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Court : Guwahati

Decided On : Sep-12-1958

Judge : Sarjoo Prosad, C.J. and G. Mehrotra, J.

Acts : [Constitution of India](#) - Article 311(2); Railway Service (Safe guarding of National Security) Rules, 1949; Indian Railway Establishment Code - Rule 148

Appeal No. : Civil Rule No. 103 of 1958

Appellant : Raimohan Nath

Respondent : The General Manager, N.E.F. Rly. and anr.

Advocate for Def. : S.M. Lahiri, Adv. General and D.N. Medhi, Govt. Adv.

Advocate for Pet/Ap. : S.K. Ghose and R.C. Chaudhuri, Advs.

Disposition : Application rejected

Judgement :

Sarjoo Prosad, C.J.

1. The petitioner has applied for an appropriate writ for quashing an order, dated 4-7-58, passed by the Respondent, the General Manager, North East Frontier Railway, terminating his service (under Rule 148 of the Indian Railway Establishment Code, Vol. I); and also for a direction prohibiting the Respondents, the authorities concerned, from taking any action on the basis of the order in

question.

2. The relevant facts are these. The petitioner was appointed as an Electric Khalasi under the then Bengal Assam Railway on 15-12-43. In 1945, he alleges, he was promoted as an Armature Winder. After the nationalisation of the Bengal Assam Railway, the petitioner was confirmed as Armature Winder in April, 1952, and was continuing to serve the Railway Administration as such until the order terminating his services.

It appears that on certain accusations made against the petitioner for unlawful activities, he was arrested by the District authorities on 29-4-49 for trial under section 188 of the Indian Penal Code, but acquitted. Thereafter he appears to have been detained as a security prisoner under Section 3 of the Preventive Detention Act, 1950.

He was released from detention on 28-5-51 when an internment order was served on him under Sections 2 (1) and 2 (4) of the Assam Maintenance of Public Order Act, 1947, directing him not to proceed beyond the limits of the Gauhati Municipality. This order appears to have been revoked later after the expiry of two months on 19-7-51.

During the period of his detention as a security prisoner, the petitioner was also served with an order, dated 1-9-50, under the Railway Services (Safeguarding of National Security) Rules, 1949. The order stated that he was engaged in subversive activities and, as such, his services were liable to be terminated. He was accordingly asked to show cause within a specified period and his case was referred for consideration to a Committee of Advisers.

The petitioner says that he gave an undertaking to the said Committee agreeing not to associate with any subversive party or participate in any subversive activities. This was on 5-12-51. Thereafter no action appears to have been taken against the petitioner though he was kept under suspension.

On 3-7-58, the petitioner was eventually informed that it had been decided not to proceed with the action initiated against him under the Railway Services

(Safeguarding of National Security) Rules, 1949, and he was ordered to be restored to

duty with immediate effect. The order in question appears to be dated 26-6-58, though actually it was served on the petitioner on 3-7-58.

The petitioner then resumed his duties on 4-7-58 when on the same day he was served with a fresh order under the signature of the General Manager, North East Frontier Railway, terminating his services. It is this order which is in question before us. The facts stated above have not been controverted in the affidavit-in-opposition filed by Sri S. Ramamurthi, Chief Personnel Officer of the Railway Administration concerned, who claims to be conversant with the facts.

3. The learned counsel for the petitioner urges that the order, though purporting to be under Rule 148 of the Railway Establishment Code, is in reality and substance an order imposing a punishment on the petitioner; and it was, therefore, necessary that action should have been taken against him under Article 311 of the Constitution.

He contends that the previous events, to which reference has been made already, clearly indicate that the real intention of the authorities in terminating his service was to inflict a punishment on him for his alleged subversive activities in respect of which proceedings had been initiated against him earlier under the Railway Services Security Rules.

It is argued that when the authorities concerned were unable to proceed against the petitioner under the Security Rules and decided to give up the proceeding and asked the petitioner to resume his duties, the authorities were not justified in taking any action against him under Rule 148 of the Establishment Code by-passing the Constitutional provision.

The respondents resist the above contentions on the ground that the termination of the petitioners services was valid under the rules and in accordance with the terms of his employment. According to them, it did not impose any penalty and, therefore, neither Chapter 17 of the Indian Railway Establishment Code, Vol. I, nor

Article 311 of the Constitution was attracted to such a case.

