Rama Shanker Srivastava vs Divisional Supdt., Northern Railway, ... on 19 October, 1955

Equivalent citations: AIR1956ALL393, AIR 1956 ALLAHABAD 393, 1956 ALL. L. J. 65

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. Rama Shanker Srivastava who has filed this petition under Article 226 of the Constitution was an employee in the Northern Railway. He was originally selected for appointment by the East Indian and Oudh and Trihut Railway Joint Service Commission for the post of a ticket collector and was then appointed as such on 29-8-1949.

According to the opposite party, the Divisional Superintendent, Northern Railway, Allahabad, the actual date of appointment was 6-9-1949. The exact date of appointment being immaterial, it is not necessary to express any view as to which of the two dates is correct.

On 20th of July 1950, a charge sheet was served on the petitioner by the Assistant Superintendent Commercial specifying seven forms of punishment and calling upon the petitioner to show cause why the penalty of dismissal or any lesser penalty be not imposed on him on the grounds mentioned in the charge sheet. The petitioner was allowed seven clear days from the date of the receipt of the notice to give his explanation and was told that any representation which he made in that connection would be taken into consideration by the competent authority before passing orders.

It was also stated in the charge sheet that since the maximum penalty specified included removal from service and dismissal from service, he should state, while giving his written explanation to the charge sheet, whether he desired to be heard in person.

The petitioner submitted his explanation. There is no information on the record whether he expressed any desire to be heard in person. His explanation was considered and by the letter dated 14/16-9-1950, intimation was sent to the petitioner that the Assistant Superintendent Commercial considered that the petitioner was thoroughly unreliable and not fit for service and that in the circumstances he had passed an order removing the Petitioner from service after giving him pay in lieu of notice under the agreement with him.

The petitioner filed an appeal before the Divisional Superintendent, the dismissal of which was communicated to him by the letter dated 23/28-11-1950. Then a period of about four years elapsed, whereafter the petitioner was ordered to be restored to duty." This order was communicated to the petitioner by the letter dated 10-4-1954. Subsequent to his restoration on 23-4-1954, the petitioner was again suspended and the order of suspension specified that he would be allowed subsistence allowance and other admissible allowances during the period of suspension.

On 14-6-1954, the petitioner filed an appeal to the Divisional Superintendent against this order of suspension and according to the petitioner no orders were passed on it. On 9-2-1955, the petitioner received by post a letter dated 8-2-1955, under the signature of the Divisional Commercial Superintendent that the latter had, after considering the explanation of the petitioner to the charge sheet dated 12-7-1950, formed provisionally the opinion that he should be removed from service on account of certain charges specified in the letter.

The petitioner in that letter was given seven clear days' time from the receipt of it to show cause why the proposed penalty should not be inflicted on him. He was also told that any representation that he might make in this connection would be taken into consideration before passing final orders. The petitioner on 15-2-1955, replied to this letter and claimed that he was entitled to a full enquiry according to the amend-ed Rule 1709 of the Railway Establishment Code.

Thereupon an order was passed against the petitioner which was communicated to him by letter dated 4-3-1955. The order was to the effect that the petitioner be removed from service with effect from 7-3-1955. Thereupon this petition was filed by the petitioner on 11-4-1955.

2. The main ground on which the petitioner filed this petition was that at the time when the notice contained in the letter dated 8-2-1955, was served on him no enquiry was held though he desired such an enquiry and consequently his dismissal was wrongful.

It appears to be clear from the facts given above that this notice contained in the letter dated 8-2-1955, was sent for the purpose of complying with the provisions of Article 311 of the Constitution under which no punishment of dismissal or removal can be awarded unless the person against whom such action is sought to be taken Is given an opportunity to show cause why such action should not be taken against him.

The question is whether at this stage the petitioner was entitled to claim an enquiry by which the petitioner obviously meant that he should be given an opportunity to disprove the charges against him by adducing his evidence in that behalf. The petitioner of course claimed that the enquiry should be held in accordance with Rule 1707 of the Discipline and Appeal Rules contained in the Railway Establishment Code. That the petitioner has a right to claim an enquiry even at the stage when a notice is served on him for the purpose of complying with the provisions of Article 311 of the Constitution can no longer be doubted.

Article 311 of the Constitution lays down for cases such as the case of the petitioner that no such person shall be dismissed or removed or reduced in rank until he has been given a reasonable

opportunity of showing cause against the action proposed to be taken in regard to him. The expression "reasonable opportunity of showing cause" was interpreted by a Division Bench of this Court in the case of -- 'Ravi Pratap Narain Singh v. State of Uttar Pradesh', AIR 1952 All 99 (A), in which the view expressed in an earlier Bench Case -- 'Avadhesh Pratap Singh v. State of Uttar Pradesh', AIR 1952 All 63 (B), was follow-ed and approved.

