

Malla Reddy (E.) Vs. Southern Railway (by the Divisional Operating Superintendent)

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Court : Andhra Pradesh

Decided On : Jul-12-1962

Reported in : (1962)IILLJ586AP

Judge : P. Chandra Reddi, C.J. and ;Gopal Rao Ekbote, J.

Appellant : Malla Reddy (E.)

Respondent : Southern Railway (by the Divisional Operating Superintendent)

Judgement :

ORDER

P. Chandra Reddi, C.J.

1. The petitioner seeks the issuance of a writ of certiorari to quash the dismissal of the petitioner made on 8 February 1961.
2. The petitioner was an assistant goods clerk at Tenali railway station in the year 1960. While there, the following two charges were framed against him on 8 April 1960:

While you were working as senior assistant goods clerk, from 1 July 1959 onwards at Tenali railway station, you failed to maintain absolute integrity and devotion to duty inasmuch as you demanded and accepted an illegal gratification of Rs. 35 on

11 November 1969, from Sri T. Hanuman Das of Tenali for the twenty wagons unloaded and thereby contravened Rule 3 of the Railway (Servants) Conduct Rules, 1956.

During the above period, while you were working as senior assistant goods clerk at Tenali railway station, you committed misconduct and failed to maintain absolute integrity and devotion to duty as much as bona habitually demanded and obtained illegal gratification ranging from Rs. 2-4-0 to Rs. 16 for wagons unloaded and loaded through hundekars by name Sarvasri Shaik Masthan, Shaik Subhan Sahib, Narnath, Hanuman Das and T. Pulla Rao, and thereby contravened Rule 3 of the Railway (Servants) Conduct Rules, 1956.

He was asked to submit an explanation within seven days from the receipt of the notice. These charges were served on him on 12 April 1960.

3. An explanation was submitted by the petitioner on 12 May 1960 (more than a month of the receipt of the notice). The Divisional Commercial Superintendent, who framed the charges and who considered the explanation of the petitioner, put up the papers to the Divisional Operating Superintendent, an authority competent to dismiss the petitioner, for directing an enquiry. The latter officer, after satisfying himself that it was a case for departmental enquiry, directed that enquiry should be held by the Assistant Commercial Superintendent. This officer, after an elaborate enquiry lasting from 16 September 1960 to 5 November 1960, found the petitioner to be guilty of the first charge and forwarded his report to the Divisional Operating Superintendent for necessary action. The competent authority, on a consideration of the report, accepted the findings of the enquiring officer and issued a notice to the petitioner to show cause why he should not be dismissed.

4. That notice shows that the authority carefully considered the explanation submitted by the petitioner, his defence and the findings of the enquiring officer, and reached the conclusion that the first charge referred to above was proved. It was recited in the notice that it was tentatively decided by him that the delinquent should be dismissed from service. To this notice was annexed a copy of the proceedings of the enquiring officer, including statements, discussion of evidence, his report, reasons for the findings and the findings, and the petitioner was also

given an opportunity to make his representations, if any, in that connexion which would be taken into consideration before passing final orders.

5. On receipt of this, the petitioner wanted permission to look into certain documents. This permission was granted, and on 26 January he submitted a long explanation attacking the findings of the enquiring officer. This explanation was considered by the competent authority and found to be unacceptable. Consequently he passed the impugned order. The petitioner, instead of availing himself of the remedy of an appeal provided by the relevant rules, invoked the jurisdiction of this Court under Article 226 of the Constitution.

6. In support of this petition, various contentions have been raised:

(1) that the Divisional commercial Superintendent, who had put in less than ten years of service, was not competent to hold the enquiry;

(2) that under D. Circular No. 1470 when he thought that an enquiry should be conducted, he should have put up the papers to a higher authority, viz., the Divisional Operating Superintendent;

(3) that his request for permission to take extracts for certain records was unreasonably rejected;

(4) that the person who refused to produce certain of the records was not a competent authority;

(5) that he was not allowed to cross-examine the accused;

(6) that he was not given permission to examine three witnesses;

(7) that the enquiring officer should have compelled one of the mediators to answer every one of the questions put to him and should not have allowed that witness to evade the answers on the ground that they were unnecessary, irrelevant and 'annoying,' and lastly,

(8) that the show-cause notice against the proposed punishment did not disclose reasons for the competent authority reaching the conclusions that the petitioner

was guilty of the charge levelled against him.

We shall now deal with these points seriatim.

