
(1965) 11 AHC CK 0009

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1086 of 1956

Uma Shanker Singh

APPELLANT

Vs

Senior Personnel Officer and others

RESPONDENT

Date of Decision : 29-11-1965

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 19(2), 309, 33

Citation : AIR 1966 All 567

Hon'ble Judges : R.S. Pathak, J

Bench : Single Bench

Advocate : D. Sanyal, for the Appellant;

Final Decision : Dismissed

Judgement

R.S. Pathak, J.—This and the connected petitions have been filed by employees of the North Eastern Railway who are aggrieved by the action of the first respondent, the Senior Personnel Officer (Gazetted), North Eastern Railway, Gorakhpur, suspending them and by the commencement of disciplinary proceedings against them.

2. Dr. Ram Subhag Singh, Minister of State for Railways in the Government of India, decided to visit Gorakhpur on December 5 and 6, 1964. According to the programme drawn up by the Railway Authorities, among other engagements, he was to meet the heads of the departments of the Railway on the first of these two dates at 5.30 in the afternoon and the North Eastern Railway Mazdoor Union and the North Eastern Railway Employees' Union on the next day at 11 O'clock in the forenoon. The North Eastern Railway Mazdoor Union, however, pressed for permission to meet him on the afternoon of December 5, 1964, but this was refused. However, when the Minister was attending the meeting with the heads of the various departments in the office of the General Manager on the afternoon of that day, it is said that a large number of railway employees collected outside the office. It seems that the Minister was prevailed upon to address the gathering and thereupon, it is alleged, objectionable slogans were shouted by the crowd

that had assembled inside the compound of the office.

3. On December 7, 1964 the first respondent passed an order suspending the petitioner, Uma Shanker Singh, who is a Senior Clerk employed in the North Eastern Railway. He was also served with a memorandum informing him that it was proposed to hold an enquiry against him. The charge, and the allegations regarding the charge, were enclosed. The charge recited that the petitioner had "participated in and or held an unruly demonstration and also indulged in raising derogatory and abusive slogans before and against the Hon. Minister of State for Railway on 5-12-1964 at about 17/45 hours inside the Railway premises in contravention of the Gazette Notification issued in the N.E. Railway Fortnightly Gazette, dated 1st August 1956. This was a breach of Service Conduct Rule No. 19(1)". Similar action was taken in respect of the other petitioners.

4. A number of contentions have been raised on behalf of the petitioners. I shall first consider those which are common to this and the connected petitions.

5. The petitioners challenge the validity of R. 19(1) of the Railway Service (Conduct) Rules. This Rule was inserted in the Railway Service (Conduct) Rules by the following notification:-

In exercise of the powers conferred by the proviso to Art. 309 of the Constitution, the President hereby directs that the Railway Services (Conduct) Rules, 1956, contained in Appendix VIII of the Indian Railway Establishment Code, Vol. 1 (1959 Edn), should be amended as in the advance copy of the correction slip sent herewith.

Advance Correction Slip No. 171, R. 1.

Appendix VIII-RI-Rule 19;

Substitute the following for the existing Rule:-

19(1) Demonstrations:

No Railway servant shall engage himself or participate in any demonstration which is prejudicial to the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or which involves contempt of Court, defamation or incitement to an offence.

(2) Joining of Associations or Unions by Railway Servants.-No Railway servant shall join, or continue to be a member of an Association or Union the objects or activities of which are prejudicial to the interests of the sovereignty, and integrity of India or public order or morality.

6. The challenge to the validity of R. 19(1) is based on two submissions. It is said that the Rule contravenes sub-cl. (a) and (b) of Cl. (1) of Art. 19 of the Constitution and is not saved by Cls. (2) and (3) of that Article. It is also urged that the Rule falls outside the powers conferred by the proviso to Art. 309 of the

Constitution.

7. The contention on behalf of the petitioners is that Rule 19(1) incorporates a restriction upon the fundamental rights of the Railway servants to freedom of speech and expression, and to assemble peaceably and without arms which operates to defeat those fundamental rights and therefore the Rule is ultra vires. It is pointed out that by virtue of the Rule a Railway servant is prohibited from engaging himself or participating in all demonstrations, no matter what their description or character. It is urged that a Railway servant enjoys the fundamental rights guaranteed by Article 19(1) in the same full measure as even "other citizen of India, and that merely because he is in Railway service does not mean that he is any the less a citizen of the country. Reliance has been placed by the petitioners on the decision of the Supreme Court in *Kameshwar Prasad and Others Vs. The State of Bihar and Another*, .

