
(1975) 07 CAL CK 0001
In the Calcutta High Court
Case No : A.O.O. 999 of 1974

Union of India and Others

APPELLANT

Vs

N.K. Chanda Roy and Others

RESPONDENT

Date of Decision : 18-07-1975

Acts Referred:

Constitution of India, 1950 — Article 311, 311(1)

Citation : 80 CWN 320

Hon'ble Judges : S.P. Mitra, C.J.; S.K. Datta, J

Bench : Division Bench

Advocate : Sankardas Banerjee and Ajay Kumar Basu, for the Appellant; Somnath Chatterjee, Mohitosh Majumdar, Samir Kumar Ghosh and Ashok Kumar Ganguly, for the Respondent

Judgement

Sankar Prasad Mitra, C.J.—This appeal arises out of the All India Railway Strike which commenced on the 8th May, 1974. The respondents were removed from service without any enquiry held against them. The removal notice in the case of respondent No. 1 is dated the 21st May, 1974. The terms of this notice are as follows: --

Sri N. K. Chanda Roy son of Babu Monkumar Roy employed as Sta. Clerk GSS Office Shalimar is hereby removed from service with effect from 21-5-1974 in accordance with the Rule 14(ii) of the Rly. Servants D and A Rules.

The removal notice is signed by the appointing authority Removal Notices on the other respondents were also on the same terms. The removal notices contained the residential addresses of the respective respondents. It is well-known that under Article 311(1) and (2) of the Constitution no person who is a member of a civil service of the Union or All India Service can be dismissed, removed or reduced in rank without holding an enquiry against him. But proviso (b) to sub-article (2) of Article 311 lays down that the enquiry may be dispensed with "where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in

writing, it is not reasonably practicable to hold such inquiry."

Similar provisions have also been made in Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968.

2. The only point for inquiry in this appeal is whether the authority empowered to dismiss had recorded its reasons in writing to show that it was not reasonably practicable to hold an inquiry. These reasons have been annexed to the Affidavit-in-opposition of Gouri Sankar Ganguly, Traffic Superintendent of South Eastern Railway at Shalimar affirmed on the 9th July 1974. We set out below Annexure R to this Affidavit. It is as follows :--

Shri Nirmal Kanti Chanda Roy (name) Station Clerk (designation) Shalimar (headquarters) has been absconding and has not reported to his place of work and continues to absent himself from work, without reasonable excuse, notwithstanding due notices issued to all staff to be present in the context of the emergency arising out of the illegal strike. He is also found to be indulging in activities affecting the work of the railways.

Thus, in this case, there is no doubt that Shri Nirmal Kanti Chanda Roy is guilty of gross misconduct in that besides violating departmental rules, he is, without lawful authority or excuse, doing prejudicial acts and is contravening and abetting contravention of the rules and orders issued under the Defence of India Act and the Rules framed under it.

It is without doubt, in the facts and circumstances of the case that the abovementioned action of Shri Nirmal Kanti Chanda Roy merits his removal from service.

Shri Nirmal Kanti Chanda Roy is absconding and is not available and in the particular facts and circumstances of the case, I am satisfied that it is not reasonably practicable to hold the enquiry under D and A Rules for his removal and at the same time it is considered that the aforesaid person is not fit to remain in service.

Therefore, I, the competent authority, do hereby order that Shri Nirmal Kanti Chanda Roy shall be removed from service with immediate effect. The notice of removal be issued accordingly.

Station : Shalimar.

Dated 21st May, 1974.

Sd/- G. S. Ganguly,

Traffic Supdt, S.E. Railway,

Shalimar.

3. This order setting out the reasons aforesaid was followed by the notice of removal we have referred to. But it is not disputed that this is the only recording

of reasons for not holding the inquiry as envisaged by proviso (b) of Sub-Article (2) of Article 311 of the Constitution as well as Rule 14(ii) of the aforesaid Rules. There are similar recordings with respect to other respondents as well. Mr. Sankar-das Banerjee appearing on behalf of the appellants has argued before us that the aforesaid order of the 21st May 1974 contains adequate reasons for dispensing with the enquiry. Learned Counsel says that first there was a threat of strike. This was followed by a Notification under the Defence of India Act and the Rules made thereunder that the strike would be illegal. In spite of that Notification the strike was launched. It was a strike of an All India character having disastrous consequences on the movement of troops and essential goods. The respondents participated in the strike. The strike began on the 8th May, 1974 and the order under scrutiny was recorded on the 21st May, 1974. For the entire period the respondents were absconding and were not available. The cumulative effect of these circumstances, according to learned Counsel, is that the competent authority is justified in dispensing with the enquiry. Mr. Banerjee said further that if the respondents were not available there was no question of holding any enquiry against them.

