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Court : Rajasthan

Decided On : Nov-25-1952

Reported in : AIR1953Raj199

Judge : Sharma and; Dave, JJ.

Acts : [Constitution of India](#) - Article 226; Railways Establishment Code - Rules 1702, 1702(8), 1717, 1725 and 1727

Appeal No. : C. Writ Petn. No. 24 of 1952

Appellant : Sukhai

Respondent : Union of India (Uoi), General Manager, Western Railway, Bombay and anr.

Advocate for Def. : Beri, Adv.

Advocate for Pet/Ap. : Party in person

Disposition : Petition dismissed

Judgement :

Sharma, J.

1. This is an application by Sukbai, ex washout coolie, Loco-shed, Kotah for the issue of writ of Mandamus or any other proper writ or directive which might be considered feasible to the Union of India, General Manager Western Railway, Bombay Churchgate and Mr. I. T. Carter, District Mechanical Engineer, Western Railway, Gangapur city to set aside the order of his removal from service, issued by the General Manager, Western Railway under his Order No. F/2, dated 30-8-1951. The facts giving rise to this petition briefly stated are as under.

2. The petitioner was appointed in Loco Department of B. B. & C. I., Railway (now Western Rail-way) in the year 1923. On 1-1-1942, on change of the B. B. & C. I. Company managed into a State-managed Railway, the petitioner by virtue of option, given to him by the District Loco and Carriage Superintendent, Gangapur in the name of the General Manager of the said Railway, became a member of the State managed Railway -- Subordinate staff (Non-Gazetted) Service. While employed at Kotah Loco-shed, he occupied a railway quarter No. L/309/G. He was asked to vacate that quarter by the Fitter Incharge Kotah on 1-4-1951 who served him with a notice, stating therein that he would be fined if he did not vacate the quarter and he was asked to reply to this notice within three days. The petitioner replied to this notice on 4-3-1951 saying that he found the quarter lying vacant and so he occupied it.

On 16-4-1951, the District Mechanical Engineer made an order on the basis of notice of the Fitter in charge and the petitioner's reply that if the petitioner did not vacate the quarter by 25-4-1951, he would be charge-sheeted. He was also given fifteen days' leave on 22-4-1951 in order to find out an alternative accommodation. Upto 9-5-1951, how-ever, the petitioner did not vacate the quarter and the Fitter in charge, Kotah informed the District Mechanical Engineer that the quarter was not vacated. On this letter an order was made by the District Mechanical Engineer that the petitioner should be served with a charge-sheet in accordance with Appendix 'B' for insubordination. That charge-sheet was drawn up on the 17/18th May, 1951 and it was received by the petitioner on 19-5-1951. The petitioner replied to this charge-sheet saying that it was under the verbal orders of the District Mechanical Engineer that he occupied the quarter. He did not say anything as to whether he intended to vacate the quarter or not.

On 21-6-1951, the District Mechanical Engineer sent a letter to the Fitter in charge, Kotah, asking him if the petitioner had vacated the quarter or not. In another letter dated 4-7-1951, the District Mechanical Engineer informed the Fitter in charge that it was wrong to say that he had given any verbal permission to the petitioner to 'occupy the quarter. On 8-7-1951, the petitioner made an application that he might be permitted to continue for sometime more. He was given time to vacate the quarter upto 10-7-1951. He, however, did not vacate the quarter on the said date. On 19-7-1951, therefore, provisional decision was reached that the petitioner be removed from service and this order was served on the petitioner on 4-8-1951. The petitioner replied to this provisional decision on 9-8-1951 and said that he declined to accept the decision. On 30-8-1951, therefore, order was passed that with effect from 11-10-1951, the petitioner be removed from service. After giving notices under Section 80, Civil P. C., dated the 24th September and 16th October, 1951, the petitioner presented the present petition for writ and direction as mentioned above.

