UNION OF INDIA & ORS.

v.

K. RAJAPPA MENON

October 7, 1968

B [J. C. SHAH, G. K. MITTER, K. S. HEGDE AND A. N. GROVER, *JJ.*]

Conduct and Disciplinary Rules, r. 1713—Disciplinary authority whether required to give detailed reasons for confirming finding established at departmental enquiry.

Constitution of India, Art. 311(2)—Second show cause notice—If authority can make up mind tentatively before receipt of explanation.

C After the reply of the respondent—a railway employee—in respect of certain charges preferred against him was received, a departmental enquiry was held. The Enquiring Officer found all the charges proved. A show cause notice was then served stating that it had been tentatively decided by the Chief Commercial Superintendent that the respondent should be dismissed from service. This notice was served after the Chief Commercial Superintendent had recorded an order stating that he had seen the D enquiry proceedings, that the procedure had been correctly followed, and that he agreed with the findings of the Enquiring Officer. The respondent submitted his explanation; thereafter his dismissal was ordered. The respondent filed a writ petition in the High Court. The single Judge allowed the petition holding that the Chief Commercial Superintendent was bound to pass a detailed order expressing his views about each of the charges and that a general agreement with the findings of the Enquiry Officer did not satisfy the requirements of r. 1713 of the Conduct and Disciplinary E Rules. This decision was affirmed by the Division Bench. In appeal, this Court.

HELD : The appeal must be allowed.

(i) Rule 1713 does not lay down any particular form or manner in which the disciplinary authority should record its findings on each charge. All that the Rule requires is that the record of the enquiry should be con- F sidered and disciplinary authority should proceed to give its findings on each charges. This does not and cannot mean that it is obligatory on the disciplinary authority to discuss the evidence and the facts and circumstances established at the departmental enquiry in detail and write as if it were an order or a judgment of a judicial tribunal. The rule certainly requires the disciplinary authority to give consideration to the record of the proceedings which was done by the Chief Commercial Superintendent. When he agreed with the findings of the Enquiry Officer that all the G charges mentioned in the charge sheet had been established it meant that he was affirming the findings on each charge and that would certainly fulfil the requirement of the Rule. [345 H—346 D]

(ii) There was no force in the respondent's contention that the disciplinary authority was not entitled to have finally made up its mind before the explanation to the second show cause notice had been received by it and at a stage prior to the issuance of the notice. The procedure H which is to be followed under Art. 311(2) of the Constitution of affording a reasonable opportunity includes the giving of two notices, one at the enquiry stage and the other when the competent authority as a result of the enquiry tentatively determines to inflict a particular punishment.

It is quite obvious that unless the disciplinary or the competent authority arrives at some tentative decision it will not be in a position to determine what particular punishment to inflict and a second show cause notice cannot be issued without such a tentative determination. [346 E]

Khem Chand v. *Union of India & Ors.*, [1958] S.C.R. 1080, followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1064 of 1966.

Appeal by special leave from the judgment and order, dated August 4, 1965 of the Kerala High Court in Writ Appeal No. 205 of 1964.

B. Sen and *S. P. Nayar*, for appellant No. 1.

A. S. Nambiar and *Lily Thomas*, for the respondent.

The Judgment of the Court was delivered by

Grover, J. This is an appeal by special leave from the judgment of the Kerala High Court in which the only point which arises for decision is whether Rule 1713 of the Conduct and Disciplinary Rules, hereinafter called the Rules, for railway servants was correctly applied and the dismissal of the respondent, who at the material time, was an Assistant Station Master was rightly set aside for non-compliance with that Rule.

The facts lie within a narrow compass. In July 1963 the respondent, who was working as an Assistant Station Master at Chalakudy railway station was served with a statement containing charges relating to certain matters after an inspection report had been submitted to the authorities concerned. After the reply of the respondent had been received a departmental enquiry was held and the Enquiring Officer submitted a report finding all the four charges which had been preferred against the respondent proved. A show cause notice was then served in September 1963 giving the findings of the Enquiring Officer (Assistant Commercial Superintendent) and it was stated that it had been tentatively decided by the Chief Commercial Superintendent that the respondent should be dismissed from service. This notice was served after the Chief Commercial Superintendent had recorded the following order (Exh. R. 8) :

> "The employee, in his reply dated 3-8-1963 to this charge sheet, has not accepted the charges contained in the same. An enquiry, therefore was arranged. It was held by the Assistant Commercial Superintendent/ Olavakkot from 22-8-63 to 29-8-1963. I have seen the enquiry proceedings. I find that the procedure has been followed correctly; that the accused has been given every reasonable opportunity for his defence and I agree with the findings of the Enquiry Officer

A that all the charges mentioned in the charge-sheet have been established. Since these are serious charges, it is tentatively decided to impose the penalty of dismissal from service on Shri K. Rajappa Menon, Assistant Station Master/Chalakudi. He should, therefore, be asked to show cause why he should not be dismissed
B from service accordingly."

