

(2015) 09 AP CK 0024
In the Andhra Pradesh High Court
Case No : W.P. No. 26790 of 2015

The Union of India and Others

APPELLANT

Vs

A.R. Rakesh and Others

RESPONDENT

Date of Decision : 14-09-2015

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2015) 09 AP CK 0024

Hon'ble Judges : Nooty Ramamohana Rao and Anis, JJ.

Bench : Division Bench

Advocate : Pushpinder Kaur, for the Appellant; K.R.K.V. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao, J.—The Union of India and the officials of the Ministry of Railways are the petitioners herein. They call in question the correctness of the order passed by the Central Administrative Tribunal, Hyderabad Bench in O.A. No. 132 of 2012 instituted by the 1st respondent employee of the Railways.

2. The 1st respondent is appointed as a Bungalow Peon and he has been attached to the 4th petitioner herein. However, on the ground that he was continuously absent unauthorizedly for a period of 91 days, he has been subjected to disciplinary control. An Inquiry Officer has been appointed to conduct a detailed inquiry in accordance with the Railway Servants (Discipline and Appeal) Rules, 1968 (for short, "the Rules"), but however, no Presenting Officer has been appointed to conduct the proceedings before the said Inquiry Officer on behalf of the Ministry of Railways. The Inquiry Officer himself not only presented the witnesses but also went on to cross-examine and invite a defence brief and then filed his report holding the employee guilty of the charge framed against him. Accepting the Inquiry Officer's report, the 1st respondent employee has been handed down the punishment of removal from service by an order passed on 06.09.2010. The defence taken by the 1st respondent was that the

officer, in whose bungalow he has been posted for doing duties, has not allowed him to function and attend to the work. As a consequence, he had to stay away from duty. It is, no doubt, true that the 1st respondent employee would submit that the officer has directed him orally to learn driving a four-wheeler and then report to duty and with a view to learn the four-wheeler driving, he stayed away from duty.

3. Learned Standing Counsel for the Railways Ms. Pushpender Kaur would submit that this explanation offered by the employee was so palpably and factually inaccurate, because the 1st respondent employee holds a valid driving licence issued by the competent authority under the Motor Vehicles Act for driving a four-wheeler. It is therefore, a clear case where the explanation of the employee for staying away from duty unauthorizedly is a figment of imagination rather than being truthful. Be that as it may, for sheer lack of impartiality in the approach exhibited by the Inquiry Officer, who himself introduced a witness P.W.1 and also cross-examined the defence witnesses D.Ws.1 and 2 and then finalized his own report holding the employee guilty, the Central Administrative Tribunal faulted this procedure and held that the proceedings are vitiated. The Tribunal directed, by its order dated 09.01.2015, reinstatement of the 1st respondent with all consequential benefits. Hence, this Writ Petition.

4. Though the Central Administrative Tribunal passed the order on 09.01.2015, this Writ Petition was instituted on 21.08.2015 in this Court without reinstating the employee concerned. What baffled us is the attitude exhibited by the officers concerned. If a Bungalow Peon has really committed a serious act of misconduct, he is liable to be dealt with sternly. No public servant has any manner of right to act contrary to the discipline of the organization and then, still, expect that the organization would be too kind to him. Whether one works as a Peon, the lowest post in an organization or its Chief Executive, the highest, every one is bound by the same code of discipline. Sans discipline, no organization will ever be able to render any service for which it is established or contribute meaningfully to the productivity of such an organization. But does the discipline mean taking every aspect of life of a man too seriously beyond reasonable limits? The answer to our minds is in the negative. If a Bungalow Peon has committed a misconduct of staying away from duty for 91 days unauthorizedly, the question would normally crop up as to why he was not put on notice before the expiry of 91 days by the officer concerned. Imagine a case where someone takes to serious illness or meets with a motor accident on a road and then becomes hospitalized, consequently stays away from duty for more than three months, can he be penalized irrespective of the facts and circumstances that warrant some compassion to be exercised in the matter? Therefore, we are at a loss to understand as to why the Railway Administration has not thought it appropriate that for the proven misconduct of the employee, any other punishment than removal from service has not been considered as a suitable one and an appropriate one too.