It is true, as was observed by the Supreme Court in this case, that a person who enters Government service does not cease to be a citizen of India and is not removed from the protection of the several rights guaranteed by the several Articles in Part III of the Constitution. It is only the members of two Services under the State, members of the Armed Forces and the Forces charged with the maintenance or public order who are deprived of the benefit of these rights by virtue of Article 33, and that also only to the extent contemplated by its terms. A Railway servant is as much entitled to the enjoyment of the fundamental rights set out in Article 19(1) as any other citizen. It seems to me that there is no room for legitimate dispute in this regard. But the question whether the scope of Rule 19(1) is so wide as to nullify those fundamental rights is another matter.

In *Kameshwar Prasad and Others Vs. The State of Bihar and Another*, the provision considered by the Supreme Court prohibited Government servants from participating in any demonstration or resorting to any form of strike in connection with any matter pertaining to their conditions of service and the Supreme Court struck this provision down because it imposed "a blanket ban on all demonstrations of whatever type-innocent as well as otherwise...." and did not confine itself to demonstration of a type which would lead to disorder. It was pointed out that a demonstration in itself might take the form of a peaceful and orderly assembly and the prohibition of such demonstration could not be justified against the provisions of sub-clauses (a) and (b) of clause (1) of Article 19. The Supreme Court emphasised that if the provision was so framed as to single out those types of demonstrations which were likely to lead to a disturbance of public tranquillity or which could fall under the other limiting criteria specified in Article 19(2) the validity of the rule could have been sustained.

In my judgment, the provision which was before the Supreme Court is in complete contrast with Rule 19(1). It is clear from the terms of the Rule that it prohibits only those demonstrations which are prejudicial to public order, which is mentioned in both clauses (2) and (3) of Article 19, and to the other considerations mentioned in clause (2) of that Article. The Rule confines the

demonstrations to a defined class, a class which is defined by reference to the criteria set out in clauses (2) and (3) of Article 19. It cannot be said that all demonstrations are the subject of Rule 19(1). There is no blanket ban here. The Rule does not contemplate a ban against innocent demonstrations. The Rule operates in respect of those demonstrations only which fall within the prohibition of the limiting criteria in clauses (2) and (3) of Article 19.

8. It is then pointed out that there must be a reasonable relation between the restrictions and the object which the Rule seeks to achieve and that the restrictions must not be in excess of that object, and I have been referred to *Superintendent, The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia*, . It is urged that if the Rule is construed so as to prohibit Railway servants from engaging themselves or participating in a demonstration agitating for better conditions of service it must be treated as invalid. It seems to me that this submission proceeds upon a fallacy. There can be no dispute, I think that Railway servants are entitled to demonstrate for the improvement of their conditions of service. That would seem to have been laid down by the Supreme Court in *Kameshwar Prasad and Others Vs. The State of Bihar and Another*, . But a distinction must be maintained between demonstrations prejudicial to the considerations mentioned in clauses (2) and (3) of Article 19 and demonstrations outside that class.

It is perfectly conceivable that Railway servants, may engage or participate in demonstrations pertaining to their conditions of service which are innocent in the sense that they do not offend those considerations. But there may also be demonstrations, which while pertaining to the conditions of service, may be prejudicial to one or more of those interests described by reference to the criteria set out in clauses (2) and (3) of Article 19. It is at once apparent that only such demonstrations fall within the prohibition of Rule 19(1). Whether a particular demonstration is prejudicial or not is a question to be determined upon the individual facts of each case. It cannot be contemplated that the Rule should specifically detail those demonstrations which are prejudicial to the interests mentioned by it and those which are not. The guiding test is embodied in the Rule itself, and the operation of the Rule is controlled accordingly.