It has not been disputed that proceedings had been actually taken against the petitioner earlier under the Railway Services Security Rules and that he did give an undertaking before the Advisory Committee not to take part in subversive activities; but it is said that the undertaking was not accepted. The matter continued to be pending for a long period and eventually it was decided to recall those proceedings.

In consequence the proceedings were withdrawn and the suspension order was revoked directing the petitioner to resume his duties; and then followed the order in question, dated 4-7-58, terminating his service. On these facts the question which arises for consideration is: whether the authorities were justified in acting under Rule 148 of the Indian Railway Establishment Code in terminating the services of the petitioner, and whether, in the circumstances, he was entitled to the benefit of Article 311 of the Constitution.

4. The argument of the learned counsel for the petitioner stands on the assumption that the alleged subversive activities of the petitioner for which there was the earlier proceeding under the Security Rules, which proved abortive, were the very foundation for the order terminating his service; and it was, therefore, manifest that Rule 148 of the Establishment Code had been resorted to only with a view to punish the petitioner without giving him a chance of showing cause, as required by Article 311 of the Constitution. Reliance in this connection has been placed upon the observations of the Supreme Court in 'Parshotam Lal Dhingra v. Union of India, AIR 1958 SC 36. The relevant passage on the context of which the argument is advanced, runs as follows:--

'In short, if the termination of service is founded on the right flowing from contract or the service rules, then prima facie the termination is not a punishment and carries with it no evil consequences, and so Article 311 is not attracted. But even if the Government has, by contract Or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless choose to punish the servant, and if the termination of service is

sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment, and the requirements of Article 311 must be complied with. As already stated, if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his service cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause.'

It is, therefore, argued that it should be held, in the background of the facts disclosed above, that the order of termination of service was in reality 'sought to be founded' on the alleged misconduct of the petitioner in connection with some subversive activities and was thus a measure of punishment which attracted the constitutional safeguard. The argument in our opinion proceeds upon a misconception of the principles laid down in the above decision of the Supreme Court.

It has been definitely observed in that case that where the termination of service is brought about by the exercise of a contractual right, it is not per se dismissal or removal within the meaning of Article 311 of the Constitution; nor does termination of service by compulsory retirement amount to any such infliction or punishment by itself unless it carries with it certain penal consequences of loss of pay or allowances.

Their Lordships further postulated that

'misconduct, negligence, inefficiency or

other disqualification may be the motive or the

inducing factor which influences the Government

to take action under the terms of the contract of

employment or the specific service rule, nevertheless, if a right exists, under the contract or

the rules, to terminate the service the motive

operating on the mind of the Government is, as

Chagla, C. J., has said in *Shrinivas Ganesh v.*

Union of India, (S) AIR 1956 Bom 455, wholly ir

relevant.'

Where, therefore, the right to terminate service is founded on the right flowing from some contract or service rules which, govern the conditions of service such termination, as held by their Lordships, is not a punishment and does not carry with it any evil consequences so as to attract the operation of Article 311 of the Constitution. Let us, therefore, see whether in the case before us the impugned order is 'sought to be founded' on any alleged ground of misconduct or imposes any penal consequences on the petitioner. The order is:

'As your services are no longer required by the Railway Administration, your services are, in accordance with Rule 148 of the Indian Railway Establishment Code, Vol. I, terminated with immediate effect. You will be paid one month's pay in lieu of notice of termination of your service due to you.'

On the face of it, there is nothing to indicate in the order that it was founded on any ground of misconduct. There is further nothing in the order to show that the authorities wanted to affect the rights and privileges which had already accrued to the petitioner by virtue of the services previously rendered by him, or imposed any other penalty.

Rule 148 of the Establishment Code permits

the action taken by authorities. By virtue of Rule 148, the service of permanent non-Gazetted employees of the Railway was liable to termination on

one month's notice on either side, and in lieu of

the prescribed notice, it was also permissible on

the part of the Railway Administration to terminate

the service by paying the employee concerned the pay for the said period.

The previous history of the case is hardly material for the purpose of determining the nature of the action, which was actually taken against the petitioner. It is true that previously proceedings had been started against him under the Security Rules; but whatever the reasons may be, the authorities concerned did not want to proceed against him under those Rules.

They had the option to terminate his service under Rule 148 of the Establishment Code; and, in fact, they preferred to exercise that option against the petitioner. It may be that the allegation of subversive activities on the part of the petitioner may have been the impelling factor or the motive for taking this step against him, but the actual order which has been made in this case has been made on the authority of the Service Rules, and not as a measure of punishment against the petitioner.

