

(1985) 04 CAL CK 0003
In the Calcutta High Court

Samar Nandy Chowdhury

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-04-1985

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : 89 CWN 883 : (1986) 1 LLJ 95

Hon'ble Judges : Shamsuddin Ahmad, J; Mookerjee, J

Bench : Division Bench

Judgement

Mookerjee, J.—Being aggrieved, by the judgment of Hon"ble Mr. Justice P.C. Borooah discharging the Rule obtained by him against the Memorandum of charge-sheet, dated 2nd August, 1977 issued by the Senior Divisional Mechanical Engineer (P), North Eastern Frontier Railway, Katihar, the appellant has preferred this appeal.

2. The appellant at the relevant time was Fireman-B under the North Eastern Frontier Railway Administration. In the year 1973 he was elected as the Secretary of the North Eastern Frontier Railway Co-operative Stores Ltd., Malda. The Senior Divisional Mechanical Engineer (P), North Eastern Frontier Railway, Katihar, had purported to issue the impugned charge-sheet in respect of certain alleged acts of misconduct committed by the petitioner as Secretary of the North Eastern Frontier Railway, Co-operative Stores Ltd. The petitioner has challenged the authority of the Senior Divisional Mechanical Engineer (P), Katihar to initiate a disciplinary enquiry and to serve charge-sheet upon him not in respect of any act allegedly done by him in performing his duties as a railway servant but in respect of alleged acts committed by him in the capacity of the Secretary of the said cooperative stores. The substance of the petitioner's case is that only under the provisions of the West Bengal Co-operative Societies Act an enquiry can be held in respect of acts allegedly done by him as the Secretary of the co-operative stores and the Railway Authorities cannot conduct any disciplinary enquiry against him in respect of the said allegations.

3. In our view, the learned Single judge has rightly discharged the Rule obtained by the appellant and the disciplinary enquiry and the charge-sheet against the petitioner cannot be quashed in limine because the Railway Authorities have jurisdiction in the matter. The appellant is a whole time railway employee and he is subject to provisions of Rule 3 of the Railway Service (Conduct) Rules, 1966 which, inter alia requires that every railway servant shall at all times maintain absolute integrity. He is also forbidden from doing anything which is unbecoming of a railway or government servant. The aforesaid provisions of the Conduct Rules are wide enough to include not only acts done by a railway servant in discharge of his duties but also acts done outside his employment. The respondent have relied upon the Railway Board Letter Nos. E/55/R.G-6/15 dated 26th July, 1955 and E (D.A.)-73-R.G-6/23 dated 19th June, 1973 on the subject of disciplinary action against the railway servants guilty of mismanaging or misappropriating the funds of Railway Co-operative Societies institutions, clubs etc, The Railway Board by their earlier letter dated 26th July, 1956 had clarified doubt on the question whether disciplinary action can be taken against the Railway servants found guilty of charge outside their duties in connection with the affairs of institutions like Railway Co-operative Societies, Railway Institutes, clubs and other similar bodies which are established and run by railway servants. The Railway Board had observed that it would be quite in order for Railway Administration to take appropriate disciplinary action against staff found guilty of the offence referred. The Railway Board by their subsequent letter dated 19th June, 1973 dispelled the impression that no action could be taken against railway servants for charges of misappropriation or other irregularities amounting to serious misconduct in discharge of their duties in the affairs of the institutions like the Railway Co-operative Societies etc. until they had been found guilty by the canteen management or by the Registrar of Co-operative Societies. The Railway Board laid down that the terms of the Railway Servants (Discipline and Appeal) Rules, 1968 penalties may be imposed on a railway servant for good and sufficient reasons. It was therefore not necessary that the railway servant should be found guilty of any offence by the management or the Registrar of the Co-operative Societies before the action could be taken under the disciplinary rules. Further, whether there were good and sufficient reasons and whether there was prima facie evidence are matters which would have to be considered appropriately by the Disciplinary Authority before any action was limited under the Disciplinary Rules.

4. The aforesaid two letters of the Railway Board clearly clarify that it would be legal to start disciplinary action against railway servants for alleged mismanagement or misappropriation of the funds of the railway co-operative societies, institutions, clubs, etc. In this writ petition or at the time of the hearing of the Civil Rule the appellant petitioner did not challenge the legality and validity of the said two letters of the Railway Board which were made Annexures "R8" and "R9" to the affidavit-in-opposition filed on behalf of the Railway Administration. Therefore, at the time of the hearing of this appeal, we cannot

permit the learned advocate for the petitioner to contend for the first time that the said letters of the Railway Board were beyond the competence of the Board. The Railway Board is also not a party before us. The contents of the said letter are not repugnant to the provisions of the Railway Servants (Discipline and Appeal) Rules and the Railway Servants Conduct Rules. The said two letters of the Railway Board really amplify and bring down the true meaning of the said two Rules framed under Article 309 of the Constitution. Further the petitioner as a railway servant had become the Secretary of the Railway Co-operative Stores which was under the control of the Railway.

5. Mr. Chatterjee, learned standing counsel, appearing on behalf of the appellant, attempted to draw analogy between the relationship in law between master and servant and the relationship between the State and its servants. In the first place, the said analogy cannot be stretched too far in view of the established legal position that a government servant including railway servants are holders of status and their rights and obligations are not purely contractual in character as in case of employees under private employers. The decision of the Court of Law in the case of *Pearce v. Foster and Ors.* L.R. Queen's Bench Division Vol. XVIII(1) (referred in Halsbury's Laws of England (4th Edition Vol. 16 at page 628), upon which Mr. Chatterjee placed reliance does not really support his contention. Lord Esher M.R. in the case of *Pearce v. Foster* (supra) had inter alia laid down. "But if a servant is guilty of such a crime outside his service as to make it unsafe for a master to keep him in his employ, the servant may be dismissed by his master, and if the servant's conduct is so grossly immoral that all reasonable men would say that he cannot be trusted, the master may dismiss him." The Court of Appeal held as justifiable dismissal of the plaintiff who had been speculating in differences upon the stock exchange to the extent of many thousands of pounds and was thereupon dismissed from service.

6. In the present case, the Disciplinary Authority of the appellant had issued charge-sheet and not yet found him guilty. It is open to the appellant not only to show cause against the charge-sheet but also to represent against penalty which may be proposed. The respondents had authority to issue the charge-sheet and to initiate enquiry whether or not the appellant was guilty and whether any penalty should be imposed upon him are matters which are outside the scope of the present case before the Court. The said question may be considered at the first instance by the Disciplinary Authority of the appellant.

For the foregoing reasons, we dismiss this appeal without any order as to costs.