

(1983) 02 CAL CK 0014

Calcutta High Court

Case No: C.R. No. 3714 (W) of 1982

Bal Krishna Mishra

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: Feb. 7, 1983

Acts Referred:

- Constitution of India, 1950 - Article 226, 311

Citation: 87 CWN 382

Hon'ble Judges: Chittatosh Mookerjee, J

Bench: Single Bench

Advocate: Arun Prakash Chatterjee, Sm. Pratibha Chowdhury, for the Appellant; N.C. Chakravorti, P.K. Ghosh, Madhusudhan Banerjee, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Chittatosh Mookerjee, J.

The petitioner was a Travelling Ticket Examiner in Group -"C" in the Howrah Division of the Eastern Railway. The Divisional Railway Manager, Eastern Railway, Howrah by his order dated 26th February, 1982 in exercise of the power conferred by Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 removed him from service with immediate effect. The Divisional Railway Manager, Eastern Railway, Howrah has, inter alias, stated that the petitioner was guilty of carting passengers, unauthorisedly in a three ties coach of 5-UP on 11th December, 1981 and thereby caused loss to the Administration. Further in the interest of Railway as well as the general public, the retention of the petitioner was considered undesirable and it was also considered that " The circumstances of the case were such that it is not reasonably practicable to held an enquiry in the manner provided for in the Railway Servants (Discipline and Appeal) Rules, 1968".

2. The petitioner has challenged his removal order on the ground that the Divisional Railway Manager, Eastern Railway, Howrah was not his Appointing Authority. The

General Manager, Eastern Railway had appointed him as a Trainee Ticket Collector under his special power from the sports quota. Secondly, the petitioner has contended that in any view of the matter the Divisional Railway Manager, Eastern Railway, Howrah did not state in the impugned removal order the reasons why he considered that it was not reasonably practicable to hold an enquiry in the manner provided for in the Railway Servants (Discipline and Appeal) Rules, 1968. It has been next contended that the alleged circumstances disclosed in the respondent's affidavit-in-opposition were not at all relevant for recording the opinion that it was not reasonably practicable to hold any such enquiry against the petitioner. Lastly, it has been submitted on behalf of the petitioner that even in case Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 is invoked the Disciplinary Authority in considering the circumstances of the case is bound to give an opportunity to the petitioner to show-cause why he shall not be removed from service.

3. The petitioner himself has annexed to his petition Order No. B-890/Trainee/T.C/R & R/Apptt. Dated 5th February, 1969 issued by the Senior Personnel Officer (T.R.) Eastern Railway, Calcutta. The Senior Personnel Officer, Eastern Railway, Calcutta informed the petitioner that he had been selected to undergo training at Sealdah as the Trainee Ticket Collector subject to his passing prescribed medical examination. After the petitioner completed his said training, the Divisional personnel Officer, Eastern Railway, Howrah by his office order dated 17th April, 1969 posted him against an available vacancy. For the reasons presently indicated, I accept the contention of the respondents that the petitioner's appointing authority was the Senior Personnel Officer (T.R.) Eastern Railway, Howrah and not the General Manager of the Eastern Railway, Howrah. The respondents produced the original Service Book of the petitioner which contained entries made in his own hand-writing. According to the said Service Book, the Senior Personnel Officer, Eastern Railway Board in pursuance of Rule 136(2) of the Indian Railway Establishment Code, Vol I had authorized the General Manager of the zonal Railways to make direct appointments to class-III posts against sports quota. I am unable to accept the contention of the learned Advocate on behalf of the petitioner that the said special power of the General Manager could not be delegated. The General Manager need not always himself exercise his said special power of appointment and he could authorize another officer to make appointments on his behalf from the sports quota. In the instant case, the Senior Personal Officer in fact appointed the petitioner as Trainee Ticket Collector and had thereafter confirmed him. The real question in this Rule is whether the Divisional Railway Manager, Eastern Railway, Howrah could exercise the powers of the Disciplinary Authority and remove the petitioner in accordance with Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968. The respondents have disclosed a circular dated 4th April, 1970 issued by the General Manager, Eastern Railway. The General Manager Eastern Railway by the same decided that the powers under Rules 14(ii) of the Revised

Disciplinary action Rules, 1968 could also be exercise by the Heads of the department and divisional Superintendence only (vide Annesure R 5 to the A.O). The divisional superintendents have been now re-designated as divisional Railway Manager.

