

(1992) 11 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 1311 of 1986 (R)

Abdul Rahim

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 28-11-1992

Acts Referred:

Citation : (1992) 11 PAT CK 0008

Final Decision : Dismissed

Judgement

Narayan Roy, J.—In this writ application petitioner has prayed for quashing of the order dated 6-2-1980 passed by respondent No. 1 in B.S. Case No. 31/1976 (26) whereby and whereunder the labour court, respondent No. 1, has dismissed the complaint filed u/s 26 of the Bihar Shops and Establishment Act, 1953 (hereinafter to be referred to as the Act) by the petitioner.

2. It appears that the complaint u/s 26 of the Act was filed by the petitioner raising therein, inter alia, that he was employed as permanent watchman as security guard in the security department of Tata Engineering Locomotive Company (Telco) since 1-1-1966 and he was posted at Jamshedpur. While he was serving under respondent No. 2, one Sri Sushil Mishra, an employee of respondent No. 2 was caught on 30-3-1976 at the Dispensary Gate with five numbers of rear axle shaft gears and a police case was instituted against him. On that very date, he was on duty at Plant No. 11 in B shift commencing from 4-00 p.m. On 4-4-1976 he was served with a charge-sheet dated 4-4-1976 in which it was alleged that Sri Sushil Mishra came out of the gate where he was on duty at 4-00 p.m. and he did not chock his person and allowed Sri Mishra to go out. For this accusation he was charge-sheeted and the charge disclosed that he was in league with Sri Mishra in committing theft of the property of the Company. Pursuant to the charge-sheet, he submitted his explanation denying the allegation. Thereafter, a domestic enquiry was hold and there he was found guilty of several charges and, accordingly, he was dismissed from his services with effect from 25-10-1976. It was further stated in the complaint that the

domestic enquiry was not fair and was conducted against the principles of natural justice as, though the charges against him could not be proved, yet he was dismissed from services.

3. Pursuant to the aforesaid complaint u/s 26 of the Act. B.S. case No. 31/1976(26) was registered and the case proceeded. Respondent No. 2 appeared and filed its show cause stating thereon that the complaint filed by the petitioner is not maintainable in law and on facts. The applicant was a worker covered by the definition given in the Indian Factories Act, 1948 and was, therefore, not an employee under the Act and, as such, the application was without jurisdiction. The applicant was suspended for 7 days from 14-10-1968 to 20-10-1968 for having been found guilty of misconduct under the Works Standing Orders of respondent No. 2. A proper and fair domestic enquiry was held in accordance with the Works Standing Orders and Rules of natural justice were followed. This petitioner had duly participated in the enquiry and he had all reasonable opportunity to cross examine the witnesses examined in support of the charges and also to adduce his own evidence including himself in his defence.

4. The learned Labour Court, after hearing the parties in this case and considering the documents and evidence on record, ultimately found the petitioner guilty of the charges levelled against him and dismissed the case aforeforesaid instituted by the petitioner giving rise to this writ application.

5. Mr. Tapen Sen learned Counsel appearing on behalf of the petitioner, has formulated four points in support of his case : (i) Since the enquiry report was not furnished to the petitioner, the domestic enquiry holding the petitioner guilty and, thereafter, the order of dismissal of the petitioner, vitiated and the order passed by the labour court is not sustainable in law. (ii) Since the enquiry officer was examined as management witness (MW) in this case before the labour court, the case of the petitioner was prejudiced and there was violation of the principles of natural justice. (iii) Since Sushil Mishra from whose possession the stolen properties were recovered has not been examined, the case against the petitioner has not been proved. (iv) The charges on which the petitioner has been dismissed and found guilty by the labour court, were not the charges framed by the company and thus the learned labour court has gone beyond the charges served upon the petitioner.

