Sri Swadesh Bhusan Ghose Vs. Chief Commercial Superintendent, E. Rly. and ors.

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Court : Kolkata

Decided On : Sep-13-1960

Reported in : AIR1961Cal93,65CWN94,(1961)ILLJ55Cal

Judge : Sinha, J.

Acts : Railways Act, 1890 - Section 47; ;Discipline and Appeal Rules - Rule 1725; ;Constitution of India - Article 311(2)

Appeal No. : Civil Revn. No. 2107 of 1959

Appellant : Sri Swadesh Bhusan Ghose

Respondent : Chief Commercial Superintendent, E. Rly. and ors.

Advocate for Def. : Ajay Kumar Basu, Adv.

Advocate for Pet/Ap. : S.K. Acharyya and ;Manas Nath Roy, Advs.

Judgement :

ORDER

Sinha, J.

1. The facts in this case are shortly as follows : The petitioner first took service in 1944 as a clerk in the Bengal Nagpur Railway, which is subsequently known as, and/or merged with, the South Eastern Railway. In 1949, he was posted at Puri as a ticket collector, and was working there in 1955. On 16-1-1954 the petitioner applied for and obtained railway passes, inter alia for two dependent relatives, namely a dependent widowed mother aged 60 and dependent brother aged 20. On 27-12-1954 he applied for and obtained passes for two dependent relatives namely dependent widowed mother aged 64 and dependent widowed sister aged 45. In November, 1955 the Special Police Establishment, Puri, reported to the General Manager of the South Eastern Railway to the effect that they had received information that the petitioner had no widowed mother, but was living in the house of a Bengalee lady and had obtained passes from time to time on false pretences and allowed outsiders to travel on railway passes which they were not entitled to do. On 4-9-1956 the District Commercial Superintendent asked the petitioner through the Station Master, Puri, to give certain informations about his family, and particularly whether his mother was alive and how many brothers and sisters he had and their particulars. On 8-9-1956 he gave an answer stating that his mother was dead but he had an adoptive mother and that he had no brother or sister. On 4-10-1956 a charge sheet was issued a copy whereof is annexure 'A' to the petition. In the charge sheet it was stated that he was living with a Bengalee lady of the name of Sm. Sarajubala Banerjee, while he was calling himself 'Ghose'. It was stated that the contents of his applications mentioned above, upon which passes were issued, were false and that he had intentionally cheated the railways by obtaining passes on false declarations and he was asked to show cause why he should not be punished by removal from service or punished with another lesser penalty. He gave an explanation. It appeared that the petitioner claimed this Sm. Saruju-bala Bannerjee to be his adoptive mother,

although no document in writing could be produced to that effect. This was the lady whom he described as his dependent widowed mother in his application for a pass. The other persons whom he declared as his dependent brother or sister, were claimed by him to be persons living with his widowed mother hut they were not the children of Sm. Sarujubala Bannerjee. He had stated that they had left for unknown destinations and he was unable to contact them. On 10-7-1957 an order was communicated to the petitioner, signed by the District Commercial Superintendent, Khurdah Road, a copy whereof is annexure 'C' to the petition. It was stated there that his explanation had not been considered satisfactory because he had taken passes for dependent widowed sister and dependent brothers while he had no such brothers or sisters by natural or adoptive parents. In this letter, there was no mention of the dependent widowed mother. I find from the materials placed before me that the enquiring authority was not prepared to dispute the factum of the adoption itself. The punishment that was imposed was that his privilege passes and ticket orders for the years 1957 and 1958 were to be withheld. The punishment was imposed, and these passes were withheld, and very nearly at the end of the period mentioned, when the petitioner had undergone almost the whole of the penalty, be was served on 4-7-1958 with a show cause notice by the Chief Commercial Superintendent a copy whereof is annexure 'D' to the petition. It was stated there that the Chief Commercial Superintendent was not satisfied that the penalty imposed was adequate. He was, therefore, called upon to show cause why he should not be removed from service. The petitioner showed cause. Thereafter, on 14-8-1958 without giving him a hearing, an order was passed by the Chief Commercial Superintendent, removing the petitioner from service. An appeal was made to the General Manager. On 16-4-1959 the General Manager, without hearing the petitioner, made the following order:

'I have gone through the papers on the subject carefully. It is an admitted and proved case of passes in favour of those not entitled to. I agree that removal from service is the correct penalty'.

2. It is against these orders that this application is directed. The first point taken is that the petitioner had once been punished, and he had almost carried out his punishment and there should not be a second order inflicting a different punishment. In connection with this, reference has been made to the Discipline and Appeal Rules as framed under Section 47(e) of the Indian Railways Act, as applicable to non-grazetted staff. The particular rule cited is Rule 1725 which runs as follows:

'1725. (a) The Railway Board, a General Manager, and any officer not below the rank of a Deputy Head of Department, a Divisional Superintendent, specified in this behalf by the General Manager, shall have the power, on their/his Own motion or otherwise to revise any order passed by an authority subordinate to them/him and shall also have the power to reconsider an earlier order passed on an appeal by them/him or by a predecessor, if on a subsequent date either fresh light is thrown upon the case or by his subsequent conduct the employee has established a case for mitigation of the penalty imposed.

(b) When an authority referred to in (a) above, proposes to enhance the penalty imposed on a railway servant, otherwise than as the result of an appeal preferred to him, he shall communicate his intention to the railway servant concerned, with the reasons therefor, and call upon him to show cause as to why the enhanced penalty should not be imposed. After considering the reply of the railway servant to this communication, he shall pass such orders as he thinks fit'.