5. The expression "Disciplinary Authority", according to Rule 2(c) of the Railway servants (Disciplinarian appeal) Rules, 1968, inter alias, means

(i) in relation to the imposition of a penalty on a Railway Servants, the authority competent under this Rules to imposed on in that penalty.

(ii) * * *

(iii) * * *

(iv) * * *

Part-III of the Railway Servants (Discipline and Appeal) Rules, 1968 inter alias mention the penalties and the disciplinary authorities who may impose the same. Rule 7(2) of the said Railway Servants (Discipline and Appeal) Rules, 1968 provides that any of the penalties specified in Rule 6 may be imposed on a Railway servant by the authorities specified in Schedules I, II, and III. According to Schedule III Appointing Authority or higher Authority may impose on non-gazetted staff punishment by way of compulsory retirement, removal from service and dismissal from service.

6. The Divisional Railway Manager, Eastern Railway, Howrah who removed the petitioner from service was a higher authority than the Senior Personal Officer who had appointed him. Therefore, the Divisional Railway Manager, Eastern Railway, Howrah who was a disciplinary authority of the petitioner under Rule 7(2) read with Schedule II of the Railway Servants (Discipline and Appeals) Rule, 1968 was competent to pass the impugned removal order in accordance with Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968. In relation to the imposition of the said penalty of removal on the petitioner the Divisional Railway Manager, Eastern Railway, Howrah was competent under the Rules to impose the same because, the Divisional Railway manager, was within the definition of the expression "Disciplinary Authority" in Rule 2(c)(i) of the Railway Servants (Discipline and Appeal) Rules, 1968.

7. The decision of the Andhra Pradesh High Court in the case of D. Daniel & Ors. v. Scientific Adviser to the Ministry of Defense & ors. 1980(2) SLR 477, is clearly distinguishable. The question raised in the said reported case was whether the Director of Defence Electronics Research laboratory, Hyderabad was competent to initiate disciplinary proceedings under Rule 13 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. In B. Daniel's case (supra), the respondents did not claim that the Director of the Electronics Research Laboratory had initiated the disciplinary proceedings was an authority specified in the Schedule

to the Central Civil Services (Classification, Control and Appeal) Rules, 1965 or that he was an authority specifically or generally empowered by the President. The only claim put forward was that the Director came within the category of appointing authority under Rule 9(1) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965. At this stage, I may indicate that in the instant case as I have already found under that the Divisional Railway manger, Eastern Railway, Howrah is the disciplinary authority according to Rule 7(2) read with Schedule II of the Railway Servants (Discipline and Appeal) Rules 1968, The Railway Servants (Discipline and Appeal) Rules 1968, The Railway Servants (Discipline and Appeal) Rules, 1963 do not also contain any provision corresponding to Rule 9(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Rule 134 of the Railway establishment Code specifies the authorities competent to make first appointments to non-gazetted posts shown against each authority. The Andhra Pradesh High Court in B. Danie.'s case (supra), had also rejected the arguments that the Director of the Defense Electronics Research Laboratory having been empowered by the Scientific Adviser to appoint the petitioner of the said case, the former was also competent to initiate the disciplinary proceedings against him. In this connection, the Division Bench of the Andhra Pradesh High Court had relied upon Rule 2(a) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and held that the Scientific Adviser being an authority higher than the Director was the Appointing Authority and he alone was competent to initiate the disciplinary proceedings. In the instant case, we are not required to apply the definition of the word "Appointing Authority" in the corresponding Rule 2(a) of the Railway Servants (Discipline and Appeal) Rules, 1968 because for the purpose of imposition of penalties under part III of the railway Servants (Discipline and Appeal) Rules, 1968, the authorities who may impose penalties mentioned in Rule 6 have been specified in Rule 7 read with schedules to the Railway Servants (Discipline and Appeal) Rules, 1968. I have already mentioned the serial circular issued by the General Manager by which he had delegated the disciplinary powers to Heads of Departments and Senior Scale Officer (vide Annexure X5 to the affidavit-in-opposition). Therefore, I conclude that the ration of the decision in B. Danie.'s case (supra) is inapplicable to the facts of the present case. The Divisional Railway Manager had been expressly authorized by the General Manager and the Divisional Railway manager also was a higher authority than the Senior Personnel Officer who had appointed the petitioner.

