

CIVIL WRIT.

*Before Grover, J.*RATTI RAM,—*Petitioner**versus*THE DIVISIONAL SUPERINTENDENT, ETC.,—*Respondents*

Civil Writ No. 591 of 1957

1958
 Sept. 16th

Constitution of India (1950)—Article 311 (2) proviso—Scope of—Railways Act (IX of 1890)—Sections 120 and 121—Conviction for an offence under—Whether amounts to criminal charge—Section 47—Rules framed under—Rule 21—Scope of.

Held, that the protection of clause (2) of Article 311 of the Constitution cannot be claimed by a person who is dismissed on the ground of conduct which had led to his conviction on a criminal charge. The word “charge” contemplates some accusation and not merely a charge in technical sense of the Code of Criminal Procedure. Conviction for an offence under sections 120 and 121 of the Railways Act amounts to a conviction on a criminal charge and in the case of an employee who has been dismissed on the ground of such a conviction it is not necessary to comply with the mandatory provisions of Article 311(2) of the Constitution.

Held, that Rule 21 of the Rules framed under section 47 of the Railways Act only refers to a breach of the rules and can have nothing to do with any conviction under the substantive provisions of the statute, namely, sections 120 and 121 of the Act.

Petition under Article 226 of the Constitution of India, praying that a writ of certiorari and mandamus be issued quashing the order No. 729/E/709 (p-2) dated the 4th April, 1956, whereby the petitioner has been removed from service, and directing the respondents not to give effect to the same.

JAI KISHAN KHOSLA, for Petitioner.

F. C. MITTAL, for Respondent.

ORDER

GROVER, J.—This is a petition under Article 226 of the Constitution by a person who was employed as a sweeper in the Railways. On the 13th December, 1955, he pleaded guilty to charges under sections 120 and 121 of the Indian Railways Act and was convicted by Magistrate First Class and directed to pay a fine of Rs. 10-0-0 under section 120 and Rs. 25-0-0 under section 121 of the Act. In default he was to undergo simple imprisonment for seven days and two weeks respectively. A departmental enquiry was held and thereafter the petitioner was dismissed from service by the competent authority. The reason given for his dismissal was that he had been convicted by a Court of law. The petitioner appealed against the order or dismissal to the officer concerned. That appeal, however, failed. He filed a further appeal to the Chief Commercial Superintendent, but the same was also dismissed.

Grover, J.

The main point that has been raised on behalf of the petitioner is that he was dismissed from service in violation of the provisions of Article 311 of the Constitution. It is, however, clear from the proviso to Article 311(2) that the protection of the aforesaid clause cannot be claimed by a person who is dismissed on the ground of conduct which had led to his conviction on a criminal charge. It is contended that the charge on which the petitioner was convicted being under sections 120 and 121 of the Indian Railways Act, could not be regarded to fall within the above proviso, as the offences covered by the aforesaid sections could not be regarded to be criminal in the sense in which that expression is used in the proviso appearing in Article 311. It is not possible to accept this contention. An identical point came up for consideration before Byers, J., in *Venkatarama v. Madras*

Ratti Ram
v.
 The Divisional
 Superintendent
 etc.
 Grover, J.

Province (1), a case in which the proviso in section 240(3)(a) of the Government of India Act had to be examined. The learned Judge has observed that the way in which the word 'charge' has been used obviously contemplates some accusation and not merely a charge in the technical sense of the Code of Criminal Procedure. In that case a person had been convicted of contempt of Court and it was held that although an offence of that nature might not fall within the narrow limits of the offences in the Penal Code, it was nevertheless a matter giving rise to a criminal charge within the meaning of the proviso in section 240(3)(a). It was held that as the dismissed official had been convicted on a criminal charge the formalities regarding notice and a reasonable opportunity of showing cause were not necessary to be complied with. With respect, I agree with the view of the learned Madras Judge and hold that in the present case it was not necessary to comply with the mandatory provisions of Article 311(2) of the Constitution.

Mr. J. K. Khosla, who appears for the petitioner, has raised another point. He has invited my attention to rule 21 appearing in Part II of the rules in Appendix 'A' framed in pursuance of section 47 of the Indian Railways Act. This rule is in the following terms:

"Any person other than a railway servant committing a breach of any of the rules in this Part shall, on conviction before a Magistrate, be punishable with fine not exceeding fifty rupees; and any railway servant committing such breach shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the Railway Administration from his pay."

Mr. Khosla, contends that the petitioner on his conviction was liable to forfeiture of one month's pay and this penalty having been specifically prescribed no question of his dismissal arose and the penalty of dismissal could not have been imposed upon him. The argument that has been raised is wholly baseless and without any force. Rule 21 refers specifically to "breach of any of the rules in this part". This has reference to Part II of the rules which begin with the Chapter entitled 'Carriage of Passengers' and end with rule 20 in Chapter II. Rule 21 appearing in Chapter III which appears in Part II governs the breach of only those rules which appear in Chapters I and II of Part II of the rules. Moreover, rule 21 only refers to a breach of the rules and can have nothing to do with any conviction under the substantive provisions of the statute, namely, sections 120 and 121 of the Act.

Ratti Ram
v.
The Divisional
Superintendent etc.

Grover, J.

For the reasons given above this petition fails and is dismissed. I, however, leave the parties to bear their own costs in this Court.

R.S.

CIVIL REVISION

Before R. P. Khosla, J.

BUA DASS,—*Petitioner*

versus

PIARE LAL,—*Respondent*

Civil Revision No. 107 of 1957.

East Punjab Urban Rent Restriction Act (III of 1949)
—*Section 13—Bona fide requirement for rebuilding—Meaning and test of .*

1958

Sept. 17th

Held, that while determining whether the landlord *bona fide* requires the permises for rebuilding, it is not the desire of the landlord to rebuild which is the determining