Nemai Chand Banerjee Vs Union of India (UOI) and Others

Court: Calcutta High Court

Date of Decision: July 12, 1960

Citation: 65 CWN 90 : (1961) 2 ILR (Cal) 333 : (1961) 1 LLJ 51

Hon'ble Judges: Sinha, J

Bench: Single Bench

Judgement

Sinha, J.
The facts in this case are shortly as follows:

In 1920 the petitioner was appointed in the Eastern Railway in a subordinate service. In 1950 the petitioner was confirmed in class II service. In

November 1954, the petitioner was promoted by the General Manager to officiate in the senior scale class I service which was subsequently

approved by the Public Service Commission. In March 1957, the petitioner was transferred to Kanchrapara. On 28 April 1958 the General

Manager issued an order of suspension in contemplation of a departmental proceeding, a copy whereof is annexure A to the petition. In that order

it was stated that the petitioner was placed under, suspension with effect from 28 April 1958 on charges detailed in a certain confidential

communication dated 28 April 1958. The chargesheet is included in annexure A at p. 8. It contains four charges. This chargesheet was on the

footing that the General Manager was the competent authority to charge and punish the petitioner. Against this action of the General Manager the

petitioner moved this Court and a rule was issued being C.R. No. 2451 of 1958 and further proceedings were stayed. On 31 October 1958 the

petitioner reached his age of superannuation and retired from the employment of the railway. On 13 May 1959, the rule was disposed of by my

judgment of that date. I held that while officiating in a post belonging to the senior scale class I service, the General Manager was not the punishing

authority and therefore could not issue a chargesheet, but that under the rules it was the Railway Board which was the punishing authority and

therefore a chargesheet could only be issued by the Railway Board. I therefore made that rule absolute and the chargesheet issued and the

proceedings held by virtue thereof by the General Manager were quashed and set aside. I further said that if the authorities sO wish, they could

continue the departmental proceedings by issuing a proper chargesheet by the proper authority and thereafter continue the departmental

proceedings in accordance with law.

2. On 4 June 1959, the Railway Board has issued a chargesheet and an order of suspension. The charges are practically the same as before, with

certain variations, copies thereof are annexures C to the petition. On 31 July 1959, the petitioner has been informed that the enquiry will be held

and on 18 August 1959, he came to this Court and this rule was issued. The point taken herein is a very short one. It is conceded that after a

person has attained his age of superannuation and retired, no order of dismissal can be made and no departmental proceedings can be had, unless

it is authorized by the rules. Previously, the rules did not contain this provision and it was held that after retirement neither can departmental

proceedings continue, nor orders of dismissal made. Now a rule has been introduced, viz., Rule 2046(4), in the Indian Railway Establishment

Code, Vol. II, p. 22. The relevant rule is as follows:

2046. (1) Except as otherwise provided in the other clauses of this rule, the date of compulsory retirement of the railway servants other than a

ministerial servant is the date on which he attains the age of 55 years. He may be retained in service after the date of compulsory retirement with

the sanction of the competent authority on public grounds which must be recorded in writing but he must not be retained after the age of 60 years

except in very special circumstances.

* * *

(4) Notwithstanding anything contained in Clauses (1), (2) and (3) a railway servant under suspension on a charge of misconduct shall not be

required or permitted to retire on reaching the date of compulsory retirement but shall be retained in service until the enquiry into the charge is

concluded and a final order is passed thereon by a competent authority.

3. It is obvious that the petitioner having attained the age of 55 must be taken to have retired from 1 November 1958, unless Clause (4) applies.

The first thing about notice under Clause (4) is that it contemplates a departmental enquiry and provides for it. The words ""charge"" or ""misconduct

or ""competent authority"" must therefore be construed in the background of the fact that they all relate to a departmental enquiry. In the case of

criminal trials the matter is dealt with elsewhere, namely, in appendix XXXI. Keeping this in mind, it seems that the meaning of C1ause (4) is quite

clear. If a charge is made of misconduct, and there is suspension in contemplation of the enquiry, then the employee should not escape the enquiry

or the consequences thereof, if in the meantime he arrives at the age of superannuation. But the rule itself makes it clear that there must be a charge

of misconduct and a suspension based on such a charge. The existence of a charge of misconduct is essential. In this particular case, I held that the

