administration refers to me a decision of the Supreme Court in *Employers of Firestone Tyre and Rubber Co. Ltd. Vs. Their Workmen*, , possibly to urge that the Supreme Court has taken a different view on a later occasion. The earlier decisions of the Supreme Court and in particular those to which I have already adverted, were referred to by Hidayathullah, J. in that case and the learned Judge said thus:

These cases no doubt lay down that before a delinquent is asked anything, all the evidence against him must be led. This cannot be an invariable rule in all cases. The situation is different where the accusation is based on a matter of record or the facts are admitted. In such a case it may be permissible to draw the attention of the delinquent to the evidence on the record which goes against him and which if he cannot satisfactorily explain must lead to a conclusion of guilt. In certain cases it may even be fair to the delinquent to take his version first so that the enquiry may cover the point of difference and the witnesses may be questioned properly on the aspect of the case suggested by him. It is all question of justice and fair-play. If the second procedure leads to a just decision of the disputed points and is fairer to the delinquent than the ordinary procedure of examining evidence against him first, no exception can be taken to it. It is, however, wise to ask the delinquent whether he would like to make a statement first or wait till the evidence is over but the failure to question him in this way does not ipso facto vitiate the enquiry unless prejudice is caused. It is only when the person enquired against seems to have been held at a disadvantage or has objected to such a course that the enquiry may be said to be vitiated. It must, however, be emphasised that in all cases in which the facts in controversy are disputed the procedure ordinarily to be followed is the one laid down by This Court in the cited cases. The procedure of examining the delinquent first may be adopted in a clear case only. As an illustration we may mention one such case

which was recently before us. There a bank clerk had allowed overdrafts to customers much beyond the limits sanctioned by the bank. The clerk had no authority to do so. Before the enquiry commenced he admitted his fault and asked to be excused. He was questioned first to find out if there were any extenuating circumstances before the formal evidence was led to complete the picture of his guilt. We held that the enquiry did not offend, any principles of natural justice and was proper (see Central Bank of India Ltd. Vs. Karunamoy Banerjee, .

I do not see anything in this decision which goes against the rule formulated by the Supreme Court in earlier decisions. It is not that a person who faces a charge should not be asked any questions by the inquiry officer. A statement may be taken by the inquiry officer. Normally such statement is taken after the close of the evidence. But it may be that in some circumstances even if it is taken earlier it cannot vitiate the enquiry. If the attempt by the inquiry officer is not to seek the accused to explain the case against him but to elucidate certain material out of him so that the charge which is otherwise unsubstantiated is proved, the inquiry is certainly vitiated and I do not think that the Supreme Court has ever spoken to the contrary.

14. Sri K. Venkateswara Rao, who is seen to have enquired into the allegations, has apparently misconceived his role. Apart from the fact that he made a mess of the inquiry by resorting to cross-examination of the petitioner and doing nothing else he has not even prepared a report which brought home the guilt to the petitioner. In these circumstances, the inquiry is vitiated also for the reasons that there has not been a fair dealing with the question.

15. In view of what I have stated here, I do not think it is necessary to go into the further question whether the first respondent was competent to review the order Ext. P-3.

16. The prayer in the original petition is to quash Exts. P-11, P-12 and P-14 orders of the respondent. For reasons stated, these orders deserve to be quashed and I do so. There is a further prayer to direct the respondent to reinstate the petitioner in service. That, of course, is the natural consequence and the respondents will take note of the fact that Ext.P-11 order stands vacated. There is an earlier order Ext. P-3 imposing penalty of withholding increment. That order stands. Taking due note of these facts, the respondents will act appropriately. The original petition is allowed as above with costs.