3. Two points, therefore, arise for determination. The first is as to whether the procedure that has been followed in this case is in accordance with the provisions of this rule. The second point that arises is that, assuming that the procedure adopted is in accordance with this rule, whether Sub-rule (b) is violative of Article 311 of the Constitution and therefore void. I have already set out above the relevant facts of this case. The petitioner was working under the District Commercial Officer, Khurda Road, now known as the District Commercial Superintendent. He was served with a charge sheet issued by the District Commercial Superintendent and he showed cause. He was served with an order of punishment dated 10-7-1957 whereby his privilege passes and ticket orders for the years 1957 and 1958 were withheld. This punishment however, does not bring him within Article 311, The petitioner did not object to this order of punishment nor did he

prefer any appeal against it; He practically underwent the whole punishment that was imposed upon him. Nearly l 1/2 years afterwards, the Chief Commercial Superintendent passed an order stating that the penalty imposed was not sufficient and therefore, he was asked to show cause why he should not be removed from service as a penalty. It is now stated that he acted under Clause (a) of Rule 1725. The petitioner having shown cause, he was not heard, but was removed from service by an order dated 14-8-1938 by the Chief Commercial Superintendent. The petitioner thereupon appealed and again he was not heard on the appeal, but an order was made by simply reading the papers. The question is whether this procedure is in accordance with law. Clause (a) of Rule 1725 gives power to the officers mentioned therein to revise any order passed by an authority subordinate to them. Reading Clause (a) as it stands it appears to me that it is possible to interpret it by saying that such an authority would be entitled to revise any order passed by a subordinate authority or reconsider an earlier order, if on a subsequent date, either fresh light is thrown upon the case, or by his subsequent conduct the employee has established a case for mitigation of the penalty imposed. In this view of the matter, both the power of revision and reconsideration would be dependent on two things. Either there must be fresh light thrown upon the matter or by his subsequent con-duct the employee merited a mitigation of the penalty. If this be the proper interpretation, then the orders passed in this case must at once be declared bad, because the conditions are not satisfied. It is however argued that the power of revision is unqualified and the two conditions qualify only the power of reconsideration. This interpretation would have been acceptable if there was a comma after the words 'subordinate to them/him'. Unfortunately the comma is after the word 'predecessor' and it is arguable that both revision and reconsideration have been made subject to these conditions. Mr. Bose has cited a decision of the Allahabad High Court, Harbans Lal Arora v. Divisional Superintendent, Central Rly, : AIR1960All164 wherein Dhavan, J. has held that under Clause (a), the power of revision is unlimited. With respect, I must say that I have some doubts in the matter. Fortunately, however, it is not necessary to decide this point finally because the application may be disposed of on another ground. It will be remembered that in the revision proceedings the petitioner has never been heard in his defence, but the case has been decided, both at the first stage and at the appellate stage, merely upon reading the papers. Now, so far as the punishment of withholding passes or tickets are concerned, the matter is not within the compass of Article 311 and the right to be heard cannot be claimed as a matter of right. But when it comes to removal from service as a penalty, the provision of Article 311 applies and the question arises whether Clause (b) of Rule 1725 violates this provision. The procedure adopted, whereby in the revision the petitioner was not given a hearing is sought to be justified under Clause (b) of Rule 1725 which makes it necessary only to consider the reply of the railway servant concerned. This, of course, has been done. In my opinion Clause (b) of Rule 1725, in so far as it provides that there can be an order of dismissal, removal from service or demotion, without giving a hearing to the delinquent, contravenes the provision of Article 311 and must be declared to be invalid. Article 311 of the Constitution lays down that in such cases no person shall be dismissed or removed or reduced in rank until he has been given 'reasonable opportunity of showing cause'. What is a reasonable opportunity has by now been well established. There must be a charge sheet and an opportunity given to reply thereto. In the case of revision it would be the show cause notice. In either case, the delinquent must be given an opportunity of being heard in his defence. If necessary, he must be allowed to call evidence in his support and to challenge the evidence brought against him. Clause (b) of Rule 1725 only lays down a summary method, and all that is to be done by the authority is to communicate his intention of enhancing penalty, with the reasons, and call upon the delinquent to show cause why it should not be imposed. Thereafter the only thing that is to be done is to consider the reply. There need be no hearing, no evidence and no semblance of a judicial approach. So far as other penalties are concerned, that is to say, penalties other than mentioned in Article 311(2) the matter may be on a different footing. But when it comes to removal from service by way of penalty, as has been done in this case, the provisions of Article 311 are clearly attracted and Clause (b) of Rule 1725 is violative of it, and to that extent invalid.

4. That being so, the procedure followed is not in accordance with law. The petitioner must not only be given an opportunity of showing cause but he is to be heard, not only at the first stage but also at the appellate stage. As this has not been done and Clause (b) of Rule 1725 has been followed, it must be held that the procedure followed has been illegal and the orders made must be set aside.

5. The Rule is therefore made absolute and the orders dated 14-8-1958 and the appellate orders thereto, removing the petitioner from service must be quashed and/or set aside. There will he a writ in the nature of mandamus commanding the respondents not to give effect to the same. If the respondents so wish they can continue the revisional proceeding in accordance with law. There will be no order as to costs.

6. Let the operation of this order remain in abeyance for three weeks from today to enable the respondents to prefer an appeal, as prayed for.