
(1966) 07 AHC CK 0009
In the Allahabad High Court
Case No : Civil Misc. Writ No. 2188 of 1960

Surjit Singh Sher Gill

APPELLANT

Vs

Divisional Supdt., Northern Rly. and Another

RESPONDENT

Date of Decision : 07-07-1966

Acts Referred:

Constitution of India, 1950 — Article 311(1), 311(2)
Northern Railway Discipline and Appeal Rules — Rule 2, 21, 21C, 3, 4

Citation : AIR 1967 All 112 : (1968) 1 LLJ 301

Hon'ble Judges : G.C. Mathur, J

Bench : Single Bench

Advocate : B.N. Asthana, for the Appellant; D. Sanyal, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Mathur, J.—The petitioner was a Travelling Ticket Examiner in the Northern Railway in the Allahabad Division and was posted at Kanpur. He was served with a charge sheet dated September 17, 1958, levelling the following two charges against him and he was asked to furnish his explanation:

"(1) You realised fares from 36 without ticket passengers upto Bhaupur and another 11 passengers i.e. 9 from Maitha and 2 from Bhaupur, were detected travelling without ticket by the same train. Neither any Guard Certificate nor any E. F. T. had been issued for any of those passengers upto the time of the raid on your train by the Special Railway Magistrate, Kanpur, at Panki.

2. The Squad of the Spl. Rly. Magistrate detected all the 47 passengers travelling without ticket, when you as a safeguard, were trying to issue the E. F. T. without the prior issue of the Guard Certificate up till then. This clearly establishes that with the connivance of the Guard you had the mala fide intentions to carry without ticket passengers and to pocket the amount collected which otherwise should have gone to the Railway revenues." The petitioner submitted his explanation. Without holding any formal inquiry the Divisional Commercial

Superintendent, Northern Railway, Allahabad Division, passed the following order of punishment on September 1, 1959:

"Tour next increment raising your pay from Rs. 100 to Rs. 105 P. M. in grade Rs. 80-160 (PC) which normally falls due on 3-4-60 is withheld for two years permanently affecting your future increments and subsequent seniority on promotion to next higher grade."

Against this order, the petitioner preferred an appeal but the appeal was dismissed by the Divisional Superintendent, Allahabad. Thereupon the petitioner filed this writ petition.

2. The first point urged by learned counsel for the petitioner is that the Divisional Commercial Superintendent was not competent to impose the punishment upon the petitioner. The petitioner is governed by the Northern Railway Discipline and Appeal Rules for non-gazetted railway servants. Rule 2 enumerates punishments that may be imposed upon railway servants. Rule 3 provides that the General Manager may impose any of the penalties specified in Rule 2 and empowers him to delegate to the authorities subordinate to him power to impose these penalties except the withholding of provident fund contribution and gratuity and the reduction or withholding of pensions. Rule 4 states that the powers to impose the penalties specified in Rule 2 have been delegated to the authorities specified in Appendix "A". It further states that the following points must, however, be borne in mind:

(a) A fine shall not be imposed upon railway servants who are exclusively employed on clerical work;

(b) the penalty specified in item (4) of Rule 2 viz., withholding of increments or promotion, shall not be imposed by an authority lower than a Divisional Superintendent or the authority competent to make a substantive appointment to the post which the railway servant holds. According to Appendix "A", the officer authorised to inflict the punishment of stoppage of increment upon the petitioner was the District Officer. According to paragraph 102 of the Indian Railway Establishment Code, Volume I, a District Officer means a gazetted railway servant drawing pay on the scale applicable to Senior Scale Officers. It has not been disputed before me that the Divisional Commercial Superintendent is such an officer. Therefore, according to Rule 4 read with Appendix "A", the Divisional Commercial Superintendent was authorised to inflict the punishment upon the petitioner. But it was argued by learned counsel for the petitioner that Clause (b) of Rule 4 is in the nature of a proviso and provides that the punishment of withholding of increments or promotion shall not be imposed by an authority lower than a Divisional Superintendent or the authority competent to make a substantive appointment to the post which the railway servant holds.

It is contended that the Divisional Commercial Superintendent is not an authority competent to appoint a Travelling Ticket Examiner. Shri D. Sanyal, learned counsel for the railway, produced before me a booklet, published by the Northern

Railway, containing the delegation of powers of appointment by the General Manager. From this it appears that the power to appoint all non-pensionable class III staff, and, admittedly, the petitioner belongs to this class, has been delegated to Divisional Personnel Officers. Thus a Travelling Ticket Examiner can be appointed by a Divisional Personnel Officer. What has now to be seen is whether the Divisional Commercial Superintendent is an authority lower than the Divisional Personnel Officer.