8. The Division Bench decision in the case of Union of India v. P. C. Chowdhury 80 CWN 946 is binding upon me. The Division Bench in the said case had explained the decision of the Supreme Court in the The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, , and held that the Supreme Court in T. R. Chellappan's case (supra), did not lay down a universal rule that in all cases delinquent employees have to be given a hearing According to the Division Bench, the decision in Union of India v. P.C. Chowdhury (supra) in cases coming

under clause (i) (ii) and (iii) of Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968 final order cannot be assailed only because no opportunity of bearing was given to the delinquent employee provided a proper consideration of all the attending circumstances and appreciation of the position in law and facts were made. Recently, Sabyasachi Mukharji J. in Jayanta Kumar Roy & Ors. v. Union of India & Ors. 1981 (2) Cal CN 358, has applied the Division Bench decision in Union of India v. P. C. Chowdhury (supra) and did not follow the contrary observations of Borooh, J. in the case of Sadhan Chandra Ghosh v. Union of India & Ors. 1981 (1) CCN 475. The attention of the learned Judge was apparently not drawn to the Division Bench decision in Union of India v. P. C. Chowdhury (supra) and therefore the decision in Sadhan Chandra Ghosh's case cannot be considered as good law. I respectfully follow the decision of the Division Bench and of Sabyasachi Mukharji, J mentioned above and reject the petitioner's contention that the impugned removal order was invalid because the disciplinary authority did not give any opportunity of hearing to him before passing the impugned order of removal. In this connection, I respectfully point out that Sabyasachi Mukherji J. in Jayanta Kumar Roy's case (supra) rightly pointed out that the decision in T. R. Chellappan's case (supra) was rendered in the light of the provisions of Article 311(2) as the same stood before 42nd Amendment of the Constitution the first proviso to Article 311(2) enacts that it is no longer necessary to give any opportunity of making representation on the penalty proposed. Mr. Chakravorti the learned advocate for the respondents has pointed out that sub-rule (5) of Rule 10 of the Railway Servants (Discipline and Appeal) Rules has been also amended by, inter alias laying down "it shall not be necessary to give the railway servant any opportunity of making representation on the penalty proposed to be imposed.

9. The clause (3) inserted also by the 42nd Amendment of the Constituted inter alias provides "if ..question arises whether it is reasonably practicable to hold such enquiry as referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such persons or to reduce in rank shall be final". The Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968 gives effect to the sub-clause (a) (b) and (c) of the second proviso to Article 311(2) of the Constitution. Therefore, the opinion of the Divisional Railway Manger, eastern Railway, Howrah who was empowered to remove the petitioner that it was not reasonably practicable to hold any enquiry cannot be challenged except on the ground that no opinion was at all formed or that the same was formed on illusory or non-existent grounds or that the authority had acted male fide and for extraneous grounds.

10. At this stage, I may refer to the Division Bench decision in Chief Mechanical Engineer, Eastern Railway & anr. v. Jyoti Prasad Banerjee & Ors. 1975 (1) CLJ 537. The Division Bench held that reasons which satisfied the disciplinary authority about the impracticability of holding an enquiry must be stated in writing but the reasons need not be recorded in the order itself. It is sufficient if the reasons are recorded

elsewhere in the relevant departmental files before the orders are made. It is however, incumbent on the disciplinary authority to furnish the pentlised employee with the reasons on demand. In this case, the reasons had been recorded in the departmental files before the orders were issued. In spite of declared finality of orders passed under Rule 14(ii) or under proviso (b) to Article 311(2) of the Constitution, the Court can review such order to ascertain if the recorded reasons for the satisfaction of the disciplinary authority that it was impracticable to hold an enquiry did in fact exist. The existence of the reasons cannot be a matter of subjective opinion though the satisfaction reached thereon is not amenable to review by the Court. The Court can also review such orders to ascertain if the satisfaction was reached on relevant considerations and in good faith and after due application of mind.