The authorities have taken their stand on the rules governing the conditions of the petitioner's service. Those rules embody the normal incidents of the service to which the petitioner belonged. It is, therefore, not open to us to delve into the motive for the action, when the step taken is justified under the relevant rules. It has been

contended for the petitioner that the fact that his service has been terminated by itself amounts to punishment, because thereby he has been deprived of his right to continue in employment.

This argument does not carry conviction for the obvious reason that in every case of termination of service on the authority of the Rule in question, the deprivation of the right to continue in employment in future would follow as a matter of course.

5. Indeed, the present case appears to be clearly governed by the principles underlying the decision of the Supreme Court in *Gopal Krishna Potnay v. Union of India*, AIR 1954 SC 632. There, an order was served on a Railway employee in

similar terms under paragraph 1708 of the Discipline and Appeal Rules. The order runs thus :

'You are hereby informed that in accordance with the order passed by C. A. O. R., Delhi, in exercise of his special powers vested in him under Para. 1708 RI, you are given one month's pay in lieu of notice of discharge from service with effect from 4-7-1949 A. N.'

Rule 1708 specifically refers to removal from service on grounds of inefficiency, commission of any offence or repetition of minor offences or abstention from duty or incivility to the public, etc.

The order of discharge, therefore, necessarily involved some such disqualification as enumerated in the rule; in spite of this, it was held that where a railway employee is discharged from service after giving one month's notice according to the terms of

his agreement of service, he could not be heard to complain that no charge-sheet had been formulated against him and proceedings had not been taken thereunder, as required by Section 240 of the Government of India Act of 1935, which was a provision analogous to Article 311 of the present Constitution.

Another instance in point is the decision of the Supreme Court in *Shyam Lal v. State of Uttar Pradesh*, AIR 1954 SC 369, where there were serious allegations of corruption and misconduct against the officer concerned, which led to an enquiry by the Union Public Service Commission. The Commission found that five out of the six charges were proved against the officer and submitted its report accordingly.

The President of India, however, decided that the officer should be retired forthwith from service under Note 1 to Article 465A of the Civil Service Regulations. The officer challenged the order of compulsory retirement as being in the nature of a punishment; but the Supreme Court rejected the contention. The Court observed that there can be no doubt that removal from service or dismissal generally implies that the officer is regarded as in some manner blameworthy or deficient, that is to

say, that he has been guilty of some misconduct or is lacking in ability or capacity or the will to discharge his duties as he should do.

Where, therefore, an action of removal against him is founded on these grounds, which are personal to himself, an enquiry under Article 311 of the Constitution may be necessary; but there is no such element of charge or imputation in the case of compulsory retirement. Their Lordships further observed that it is true that the power of compulsory retirement may be used when the authority exercising the power cannot substantiate the misconduct which may be the real cause for taking the action, but the important thing to note was that the directions in Note 1 to Article 465A made it abundantly clear that no imputation or charge was in terms made a condition for the exercise of that power.

Their Lordships also recognised the further

fact that there was no doubt some imputation against the officer which he was called upon to ex

plain; but the enquiry was just to help the Government to make up its mind as to whether it was in

the public interest to dispense with his service.

It follows, therefore, that the significant point to

note is not why the action was taken against the

petitioner, which may relate to the underlying

motive or the inducing factor for taking the action

but what was the step actually taken and whether the step in question amounted to punishment

within the meaning of Article 311 of the Constitution.

The words 'dismissal, removal or reduction in rank', as used in Article 311 of the Constitution as is well known, have acquired a technical meaning, and it is only

when an action is taken in the sense of imposing a penalty within the meaning of that Article that a person is entitled to the protection thereof. Mr. Lahiri the learned Advocate General for the respondents has also referred to the latest decision of the Supreme Court on the point reported in *P. Balakotiah v. Union of India*, AIR 1958 SC 232.

In that case, the services of the employee were terminated under Rule 3 of the Security Rules. The Supreme Court in that case reiterated the principles laid down in *Parshotam Lal Dhingra's case* (AIR 1958 SC 36) namely, where the terms of employment provide for the service being terminated on a proper notice, no question of premature termination of service arises.

It was further pointed out that Rule 7 of the Security Rules preserves the rights of the employees to all the benefits of pension, gratuities and the like, to which they were entitled under the rules. There was, therefore, no forfeiture of benefits already acquired and, as such, there was no punishment imposed within the meaning of Article 311.