General Manager, who did make a charge of misconduct and followed it up by an order of suspension, had no jurisdiction to make any such

charge, and the chargesheet issued by him was struck down. I left the point open as to whether the suspension order was valid. Whether the

General Manager, as the original appointing authority, could pass an order of suspension is a question of difficulty, but this is clear that he could not

make a charge of misconduct. If the word ""charge"" is to be taken as a process included in a departmental proceeding, it follows that while the

petitioner enjoyed an officiating post in class I, the General Manager would no longer have anything to do with the departmental enquiry in respect

of the petitioner. That was the responsibility of the Railway Board. In fact, it has now been recognized, because after my judgment the Railway

Board has issued a chargesheet charging the petitioner with misconduct and has also issued an order of suspension. The question therefore is as to

whether on 31 October 1958 the petitioner was under suspension on a charge of misconduct. The only charge of misconduct which in fact existed

was contained in a chargesheet issued by the General Manager, which has been struck down. Whether independently of that chargesheet there

could exist a charge, it is not fruitful to enquire. Upon the facts of this case, there could exist no charge independently of the chargesheet which, as I

have pointed out, has been struck down. Therefore, it must be held that on that date the petitioner was not under suspension on a charge of

misconduct, because the so-called charge that was made has been found to be incompetent and void. Assuming that the General Manager was in

any way competent to suspend, that could only be in contemplation of the competent authority putting forward a charge of misconduct. If that

charge of misconduct by a competent authority took place before the date of superannuation, then there would be no difficulty. It so happened,

however, that the charge of misconduct made by the competent authority came long after the petitioner ceasing to be in the employment of the

railway.

4. Mr. Roy arguing on behalf of the respondents, says that the word ""charge"" in Clause (4) ought not to be given a restricted meaning. Even if the

General Manager could not issue a chargesheet, he was competent enough to charge the petitioner with misconduct. Unfortunately, the only charge

is contained in the chargesheet. If Clause (4) deals with departmental proceedings, then the General Manager can neither issue a chargesheet, nor

charge the petitioner for misconduct. It is only the competent authority which can charge the petitioner with misconduct and hold the departmental

proceedings and punish him. In my opinion, to say that the General Manager has nothing to do with the departmental proceedings and yet to make

him competent to charge the petitioner with misconduct but not so as to issue a charge-sheet, is too subtle, and it is not possible to interpret the

clause on this basis. In my opinion, it has not been established that after the superannuation of the petitioner, there could be any departmental

enquiry instituted against him, and the matter is not rectified by Clause (4) of Rule 2046.

5. The next question is as to what relief can be given. Mr. Roy has pointed out that the Railway Board which has issued the charge-sheet is outside

my jurisdiction and therefore I cannot issue a writ in the nature of mandamus or prohibition against the Railway Board. In that, I think, he is right.

But the departmental enquiry is in the nature of a quasi-judicial proceeding, and the record is here and I can quash it. To this, Mr. Roy argues that

it would not be appropriate to quash, by a writ in the nature of certiorari, merely the order of the Railway Board directing departmental

proceedings, because certiorari lies after a proceeding is completed. This is a point that requires consideration and I am not certain that certiorari

does not lie to quash a chargesheet or the order commencing departmental proceedings, if it has been made without jurisdiction.

6. However, Mr. Chaudhury, on behalf of the petitioner, says that he will be quite satisfied if I issue a writ of prohibition against the respondent 2,

directing him not to proceed with the departmental proceedings and this I have undoubtedly jurisdiction to order. The respondent 2 is within my

jurisdiction, and he proposes to hold the proceedings within the said jurisdiction.

7. The result therefore is that this rule is made partially absolute and a writ in the nature of prohibition is issued against the respondent 2 directing

him not to proceed with the departmental enquiry, which he has been directed to do by the Railway Board. So far as the other reliefs are

concerned, the petitioner will be entitled to agitate them in the proper jurisdiction. There will be no order as to costs.

8. Let the operation of this order remain in abeyance for six weeks from today, as prayed for. The learned advocate appearing for the said

respondent 2 gives an undertaking to Court that his client will not proceed with the departmental enquiry, during the said period of six weeks, after

which period the writ of prohibition will be operative.