9. It is then said that Rule 19(1) is ultra vires because it falls outside the powers conferred by the proviso to Article 309. It is not clearly stated how this submission can be sustained. The proviso to Article 309 empowers the President to make rules regulating the conditions of service of persons appointed to services and posts in connection with the affairs of the Union. The power conferred is a power to make rules regulating the conditions of service. What these rules must be is not indicated. That is a matter for the President to decide. If there are any restrictions upon the exercise of the power they are to be found in the other provisions of the Constitution. It is settled law that the validity of such rules is to be tested by the same criteria as are applicable to all law and subordinate legislation. Rule 19(1) is a rule declaring that so long as a person is

in Railway service he shall not engage himself or participate in the demonstrations prohibited by that Rule. In order that it be a Rule regulating the conditions of service it is not necessary that the Rule should confine itself to matters such as grades and scales of pay, promotion, selection for superior posts, pension and so on. A rule providing for the manner in which a Railway servant should conduct himself in matters which bear upon public security and public order, to mention only some of the considerations, is as much a rule of service as the former. An appropriate rule which serves any of the considerations by reference to which the State can limit the fundamental rights defined under Article 19(1) is a rule validly regulating the (sic) of service within the contemplation of the provisions of Article 309.

10. I am of opinion that upon the ground raised by the petitioners Rule 19(1) cannot be declared ultra vires.

11. The next contention of the petitioners is that the allegations upon which the charge is framed do not state that they engaged themselves and participated in the demonstration. Consequently, the charge as it is framed against them is bad. It seems to me that the objection is purely technical. The question depends upon whether the petitioners understood, when they received the memorandum along with the charge and the allegations regarding the charge, that they were alleged to have participated in, or held, the demonstration. Nowhere in the petition has it been stated that the petitioners did not so understand the charge and the allegations. On the contrary, it is expressly admitted by them in the petitions that they Joined the demonstration. When they were served with the memorandum they must have understood that they were alleged to have participated in, and held, the demonstration. The language of the charge is clear and it is difficult to conceive that the petitioners did not understand that the allegations were directed against them. The contention that the charge is bad must therefore, be rejected.

12. The next contention of the petitioners is that no disciplinary action can be taken against them respecting anything done by them as members of a Trade Union if what is done is not connected with their conditions of service. I have already held that Rule 19(1) is a valid provision governing their conditions of service, and if what is alleged against them falls within the scope of Rule 19(1) it is immaterial that their conduct can be referred also to their Trade Union activities.

13. There was much argument by the petitioners that upon the facts of the case the charge was not made out. The matter rests in the realm of facts and must be determined with reference to the particular facts of each case. It is a matter which properly falls for consideration in the disciplinary proceedings pending against the petitioners. It is not for this Court in the exercise of its extraordinary jurisdiction, and certainly not at this stage, to enter into the merits of the case against each petitioner.

14. The last contention on behalf of the petitioners is that the action taken against them by the respondents is vitiated by mala fides. I have examined the affidavits on the record and I am not satisfied that there is substance in this contention. It cannot, in my opinion, be inferred from the material before me that the respondents are acting arbitrarily. There is also nothing to show that any ulterior motive influenced the respondents in taking the impugned disciplinary proceedings.

15. These are all the contentions common to the several petitioners.

16. An additional point has been raised by the petitioner, Ganesh Jha, in Writ Petition No. 1087 of 1966. It is pointed (sic) that this petitioner had been placed on deput (sic) on with the North Eastern Railway Mazdoor Union for a period of one year by a letter dated November 13, 1964 issued by the Chief Personnel Officer of the Railway. It is urged that the petitioner cannot be considered to have been an employee of the Railway when the demonstration took place and, therefore, he is not amenable to its disciplinary jurisdiction. The submission is that after being placed on deputation with the Union, the petitioner had ceased to be in the employment of the Railway. The terms and conditions on which the petitioner was placed on deputation with the Union indicate that he continued to be an employee of the Railway but his services had been lent to the Union by virtue of the deputation. Nothing has been shown to me to indicate that the deputation resulted in the termination of his employment with the Railway. Consequently, during the period of deputation, he remained in the employment of the Railway and was, therefore, amenable to the disciplinary jurisdiction exercised over Railway employees. In the circumstances, whether or not the Railway authorities were entitled to terminate the period of deputation of the petitioner with the Union by unilateral act does not call for decision.

17. In Writ Petition No. 1088 of 1965, the petitioner, Narendra Singh, points out that he has been charged with participating in and holding an unruly demonstration and in raising derogatory slogans against the Minister of State for Railway on December 6, 1964, but he says that there is no reference in the allegations which are the basis of the charge that he participated in and held the demonstration. It is urged that the charge is, therefore, bad and the disciplinary proceedings being taken against him cannot proceed on its basis. I am of opinion, for the reasons on which I have repelled a similar contention advanced by the petitioners in the other writ petitions, that this contention must also be rejected.

18. The instant petition is dismissed. There is, however, no order as to costs.