3. The petitioner attacks the order of his removal from service on the following two grounds:

1. That he was not removed from service by the authority which appointed him.
2. That no reasonable opportunity was given to him to reply to the charges and to defend himself as required by law.
4. As regards the first objection, it was argued that the petitioner was appointed by the General Manager of the then B. B. & C. I. R. and therefore, he could not be removed from service by a subordinate authority i.e., the District Mechanical Engineer.
5. As regards the second objection it was argued that the petitioner ought to have been given two opportunities one after the charge-sheet and the other after the provisional order that was served upon him.
6. The petition is opposed on behalf of the opposite party on several grounds, but it would be enough to deal with ground No. vii(a) in para 9 of the reply of the

opposite party only as in our opinion the petition fails on that ground. Therein the opposite party says that the petitioner had not exhausted his other remedies by way of appeal or memorial against the order of removal and he was therefore, not entitled to the reliefs prayed for by him.

7. It was argued by the learned counsel for the opposite party that the order by the District Mechanical Engineer was made under Rule 1702 of the Indian Railways Establishment Code Vol. I and against such an order an appeal lay to the next higher authority under Rule 1717. Besides, it was argued that there could be a revision to the Railway Board or the General Manager also under Rule 1725. There was a further remedy according to the learned counsel for the opposite party provided by Rule 1727 of the said Code. It was also argued that in any case a suit could be filed in the civil Court for a declaration that the petitioner's removal was illegal and that he still continued to be a servant of the railway.

8. We have considered the arguments of both the learned counsel in this respect. It has been held by various High Courts including this Court that the remedy under Article 226 of the Constitution is an extraordinary remedy and it should not be normally resorted to specially in cases where adequate alternative remedy lies.

9. In the case of -- 'D. Parraju v. General Manager, B. N. Rly.', AIR 1952 Cal 610 (A), it was held that

'In spite of the wide words of Article 226, one must remember that the object of Article 32 or Article 226 was not to supplant the ordinary right of action or the remedy provided for by the ordinary law of the land. If a suitor can get an adequate and convenient and beneficial remedy by the normal process of a suit or by the remedy provided for by a Statute, the High Court will not, ordinarily exercise its powers under Article 226.'

10. In that case too, the petitioner was removed from the railway service and applied for a writ in the nature of mandamus or in the nature of Prohibition, but it was held that because alternative remedy lay by way of suit, it was not proper to give him relief under Article 226.

11. A similar view was taken by Madras High Court in the case of 'Dr. M. Krishnamoorthy v. State of Madras', AIR 1951 Mad 882 (B). In that case also the petitioner was a Government Servant who was removed from service. This High Court itself in the case of -- 'Gokalchand v. Govt. of Rajasthan', AIR 1952 Raj 112 (C) held that 'The remedy provided by Article 226 of the Constitution is not intended to be an alternative remedy to the normal process of a decision in an action brought in the Courts of law. The powers under this Article should be used only in those clear cases where no other specific and adequate remedy is available.'

12. In that case also, the regular civil suit was considered to be an adequate alternative remedy.

13. In the present case, we need not go so far as to say that the petitioner is disentitled to obtain any relief under Article 226 of the Constitution because he could file a regular civil suit. The Indian Railways Establishment Code, itself, gives certain alternative remedies which the petitioner could well have availed of. It cannot be disputed that the order of removal from service was under Rule 1702(8), and, therefore, under Rule 1717, an appeal could be filed before the authority next above the District Mechanical Engineer who made the order of removal of the petitioner from service. Under Rule 1725, the Railway Board or the General Manager has been given power to revise any order passed by an authority subordinate to them. The petitioner did not approach the Railway Board or General Manager in revision. Then there is a special remedy under Rule 1727, under which the President of India has power to revise whether on his own motion or otherwise any order passed under the rules of the Indian Railways Establishment Code by any subordinate authority. This remedy too was not availed of by the petitioner. The petitioner has, therefore, not exhausted the remedies which were open to him under the said Code itself. Under these circumstances, we do not find any special or extra-ordinary reasons to grant the petitioner any relief under Article 226 of the Constitution. It would be open to the petitioner to avail himself of any of the remedies provided by the Indian Railways Establishment Code and we hope if a proper case is made out before the authorities, at least the somewhat severe penalty which has been imposed on him,

under the circumstances of the case might be modified. This is, however, the concern of the authorities concerned, suffice it to say that finding that the petitioner has not exhausted the specific remedies provided by the said Code, we are not inclined to give him any relief under Article 226 of the Constitution.

14. The petition is dismissed, but looking to the circumstances of the petitioner as also to somewhat severe penalty which has been imposed upon him, we order that parties shall bear their own costs.

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