

Bimal Kumar Chakravarti Vs. Eastern Railway (by General Manager) and ors.

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Court : Kolkata

Decided On : Nov-22-1965

Reported in : (1966)IILLJ290Cal

Judge : B.N. Banerjee, J.

Appellant : Bimal Kumar Chakravarti

Respondent : Eastern Railway (by General Manager) and ors.

Judgement :

B.N. Banerjee, J.

1. This is directed against a notice directing the petitioner, a railway servant, to show cause why he should not be reduced in rank from the post of a tracer to that of a peon, for a period of three years. The circumstances leading to the issue of the notice are hereinafter briefly stated.

2. According to the affidavit-in-opposition, filed by the respondents, the petitioner was appointed, in the year 1946, as a peon, on a pay of Es. 12 per month, in the railway unit, then known as the B.A. Railway. He was subsequently promoted as a record-supplier, with effect from 1 February 1947, in the scale of pay of Rs. 17-25 and was posted at Kanchrapara. From there he was transferred to Lumding, on 27 August 1947, but as there was no vacancy at that time at Lumding, the petitioner was directed to report to the Transfer Office/India. This being the time of partition

of India, considerable confusion was prevailing. The petitioner, it is said, took advantage of the confusion and when he was transferred to the Eastern Railway unit, he was, on representation by him, posted as a tracer at Asansol division, on 15 October 1947, in the scale, of pay of Rs. 60-150. On 13 January 1948, in reinforcement of his representation, the petitioner is said to have made a false declaration to the effect that he was a tracer in the B.A. Railway. On that representation, a new service-sheet was opened for the petitioner, because the old service records and files had not still then been received from the B.A. Railway administration. When, later on, the old records arrived, it was detected that a part of it, relating to the period of the petitioner's service at Lumding and thereafter, was missing. Armed with the information, derived from the petitioner's service records, that declaration made by the petitioner was false, the respondent, Divisional Personnel Officer, suspended the petitioner on 9 May 1960, and thereafter served this petitioner with a chargesheet, couched in the following language:

You are charged with the following offences or failures and you are hereby called upon to show cause why you should not be punished with the penalty specified in item 6 of the list below or punished with any of the lesser penalties specified in the said list. The facts and/or circumstances whereon the charges has/have been based are as related below:

* * *Charges

For serious misconduct in that:

On 13 January 1948 you have made (?) a wrong declaration in the office of

D.S./A.S.N. stating that you are a substantive holder of the post of tracer in the scale of Rs. 30-60 in the existing scale although you had never worked in the said capacity on 1 January 1947, i.e., the date from which you elected to come under the prescribed scale. On the basis of this declaration your pay was fixed as a tracer in the prescribed scale of Rs. 60-150 although from records it is seen that you were working as a record-sorter and your pay was due to be fixed in the prescribed scale of Rs. 40-60.

* * *List of penalties.

Removal from service.

3. On receipt of the chargesheet, the petitioner asked for copies of the following documents in order to enable him to submit his explanation:

(i) True copy of the declaration as alleged to have been filed by me before D.S./A.S.N. together with other connected documents.

(ii) True copy or copies of documents and/or evidence relied upon by your goodself in framing the chargesheet.

(iii) Copy of the full text of enquiry notes, report and evidences in connexion with enquiry some one year back wherein I was made to appear on verbal instruction.

(iv) Copy of my original service-sheet, history-sheet, etc., those were maintained by the ex-B.A. Railway administration since my appointment originally in 1946,

(v) Copies of documents, those have been considered by your goodself to come to the finding that a prima facie charge is there to connect me with an offence of serious misconduct as mentioned in the chargesheet.

4. The respondent-Divisional Personnel Officer thereupon asked the petitioner to have Inspection 'of the documents, on 21 June 1960, at the forger's office. The petitioner, however, did not accept the offer to take inspection. He insisted upon copies, of the documents being given to him, which request, however, was not complied with. The petitioner does not appear to have submitted his explanation to the chargesheet.

5. In this rule I am not concerned with the first enquiry into the charges, which proved abortive. Thereafter, there was a fresh enquiry into the charges ordered on 26 February 1962. Apart from ventilating his grievance against his protracted suspension and asking for repeated postponements of the enquiry, the petitioner did not extend any co-operation to this enquiry. As such, the enquiry had to proceed ex parte and the enquiring officer came to the following finding:

There is, therefore, overwhelming evidence to prove that B. K. Chakravarti never worked as a tracer as he has falsely declared on 1 January 1947, i.e., the date from which he elected to come under the prescribed scale.

6. On receipt of the enquiry report the respondent-Chief Engineer served upon the petitioner a notice, dated 30 November 1962, couched, inter alia, in the following language :

Charges

On the basis of your wrong declaration, that you were a substantive holder of the post of tracer in the scale of Rs. 30-60 your pay as a tracer in the prescribed scale of Rs. 60-150 from 1 January 1947, the date from which you elected to come under the prescribed scale (sic) though you were working as record-supplier/record-sorter, grade II, and your pay was to be fixed in the scale of Rs. 40-60 (P.S.). Thus you have derived undue benefits which were not due to you which tantamounts to serious misconduct.

