
(1987) 03 CAL CK 0020

In the Calcutta High Court

Case No : F.M.A.T. No's. 1057 and 1058 of 1986

Ananda Chakraborty

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-03-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 91 CWN 1052

Hon'ble Judges : K.M. Yusuf, J;G.N. Ray, J

Bench : Division Bench

Advocate : S. Pal and Asit Kumar Banerjee, for the Appellant;Mihir Chakraborty, for the Respondent

Judgement

G.N. Ray, J.—This appeal is directed against the judgment dated 11th of September, 1985 passed in C.O.No.15469(W) of 1985. By the aforesaid order, the writ petition filed by the appellant Shri Ananda Chakraborty was dismissed by the learned Trial Judge. The aforesaid writ petition was moved by the appellant Shri Ananda Chakraborty against the order of dismissal from service passed by the respondent No. 5, the District Traffic Superintendent, Eastern Railway, Chitpur, Calcutta.

2. It appears that a disciplinary proceeding was initiated against the appellant by issuing a charge sheet along with imputation of charges and statements of imputation of misconduct, since referred to in Annexure "A" to the writ petition. The charges leveled against the appellant are set out hereunder :-

Charges

1. Shri Ananda Chakraborty while functioning as Commercial Clerk at Sealdah Railway Booking Counter No. 15 on 29.8.81 from 13.30 hrs. committed gross misconduct in that the said Sri Ananda Chakraborty had kept concealed 171 pcs. Of blank papers cut into sizes of self-printed tickets in two bundles, one printed ticket without inscription of ticket number on it ex. Sealdah to Krishnagar, one

printed ticket dated 12th August, 1986 without inscription of ticket number on it ex. Sealdah to Belgharia/Durganagar and three two Rupee G. C. Notes, inside a locked drawer of office table, the key of which was under the personal possession of Sri Ananda Chakraborty for the purpose of manufacturing fake tickets with intent to sell to the intending passengers for personal gain, by depriving the Railways, of Railway revenue arising out of sale of such unaccounted for tickets.

2. Sri Ananda Chakraborty, Commercial Clerk failed to declare his personal cash in the Personal Cash Declaration Register at the time of reporting to duties regularly thereby violating the extent orders of the Administration.

3. Sri Ananda Chakraborty, Commercial Clerk had declared excess amount of personal cash on ten occasions between 10-7-81 and 29-8-81 beyond maximum permissible limit of Rs. 20/- violating the extent orders of the Administration.

Sri Ananda Chakraborty, therefore, failed to maintain absolute integrity and acted in a manner unbecoming of a Railway servant and contravened Rule 3(1)(i) and (iii) of Railway Services (Conduct) Rules, 1966.

Sd/- (Sankar Ghosh) Dist. Traffic Supdt./Chitpur.

3. It further appears that in the said disciplinary proceeding several witnesses were examined on behalf of the Railway Administration and the appellant viz. the delinquent officer also deposed and he took the assistance of a defence helper being one of the Railway ex-employees. The Enquiring Officer submitted a report containing his findings and it appears from the said report that he came to the finding that the charges Nos.1 and 2 had been proved and with regard to charge No. 3 the finding of the Enquiring Officer was to the effect that although the delinquent had declared his personal cash in the concerned register but such declaration had not been counter signed by the superior officers and although there had been contributory negligence by the concerned Railway Officers in not signing such declarations of the delinquent officer, he cannot be fully absolved of his responsibility in not getting his declarations countersigned by the superior officers. The enquiring officer also negated the contention of the delinquent officer that non production of the alleged extent order requiring declaration of personal cash at the enquiry, the said charge could not be established because P.W.1 had deposed that the delinquent officer had a duty to declare his personal cash and to get it countersigned if it had exceeded Rs. 20/-.

4. With regard to charge No. 2, the Enquiring Officer came to the finding that the defence plea that the delinquent officer and other booking clerks could not declare personal cash due to non-availability of such personal cash declaration register could not be accepted in the absence of recorded evidence to that effect. The enquiring officer had held that the delinquent officer and other booking clerks did not attach proper importance to the requirement of declaration of personal cash in the personal cash declaration a register. The disciplinary authority did not discuss the contentions of the delinquent officer in the context of the evidence on record but made a very cryptic finding containing about nine lines to sustain the

impugned order of dismissal. The finding of the disciplinary authority is set out hereunder :

I fully agree with the findings of the Enquiry Officer.

Sri Ananda Chakraborty has committed serious breach of trust reposed, in him by the Rly. Administration, demoralized himself to the extent possible to serve his selfish and, i.e. monetary greed and helped in leakage of Rly. Revenue. Such serious nature of offence warrants drastic action. To meet the end of justice, I am inclined to infer this as a fit case for removal and hence, I order that Shri Ananda Chakraborty be removed from service.

5. The learned trial Judge dismissed the writ petition made by the appellant inter alia on the finding that the writ court should not interfere with the findings of fact by sitting as a Court of Appeal over the findings made in a disciplinary proceeding. The learned trial Judge was of the view that there was no perversity in the finding made in the disciplinary proceeding for which interference by the writ court was called for. Against the aforesaid decision of the learned trial judge, the instant appeal has been preferred by the writ petitioner appellant.