Point 1.--It is true that the Divisional Commercial Superintendent had not put in ten years of service so as to enable him to hold the enquiry as required by D. No. 1399, but that is of no avail to the petitioner as the person who ultimately directed the enquiry was the Divisional Operating Superintendent who had put in more than ten years of service and who, it is disputed, was competent to impose the punishment of dismissal. This contention has therefore to be rejected.

Point 2.--This point is equally untenable. This is based upon D. No. 1470 which inter alia states:

When an employee is chargesheeted for dismissal, removal or reduction, the explanation of the employee is in the first instance put up to the officer who issues the chargesheet. If that officer after perusing the explanation considers that the penalty as indicated in the chargesheet is warranted he should put up the papers to the officer competent to impose the penalty indicated in the chargesheet. If that higher authority considers the penalty indicated is not justified, it may remit the papers back to the lower authority for infliction of such lesser penalty as is within the powers of the lower authority.

7. What has given rise to this argument is the expression 'higher authority,' On the basis of these words it is contended by Sri Narayana Rao that since the Divisional Operating Superintendent cannot be regarded as a higher authority vis-a-vis the Divisional Commercial Superintendent, this circular has been violated. This argument overlooks the fact that this circular requires the officer who issues the chargesheet, to put up the papers to the officer competent to impose the penalty. It cannot be ignored that the stress is on 'the competent authority.' Indisputably the Divisional Operating Superintendent is a competent authority. The expression 'higher authority' is to be understood in the light of the previous sentences. Normally the chargesheet is leaned by a person holding a subordinate position to the competent authority. So, the words 'higher Authority' are loosely used. That apart, these are only departmental instructions and even if there is any violation,

that would not furnish a ground for quashing an order of dismissal.

8. Coming now to the next point, we think that there is no substance in it either. The petitioner appears to have asked for the production of the delivery books, unloading books, Sunday stock books, 'D' message books, 'D' registers, open delivery books, station inspection register, muster particulars of the goods shed, complaint books, audit inspection books, tranship memos and error sheet flies, for the period from 1 July 1957 to August 1960. As the enquiring officer thought that these documents were irrelevant and did not throw any light on the charge against the petitioner, that he received an illegal gratification of Rs. 35, on 11 November 1959, he refused to comply with the request but he produced such books as had any relevancy in the matter and permitted the petitioner to take extracts there from. That being so, this complaint has no substance.

9. The fourth point is also devoid of substance, because the officer who sent the reply is the one who was addressed by the petitioner himself for that purpose. It does not lie in the mouth of the petitioner to say that the reply should not have been sent by the Divisional Commercial Superintendent having asked that very officer to produce certain records. This contention also therefore falls and has to be rejected.

10. Dealing with point 5, we have to observe that the enquiring officer cannot be said to have acted illegally in not permitting the petitioner to cross-examine the co-accused. We do not think it is permissible for him to cross-examine the co-accused. That apart, we are told that the purpose of the cross-examination of the co-accused was to establish that the co-accused had taken a Bum of Rs. 500 by way of illegal gratification on some other occasion. We do not see what relevancy it has to the charge against the petitioner.

11. Coming to the contention based upon the refusal of permission to the petitioner to examine three witnesses, it has only to be mentioned that these three witnesses were persons who are supposed to have given a bribe of Rs. 500 to the co-accused. If so, their evidence has absolutely no bearing on the first charge of which the petitioner was found guilty. They do not purport to speak to anything that has a relevancy in the context of the charge that is held to have been proved

against the petitioner. We cannot, therefore, give effect to this argument either.

12. We do not see how the enquiring officer could compel a witness to answer 'unnecessary, irrelevant and annoying' questions. Further that witness only attested the medi-atordnama prepared before the trap was actually laid, and he merely testified to his presence when the currency notes were given to Hanuman Das. Even assuming that the enquiring officer was not correct in not insisting upon the witness to answer each and every question put by the petitioner, that would not furnish a ground to vacate the order of dismissal in the exercise of this Court's jurisdiction under Article 226 of the Constitution.

13. The only question that survives is whether the competent authority is required to give independent reasons for the proposed punishment in the show-cause notice and whether the absence of it would amount to a denial of a reasonable opportunity to the petitioner. We have already said that that notice reveals that the competent authority had accepted the findings of the enquiring officer and had also sent not only the report of the enquiring officer but the whole of the proceedings before him. The point for consideration is whether he has to further discuss the evidence, and give his own reasons in support of the findings.