5. Rule 6 of the Rules listed out as many as nine punishments and they were classified as minor and major punishments. Reduction in rank, reduction in time scale of pay, compulsory retirement, removal and dismissal fall under the head of "major punishments". Censure, withholding of his promotion for a specified period, recovery from the pay of the employee the whole or part of any pecuniary loss caused by him to the Railway Administration by negligence, withholding of the Privilege Passes or Privilege Ticket Orders or both, reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension and withholding of increments of pay for a specified period with further directions as to whether upon expiry of such period, the punishment will or will not have the effect of postponing the future increments of pay, are listed as "minor punishments". When the Rule itself has classified the punishments liable to be imposed for a proven misconduct of a railway servant into minor punishments and major punishments, it pre-supposes that the disciplinary authority is required to apply its mind, duly taking into account and consideration all relevant facts and circumstances. The "doctrine of proportionality", which has been brought into the Indian jurisprudence in *Ranjit Thakur Vs. Union of India (UOI) and Others*, by the Supreme Court, has clearly propounded that the punishment that is liable to be imposed upon the individual for the proven misconduct must necessarily meet the gravity of the misconduct and also meet the offender. If an offender, as in the present case, is a low-paid, low-strata employee, removal from service of such an employee will visit him with bountiful of woes. Such a punishment will produce ruinous consequences not only upon the individual but also upon the whole family, who are depending on him. The very purpose of establishing a code of discipline is not to impose punishments upon the employees left, right and centre, but with a view to provide them an opportunity to improve upon the past mistakes. After all, to err is human. If one has committed a grave error of judgment and in the process, has violated the code of conduct and discipline of the organization, he certainly deserves to be penalized, but the punishment must be to provide him a fair chance to improve upon in his life and also establish as to how useful he can still be to the organization. A chance to turn a new leaf round is what the philosophy ingrained in classifying the punishments into minor and major punishments. A repeated error too many times, even if it is on a minor scale, may itself prove to be a serious misconduct, inasmuch as in such repetitive conduct, the employee concerned is only trying to communicate to the organization that he is beyond correction. That was not the case here.

6. If a Bungalow Peon, irrespective of the justification or for that matter the lack of it, has stayed away from duty for 91 days, any of those minor punishments would have met the ends of justice, instead, the Railway Administration has chosen to impose one of the harshest punishments of removal from service on him and to cap it, when the Central Administrative Tribunal set aside that proceeding and asked for his reinstatement, they have chosen to approach this

Court by instituting this Writ Petition taking their own sweet time. It only reflected the lack of appreciation of pain of the other fellow human being on the part of the railway officers. The high- ranking officials, who are the petitioners herein, are squarely dependent upon the monthly salary and allowances, which they receive, for their sustenance. So would be the case even with a peon. For the sheer failure of the officers concerned to have this human touch while penalizing the subordinates and thereafter litigating, we disapprove of their anxiety in litigating. We are not unnecessarily upset that the railways have chosen to fritter away its precious finances by entering upon this kind of litigation. We are any way used to this kind of fruit-less litigation indulged in routinely by the railways. Government is the biggest litigant and the Courts are almost bursting at their seams because of the pressure exerted by the docket increase. They have not learnt any lesson from their past mistakes in spite of the Courts, particularly the Constitutional Courts, repeatedly trying to tell them that only in certain cases, where injustice can be perceived to have been committed or upon a principle, litigation can be carried further. We fail to understand as to what grave situation would have engulfed to the Railway Administration if a Bungalow Peon is reinstated back to duty, all the more so when it has been told that the Inquiry Officer has acted as a prosecutor on behalf of the railways also.