2. I have, therefore, provisionally formed the opinion that you should be reduced for a period of three years from the post of tracer on Rs. 104, grade Rs. 60-150 (P.S.), to the post of 'peon on Rs. 35 per month, grade Rs. 30-35 (P.S.).

The period of reduction shall not operate to postpone future increments.

After the period of proposed penalty you will be re-promoted back to your own category as record-sorter, grade II.

3. You are hereby given seven days' time from the receipt of the show-cause notice why the proposed penalty should not be inflicted on you. Any representation that you may make in this connexion will be taken into consideration before passing final orders.

7. The enquiry report admittedly did not accompany the notice. The findings of the enquiry committee, however, were forwarded to the petitioner later on 22 March 1963. The petitioner did not show cause against the proposed penalty and went on asking for time and also for various papers in order to enable him to show cause.

The penalty admittedly has not been imposed upon the petitioner. In this background the petitioner moved this Court, under Article 226 of the Constitution, praying for a writ of certiorari for the quashing of the order, dated 30 November 1962, and for a writ of mandamus restraining the respondents from giving effect thereto and obtained this rule, limited to grounds I, II, III, VI and IX.

8. In ground I It is stated that the order dated 30 November 1962 was hit by Article 311(2) of the Constitution, because the findings of the enquiring authority were not furnished to the petitioner. In ground II it is alleged that the order dated 30 November 1962 and the letter dated 22 March 1963 whereby the findings of the enquiring committee were communicated to the petitioner, deserve to be struck down, because the petitioner was denied reasonable ' opportunity to show cause against the charges' for want of documents asked for but not furnished to the petitioner.

9. Admittedly, the notice (misdescribed as order), dated 30 November 1962, was defective because the findings made by the enquiry committee did not accompany or precede the notice, as required under Rule 1715 (a) of the Discipline and Appeal Rule 3. But this lacuna was remedied by letter, dated 22 March 1963, by which the findings were furnished to the petitioner. The penal order has not yet been passed against the petitioner. The petitioner is still at liberty to show cause against the proposed penalty. I do not, therefore, find any substance in the first ground urged by the learned advocate for the petitioner.

10. The second ground is also misconceived. The petitioner had been offered inspection of such available documents as he wanted on receipt of the chargesheet; but he did not take advantage of it. The first enquiry, which the petitioner attended, proved abortive. The fresh enquiry, which was ordered on the same chargesheet, the petitioner boycotted and the enquiry had to proceed ex parte. When asked to show cause against the proposed penalty, he asked for certain documents in order to show cause against the charges. That was too late a stage to seek opportunity to show cause against the charges themselves. I, therefore, overrule the point taken in this ground as well.

11. Third ground is also a ground of violation of the principles of natural justice, particularly because the procedure prescribed in Clause (3) and (4) of Rule 1712 were not followed. The clauses relied upon by the petitioner read as follows :

(3) The inquiring authority shall, in the course of the inquiry, consider such documentary evidence and take such oral evidence, including cross-examination of the railway servant and witnesses, as may be relevant or material in regard to the charges. The railway servant shall have the opportunity of adducing relevant evidence on which he relies, the evidence of witnesses shall be taken in his presence, he or the person assisting him shall be given the opportunity of cross-examining the witnesses and no materials shall be relied on against him without his being given an opportunity of explaining them.

(4) At the conclusion of the enquiry, the inquiring authority shall prepare a report of the inquiry recording its findings on each of the charges, together with the reasons there for. If, in the opinion of such authority, the proceedings of the inquiry establish charges different from those originally framed, it may record findings on such charges provided that findings on such charges shall not be recorded unless the railway servant has admitted the facts constituting them or has had an opportunity of defending himself against them.

The petitioner, though asked to attend the enquiry, at first asked for adjournment thereof. That request was granted, but nevertheless the petitioner boycotted the subsequent stages of the enquiry. It is not for him to complain that Clause (3) of Rule 1712 was not complied with in such circumstances. In the ex parte enquiry that followed, the enquiry committee considered such evidence as it had and made a report. That was the only thing that the committee could do, regard being had to the attitude taken up by the petitioner.

12. In ground VI it is alleged:

For that in view of the failure of the authorities to produce the alleged wrong declaration, the service record and the last pay certificate in spite of the repeated demand before the committee and in view of the further fact that the committee having admitted that the relevant records are not traceable, further proceedings

should have been dropped by withdrawing the alleged charge which cannot be sub-stantiated.

13. Whatever may have happened at the time of the first enquiry, which proved abortive, there was a fresh enquiry ordered against the petitioner, in which he did not participate. It is, therefore, not open to the petitioner to urge this ground against the second enquiry. There is nothing to indicate that the findings in the second enquiry report were based on no evidence at all. I, therefore, find no substance in this ground also.

14. The last point urged in ground IX was that the order of penalty was bad, because no second opportunity was given to the petitioner to show cause against the proposed penalty. This point is wholly misconceived, because the petitioner himself obtained the rule against the second notice to show cause why the proposed penalty should not be imposed on him. He is at liberty to show that cause even now.

15. An attempt was made to argue that the Chief Engineer was not the disciplinary authority and the notice issued by him to show cause against the proposed penalty was bad. No such ground was taken in the petition, far less any rule issued on such ground. I am, therefore, unwilling to consider this ground.

16. For reasons stated, this rule is discharged. I, however, make no order as to costs.