

Vithal Mahadeo Kumbhar Vs Union of India and Others

Court: Bombay High Court

Date of Decision: March 8, 1965

Acts Referred: Railway Protection Force Rules, 1959 " Rule 40(4), 41, 44(11), 44(5), 44(9)

Citation: AIR 1967 Bom 332 : (1966) 68 BOMLR 560 : (1967) 1 LLJ 639

Hon'ble Judges: Tarkunde, J

Bench: Single Bench

Advocate: N.H. Gurushahani, for the Appellant; S.A. Desai, for the Respondent

Judgement

(1) The Petitioner, who was formerly a member of the Railway Protection Force, has filed this petition under Art, 226 of the Constitution to

challenge the validity of an order passed on 21st December 1961 dismissing him from the Force, and also of an earlier order dated 14th January

1961 by which he was suspended from service with retrospective effect.

(2) At the material time the petitioner was employed as a Rakshak in the Central Railways. During the night between the 19th and the 20th of

August 1959, there was a theft of some scrap materials valued at Rs. 415 and the petitioner was one of the persons arrested in connection with the

theft. he was placed under suspension by an order dated 20th August 1959. He was tried and convicted by a Presidency Magistrate of an offence

under S. 381 read with S. 114 of the Indian Penal Code. Following his conviction he was dismissed from service with effect from 16th August

1960 by an order dated 9th August 1960. Later, however, his conviction was set aside and he was acquitted in an appeal preferred by him in the

High Court Consequently the Security Officer passed an order on 13th January 1961 by which he cancelled the order of dismissal and directed

that the petitioner be treated as being under suspension from 16th August 1960, i.e. from the date of his dismissal under the cancelled order. He

was then served with the charge-sheet which contained the charge that, while he was on duty, he had failed to detect and to prevent the theft of

scrap materials which were lying in his charge. A departmental inquiry against him was conducted by the Assistant Security Officer. The latter

examined several witnesses and submitted his report to the Security Officer in the course of which he held that the charge against the petitioner

was duly established. The Security Officer called upon the petitioner to show cause why he should not be dismissed from service, and, after

receiving the petitioner's reply passed an order dismissing the petitioner from service on 21st December 1961. An appeal filed by the petitioner to

the chief Security Officer was dismissed and the order of dismissal was confirmed.

(3) Most of the grounds taken in the petition against the order of dismissal relate to the appreciation of the evidence which was recorded by the

Assistant Security Officer. The merit or otherwise of those grounds cannot be considered in this petition. Mr. Gurusahani, who appeared for the

petitioner, challenged the order of dismissal on two grounds on which its validity could be questioned.

(4) Mr. Gurusahani tried to point out, in the first place, that the charge-sheet, which was framed against the petitioner by the Security Officer, not

only contained the charge of negligence of duty as mentioned above, but it also called upon the petitioner to show cause why the penalty of

dismissal, or any of the other penalties enumerated in Rule 41 of the Railway Protection Force Rules, 1959, should not be imposed upon him.

According to Mr. Gurusahani, the inclusion of such a show cause notice in the charge sheet on which a departmental inquiry took place was

contrary to Article 311 of the Constitution and vitiated the subsequent order of dismissal passed against the petitioner. Mr. Gurusahani sought to

rely on the decision of a single Judge of the Madras High Court in S. Manickam Vs. Superintendent of Police and Others, . In the very short

judgment which was given in that case, the learned Judge referred to the portion in the charge-sheet which called upon the petitioner in that case to

show cause why he "should not be dismissed from the force or otherwise punished for the gross in disciplinary conduct." and went on to say:

At the stage of the charge, no question of punishment can arise. The fact that the proposed punishment is mentioned in the charge can only show

that even before the charges were enquired into and a finding arrived at on the basis of the enquiry, the petitioner had been prejudged. On this

short groundthe order of dismissal is quashed".

(5) Now, it has never been the case of the present petitioner that the aforesaid paragraph contained in the charge sheet framed against him showed

that he had been prejudged . of that the security Officer who had framed the charge sheet. and the Assistant Security Officer who had conducted

the departmental inquiry were prejudged against him. No objection to the said paragraph in the charge sheet was taken during the departmental

inquiry or in the reply to sent to him by the Security Officer after receiving the report of the inquiry from the dum of appeal which was sent to him

by the Security Officer after re-Assistant Security Officer, on in the memorandum of appeal which was submitted by the petitioner to the Chief

Security Officer against the order of his dismissal. In fact such an objection has not been taken even in the present petition. Whether the petitioner

was prejudged and whether the Assistant Security Officer or the Security Officer were prejudged against him are questions of fact, and, in my

view, they cannot be allowed to be agitated by the petitioner for the first time in the course of arguments. I accordingly disallowed the above

contention which was sought to be advanced by Mr. Gurusahani on the basis of the aforesaid Madras decision.

(6) Even if I had allowed Mr. Gurusahani to advance the above argument. I would not have found it possible to accept it. I cannot agree that an

order of dismissal passed against a Government servant is necessarily vitiated, if the charge-sheet which was sent to him prior to the departmental

inquiry contained a clause calling upon him to show cause why any one of the prescribed punishments should not be awarded to him. The aforesaid

Madras case is perhaps distinguishable on the ground that the relevant clause in the charge-sheet in that case had described the alleged conduct of

the delinquent as "'gross indisciplinary conduct'". If the learned Judge who decided that case intended to lay down as a general proposition that a

charge which incidentally called upon the delinquent to show cause why he should not be punished for the alleged delinquency was necessarily

violative of Art 311 of the Constitution, I must with great respect, differ from that view.

