

Serial No. 3453—Circular No. 324-E/O-III (EIV), dated 23-5-1966.

Sub.—Railway Services (Conduct) Rules—Allahabad High Court's Judgment upholding provision relating to demonstrations by Railway servants.

A copy of Railway Board's letter No. E(D & A)65GS1-14, dated 21-4-1966 together with its enclosure is forwarded for information and guidance.

*Copy of Railway Board's letter No. E(D & A)65GS1-14, dated 21-4-1966, addressed to the General Managers, all Indian Railways, etc.*

Sub.—As above.

In a judgment dated 29-11-1965, the Allahabad High Court have held that Rule 19 (1) of the Railway Services (Conduct) Rules, 1956 (which is the same as Rule 7 of the Railway Services (Conduct) Rules, 1966) relating to demonstrations by Railway servants, was not ultra vires of Article 19 of the Constitution nor was it beyond the scope of Article 309 of the Constitution under which the Rule had been framed. Relevant extracts from the judgment are sent herewith for information and guidance.

Extracts from judgment of Allahabad High Court dated 29-11-1965 Civil Misc. Writ No. 1086 of 1965 etc.

This and the connected petitions have been filed by employees of the N.E. Railway who are aggrieved by the action of the first respondent, the Senior Personnel Officer (Gazetted) N.E. Railway, Gorakhpur, suspending them and by the commencement of disciplinary proceedings against them.

X X X X

The charge recited that the petitioner had "participated in and or held an unruly demonstration and also indulged in raising derogatory and abusive slogans before and against the Hon. Minister of State for Railways on 5-12-1964 about 17-45 hours inside the Railway Premises in contravention of the Gazette Notification issued in the N.E. Railway Fortnightly Gazette dated 1-8-1956. This was a breach of Service Conduct Rule No. 19 (1)" Similar action was taken in respect of the other petitioners.

X X X X X

The challenge to the validity of Rule 19 (1) is based on two submissions. It is said that the Rules contravenes sub-clauses (a) and (b) of clause (1) of Article 19 of the Constitution and is not saved by clauses (2) and (3) of that Article. It is also urged that the Rule falls outside the powers conferred by the proviso to Article 309 of the Constitution.

X X X X X

The Contention on behalf of the petitioners is that Rule 19 (1) incorporates restriction upon the fundamental rights of Railway servants to freedom of speech and expression, and to assemble peaceably and without arms.....It is pointed out that by virtue of the Rule a Railway Servant is prohibited from engaging himself

or participating in all demonstrations no matter what their description or character ..... A Railway Servant is as much entitled to the enjoyment of the fundamental rights set out in Article 19 (1) as any other citizen. .... But the question whether the scope of Rule 19 (1) is so wide as to nullify those fundamental rights is another matter. In Kameshwar Prasad's case the provision considered by the Supreme Court prohibited Government servants from participating in any demonstration or resorting to any form of strike in connection with any matter pertaining to their conditions of service and the Supreme Court struck this provision down because it imposed "a blanket ban on all demonstrations of whatever type innocent as well as otherwise. ...." and did not confine itself to demonstrations of a type which would lead to disorder. It was pointed out that a demonstration in itself might take the form of a peaceful and orderly assembly and the prohibition of such demonstration could not be justified against the provisions of sub-clauses (a) and (b) of clause (1) of Article 19. The Supreme Court emphasised that if the provision was so framed as to single out those types of demonstrations which were likely to lead to disturbance of public tranquility or which could fall under the other limiting criteria specified in Article 19 (2) the validity of the Rule could have been sustained. In my judgment the provision which was before the Supreme court is in complete contrast with Rule 19 (1). It is clear from the terms of the Rule that it prohibits only those demonstrations which are prejudicial to public order, which is mentioned in both clauses (2) and (3) of Article 19, and to the considerations mentioned in clause (2) of that Article. The Rule confines the demonstrations to a defined class, a class which is defined by reference to the criteria set out in clauses (2) and (3) of Article 19. It cannot be said that all demonstrations are to the subject of Rule 19 (1). There is no blanket ban here.

X X X X X

A distinction must be maintained between demonstrations prejudicial to the consideration mentioned in clauses (2) and (3) of Article 19 and demonstrations outside that class. It is perfectly conceivable that Railway servants may engage or participate in demonstrations pertaining to their conditions of their service which are innocent in the sense that they do not offend those considerations. But there may also be demonstrations which while pertaining to the conditions of service, may be prejudicial to one or more of those interests described by reference to the criteria set out in clauses (2) and (3) of Article 19. It is at once apparent that only such demonstrations fall within the prohibition of Rule 19 (1).

X X X X X

A rule providing for the manner in which a Railway servant should conduct himself in matters which bear upon public security and public order, to mention only some of the considerations, is as much a rule of service. .... An appropriate rule which serves any of the considerations by reference to which the State can limit the fundamental rights defined under Article 19 (1) is a rule validly regulating the conditions of service within the contemplation of the provision of Article 309. I am of opinion that upon the grounds raised by the petitioners, Rule, 19 (1) cannot be declared ultra vires.

X X X X X

It is pointed out that this petitioner had been placed on deputation with the North Eastern Railway Mazdoor Union for a period of one year ..... It is urged that the petitioner cannot be considered to have been an employee of the Railway when the demonstration took place and, therefore, he is not amenable to its disciplinary jurisdiction. .... The terms and conditions on which the petitioner was placed on deputation with the Union indicate that he continued to

be an employee of the Railway but his services had been lent to the Union by virtue of the deputation. Nothing has been shown to me to indicate that the deputation resulted in the termination of his employment with the Railway. Consequently during the period of deputation, he remained in the employment of the Railway and was, therefore, amenable to the disciplinary jurisdiction exercised over Railway employees.

X X X X X

The instant petition is dismissed.....

**Serial No. 3454.—Circular No. 847-E/38-II(Eiv), dated 18-6-1966.**

**Sub.—**Seniority of staff on transfer from one Division to another on a Railway from one Railway to another on personal request.

A copy each of Railway Board's letter No. E(NG)65SR6-31, dated 29-1-1966 and 1-4-1966 is forwarded for information and guidance. The Board's letter dated 30-9-1965 referred to therein was circulated under this office letter of even number dated 6-11-1965 (Serial No. 3218). It is further clarified that such Inter Railway/Inter Divisional transfers are to be set off against direct recruitment quota and not against promotee quota.

*Copy of Railway Board's letter No. E(NG)65SR6-31, dated 1-4-1966, addressed to the General Managers, all Indian Railways etc. etc.*

**Sub.—**As above.

Reference Board's letter No. E(NG)65SR6-31, dated 29-1-66. The Board have reconsidered the matter and have decided that it is not necessary for the staff, seeking transfers in intermediate grades from one Railway to another or from one Division to another on a particular Railway on personal request, to possess the educational qualifications laid down for direct recruitment. You may accordingly permit transfers being made.

2. Note (2) to para 12. of Chapter III of the Indian Railway Establishment Manual as introduced vide C.S. No. 138 may please be revised as in the advance C.S. sent herewith.

#### **Indian Railway Establishment Manual Advance C.S. No. 140**

##### **Chapter III**

**Rule 12.—**Note (2) below this Rule as introduced vide Advance Correction Slip No. 138 may be substituted as under :—

"The expression "relevant grade" applied to grades where there is an element of direct recruitment. Transfers on request from Railway employees working in such grades may be accepted in such grades. No such transfers should be allowed in the intermediate grades in which all the posts are filled entirely by promotion of staff from the lower grade (s) and there is no element of direct recruitment."