He was given a week for showing cause why the proposed penalty should not be inflicted on him. After the explanation of the respondent had been received his dismissal was ordered by the Chief Commercial Superintendent.

C The respondent filed a petition under Art. 226 of the Constitution in the High Court and a number of points were raised before the learned Single Judge. The only point which prevailed with him was that the Chief Commercial Superintendent had not recorded an order as required by Rule 1713. He examined the other contention raised on behalf of the respondent before him that at the stage of the second show cause notice the Chief Com-
D mercial Superintendent had finally made up his mind which he could not or ought not to have done until the reply or the explanation of the respondent had been received and considered by him. In view of a bench decision of the Kerala High Court he did not rest his decision on the second point but decided in favour of the respondent on the first point holding that the Chief
E Commrcial Superintendent had not given findings on each of the charges. In his opinion the rule contemplated that the evidence which had been adduced at the enquiry in relation to each charges should be examined and considered by the punishing authority and he should give his own assessment and finding relating to each individual charge which was not done in the present case. The division Bench on appeal by the present appel-
F lant affirmed the judgment of the learned Single Judge.

Now Rule 1713 provides that if the disciplinary authority is not the Enquiring Authority it shall consider the record of the enquiry and record its findings on each charge. The argument which prevailed with the High Court was that the order embodied
G in Exh. 8 did not comply with the aforesaid rule because findings relating to each charge were not given after a proper discussion and analysis of the evidence produced at the departmental enquiry. In other words, the Chief Commercial Superintendent was bound to pass a detailed order expressing his views about each charge and that a general agreement with the findings of the Enquiry Officer did not satisfy the requirements of Rule
H 1713.

We are altogether unable to agree with the view expressed by the High Court. Rule 1713 does not lay down any particular

form or manner in which the disciplinary authority should record its findings on each charge. All that the Rule requires is that the record of the enquiry should be considered and the disciplinary authority should proceed to give its findings on each charge. This does not and cannot mean that it is obligatory on the disciplinary authority to discuss the evidence and the facts and circumstances established at the departmental enquiry in detail and write as if it were an order or a judgment of a judicial tribunal. The rule certainly requires the disciplinary authority to give consideration to the record of the proceedings which, as expressly stated in Exh. R. 8, was done by the Chief Commercial Superintendent. When he agreed with the findings of the Enquiry Officer that all the charges mentioned in the charge sheet had been established it meant that he was affirming the findings on each charge and that would certainly fulfil the requirement of the Rule. The Rule after all has to be read not in a pedantic manner but in a practical and reasonable way and so read it is difficult to escape from the conclusion that the Chief Commercial Superintendent had substantially complied with the requirements of the Rule. The interference by the High Court, therefore, on the ground that there had been non-compliance with Rule 1713 was not justified.

Learned counsel for the respondent has sought to raise the second point which the High Court had declined to decide, namely, that the disciplinary authority was not entitled to have finally made up its mind before the explanation to the second show cause notice had been received by it and at a stage prior to the issuance of the notice. Such a contention is wholly untenable in view of the decisions of this Court. It has been made quite clear in *Khem Chand* v. *The Union of India & Ors.*(1) that the procedure which is to be followed under Art. 311(2) of the Constitution of affording a reasonable opportunity includes the giving of two notices, one at the enquiry stage and the other when the competent authority as a result of the enquiry tentatively determines to inflict a particular punishment. It is quite obvious that unless the disciplinary or the competent authority arrives at some tentative decision it will not be in a position to determine what particular punishment to inflict and a second show cause notice cannot be issued without such a tentative determination.

The appeal is consequently allowed and the judgment of the High Court is hereby set aside. The petition filed by the respondent under Art. 226 shall stand dismissed. No order as to costs.

Y.P. *Appeal allowed.*

(1) [1958] S.C.R. 1080.