

PUNJAB AND HARYANA HIGH COURT

Dilbagh Rai Jarry

Vs

The Divisional Superintendent

(A.N Grover, J.)

02.09.1958

ORDER

A.N. Grover, J.

1. This is a petition under Article 226 of the Constitution in which the order of dismissal made against the petitioner, who was confirmed as a Railway Guard on 19th February, 1952, is challenged.

2. The petitioner was prosecuted for an offence under Section 509, Indian Penal Code, for having wished namaste to a lady on a railway platform in circumstances which were not considered proper. He was awarded a sentence of three months' simple imprisonment by the trial Magistrate on 29th December, 1955. His appeal to the Court of Session also failed. On 22nd February, 1956 he approached this Court on the, revisional side, but his petition was dismissed on 5th March, 1958 in limine, Thereafter the petitioner was dismissed from service on the ground of his conviction on 31st March, 1956. In April, 1956 the petitioner moved this Court for leave to appeal to the Supreme Court against the order of his conviction. That petition was dismissed. He, however, obtained special leave from their Lordships of the Supreme Court and his appeal was admitted and heard. It was allowed on 7th March, 1957. It was observed by their Lordships that the action of the petitioner was highly imprudent, almost bordering on stupidity or foolhardiness. It was further observed that he had got his due reward in the punishment which had been meted out to him by the three companions of the, lady which had resulted in serious injuries inflicted upon him and his having to remain in the hospital as an indoor patient for well-nigh 38 days. Although his action was deprecated, their Lordships did not see their way to convict him of the offence under Section 509, Indian. Penal Code. The appeal was allowed, but as her had already undergone a sentence, the conviction recorded against him was quashed.

3. The petitioner's case is that as soon as he filed a petition in this Court for leave to appeal to the Supreme Court he sent information to the Divisional Superintendent of Railways on 7th April, 1956 through the Station Master that such a petition was being filed in this Court and that he was seeking leave to appeal to the Supreme Court. Mr. Bhagat Singh Chawla, who appears on behalf of the petitioner, has also produced before me postal and acknowledgement receipts of a letter sent by registered post. There is, however, no mention of these documents in the petition, but the fact remains that some sort of information was sent on 7th April, 1956 through the Station

Master. It is denied by the respondents that any such information was ever sent. On the 18th March, 1957 the petitioner, after his acquittal by the Supreme Court, sent a fresh representation in which he brought it to the notice of the authorities concerned that his conviction had been set aside by the Supreme Court and that he should be reinstated. A reply dated 27th June, 1957 was sent to him to the effect that he could not be reinstated. The petitioner filed a departmental appeal which was also dismissed on 23rd December, 1957. The present petition was filed in February, 1958.

4. It has been contended by Mr. Bhagat Singh Chawla that the dismissal of the petitioner had been ordered in complete disregard of the provisions contained in Article 311 of the Constitution. According to Article 311, no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State can be dismissed or removed until he had been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. It is provided that the aforesaid clause shall not apply -

"311, (2) (a), where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge." Now the aforesaid proviso, becomes applicable only if a person has been convicted on a criminal charge. Conviction here can have only one meaning, namely that the person must have been convicted finally. In other words, if a person is acquitted by a Court of appeal, then it cannot be said that there is any conviction in the sense in which it is used in the aforesaid provision. In the present case the petitioner had been acquitted by the highest Court of the land. It could not possibly be said that his case fell within the aforesaid proviso. He was, therefore, fully entitled to the protection guaranteed by Art, 311. There can be no doubt that the aforesaid Article would govern the case of a railway servant as well, vide *Parshotam Lal Dhingra v. Union of India*, AIR1958 SC 36.

5. The position which has been taken up in the written statement by the respondent is that "the word used in Article 311 of the Constitution of India is conviction and not, a conviction maintained till the final Court of law"; It is maintained in paragraph 12 of the written statement that once the connection has been severed by dismissal no future change of circumstances could, affect it. This position is wholly untenable and it is somewhat surprising that any such defence should have been taken at all,

6. For the reasons given above this petition must be allowed, A proper writ shall issue directing the respondents to treat the dismissal of the petitioner as wholly void and ineffective In the circumstances of the case there will be no order as to costs.