6. Mr. Sen, in support of his first proposition has placed reliance in case of Union of India and others Vs. Mohd. Ramzan Khan, , and contended that it has been held by the Supreme Court that since the enquiry report has not been served on the delinquent, the whole proceeding vitiates. For the same proposition, Mr. Sen has further placed reliance in case of State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan AIR 1961 SC 1623 and also in an unreported judgment of this Court delivered in CWJC No. 301/91 (R) (Bijay Bahadur Singh Dinkar v. State of Bihar).

7. In all these decisions aforesaid cited by the learned Counsel appearing on

behalf of the petitioner, it has been held that a reasonable opportunity to defend at the stage of departmental enquiry is a must and denial of such opportunity to the public servant to defend himself amount to violation of the principle of natural justice as required under Article 311(2) of the Constitution of India. I find that these cases relate to a departmental proceeding initiated against a Government servant and thus have no bearing in the instant case which arises out of a case, under the Bihar Shops and Establishment Act. In the recent case of Union of India and Ors. v. Md. Ramzan Khan (supra), it has been held that the delinquent is entitled to get a copy of the enquiry report and this right has not been taken away after 42nd Amendment of the Constitution by which 2nd part of Article 311 of the Constitution has been taken away. At the same time it has also been held that this judgment shall have "prospective application and no punishment imposed shall be open for challenge on the ground. Admittedly in the instant case, punishment has been imposed on the petitioner much before the judgment of this case and, as such, the case of Union of India and Ors. v. Md. Ramzan (supra), has no application in instant case.

8. Similarly the unreported decision in CWJC No. 301/91(R) has also no application in this case as the same has been based as per the decision held in the case of Union of India and Ors. v. Md. Ramzan Khan (supra), and in that view of the matter the submission of Mr. Sen that since the enquiry report was not served on the delinquent, the whole proceeding against the petitioner vitiated, has no substance and must be repelled.

9. In rebuttal of the aforesaid submission of Mr. Sen on his first proposition, Mr. Govind Das. Sr. Advocate appearing on behalf of respondent No. 2 Company, firstly contended that the principles of Article 311 of the Constitution are not applicable in the facts and circumstances of this case, He further submitted that in view of the fact that the Supreme Court has itself laid down the law in Union of India and Ors. v. Md. Ramzan Khan (supra), that this judgment shall have prospective effect, the submission of the petitioner is baseless and has no leg to stand. Mr. Das secondly contended that the principle of Article 311 of the Constitution is only applicable to persons referred to in Article 311(1) of the Constitution and since the petitioner is not the holder of such post as referred to in Article 311(1) of the Constitution the principle envisaged under Article 311 of the Constitution, has no application in the instant case. For this proposition Mr. Das relied on a decision in case of Dr. S.L. Agrawal v. General Manager, Hindustan Steel Ltd. AIR 1970 SO 1150. In case of Dr. S.L. Agrawal v. General Manager, Hindustan Steel Ltd. (supra), it has been held by five judges Bench of the Supreme Court that Clause (2) of Article 311 which gives protection opens with the words "no such person as aforesaid"" and these words take one back to clause 1 which describes person or persons to whom protection is intended to go. Clause (1) speaks of (i) persons who are members of (a) Civil Service of the Union or (b) of Indian Service or (c) Civil Service of State or (ii) holds a Civil post under Union or a State. Categories (a) (b) and (c) refer to the extending service which have been created in the Union and the State and which are permanently

maintained in strength. In addition to the extending services there are certain posts which are outside the paramount services. The list referred in Article 311(1) therefore, speaks of such posts on the civil side as opposed to the military side. The incumbent of such post also receives protection but since the appellant is neither holding posts under the State nor Hindustan Steel Ltd. he was not entitled to the protection of Article 311 of the Constitution. In this view of the matter, Mr. Das contended that since neither the Telco is a department of the Government nor are its servants holders of such posts under the State, the principle of Article 311 of the Constitution is not applicable in the case of this petitioner Mr. Das further contended that since it is a case under the Bihar Shops and Establishment Act, there is no question of application of the principle as envisaged in Article 311 of the Constitution.

