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High Court Of Kerala

Case No: W.A. No. 404 of 1976

Southern Railway		APPELLANT
	Vs	
Samikutty		RESPONDENT

Date of Decision: May 26, 1978

Acts Referred:

- Constitution of India, 1950 - Article 311
- Railway Protection Force Rules, 1959 - Rule 24, 25

Hon'ble Judges: V.P. Gopalan Nambiyar, C.J; M.S. Menon, J

Bench: Division Bench

Advocate: M. Ramchandran, for the Appellant; K.S. Rajamony and A. Shahul Hamed, for the Respondent

Final Decision: Allowed

Judgement

Gopalan Nambiyar, C.J.

The administration of the Southern Railway has filed this appeal against the judgment of a learned Judge of this Court holding that the termination of probation of the Respondent spelt in the regions of a punitive action and therefore was violative of Article 311 of the Constitution, as the Respondent had not been afforded a full and fair opportunity for explanation. The action complained of was taken under Rules 24 and 25 of the Railway Protection Force Rules, 1959 which are as follows:

24. Promotion. -- (1) Promotion from one class to another among members of the force shall be made on the basis of selection by committees appointed in this behalf and in accordance with the regulations defining eligibility of the candidate for such selection and the tests which may include written, oral and practical tests. Promotions in grades shall, however, be on the basis of seniority-cum-suitability.

(2) Promotion to the rank of Assistant Security Officer and that from one rank of superior officer to a higher rank will be on the basis of selections made in

accordance with the orders issued by the Central Government in this behalf.

(3) Specially deserving Rakshaks or Senior Rakshaks who have done good work may be promoted to the rank of Senior Rakshaks or Head Rakshaks, respectively, on the basis of a selection, but the total number of such promotions shall not exceed 20 per cent of the number of promotion made to the particular cadre within the region or division at any given time and every case with the reasons for such promotion shall be placed before the Chief Security Officer.

(4) The age limit, length of service and other matters relating to promotions and the procedure for determining the seniority on appointment or promotion shall be such as may be prescribed by regulations.

25. Probation. -- (1) All appointments by direct recruitment or promotion shall be on probation for two years subject to the provision that the appointing authority may extend this period in special cases.

(2) The appointing authority shall, on the expiry of the period of such probation or such extend period, pass an order declaring that the probationer has completed the period of probation satisfactorily and is suitable for confirmation in that rank. If he considers him unsuitable, the probationer shall be informed in writing of the reason for terminating his probation and given an opportunity to submit any representation he may wish to make within a reasonable time and any representation submitted within that time shall also be considered and final orders passed by such authority.

In pursuance of the above rule, Ext. P-2 noticed dated 31st March 1973 was issued to the Respondent. It set out that during the period of probation, the Respondent had been placed under suspension from 27th July 1969 to 18th December 1969 in connection with an S.P.C. case against him. As he had not shown improvement in working his probation was extended by six months; subsequently he was charge sheeted for certain charges; he was also issued a notice that he would be continued on probation only till such time as a D.A.R. case against him was finalised. His pay was reduced from Rs. 126 to Rs. 122 for a period of one year. Again there was an adverse report against him from the vigilance branch. In view of all these, the Respondent was asked to show cause why his probation should not be terminated "for unsatisfactory working." The Respondent replied by Ext. P-3 dated 22nd April 1973. Then case Ext. P-4 dated 24th May 1973 which reads:

I have gone through your representation dated 22nd April 1973 in reply to my show cause notice referred to above. As already stated in my above letter that you had come to adverse notice during the period of probation, your pay in scale Rs. 110-170 has been reduced from Rs. 125 to 122 for a period of one year from 1st October 1972, as one of the charges has been proved. You had also come to adverse notice again in a case under R.P. (U.P.) Act.

2. As your work during the period of probation was found not satisfactory, please note that your probation has been ceased and you are reverted as Head Rakshak with effect from 11th June 1973 F.N.

2. The learned Judge was of the view that Ext. P-4 casts a stigma on the Petitioner and therefore cannot be said to be prima facie innocuous. The learned Judge was further of the view that having regard to the reasons for the proposed termination of probation which were recited in Ext. P-2 and which were found in Ext. P-4, the termination was really for misconduct and spelt in the region of a punitive action and therefore was bad for want of sufficient opportunity being afforded to the Respondent for explanation and for want of an enquiry having been held against him in respect of the misconduct attributed. With respect, we are unable to share the reasoning or the conclusion of the learned Judge. While it may certainly be that Ext. P-4 cannot pass as a prima facie innocuous order of termination of probation, we have got to take note of the well-settled and well-recognised principle that a termination in pursuance of a statutory rule cannot spell in the region of disciplinary proceedings or of a punitive action. The principle has been recognised in a series of decisions. It is enough to refer to a Full Bench Judgment of this Court in W.A. No. 450 of 1976 and a Division Bench Judgment in W.A. No. 388 of 1976 to both of which, one of us (myself) was a party. See also the Premier Tyres Ltd. v. Abraham I.L.R 1978 Ker 14. We have little doubt therefore that if the impugned order Ext. P-4 was one in accordance with Rules 24 and 25 which we have extracted above, it cannot be condemned as violative of Article 311 of the Constitution or as being an order which is punitive in nature. The question therefore would be whether the order in question was really and truly one under the terms of the rule, or whether the rule was only a convenient cloak for disguising an action really punitive, but masquerading as innocuous. We have extracted the rule. The rule requires that if the appointing authority considered the probationer unsuitable, the probationer shall be informed in writing of the reasons for terminating his probation, asked to submit any representation within a suitable time, and after considering the said representation, passing final orders in regard to the continuance of probation or termination of the same. It is obvious that the rule itself contemplates some type of enquiry into the conduct of the probationer and assessment of his suitability. It further contemplates a statement of the reasons in writing considered by the appointing authority as sufficient for the termination of probation to be given in the show cause notice. The final order is to be passed in the light of the explanation offered. On a perusal of Exts. P-2 and P-4 we do not think anything more than an action in strict conformity with the rule has happened in this case. We are unable to hold that the misconduct of the Petitioner was really the "foundation" for the action and not the "motive" for it. On the other hand, the express recital in Ext. P-2 to which we have already called attention, to our minds unmistakably shows that it was only the "motive" for the action. It has been explained in a series of decisions (to which we have referred in the two decisions mentioned above), and also in the judgment of a Full Bench of Five

Judges in O.P. Nos. 3091, 4167, 4177, 4306 and 4070 of 1974 and W.A. Nos. 467, 468 and 469 of 1976 and 103 of 1976 that the real effect of the order is to be judged by the underlying cause which was responsible for it. As we have found that the foundation for the order was not the misconduct attributed to the Respondent, we are unable to sustain the reasoning and the conclusion of the learned Judge that the impugned action offended Article 311 of the Constitution. We allow this appeal set aside the judgment of the learned Judge and direct that O.P. No. 1981 of 1973 will stand dismissed. There will be no order as to costs.