(7) It was next urged by Mr. Gurusahani that the departmental inquiry conducted against the petitioner, and the subsequent proceedings resulting in

his dismissal and the confirmation of his dismissal in appeal were vitiated by breaches of certain provision contained in the Railway Protection

Force Rules, 1959. Clause (5) of Rule 44 provides that the Inquiring Authority may permit a member against whom an inquiry is to be held to

present his case with the assistance of any other member approved by the Inquiring Authority. In the present case the petitioner had expressed his

desire that one Amarnath Sharma should be allowed to assist him in cross-examining witnesses. When the inquiry against the petitioner

commenced, Amarnath Sharma was not present and it is the grievance of the petitioner that he was not informed why Amarnath Sharma was

absent and was given no further time to appoint some other person as his defence counsel. An affidavit in reply to the petition has been filed by the

Assistant Security Officer who conducted the inquiry and he has stated in the affidavit that Amarnath Sharma had been informed of the petitioner's

request for assistance, that Amarnath Sharma replied a day prior to the date fixed for the inquiry that he was not interested in defending the

petitioner that the contents of this letter were explained to the petitioner at the commencement of the inquiry, and that the petitioner did not express

any desire to appoint any other defence counsel, nor asked for any adjournment of the case but that, on the contrary the petitioner was ready to

proceed with the inquiry and in fact cross-examined the witnesses who were examined by the Department. Some of these averments were denied

by the petitioner in his affidavit rejoinder. The statements of the Assistant Security Officer appear to be supported by the record, and, in any

cause. I cannot accept the above contention of the petitioner as it involves contested questions of fact.

(8) Mr. Gurusahani then referred to clauses (9) and (11) of Rule 44 of the Railway Protection Force Rules, 1959. These clauses require that the

Disciplinary Authority, if he is not the Inquiring Authority, shall consider the record of the inquiry, shall record its findings on each charge, and

communicate them to the delinquent. In the present case the Disciplinary Authority was the Security Officer, whereas the Inquiring Authority was

the Ass. Security Officer, I have, however, no reason to hold that Cls. (9) and (11) of R.44 were not complied with by the Security Officer. In the

letter dated 28th September 1961 (Ex.I to the petition). Which the Security Officer had sent to the petitioner, the Security Officer's finding on the

single charge which had been framed against the petitioner has been recorded and communicated to the petitioner.

(9) Mr. Gurusahani also referred to R.58 which requires the appellate authority (the Chief Security Officer in the present case) to consider whether

the procedure prescribed by the rules was complied with, whether the findings were justified, and whether the penalty imposed was excessive,

adequate or inadequate. I have no reason to suppose that the appellate authority in the present case did not comply with the requirements of this

rule. Mr. Gurusahani argued that the appellate authority ought to have given an oral hearing to the petitioner and should have given more exhaustive

reason than it has done in rejecting the petitioner's appeal. I do not think that it was incumbent on the Chief Security Officer, as the Appellate

authority in the present case, to either give an oral hearing to the petitioner or to give more detailed reasons than he has done in rejecting the

petitioner's appeal.

(10) Besides the order of dismissal the petitioner has also challenged the order passed by the Security Officer on 13th January 1961 that the

petitioner be regarded as being under suspension with effect from 16th August 1960. Mr. Gurusahani argued that when the petitioner was

dismissed on 16th August 1960 his previous suspension merged in the order of dismissal, and the Security Officer had no authority. When he made

his order dated 13th January 1961 setting aside the order of dismissal, to direct that the petitioner shall be treated as under suspension with

retrospective effect as from 16th August 1960. Mr. Gurusahani relied on the decision of the Supreme Court in Om Prakash Gupta Vs. The State

of Uttar Pradesh, where it was held that where a Government servant is suspended pending a inquiry and dismissed by way of penalty as a result

of the inquiry the order of suspension lapses, and a subsequent declaration by a Court that the order of dismissal was illegal does not revive the

order of suspension. Mr. Gurusahani argued that the suspension of the petitioner prior to 16th August 1960 having lapsed when the order of

dismissal was passed, the subsequent order setting aside the dismissal cannot revive the order of suspension . I agree that would have been the

result in the absence of any rule to the contrary, However, Clause 940 of Rule 40 of the Railway Protection Force Rules, 1959, specifically

provides that where a penalty of dismissal is rendered void in a subsequent decision of a Court of law, and where the disciplinary Authority, on a

consideration of the circumstances of the case, decides to hold a further inquiry against the member concerned, the member shall be deemed to

have been placed under suspension ""from the date of the original order of dismissal"" and shall continue to remain under suspension until further

orders. Thus, the impugned order of the Security Officer of 13th January 1961 was in effect a reproduction of the relevant portion of clause (4) of

Rule 40, and was not contrary to law.

(11) In the result, the petition fails and is dismissed with costs.

(12) Petition dismissed.