11. The decision of P. C. Borooah, J, (Abhirna Pada Banerjee v. Union of India & Ors 1981 (1) SLR 567). Is contrary to the Division Bench decision in the case of Chief Mechanical Engineer & ors. v. Jyoti Prosad Banerjee & ors. (Supra). Therefore, I regret that I am unable to apply the ration of Single Bench decision in Abhinna Pada Banerjee v. union of India (supra).

12. The respondents have annexed to their affidavit-in-opposition a letter of the Senior Deputy General Manager (Vigilance) dated 15th December 1981 addressed to the Divisional Railway Manager, Eastern Railway, Howrah about the alleged misbehavior and non-cooperation by the petitioner at the time of vigilance cheek in a three tier sleeper coach of 5 Up mail on the 11th December 1981. The Senior Deputy General Manager (Vigilance) had, inter alias stated that on 11th December, 1981 a team of vigilance Inspectors had entered at Burdwan the said three tier sleeper coach worked by the petitioner with a view to conduct a surprise check. The petitioner allegedly refused to allow such checking. The vigilance team had information that in the sleeper coach about 48 passengers to a marriage party were travelling, out of whom only 10 or 12 passengers had proper reservations and the rest were travelling either without reservation or without journey ticket etc. The Divisional Commercial superintendent by a Memo dated 18th December, 1981 had directed that explanation may be obtained from the petitioner regarding the said allegation of the Viginalence Department. The petitioner had submitted an explanation, inter alia, alleging that the petitioner was carrying passengers in a compartment unauthorisedly and he suggested that drastic action be taken against the petitioner. The Deputy Commercial Superintendent further suggested that the nature of the case was such in which it would not be reasonably practicable to hold normal disciplinary proceeding by issuing charge sheet and holding normal D. A. enquiry because the passengers of the coach who were considered as independent witnesses would not come forward to give evidence against the petitioner, who was helping them to travel in the coach irregularly. The Deputy Commercial Superintendent, therefore, suggested that the petitioner be removed from service under Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 for

carrying passengers unauthorisedly and not allowing the vigilance team to conduct their check. Thereupon, on 25th February, 1982 the Divisional Railway Manager, Eastern Railway, Howrah recorded the following order. He stated that he had considered the said report submitted by the Deputy Commercial Superintendent, Howrah recorded the following order. He stated that he had considered the said report submitted by the Deputy Commercial Superintendent, Howrah and he was satisfied that the petitioner was willfully and wrongfully indulging in activities prejudicial to the interest of the Railway Administration. He having not allowed the surprise check by the vigilance team, it was proved that he was carrying unauthorised passengers in the said coach. He further stated that in view of the fact that the witnesses themselves were culprits, as they with the connivance of Sri Mishra. T. T. were travelling in the coach unauthorisedly, they would not come forward to give evidence before the Enquiry Committee. In the circumstances, the Divisional Railway manager recorded that he was satisfied that it was not reasonably practicable to hold normal D. A. enquiry against the petitioner. He decided that the petitioner should be removed from service under the power vested in him in Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 as his further retention in railway service will not be in public interest.

13. I hold that the aforesaid reasons fully satisfy the requirements of Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968. If the passengers who had been allowed to travel irregularly were not available, same would be a relevant matter for formation of the opinion about the practicability or otherwise of holding a regular D.A. enquiry against the petitioner. Mr. Chatterjee, appearing on behalf of the petitioner submitted that at least the Vigilance Staff of the Railways were available for examination as witnesses. But it was for the disciplinary authority to form his opinion whether it was practicable to hold the entire enquiry by way of recording the evidence of all the witnesses about the allegations of misconduct against the petitioner. If, according to the disciplinary authority, the unauthorised railway passengers needed to be examined to prove the charges against the petitioner, exercising my jurisdiction under Article 226, I cannot substitute my opinion and decide whether by examining only the Vigilance staff of the Railway the charges against the petitioner could have been established. The allegations of mala fide have not been pressed at the final hearing. I find that the reasons for formation of the opinion in terms of Rule 14(ii) were relevant and, therefore, the impugned order cannot be set aside.

14. For the foregoing reasons, this writ petition has no merit and it ought to fail. I accordingly discharge this Rule without any order as to costs.