There is no averment in the writ petition or in the affidavit filed by the petitioner that the Divisional Commercial Superintendent is an authority lower than the Divisional Personnel Officer, nor has learned counsel for the petitioner placed any material before me from which such a conclusion could be drawn. On the other hand, from the salaries drawn by the two officers it appears that the Divisional Commercial Superintendent is not an authority lower than the Divisional Personnel Officer. The petitioner has failed to establish that he has been punished by an authority lower than the authority competent to appoint him. There is no force in the first contention.

3. The second contention raised by learned counsel for the petitioner is that no opportunity of being heard was given to the petitioner. It is true that the petitioner was served with a charge sheet and was asked to submit his explanation and to show cause why he should not be dismissed from service and that, after the submission of his explanation, no oral inquiry was held. This action is sought to be justified by the railway administration on the basis of Note 2 to Clause (c) of Rule 21 which reads thus:

"If the competent authority, after considering the employee's explanation to the charge sheet, considers that a penalty less than dismissal from service is justified, he can proceed to inflict the penalty without any enquiry."

It may be mentioned that Rule 21 is in Chapter II of the rules which relate to dismissal from service and provides the procedure for dismissal. Where the punishment of dismissal is to be inflicted, Rule 21 provides for an oral departmental inquiry after service of the charge sheet and receipt of explanation. In Chapter III, which deals with removal from service, the same procedure prescribed for dismissal from service is to be followed. Again, in Chapter IV which deals with reduction of rank, the same procedure of a formal oral Inquiry has to be followed. To all these departmental oral inquiries the provisions laid down in Chapter V apply. The other punishments are governed by Chapter VI. In the infliction of these punishments, the procedure prescribed for the major punishments is not to be followed. The only procedure prescribed in Chapter VI is the service of a charge sheet and the calling upon the employee to show cause and the passing of the order by the competent authority.

Rule 51 of Chapter VI provides for the service of the charge sheet and the show cause notice. Rule 53 provides that "when the defence in reply to a charge-sheet is received it shall be carefully considered by the competent authority and in

passing the final orders it shall record reasons for the decision arrived at." It is abundantly clear from a perusal of the rules that the rules do not require an oral inquiry in cases of punishments other than dismissal, removal or reduction in rank but they prescribe that, in such cases, a charge sheet and a show cause notice should be served and an explanation should be called for. This is precisely what has been done in the present case. The petitioner was certainly given an opportunity of being heard when the charges were conveyed to him and he was asked to submit his explanation. He cannot insist upon an oral inquiry when the rules do not provide for it and, in fact, rule out such an inquiry. In my opinion, the action was taken against the petitioner in accordance with the rules.

4. The third submission made by learned counsel for the petitioner is that the punishment imposed upon the petitioner amounts to reduction in rank. He places reliance upon a decision of the Supreme Court in *P.C. Wadhwa Vs. Union of India (UOI) and Another*, . In that case, Wadhwa had been reverted to a subordinate rank and the Supreme Court had held in the circumstances of that case that the reversion amounted to reduction in rank. This case does not at all help the petitioner. The punishment meted out to the petitioner is the withholding of his increment for two years affecting his future increments and seniority. He retained the rank which he held though his future chances of promotion may have been affected. I am unable to see how such an order can at all amount to reduction in rank. There is no force in this contention either.

5. The fourth and the last contention of learned counsel for the petitioner is that Rule 53 and note 2 to Clause (c) of Rule 21 are ultra vires. Paragraph 157 of the Indian Railway Establishment Code, Volume I, 1951 Edition, provides that the General Managers of Indian Railways have full powers to make rules with regard to non-gazetted railway servants under their control provided they are not inconsistent with any rules made by the President or the Railway Board. The rules in question were made by the General Manager, Northern Railway, in exercise of this power. Learned counsel for the petitioner has not been able to point out any rule made by the President or the Railway Board which may be inconsistent with the impugned rules. It is true that Chapter XVII of the Indian Railway Establishment Code lays down certain discipline and appeal rules for non-gazetted staff but that, by itself, does not mean that the Impugned rules are invalid. There is no provision in Chapter XVII which specifically provides that, in the case of non-gazetted staff, an oral departmental inquiry must be held even in the case of the punishment of withholding of Increment or promotion. There is no inconsistency between the impugned rules and any provision of Chapter XVII of the Establishment Code. In my opinion, the impugned rules are Intra vires and valid.

6. There is no force in any of the contentions raised by learned counsel for the petitioner. The writ petition is dismissed. There will be no order as to costs.