The expression "showing cause" was held to connote" an opportunity of leading evidence in support of one's allegation and in controverting such allegations as are made against one." It is obvious that it cannot be said that an opportunity of showing cause was granted when the petitioner was only called upon to submit a written explanation was not clearly told what the entire evidence against him was and was not afforded an opportunity to controvert the charges by adducing his own evidence.

3. In the -- 'High Commissioner for India v. I. M. Lail', AIR 1948 PC 121 (C), their Lordships of the Privy Council also had occasion to deal with the question whether a civil servant had a right of enquiry at the stage when a notice is served on him under Section 240, Sub-section (3), Government of India Act, 1935, which was to the same effect as Clause (2) of Article 311 of the Constitution. Their Lordships held as follows ;

> "Their Lordships agree with the view taken by the majority of the Federal Court. In their opinion Sub-section (3) of Section 240 was not intended to be, and was not, a reproduction of Rule 55 which was left unaffected as an administrative rule. Rule 55 is concerned that the Civil Servant shall be informed "of the grounds on which it is proposed to take action", and to afford him an adequate opportunity of defending himself against charges which have to be reduced to writing; this is in marked contrast to the statutory provision of 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.' In the opinion of their Lordships, no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges and the actual punishment to follow is provisionally determined on prior to that stage, the charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the statute gives the civil servant the opportunity for which Sub-section (3) makes provision. Their Lordships would only add that they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage.
>
> If the civil servant has been through an enquiry under Rule 55, It would not be reasonable that he should ask for a repetition of that stage, if duly carried out, but that would not exhaust his statutory right, and he would still be entitled to represent against the punishment proposed as the result of the findings of the enquiry."

Their Lordships have, therefore, definitely laid down that at the stage when notice under Sub-section (3) of Section 240, Government of India Act, 1935, was served, the civil servant" had the right of a statutory opportunity being reasonably afforded to him even though an earlier opportunity had already been afforded under Rule 55 of the Civil Service Classification and Control Rules. The

contention of learned counsel for the opposite party in this petition that the petitioner has no such statutory right must, therefore, be rejected.

4. The next point urged by learned counsel for the opposite party was that, even though the petitioner may have a statutory right of claiming an enquiry at this stage, it would hot be reasonable to afford him such an opportunity when the order of removal of the petitioner was passed after going through the procedure prescribed for such removal in the Discipline and Appeal Rules incorporated in the Railway Establishment Code.

In this connection learned counsel drew our attention to Rule 1709 as it existed at the time when the charge was first served against the petitioner in the year 1950. According to this rule, as it then stood, a railway servant who had not completed seven years of service was governed by the procedure prescribed in Rule 1712 if it was proposed to remove him from service. Rule 1712 was as follows:

> "Before an order imposing a penalty specified in items 2 to 6 of Rule 1702 or of removal from service in the circumstances mentioned in Clauses (b) and (c) of Rule 1709 is passed against a railway servant, he shall be informed of the definite offences or failures on account of which it is proposed to impose the penalty and called upon to show cause why that or any lesser penalty should not be imposed. He should also be given three days time in which to submit his explanation and be allowed reasonable facilities for the preparation of his defence."

The question arose whether this Rule which was then applicable to the petitioner gave any right to the petitioner to adduce evidence in order to meet the charges served on him. Learned counsel for the opposite party urged that this rule gave no such right to the petitioner. According to him, when the notice under this Rule is served on a railway servant to show cause why a particular penalty should not be imposed on him, the railway servant has only the right to submit his explanation and to claim reasonable facilities for the preparation of his defence.

The words "reasonable facilities for the preparation of the defence", it was submitted by learned counsel, should be interpreted to mean that he should be given the facilities required by him for the purpose of preparing his explanation. According to learned counsel, this rule granted no right to the petitioner to adduce evidence in order to meet the charges against him which could only be done if an enquiry had been held.

As we have already indicated above the words "show cause" have a wider significance than submission of a mere explanation. Whenever a person is called upon to show cause, it is implied that he has the right to adduce evidence to disprove the charges on the basis of which the action, against which he is called upon to show cause is proposed to be taken against him.

