

(1982) 08 DEL CK 0030

In the Delhi High Court

Case No : Civil Writ Appeal No. 4281 of 1973

Tilak Raj Handa

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-08-1982

Acts Referred:

Citation : (1982) ILR Delhi 1024

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Advocate : A.B. Saharia and K.C.Mittal, for the Appellant;

Judgement

M.L. Jain, J.

(1) The petitioner joined service in the Northern Railway as a Gangman on 14-5-1953 and was appointed a Clerk on 21-10-1954. He was transferred from Bikaner Division to Delhi Division on 21-2-1964. The petitioner absented from duty with effect from 26-9-1968. He was advised by a letter of 24-10-1968 to resume duty at once. The letter was sent by registered post at the Railway quarters occupied by him which was received by him on 26-10-1968. The petitioner wrote back on 2-12-1968 requesting for grant of leave from 28-9-1968 to 30-6-1969. He was informed on 3-1-1969 that he cannot be granted leave up to 30-6-1969 : that it is in his interest to resume duty without any further delay ; that the period of unauthorised absence from 26-9-1968 was treated as leave without pay: and that disciplinary action will be taken if he continued to be absent from duty any more. This intimation was also sent by registered post on the same address but this time it was returned undelivered with the remarks that the addressee has gone out and it was not known when he would return. As he did not join duty even up to March, 1969, he was charge-sheeted on 31-3-1969 by the Assistant Divisional Personnel Officer. The memorandum of chargesheet was sent at the same address. His place was visited by the Postman on several days but he failed to deliver the letter. On receipt of the undelivered memorandum, an enquiry officer was appointed. Intimation regarding the

appointment of an enquiry officer was sent to the petitioner on 14-5-1969 again by registered post. He was also intimated that the first sitting of the enquiry will be held. on 28-5-1969. Two days before, the petitioner sent a letter on 26-5-1969 that he was suffering from fever probably Typhoid for the last five days and that on medical advice he was not in a position to move at least for a period of one and a half month, and, Therefore, will not be in a position to attend the enquiry on 28-5-1969. He was asked to submit a medical certificate from a Railway Doctor. Since he had also complained that the memo of charge sheet was not received by him. it was supplied to him. But he failed to attend or send any medical certificate till 26-5-1969. The second sitting of the enquiry was fixed on 4-7-1969 but was adjourned to. 10-7-1969." Though he was informed that the disciplinary enquiry will be conducted in his absence, yet the enquiry was postponed to 30-7-1969 for the 4th time. On 30-7-1969 a letter was received from the petitioner in which he informed that he could not attend the enquiry on 30-7-1969 again on medical advice. As he was also advised a change of climate, he wanted to go to a Hill Station. The certificate produced by him was of a private practitioner and that only said that he was suffering from summer diarrhoea. The enquiry was, however, adjourned to 16-8-1969. The petitioner sent a telegram stating that he could not attend on that date and wanted another enquiry officer. He wrote another letter on 29-8-1969 requesting withholding of further proceedings- In all five chances were given to the petitioner, but he failed to attend the enquiry and failed to produce medical certificate in support of his sickness.. The enquiry there proceeded ex parte. The enquiry officer reported on 16-9-1969 that the charges of unauthorised absence from 26-9-1968 stand substantiated. He was issued by the Divisional Personnel Officer a show cause notice on 23-10-1969. It was cancelled, and a fresh memorandum was issued by the General Manager on 23-11-1970. Later on, he was removed from service by the General Manager by his order dated 19-12-1971. He appealed to the Railway Board but his appeal was dismissed by the Board on 28-8-1971. The petitioner has challenged these orders in this writ petition.

(2) Mr. A. B. Saharya made four submissions in .support of the petition. Firstly, the petitioner was unable to attend duty and enquiry because of his illness, and the petitioner cannot be punished for such inability. It has been pointed out that the petitioner lived near the Railway Hospital and it was easier for him to have treatment in the said hospital and obtain proper certificate or his absence. The only certificate on record is of one Dr. B. D. Attani. of 27-7-1969 in which "the petitioner is stated to have been suffering from diarrhoea. There is no other certificate on record. This certificate provides no justification For absence.

(3) The second submission is that the petitioner was charged for unauthorised absence from 26-9-1968 onwards. This charge is wrong because his absence has been regularised as leave from 26-9-1968 to 3-1-1969. He. Therefore, could not be charged for the period for which the absence has been regularised. I do not think that this argument has any force because the charge only says that he

absented himself from duty without any authority from 26-9-1968. He did not come to join even after 3-1-1969. No fault or resultant prejudice can be found in regard to the charge which is substantially correct. The charges in a departmental enquiry cannot be scanned in a hyper-critical manner.