4. In our judgment in *Chief Mechanical Engineer, Eastern Railway and another - vs- Jyoti Prokash Banerjee and others*, reported in 1974 (i) C.L.J. 537, we have said that the court must find the factual existence of circumstances justifying the non-holding of the enquiry. We have scrutinised the order herein made on the 21st May, 1974. This order alleges that the employee concerned is absconding. The statement appears to have been made on two grounds, namely, (i) the employee concerned has not reported to his place of work and (ii) he continues to absent himself from work. In other words, when in paragraph 4 of the order the words "absconding" and "not available" are used they mean that the person concerned was absenting himself from work and was not reporting for duty. "The particular facts and circumstances" referred to in paragraph 4 of the order also relate to those two facts. These facts may be germane to an order for dismissal but are they germane to an order recording reasons for not holding an inquiry ?

5. Our attention has been drawn to Rule 26 of the Railway Servants (Discipline and Appeal) Rules, 1968. This Rule says :--"Every order, notice and other process made or issued under these rules shall be served in person on the railway servant concerned or communicated to him by registered post.

6. We were then invited to look into serial No. 7609, Circular No. E-302|0|Vol.VI, dated the 19th December, 1970 of the Railway Board. This Circular, inter alia, provides as follows :--

In terms of Rule 26 of the Railway Servants (Discipline and Appeal) Rules, 1968, every order, notice and other process made or issued under the said rules will be served in person on the railway servant concerned, or communicated to him by registered post.

It has been brought to the notice of the Board that in some cases the service of

notice of imposition of penalty could not be effected either due to the absence of the railway servant concerned or due to his refusal or evasion to accept the same. The Board have examined the matter and decided that as far as possible actual service of an order/notice, which seeks to impose a punishment on the railway servant concerned is desirable and. therefore, with a view to ensuring actual service of the order/notice on the railway servant concerned, the authority should explore all possibilities of serving the orderjnotice, as indicated below.

Where the railway servant is present in office the order/notice should be served on him in person. If he refuses to accept the same or evades its service on him on one plea or the other the fact of his refusal, etc. should be recorded in writing and signatures of the witnesses in whose presence the orderjnotice is attempted to be served on him, taken in support of such attempt.

The order/notice should be deemed to have come into effect from the date on which it was so attempted to be served on the railway servant concerned irrespective of whether he accepts it or not.

In case the railway servant is not present in office the orderjnotice should be communicated to him at his last-known address by registered post A. D.

In case railway servant accepts the order notice sent by registered post A.D., it should be deemed to have come into effect from the date of such acceptance thereof, unless it specifies any subsequent date from which it has to take effect.

In case the railway servant concerned does not accept the order/ notice, and the same is returned undelivered by the Postal Authorities with the endorsement, such as "addressee not found", "refused to accept" etc. it should be pasted on the Notice Board of the Railway premises in which the employee concerned was working last as well as in a place in the last noted address of the railway servant.

The orderjnotice should be deemed to have come into effect from the date of issue thereof unless it specifies a subsequent date from which it has to take effect.

The above instruction may be brought to the notice of all authorities concerned for guidance.

7. We have further been invited to consider the form of the notice for removal from service with reference to Rule 14 (ii) of the Railway servants (Discipline and Appeal) Rule, 1963. The form runs thus :

No.

Place of Issue

Name of office

Dated

Whereas Shri ... Designation. under ... has been un-authorisedly absenting

from ... for which a charge-sheet bearing this office No. ... dated ... was sent to his home address under registered post with acknowledgement due.

Whereas the said charge-sheet has been returned undelivered by the Postal Authorities with the remarks.

Whereas the said Shri. could not be contacted at the address on the record of this office and whereas the present where about of the said Shri ... is not known to this office.

Whereas the undersigned is satisfied that the circumstances of the case are such that it is not reasonably practicable to hold an inquiry in the manner provided in the Railway Servants (Discipline and Appeal) Rules, 1968.

Now, therefore, in exercise of the powers conferred by Rule 14(ii) of the Railway Servants (D & A) Rules, 1968 the undersigned hereby removes the said Shri ... Designation ... under ... from service with effect from

8. We have extensively quoted the Rule, the Circular thereunder and the Form of the Notice of Removal just to show the care and attention required on the part of the Authorities to find out the employee concerned for the purpose of holding an inquiry. It does not appear to us that in the instant case any such effort or attempt was made. The reasons given in the order of the 21st May, 1974 do not refer to or mention a single effort to find the respondents or to serve any charge sheet on the respondents although in the notices of removal their home addresses have been stated. In our opinion, the circumstances set out in the orders dated the 21st May, 1974 may justify orders of dismissal but they do not give reasons for dispensing with an inquiry. The recording of reasons, needless to say, is a mandatory requirement of the Constitution.

9. In these premises, we are inclined to agree with the learned trial Judge who has struck down the notices of removal in the instant case. The appeal is dismissed. There will be no order for costs.

10. We made it clear, however, that this order of ours shall not prevent the Railway Authorities from taking any disciplinary proceedings against the respondents in accordance with law.

11. There will be a stay of operation of this order for a period of eight weeks from date. Each of the respondent is to be paid a sum equivalent to his salary for one month without prejudice to the rights and contentions of the appellants. These sums are to be paid within a fortnight from today.

S.K. Datta, J.

I agree.