

**K.K. Murty Vs. the General Manager, South Eastern Rly. and anr.**

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**Court :** Kolkata

**Decided On :** Nov-29-1957

**Reported in :** AIR1958Cal633,62CWN169,(1959)ILLJ374Cal

**Judge :** Sinha, J.

**Acts :** [Constitution of India](#) - Article 226

**Appeal No. :** Civil Revn. No. 3767 of 1955

**Appellant :** K.K. Murty

**Respondent :** The General Manager, South Eastern Rly. and anr.

**Advocate for Def. :** Ajoy Kumar Basu, Adv.

**Advocate for Pet/Ap. :** Sushil Chandra Das Gupta, ;Nalini Kanta Mukherjee and ;Ram Krishna Das, Advs.

**Judgement :**

ORDER

**Sinha, J.**

1. The facts in this case are shortly as follows : The petitioner was appointed in 1929 as an Assistant Station Master and was subsequently promoted to the post of a Station Master. While he was posted at the Palari Station, on or about 20-3-

1954, he was served with a charge-sheet. The charge-sheet was signed by the District Traffic Superintendent, Nainpur. A copy of the charge-sheet is Annexure 'E' to the petition. Substantially, the charge that the petitioner had on more than one occasion, in spite of warning, indulged in impertinence and unnecessarily rude and disrespectful language in official correspondence. Instances of such use have been set out in the charge-sheet itself. The first extract for example, shows that he was writing to the District Traffic Superintendent, assuming the title of 'Legal Pandit', stating that this title had been, 'bestowed upon him by Sriman G.S. Rajan' who was no other than the District Traffic Superintendent himself. There are several other extracts in which words have been indiscriminately used, without observing the restraint and decorum that should be observed in correspondence between persons in subordinate employment and their higher officers. Charges have been recklessly advanced against superior officers of having assumed 'dictatorship', and of having been prejudiced? against him in order to take revenge.

2. The petitioner was asked to show cause why he should not be removed from service. The petitioner questioned the authority of the opposite party No. 2 in issuing the charge-sheet and the legality of the charges and refused to submit any explanation. Thereafter, an enquiry committee was set up. The petitioner was offered every reasonable opportunity of defending himself. The petitioner refused to take any part in the enquiry or to produce evidence, The enquiry was consequently concluded on 24-4-1954. For safety's sake, the Chairman of the enquiry committee issued a notice on 10-5-1954 giving another opportunity to the petitioner to be present. But lie again refused to take part in the proceedings. In the circumstances, the enquiry committee proceeded with the enquiry ex parte. The Chairman of the: enquiry committee also took the precaution of sending a telegram to the petitioner that the enquiry was being proceeded with in his absence. To this, the petitioner sent a telegram to say that he would take no part in the enquiry. The report of the enquiry committee went against the petitioner and on 24-9-1954 the General Manager issued a second show cause notice upon the petitioner asking him to show case why the proposed penalty of removal from service should not be inflicted upon him. The petitioner made a representation, and after hearing him the order of removal from, service was made, on 28-12-1954 by the General Manager. Under the Railway Establishment Code and the relative

Rules, an appeal lies against the order but the petitioner did not file any appeal. This application has been made challenging the validity of the order of removal on various grounds, but I think that two preliminary points ought to dispose of this application. Firstly, on the facts as have been presented before me, and' are admitted, I am myself of the opinion that the petitioner was not fit to be employed by the Railways and should have been dismissed. In fact, the General Manager of the Railway has inflicted a lesser punishment. The writing of the letters, extracts wherefrom have been set out in the-charge-sheet, are not denied. It is argued before me that some of them have been written under great provocation. To start with, there is no evidence of provocation. Even assuming that there was provocation, it cannot justify the writing of such letters by subordinate employees to their higher officers. If this is to be allowed, there-would be an end to all discipline, and the administration of the Railways cannot go on. It is-a well-established principle of law that a Court of Equity ought not to interfere with the orders of inferior tribunals or bodies, if, on the facts, it|is itself of the opinion that the order made wascorrect and is in accordance with the justice ofl the case. Applying this principle, the petitioneris not entitled to any relief.

3. The second point which is equally fatal is that the petitioner did not appeal against the order of the General Manager, although an appeal lay. It is equally well-established that where an adequate alternative remedy lies, then, unless very good reasons are shown, an application for a writ will not lie. These two points completely dispose of this case.

4. I will only refer to one point that has been taken and argued, namely, the question of Rule 1707 of the Indian Railway EstablishmentCode, Volume I, page 180. It is said that thehow cause notice was not issued in the name of the punishing authority, and this has made it bad. The point has not been taken in this form in the petition or in the grounds contained therein. The learned Advocate could only point out two grounds, namely, grounds Nos. 2 and 3, which do not cover the points as adumbrated above. Refer-once has been made to my own decision in A. R. S. Choudhury v. The Union of India : (1957)ILLJ494Cal (A). There, I said that the charge-sheet ought to be in the name of the punishing authority. It is pointed out by Mr. Basu appearing on behalf of the respondents that

there is no mention of this in Rule 1707. I am however, still of that view. It is obvious that in the very nature of things a show-cause notice cannot be issued except by an authority which can punish, and which calls upon a delinquent to explain his conduct with a view to inflict punishment if the explanation is insufficient or unsatisfactory. It is unthinkable that any self-chosen champion can take upon himself to investigate the commissions and omissions of a civil servant although he might have no power to inflict any punishment. However, I do appreciate, that in most cases, the show cause notice is not issued in the name of the punishing authority, but is issued by somebody with his approval or consent. To that extent, I think the statement of law in the above decision might stand modified. What I meant by saying that it should be in the name of the punishing authority, was that it should be in the name of the punishing authority, or with its authority, consent or approval. This would make it an act of the punishing authority, and not an act of a third party. As I have said above, the point itself in that form has not been taken in the grounds or in the petition and I cannot allow the petitioner to urge it. Had he made this ground in the petition, then the opposite party might have shown that there was the requisite authority or approval of the General Manager.

5. The result is that this application cannot succeed and should be dismissed. The Rule is discharged. Interim order, if any, is vacated. There will be no order as to costs.

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