In the case of the petitioner there is no material on the record which would satisfy us that any such opportunity of adducing evidence against the charges served on the petitioner was ever afforded to the petitioner. A copy of the charge sheet served on the petitioner has been placed before us as an

annexure to the counter affidavit. The charge sheet did call upon the petitioner to show cause why he should not be punished with the penalty specified in items 7 of the list (item 7 being dismissal from service).

But in the later parts of the charge sheet the petitioner was only allowed seven days to give his explanation and was informed that any representation made by him would be taken into consideration by the competent authority before passing orders. There was a further question put to the petitioner enquiring from him whether he desired to be heard in person. There was nothing in that charge sheet indicating that the petitioner was also afforded any opportunity to adduce evidence in his defence.

The copies of the subsequent orders also indicate that very likely no opportunity was afforded to the petitioner to adduce evidence to meet the charges served on him. When he demanded an enquiry in the year 1955 after the service of the notice, served in compliance with Article 311 of the Constitution, there was again failure to afford any opportunity to him to adduce evidence in) his defence.

In these circumstances we are unable to hold that even in the year 1950 when the charge sheet was served on the petitioner the railway authorities did actually comply with the rules which were then applicable to the case of the petitioner. In fact it appears to us from the contention raised by learned counsel for the opposite party that according to the railway authorities the rules did not require any opportunity being afforded to the petitioner to adduce evidence in defence at that time.

Even if we assume that this contention of learned counsel is correct, we have now to consider whether the opportunity to show cause which the petitioner is entitled to after service of notice under Article 311 of the Constitution could be denied to him on the ground that it would not be reasonable to do so as was held by the Privy Council in the case cited above. In order to consider this point we may take into account both alternatives. One alternative is that the rules as they stood in 1950 required an opportunity to be given to the petitioner to adduce evidence in defence but there is nothing to show that any such opportunity was ever afforded.

In the alternative we may take into account the submission of learned counsel that no opportunity need have been afforded to the petitioner tinder the rules in force in order to adduce evidence in defence. In either case it is clear that in the year 1950 no such enquiry was held in which the petitioner had been granted the rights which vest in him when he claims an enquiry at the time of the service of notice under Article 311 of the Constitution.

Their Lordships of the Privy Council in the case cited above were of the view that it would not be reasonable that a civil servant should ask for a repetition of the stage of enquiry already held under Rule 55 if duly carried out and that this would be a sufficient ground for not again holding the enquiry after service of the notice under Sub-section (3), Section 240, Government of India Act.

In the case before us the demand for enquiry by the petitioner cannot possibly be said to be a repetition of an enquiry held at an earlier stage. What the petitioner demands is much more than the

enquiry which, if at all, was held in the year 1950. At that stage he had only been given an opportunity to give an explanation and to appear in person without any opportunity of adducing evidence in defence. What he can now claim is an enquiry in which his right to give defence evidence is also recognised.

Further, it is not possible for us to hold definitely that that previous enquiry in the year 1950 had been duly carried out. For these reasons we consider that the petitioner was entitled to an enquiry in which he should have been afforded an opportunity of adducing evidence in defence at the stage when the notice under Article 311 of the Constitution as contained in the letter dated 8-2-1955, was served on him.

It does not appear to be necessary for us to decide whether as contended by the petitioner that enquiry must be held strictly in accordance with Rule 1707, though it appears that, if an enquiry is held in accordance with Rule 1707, it would be a proper enquiry duly carried out which would satisfy the requirements of Article 311 of the Constitution.

So far as this case is concerned, it is enough for us to say that the enquiry to be held must be such as would grant to the petitioner the right of showing cause conferred on him by Article 311 of the Constitution. No such enquiry having been held and no proper opportunity having been afforded to the petitioner to show cause under Article 311 of the Constitution we must hold that the order of removal of the petitioner contained in the letter dated 4-3-1955, must be quashed.

5. There was one other alternative ground which was taken in the petition. That ground was that before this order of dismissal of 4-3-1955, was passed and even before the notice under Article 311 of the Constitution was served on the petitioner the Discipline and Appeal Rules in the Railway Establishment Code, had been amended and as a result of that amendment Rule 1707 became applicable to all railway servants including those who had not completed seven years of service; so that no order should have been passed against the petitioner without holding an enquiry in accordance with that rule.

It appears to be unnecessary for us to consider this submission because of the view we have taken earlier according to which the petitioner is entitled to the relief claimed by him.

6. We, therefore," allow this petition and direct that a writ shall issue quashing the order of removal of the petitioner contained in the letter dated 4-3-1955. The petitioner will be en titled to his costs from the opposite parties which was assessed at Rs. 100/-.