It was also contended there that a person who was discharged under the rules was not eligible for re-employment which, in fact, amounted to punishment. Their Lordships did not accept the contention and held that the order terminating the services under Rule 3 of the Security Rules stood on the same footing as an order of discharge under Rule 143 of the Establishment Code, and it was neither one of dismissal nor of removal within the meaning of Article 311 of the Constitution.

6. It is not necessary for me to discuss some of the other cases cited at the Bar. I am inclined to agree with the contention of the learned Advocate General that the last decision of the Supreme Court is the final pronouncement on the clarification of the law on the subject as to the import and application of Article 311 of the Constitution; and that in cases where the right to terminate the services of an employee is founded upon the terms or a contract of employment or upon the rules governing the conditions of service, Article 311 is not attracted, unless on the face of the order itself, the further intention was that the officer concerned should be deprived of certain rights or privileges, to which he was already entitled by virtue of his employment

I would not embark upon an enunciation of the principles which are deducible from the various decisions of the Supreme Court on the point. Speaking for myself, I have felt considerable difficulty in giving practical effect to the distinction between the foundation of an order terminating service and 'motive' or 'inducing factor' behind the order. The cases which I have discussed, however, throw a good deal of light on the subject and, if properly analysed, furnish an adequate guide.

As I have shown earlier, the order is on the face of it an order passed under Rule 148 of the Establishment Code under which the authorities were entitled to terminate the services of the employee on the conditions laid down in that rule, and further, there is nothing in the order to show that any such punishment was sought to be imposed as would attract the operation of Article 311 of the Constitution. The application is accordingly rejected and the Rule is discharged.

G. Mehrotra, J.

7. I am in agreement with the order proposed by my Lord the Chief Justice, but I would like to give my own reasons for the order. It is not disputed that a series of the Supreme Court decisions have now finally laid down that in every case of termination of service, Article 311 of the Constitution will not be attracted. The question, therefore, to be considered in each case will be whether the order of termination of service has been passed by way of punishment or in the exercise of the contractual right or under any of the rules governing the conditions of service.

In the present case, up to a certain stage the proceedings against the petitioner were taken on account of his subversive activities, but the Railway authorities ultimately dropped those proceedings and terminated the service of the petitioner after giving him a month's notice. Mr. Ghose has rightly contended that the real question to be decided in the case is : if in fact and in reality the

Railway Administration intended to pass an order terminating the petitioner's service as a punishment, or under Rule 148 of the Railway Establishment Code. He further contends that, in order to determine whether the Railway authorities in the present case acted in the exercise of their powers under Rule 148, or they really imposed a punishment on the petitioner, apart from the terms of the notice

the surrounding circumstances must also be considered. In my opinion, no objection can be taken to this broad proposition; but the question still remains : whether there is anything in the surrounding circumstances of the present case to indicate that the power has not been exercised under Rule 148 of the Establishment Code.

The main contention raised by Mr. Ghose is that up to a certain stage the Railway authorities took proceedings against the petitioner though they ultimately dropped the proceedings in June 1958 and then issued a notice in July, 1958 terminating his service. In fact, his grievance is that in the notice which was issued terminating the petitioner's service, originally the month shown was June, and that has been cut out and substituted by the words 4th July.

His contention, therefore, is that this circumstance points to the conclusion that in substance and in reality the Railway authorities intended to punish the petitioner and did not intend to exercise their powers under Rule 148 of the Railway Establishment Code. I do not think that the circumstances pointed out by Mr. Ghose are enough to lead to the conclusion that the Railway did not exercise its powers under Rule 148 of the Establishment Code.

In fact, the Railway informed the petitioner that the proceedings against him had been dropped and he should join his duties; and thereafter it issued a notice under Rule 148 of the Establishment Code. The intention of the Railway authorities is, therefore, clear from the attitude adopted by them that they expressly dropped the proceedings and acted under Rule 148 of the Code. Therefore, there is nothing in the circumstances pointed out by Mr. Ghose to show that in reality and in substance the Railway authorities did not act under Rule 148 of the Establishment Code. In this view of the matter also, the petitioner is not entitled to the relief claimed.

Sarjoo Prosad, C.J. and G. Mehrotra, J.

8. The learned counsel for the petitioner prays for leave to appeal to the Supreme Court, which is, however, refused.