
(1984) 04 KL CK 0019
In the High Court Of Kerala

Union of India (UOI)

APPELLANT

Vs

Subramanian

RESPONDENT

Date of Decision : 03-04-1984

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1985) 1 LLJ 382

Hon'ble Judges : R.Bhaskaran, Acting C.J.; M.P. Menon, J

Bench : Division Bench

Judgement

M.P. Menon, J.—According to the Railway authorities, the Loco Running Staff declined to "respond to the call of duty", went on an undeclared strike and refused to comply with lawful orders, during the month of January, 1981. It appears that there was some kind of concerted action by the employees, presumably to ventilate their grievances. The authorities however exercised their power under Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968 and dismissed many of the employees without holding an enquiry. Some of the employees came to this Court; and in O.P. No. 4781 of 1981, Chandrasekhara Menon, J. held that the dismissal in that case was illegal, for the reason that the authorities had failed to inform the employee about the reasons recorded by them under the sub-rule, either through the termination order or by separate communication. The same view was taken by Kochu Thommen, J. in a batch of other Original Petitions. These Writ Appeals are by the Railway authorities and the Union of India, against the judgments in the concerned Original Petitions.

2. Ignoring the proviso which is not relevant, Rule 14 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 his 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;

3. The prescriptions of the Rule are traceable to the Second proviso to Article 311(2) of the Constitution; and the rule enables the authorities to dismiss railway servants, without conducting an enquiry, under certain circumstances. The strict requirements of Rule 14(ii) are:

(i) the disciplinary authority should be satisfied about something;

(ii) that something is that it is not "reasonably practicable" to hold an enquiry into the charges against the employee in the usual manner; and

(iii) the authority should record its reasons in writing for forming his satisfaction.

Counsel for the appellants contend that communication of the reasons recorded by the disciplinary authority is not a requirement of the rule, and that the Court will not be justified in adding such a condition to the specific prescriptions. Some of the High Courts have held, as noticed by Chandrasekhara Menon, J., that this requirement can be added by importing rules of natural justice to a situation where the future of an employee is blasted on grounds of improper conduct. In our view, it is not necessary to finally pronounce on this point, because, even if this contention were to be upheld, the appellants cannot succeed in the Appeals on the facts of the case, as will presently be shown.

4. What is required under Rule 14(ii) is that the disciplinary authority should satisfy himself about the practicability or otherwise of holding an enquiry. The practicability is different from "expediency" referred to in Rule 14(iii). A reference to the proviso to Article 311(2) also shows that such a distinction has to be maintained. Now, the recording of reasons by the Disciplinary Authorities in all these seven cases, was in the following manner:

An open inquiry at this point of time is not in the public interests for the following reasons:

(i) An inquiry at this stage may whip up feelings among the running staff which is a very sensitive category and we can ill-afford any agitation on this score at this juncture when maintenance of essential services and supplies required for the community is of paramount importance.

(ii) An open inquiry will necessarily take some time and it would be delayed due to dilatory tactics on the part of the staff and I have reasons to believe that more and more running staff may resort to similar action go-slow, work-to-rule, etc., which will again affects the running of trains and movement of essential

commodities.

(iii) In view of the close camaraderie that exists in this particular category of staff, it is unlikely that staff concerned will come forward to tender evidence in an open enquiry.

The first thing to be noticed from the above is that the authority was concerned with "public interest", and not with the reasonable practicability of holding an enquiry. There is no finding, in any of the reasons recorded in this batch of cases, that it was reasonably practicable to hold an enquiry against the employees concerned. Overlooking the draw back - a serious one in itself, in our view - and proceeding to the three reasons stated, the first and second have obviously nothing to do with the question of practicability. The first may spell in the region of expediency, and the second only refers to possible delay and dislocation of trains. An assumption that the employees would try to delay the enquiry is not conclusive in the matter of forming an opinion that it is not practicable to hold one; and possible dislocation of train services can also have nothing to do with the real question. As for the third reason, if "camaraderie" is sufficient to dispense with enquiries in all cases, that will be converting the exception to the rule, because as a rule, any class of employees is likely to show some concern for the members of their class, in these days of organised trade unionism. The Constitutional requirement of Article 311(2) cannot be converted into a dead letter for the simple reason that employees have developed class or group feelings. Nor will it be correct to assume that charges against loco running staff can be established in domestic enquiries only by examining fellow-employees.

5. We are satisfied that the authorities in this case had not only failed to ask the right questions, but had permitted themselves to be influenced by irrelevant considerations. They had not even formed the opinion or satisfaction which under the statute they were bound to. They had completely misdirected themselves in law, and passed stereotyped orders without examining the merits of each case, in such a manner as to make a mockery of the Constitutional protection available to Government servants under Article 311(2).

The appeals are accordingly dismissed, without any order as to costs. All that is necessary to add is that the observations in para (12) of the Judgment in O.P. No. 4781 could not be construed as casting any personal reflection on the officer or officers concerned.

Soon after the judgment was pronounced, the counsel for the appellants made oral requests for leave to appeal to the Supreme Court. We do not find any substantial question of law of general importance which requires to be decided by the Supreme Court involved in these cases Hence leave requested for is declined.