(4) The third point urged by Mr. Saharya is that the enquiry was invalid because it was not instituted by a competent authority in accordance with Rule 8(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 (herein the Rules). That rule is :

" A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (v) of sub-rule (1) and clauses (i) and (ii) of sub-rule (2) of rule 6 may, subject to the provisions of clause (c) of sub-rule (1) of rule 2, institute disciplinary proceedings against any railway servant for the imposition of any of the penalties specified in clauses (v) to (ix) of sub-rule (1) of Rule 6, notwithstanding that such disciplinary authority is not competent under these rules to impose any of the latter penalties."

(5) It will be noticed that only a disciplinary authority can institute disciplinary proceedings but that is made subject to the provision of Rule 2(1)(c) As per that clause

"2(1)(C)"disciplinary authority" means. (i) in relation to the imposition of a penalty on a railway servant, the authority competent under these rules to impose on him that penalty; (ii) in relation to rule 9 and clauses (a) and (b) of sub-rule (1) of rule 11 in the case of any gazetted railway servant, an authority competent to impose any of the penalties specified in rule 6; (iii) in relation to rule 9 in the case of any non gazetted railway servant, an authority competent to impose any of the major penalties specified in rule 6; (iv) in relation to clauses (a) and (b) of sub rule (1) of rule 11 in the case of a non gazetted railway servant, an authority competent to impose any of the penalties specified in rule 6."

(6) Rule 9 of the Rules relates to major penalties. Now, it will be noticed that in relation to rule 9 procedure in case of non-gazetted railway servants the disciplinary authority is the authority which is competent to impose any of the major penalties. It was urged that the General Manager alone was competent to impose the penalty of removal and, Therefore, he alone was the authority to institute proceedings under rule 9, which provides the procedure for imposing major penalties. Mr. K. C. Mittal, learned counsel for the railways, referred me to a decision of the Allahabad High Court, reported in P. N. Lal v. General Manager, N. E. Railway 1975 Lab. I.C. 1927. It has held that the expression "subject to the provisions of clause (c) of sub-rule (1) of Rule 2" occurring in rule 8(2) refers to Rule 2(1)(c) (iii). The reasoning of the learned Judges is that under the four sub-clauses of clause (c) of sub-rule (1) of rule 2, the disciplinary authority is not rendered incompetent to impose the minor penalty and an authority competent to impose minor penalties can institute proceedings for major penalties. I think,

with great respect to the learned Judges, their deduction is contrary to the expression "subject to clause (c) of sub-rule (1) of rule 2." The expression includes whole of clause (c) that is all the four sub clauses of clause (c). It appears from the scheme of the rules, that disciplinary authority is a very wide term which has to be given different meaning for different purposes in accordance with the definition. The present rule 8(2) appears to be in consonance with the rule 1702 contained in the Establishment Code Vol. 1 Chap. Xvii Discipline and Appeal Rules now superseded. These rules provided that in case of non gazetted Railway servants" if major penalty is propose -to be imposed, then the enquiry should also be instituted by the authority competent to impose any of the major penalties. To confine its meaning as Allahabad has done will not fall in line with the letter and spirit of the rules. It will render the condition nugatory. A comparison of the CCS(CCA) Rules with the scheme of these rules shows that they are designedly different from those rules. In the CCS(CCA) Rules, an authority competent to impose minor penalties can institute against any officer departmental proceedings intended to result in major penalties. That exactly is the case in the Railways as far as the gazetted employees are concerned, vide sub clause (ii) of clause (c) above. But in case of non-gazetted Railway servants, enquiries for major penalties can be instituted by an authority competent to impose major penalties. That may perhaps be so, because of a concern for the lower class of the employees. But the contention of Mr. Saharya cannot succeed because according to the Schedule I to the Rules, Assistant Officer (Jr. Scale and Class Ii Officer) can impose on the class of officers to which the petitioner belongs the penalty of reduction to a lower stage in a time scale which is also major penalty under rule 6. The Assistant Personnel Officer will, Therefore, be a disciplinary authority competent to institute disciplinary proceedings under rule 9 against the petitioner.

(7) What Mr. Saharya now submits is that the appellate order of the Board is bad in law because the petitioner requested for personal hearing but it was denied to him and his appeal was disposed of without giving him such a hearing. Rule 24 of the rules provides that in case of major penalty imposed on a non-gazetted railway servant the appellate authority may in its discretion and if it considers it necessary give him a personal hearing before disposing of the appeal. Mr. Saharya maintains that the Board has not exercised its discretion in a fair and judicious manner and has thus violated principles of natural justice. May be if a personal hearing was given, the petitioner could have moved the appellate authority to show compassion as he was all along under some sort of psychosis, and could have convinced that the penalty imposed was disproportionate to his default. I quite see the value and concern of personal hearing in case of a non-gazetted employee, but it appears to me that in the circumstances of the case. it cannot be said that the discretion has not been properly exercised by the Board in not giving a personal hearing to the petitioner. He remained absent inspire of warning and avoided the enquiry without any justifiable reason whatsoever, sickness being a mere pretence. It was not a case of psychosis but of defiance.

(8) I, Therefore, see no merit in this petition and it is hereby dismissed. No costs.