7. We are conscious that some times for sheer want of adequate man-power, it may not be always possible for an Inquiry Officer to be assisted by a Presenting Officer, but at the same time, the principle to which the concept of appointing a Presenting Officer owes its existence is that the Inquiry Officer so appointed, no doubt, by the very same disciplinary authority belongs to the same department/unit, but is required to maintain adequate distance from both sides. He is required to hold the scales even. He must necessarily demonstrate that he is fairly objective and impartial in his approach and mind. Before a witness is introduced for examination or before a witness examined on behalf of the employee is cross-examined, a certain amount of briefing is required. Certain information may have to be secured from various other sources independently. Imagine the situation where the Inquiry Officer doing the above acts behind the back of the employee and thereafter the impression he gains beforehand about men and matters brought before him in the inquiry undertaken by him. Therefore, it is always set out by the Constitutional Courts that justice must not only be done, but it must appear to have been so done. What would a Bungalow Peon expect from an Inquiry Officer, who is also acting on behalf of the very same disciplinary authority who is conducting the prosecution as well? Would it be fair to expect that the man, who is facing the charge, will still have the same fair and fearless attitude that the Inquiry Officer is an impartial individual and that he is objective in his mind? That is why, we feel, that the concept that "no man should be a judge in his own cause" has been developed to the extent it has been done by the Indian Courts. Looked at it from any perspective, we cannot approve the conduct of either the Inquiry Officer or the Railways in litigating in the manner in which they have done.

8. However, we find ourselves in agreement with the view entertained by the Tribunal, for, Rule 9 of the Rules, which have the enforceability by virtue of they being made by the President in exercise of the power available to him under the Proviso to Article 309 of the Constitution, has set out, in detail, the procedure that has to be followed for imposing the major punishments. Sub-rule (9) thereof would set out that on receipt of the written statement of defence of the charge, the disciplinary authority shall consider the same and decide whether the inquiry should be proceeded with under this rule or the defence should be accepted and further proceedings should be dropped. It further sets out, where the disciplinary authority decides to proceed with the inquiry, it may itself inquire into such of the articles of the charge as are not admitted or appoint under sub-rule (2), a Board of Inquiry or other authority for the said purpose. Let us now test a case where the disciplinary authority himself has chosen to act as the inquiring authority as well. In such cases, the disciplinary authority being a fairly very high-ranking official of the department, he can be trusted for his experience and wisdom and also by the very nature of training, which he would have received, to keep his mind uninfluenced by the trivialities of the matter. That is the reason why where the disciplinary authority himself acts as the inquiring authority, a different set of considerations would spring up rather than what has been noticed above by us. Sub-rule (10) of Rule 9 has pointed out that the disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority, among other things, a copy of the order appointing the Presenting Officer, if any. A great deal of emphasis is obviously laid on the expressions "if any". Very true, sometimes, it may not be really necessary that a Presenting Officer should be appointed. Dependent upon the sensitivity of the subject and the nature of inquiry and the seriousness of the issues involved, the disciplinary authority may consider not appointing a Presenting Officer at all, in case he decides that it would not be advisable for a 3rd party other than the inquiring authority and the disciplinary authority to have knowledge of the various aspects of the matter at issue. It all depends upon the facts and circumstances of each case and the sensitivities and sensibilities involved in the matter. Take for instance, if one is inquiring into an allegation of sexual harassment at work place, the inquiring authority can himself carry on the work of Presenting Officer as well. The reason being that both the sets of the individuals involved are also entitled to an element of secrecy and privacy and their own rights also deserve to be taken note of in the process. Hence appointing another person as a Presenting Officer may not be considered as desirable. Imponderable are the ways of the cases.

9. We are therefore, of the opinion that there is no merit in this case and it is an exercise indulged in very routinely by the Railways without any serious application of mind as to whether it really warranted further litigation to this Court.

10. So far as the last portion of the order of the Tribunal that the employee should also be paid the consequential benefits is concerned, it is set aside, after hearing Sri Prasad, learned counsel for the employee, only for the reason that it

would be an exercise, which has got to be carried out by the Railway Administration upon reinstatement and also taking into account and consideration the fundamental and subsidiary rules on the subject. But however, the interregnum period cannot be ignored for the purpose of reckoning towards qualifying service.

11. With this, we dismiss the Writ Petition at the admission stage. No costs.

12. Consequently, the miscellaneous applications, if any shall also stand dismissed.