14. To substantiate the proposition that such an obligation is cast upon the competent authority, Sri D.P. Narayana Rao cites to us *Jogarao v. State of Madras* 1956 An. W.R. 978, *Sreedharaiah v. District Superintendent of Police, Anantapur* 1960 II L.L.J. 166 and *Bimal Kumar v. State of Assam* A.I.R. 1962 Assam 88.

15. The first case does not really render any assistance to the petitioner. The learned Counsel thought that a sentence in the head-note, that 'the authority should necessarily in its order requiring the civil servant to show cause should give not only the punishment proposed to be inflicted on him but also the reasons for coming to that conclusion,' justifies the view he sought to press upon us. Far from giving any help to him, it furnishes an answer to the argument raised by him.

16. At p. 983 of the report says the learned Chief Justice:

That fact that the Government agreed with the findings could only be tentative, for, after the appellant showed cause and if the Government were satisfied with the explanation, they could certainly differ from the tribunal's finding. The notice therefore gave not only the proposed punishment but also the reasons for the proposed punishment viz., the acceptance of the findings of the tribunal. These notices would be necessary only for questioning the findings. Indeed, the appellant understood the notice in the sense indicated by us and submitted a written explanation challenging the validity of the tribunal's finding and also on the quantum of punishment proposed to be inflicted by the Government. The Government thereafter by their order, dated 26 June 1953, considered the representations made by him and saw no reason to revise their provisional conclusion communicated to him earlier. We therefore hold that the notice issued is in accordance with the terms of Article 311 of the Constitution of India.

17. It is manifest that this ruling lays down that independent reasons need not be given by the competent authority if he was agreeing with the findings of the enquiring officer. In such a case the learned Judge had equated the giving of reasons for the proposed punishment, to the acceptance of the findings of the tribunal. Further, as pointed out there, the only purpose of giving reasons in support of the findings is to enable the delinquent officer to attack those findings and if the accused officer understood the reasons adduced in support of the findings, and challenged the correctness and validity of the findings, it could not be said that he was in anyway prejudiced by the absence of reasons by the competent authority. In our opinion it would be an empty formality for the competent authority to repeat the reasons given by the enquiring officer. It is not necessary for him to discuss the evidence afresh and to indicate his own reasons.

18. *Sreedharaiah v. District Superintendent of Police, Anantapur* 1960 II L.L.J. 156, far from helping the petitioner, does him some disservice in that it contains a definite statement of law that there is no need for the competent authority to discuss the evidence or to give reasons in a case where the competent authority is merely confirming the minute of the enquiring officer and it is only when that authority comes to a conclusion different from the one reached by the enquiring officer, it is incumbent upon him to consider the validity of the reasons given by the

enquiring officer and state the grounds which impelled him to come to a different conclusion. It is seen that even this Division Bench is of the opinion that in cases where the competent authority accepts the findings of the enquiring officer, it is unnecessary for him to deal with the matter once again and indicate the reasons for the findings.

19. The only other case that has to be considered is *Bimal Kumar v. State of Assam* A.I.R. 1962 Assam 88 (vide supra). It appears from the report that in that case in the notice issued by the Government it was not indicated as to which of the findings arrived at by the enquiring officer were accepted by the Government and which were rejected. It is also seen that the punishment awarded to the petitioner by the final order was not the one against which the notice to show cause was issued to him.

20. It is in those circumstances that Chief Justice Melhotra observed:

From the fact that the copy of the report of the enquiring officer was supplied along with the notice it is sought to be inferred that the punishing authority had applied its mind to the report of the enquiring officer and has come to its own independent conclusion that the charges were established.

This Inference, in our opinion, cannot be drawn from the mere fact of sending a copy of the report.

21. But the situation here is not similar. In this case the enquiring officer found the delinquent guilty only of the first charge, and the competent authority said that that finding was accepted. This is not a case of merely sending a copy of the report to the delinquent. Therefore, the observations made by the learned Chief Justice in that case could have no application here. We do not think that it was intended to lay down as a broad proposition of law that in every case the competent authority, apart from accepting the findings of the enquiring officer and sending the enquiring officer's report and all the relevant records, has also to deal with the matter afresh and indicate fresh reasons and reach his own conclusions. If for any reason it is to be so interpreted, we have to express our respectful dissent from such a proposition.

22. For these reasons, we negative this contention also.

23. It follows that there are no merits in this writ petition and it has to be dismissed.
No costs.

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