10. Having considered the facts and circumstances of the case in hand and in view of the decision of the Supreme Court in case of Dr. S.L. Agrawal v. General Manager, Hindustan Steel Ltd. (supra) I am left with no options but to hold that service of enquiry report on the petitioner was not a precondition as envisaged in Article 311 of the Constitution and non-compliance thereof, does not vitiate the proceeding initiated against the petitioner. Moreso, Mr. Das has contended that since the enquiry report was filed in the labour court and was marked as Ext. A which was made available to the petitioner where he had the occasion to go through this Ext., it cannot be said that the petitioner was not in know of the enquiry report and his case was, thus, prejudiced.

11. So far the second proposition of Mr. Sen is concerned, I find from the order of the Labour Court that not only the enquiry officer has been examined, rather, other persons have also been examined, as witnesses on behalf of the management and those witnesses have been cross-examined by the petitioner. In this view of the matter I am of the view that since the enquiry officer has been examined as one of the Management witnesses, it has not gone in any extent to prejudice the case of the petitioner and thus the submission of Mr. Sen on this point has no substance and must be repelled.

12. Mr. Sen's contention with regard to his third proposition that since Sri Sushil Mishra, the person from whose possession the stolen articles were recovered, has not been examined in this case, the case of the petitioner has been prejudiced, is also misconceived and has no substance in it. It appears from the order of the learned labour court that this petitioner has examined witnesses and he could have very well examined this Sushil Mishra as well if at all he had to bring out something from his evidence. It further appears from the order of the learned labour that F.I.R. lodged against Sushil Mishra was filed in court and was marked as Ext. 5 and, the charge-sheet submitted against him was also marked as Ext. 5(a) which were made available to the petitioner and in that view of the matter the contention of Mr. Sen, must be repelled on the ground that since the petitioner had occasion to see and examine the F. I. R. lodged against Sushil Mishra, his case in no way was prejudiced by non-examination of Sushil Mishra.

13. Coming to the fourth proposition, Mr. Sen, has submitted that the petitioner was charge-sheeted for committing acts of misconduct under Works Standing Order No. 24 and more particularly Sub-clause (xxxvii) of the Works Standing Order of the Company. He further contended that the charge-sheet discloses the charge of habitual negligence or neglect of duty or work, abatement of theft whereas he was dismissed from his services on the charge of guilty of misconduct and also guilty of dishonesty, corrupt practice and abatement of theft and thus submitted that respondent No. 1 has completely misdirected itself in so far as it failed to take into consideration this aspect of the matter, Mr. Sen also submitted that the charges on which the petitioner has been dismissed from services are not in the list of acts which may be termed as misconduct as stipulated under Rule 20 of the Bihar Shops and Establishment Rules. For this contention Mr. Sen, has placed reliance in case of Binny Ltd. Vs. Their Workmen, .

14. A bare reading of the charge-sheet and the domestic enquiry goes to explain that the charges for which the petitioner was charge-sheeted and the grounds of dismissal on which he was dismissed, are one and the same charge and there is no discrepancy, whatsoever. Thus the decision in case of Binny Ltd. v. Their Workmen (supra), has no application in the present case. From a reading of Rule 20 of the Rules, it appears that the charges on which the petitioner was dismissed from his services have been enumerated in the list of acts which may be termed as misconducts, namely, theft, dishonesty, habitual or gross neglect of work and further breach of the provisions of the Standing Orders applicable to the Establishment and in that view of the matter, I hold that the charges levelled against the petitioner and the grounds on which the petitioner has been dismissed, are in accordance with the provisions laid down under Rule 20 of the rules.

15. In this case, I must point it out that the petitioner was employed as security guard under respondent No. 2. It was his paramount duty to check the pilferages of the property of respondent No. 2 and since he, admittedly, failed in discharge of his duty in apprehending Sushil Mishra, aforesaid, the finding of the labour court is justified and there is no infirmity in it. I further find that the charges of misconduct have been proved against the petitioner and, as such, the order impugned passed by the labour court, respondent No. 1, requires no interference.

16. In the result, for the reasons stated above, this writ application is dismissed but without costs.