

(1973) 12 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 860 of 1973

T.M. Chellappan

APPELLANT

Vs

Divisional Personal Officer, Southern Railway, Olavakkot

RESPONDENT

Date of Decision : 18-12-1973

Acts Referred:

Constitution of India, 1950 — Article 311
Kerala Police Act, 1960 — Section 3, 51A

Citation : (1974) KLJ 109

Hon'ble Judges : V.P. Gopalan Nambiyar, J; George Vadakkal, J

Bench : Division Bench

Advocate : M.M. Cherian, for the Appellant; K.P. Pathrose, M.C. Cherian and C.T. Joseph, for the Respondent

Final Decision : Allowed

Judgement

V.P. Gopalan Nambiyar, J.—We think this writ petition should succeed. The petitioner was a Railway-Pointsman at Irimpanam. By Ext. P2 judgment of the Sub Magistrate, Palghat; he was found guilty under S. 51A of the Kerala Police Act for disorderly drunken behaviour. But the Magistrate released him under S. 3 of the Probation of Offenders Act 1958 after admonition. In the wake of this, by Ext. P1 proceedings of the Divisional Personal Officer, Southern Railway, the petitioner was removed from service, on the ground that the conduct which led to his conviction was such as to render further retention in public service, undesirable. The said order was confirmed on appeal by the Appellate Authority (vide Ex. P3). This writ petition is to quash Exts. P1 and P3 orders. The impugned action was taken under R.14 of the Railways Servants Discipline and Appeal R.1368, which reads:

14. Special procedure in certain cases Notwithstanding anything contained in Rules 9 to 13

(i) where any penalty is imposed on a railway servant on the ground of conduct which has led to this conviction on a criminal charge, or

(II) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules; or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules; the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.

Under sub-rule (i) of the above rule, which is the relevant sub rule that has application, it is necessary before action is taken to show that a penalty is imposed on the servant concerned on the ground of conduct which has led to his conviction on criminal charge. We do not think that in the circumstances disclosed by Ex. P2, where the petitioner was released under S. 3, after admonition, there can be said to be any imposition of a penalty on him, within the meaning of the above rule. Counsel for the respondent contended before us that the imposition of penalty referred to in sub-rule (1) is not by a criminal court, but by the disciplinary authority. To so read the rule, appears to make it meaningless, as the later part of the rule i.e., the part which follows the three sub clauses, requires the disciplinary authority to consider the circumstances and pass appropriate orders. It therefore appears fairly clear that the imposition of penalty contemplated by sub-rule (i) is by the criminal court and not by the disciplinary authority. This is further evident also from the fact that the proviso to Art.311, on which Counsel for the respondent himself stated that R.14 is based, also postulates conviction on a criminal charge which obviously can only be by the court. We are therefore of the opinion that in this case, having regard to the fact that the petitioner was released after admonition, the requirements of sub-rule (i) of R.14 were not satisfied. The impugned action under Ex. P1 order should therefore be declared illegal. We accordingly allow this writ petition and quash Ext. P1 and P3 orders. There will be no order as to costs.

Allowed.