

(1971) 03 OHC CK 0016

In the Orissa High Court

Sri Gouranga Sundar Mohanty

APPELLANT

Vs

District Transport Manager and Another

RESPONDENT

Date of Decision : 08-03-1971

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1971) 2 LLJ 83

Hon'ble Judges : R.N. Misra, J;B.K. Patra, J

Bench : Division Bench

Judgement

B.K. Patra, J.—The petitioner was a conductor in the State Transport Service, having been so appointed by the Assistant Transport Manager, Balasore (Annexure-1). A departmental inquiry was started against him on certain charges which were duly enquired into. On a consideration of the inquiry report, the District Transport Manager, Balasore Zone, who is an authority superior to the officer who appointed the petitioner, came to the conclusion that the charges against the petitioner has been duly proved and issued a notice to the petitioner to show cause why he should not be discharged from service. The material portion of the notice runs thus:

This conductor has already been punished thrice for committing similar offences. Since he was constantly giving very unsatisfactory income, he was kept as spare for a period of six months only for deputation in very short routes when there was shortage of conductors. In spite of the above punishment, there has been no improvement in him. Hence it is not desirable to keep such habitual defaulter in the S.T.S. organisation and it is, therefore, decided that he should be discharged from service.

He is, therefore, called upon to show cause within 15 days from receipt of this order as to why he will not be discharged from service. If his explanation is not received within the stipulated time, the case will be decided ex parte presuming that he has nothing to say.

(Annexure-II)

2. In response to this notice, the petitioner applied for copies of certain documents which were supplied to him. He wanted to cross-examine the Traffic Inspector who had been examined during the preliminary enquiry and the petitioner was allowed to do so. On his request, he was permitted to produce one Sk. Samim, a witness on his behalf and he was examined. He asked for a personal hearing which was allowed and his statement was recorded. Thereafter, the disciplinary authority, namely, the District Transport Manager, Balasore, passed the final order discharging the petitioner from service. It is to quash this order that the writ application has been filed on the sole ground that since in the show cause notice issued to the petitioner the disciplinary authority had mentioned that it had already been decided to discharge him from service, the notice is bad in law as offending Article 311(2) of the Constitution.

3. The District Transport Manager, Balasore who issued the notice and who ultimately imposed on the petitioner the penalty of removal from service had himself filed the counter-affidavit in which he stated that after considering the inquiry report and holding that the charge has been established against the petitioner, he tentatively decided to impose on him the punishment of discharge from service. But due to oversight, the word "tentatively" has not been mentioned in the said notice. He stated that the very fact that after the issue of such notice, he allowed the petitioner to examine a witness and to cross-examine another and that he was supplied with certified copies of documents required by him and was given a personal hearing as requested by him, go to show that he (the District Transport Manager) had not at all finally made up his mind regarding the punishment to be imposed on the petitioner which is also borne out by the recitals in the final order of discharge passed by the District Transport Manager (Annexure-II/A). The petitioner has not filed any rejoinder denying these averments. Having regard, therefore, to all these circumstances, we are convinced that the decision to discharge the petitioner from service recorded in the notice (Annexure-II) was only a tentative decision. In dealing with such matters, one has to look not to the form but to the substance of the notice. If really the disciplinary authority had finally made up his mind to discharge the petitioner from service, he would not have given to the latter the several opportunities which actually had been given to him not only to establish his innocence but also to show that the punishment proposed to be imposed on him is severe. A contrary view was doubtless taken by a learned single Judge of the Gujarat High Court in State of Bombay (Now State of Gujarat) Vs. Amarsinh Raval, . But that decision can be distinguished on facts because in the present case, the several opportunities afforded to the petitioner after the second show cause notice was issued to him indicate that full and reasonable opportunities had been afforded to the petitioner--a feature which is absent in the Gujarat case. There are cases where the punishment was mentioned in the charge sheet itself and the question arose whether that would vitiate the final orders passed by the departmental authorities in such cases. Khem Chand Vs. The Union of

India (UOI)and Others, , was one in which the charge sheet had asked the delinquent to show cause why he should not be dismissed from service. Although the order of dismissal passed in that case was set aside, it was not on the ground that the punishment was mentioned in the charge sheet, but because after the disciplinary authority found the delinquent guilty of the charges levelled against him, he was not given a further opportunity to show cause why that particular punishment should not be inflicted on him. Although it was observed in that case that if the competent authority were to determine before the charges were proved that a particular punishment would be meted out to the Government servant concerned, the delinquent is likely to feel that the competent authority had formed an opinion against him generally on the subject matter of the charge or at any rate as regards the punishment itself, for their Lordships did not say that this by itself would amount to violation of the principles of natural justice. Ours is not a case where the punishment is indicated in the charge sheet but where in the second show cause notice, the authority concerned had stated that it was decided to remove the petitioner from service giving rise to the criticism that if the disciplinary authority had already decided about the punishment, there is no meaning in asking the petitioner to show cause against it. Although such a criticism cannot be said to be unjustified, and it is imperative that the disciplinary authority should only indicate in the notice his tentative decision regarding punishment, yet having regard to the circumstances of the case already stated and the fact that full opportunity had been given to the petitioner to show cause against the proposed punishment, we are satisfied on the facts of this case that no prejudice was caused to the petitioner and we accept the explanation of the disciplinary authority that it was only inadvertently that he omitted to mention the word "tentatively" before the word "decided" in the penultimate paragraph of the notice Annexure-II.

4. In the result, the writ petition fails and is dismissed, but in the circumstances, without costs.

R.N. Misra, J.

5. I agree.