6. Mr. S. Pal, learned counsel appearing for the appellant has submitted that the disciplinary authority had passed the impugned order of punishment of dismissal from service on the finding that the delinquent officer for his own selfish end and for monetary greed had helped in leakage of Railway revenue. Mr. Pal has submitted that charge No. 1 is not for actual leakage of Railway revenue but the said charge only indicates that the delinquent officer had kept concealed 171 pieces of blank paper cut into sizes of the self-printed tickets, one self-printed ticket without inscription of ticket number, date and time and one printed ticket dated 12th August, 06 and three two rupee G. C. Notes inside the drawer for the purpose of manufacturing faked ticket with intent to self to the intending passengers for personal gain. He has submitted that the aforesaid charge clearly indicates that there had not been any leakage of Railway revenue but the delinquent officer was making preparation for manufacturing faked tickets with intent to sell to the passengers, Mr. Pal has, therefore, submitted that the finding of the disciplinary authority that there has been leakage of Railway revenue is contrary to the charge leveled against the delinquent officer. On that score alone, the finding of the disciplinary authority should be set aside and the learned trial Judge had failed to appreciate the said fact in dismissing the writ petition. Mr. Pal has also submitted that in the disciplinary proceeding no evidence has been led on behalf of the Railway Administration to bring home the charge No. 1. He has submitted that Sri M. N. Nag, Commercial Supervisor, Eastern Railway, Sealdah was examined as P.W.1 by the Railway Administration in the disciplinary proceeding and a specific question was put to the said witness on behalf of the Administration to the following effect :

Q.No.10 : Can you give me an idea about the possibilities for getting a printing impression of cards from outside without operating the SPT press buttons?

Answer : I cannot say.

7. Mr. Pal, learned counsel appearing for the appellant has submitted that another witness viz. Shri S. N. Sanyal, Ex. CWL/CCC was also examined by the Railway Administration as P.W.2 and in question No. 3 he was asked to the following effect :-

Q.No.3 : 171 pcs. of blank cards into sizes of self-printed tickets were found inside the drawer so opened by Sri Chakraborty. Do you find any scope for malpractices to the indulged by the delinquent staff therefrom.

Answer : Obviously keeping of such cut into sizes of SPT roll gives steps for indulging in malpractices.

8. Mr. Pal, learned counsel has submitted that barring the two said questions put to two different witnesses examined on behalf of the Railway Administration no other witness has been asked any question to establish the charge No. 1 and there is no evidence in the said disciplinary proceeding elicited from any of the witnesses examined in the said disciplinary proceeding that the articles found from the drawer would at all be utilized for the purpose of manufacturing faked tickets in a self printing machine. Mr. Pal, learned counsel has therefore submitted that in the absence of any evidence whatsoever to the effect that the articles found from the drawer could be utilized for the purpose of manufacturing faked tickets, no action can be taken on the basis of charge No. 1 leveled against the delinquent officer. Mr. Pal has also drawn the attention of the Court that the Enquiring Officer had also come to the finding that the blank papers cut into pieces of self-printed tickets found inside the drawer were not supplied by the Railway Administration and the normal presumption therefore would be that the purpose behind the same could be anything but legitimate. Mr. Pal has, therefore, submitted that Enquiring Officer also could not make any finding that the said materials could be utilized for manufacturing faked tickets the only finding met by the inquiry officer was that but there should be presumption that the said article were kept for a purpose which was anything but legitimate. Mr. Pal has, therefore, contended that on such finding, it was not possible for any reasonable man to proceed on the footing that the charge No. 1 had been brought home. Accordingly, there was no occasion for the disciplinary authority to pass any punishment on the basis of charge No. 1 and in the circumstances no useful purpose will be served by directing the disciplinary authority to consider afresh the finding made by the Enquiring Officer with regard to charge No. 1 and to come to a finding.

9. So far as charge No. 2 is concerned, Mr. Pal learned counsel has contended that the delinquent officer had declared his personal cash on a number of occasions but had not declared his personal cash on all the occasions and the case of the delinquent officer was that the personal cash register was not always made available to the delinquent officer and other booking clerk. The Enquiring Officer having come to the finding that the delinquent officer and several other

booking clerk did not attach proper importance to the requirement of declaration of personal cash in the personal cash register, clearly proves that there was no deliberate intention on the part of the delinquent officer to flout the Railway instruction for any illegal purpose but lapses if any was trivial and not intended to cause any personal gain. He has also submitted that so far as charge No. 3 is concerned, the Enquiring Officer has not come to any finding that the delinquent officer had the duty to get the declaration made in the personal cash register countersigned by the superior officer. He has submitted that it is an admitted position that the delinquent officer had declared his personal cash on a number of occasions but the appropriate officers failed to countersign such declarations. Unless there is any finding either by the Enquiring Officer or by the disciplinary authority that it was the duty of the delinquent officer to get such declaration countersigned, no punishment can be inflicted on the score of charge No. 3. He has submitted that as a matter of fact the alleged Extent Order requiring such declaration to be countersigned was not produced at all and Enquiring Officer had also come to the finding that the superior officers failed and neglected to countersign the declaration made by the delinquent officer and other Booking Clerks in the personal cash register and there was a contributory negligence also from the side of the Railway administration. Mr. Pal, learned counsel has therefore contended that on the basis of charge No. 3, there will therefrom be no case to inflict any punishment on the delinquent officer and a punishment of dismissal from service is wholly unwarranted. He has further submitted that in any event the disciplinary authority did not base his order of dismissal on charges nos.2 and 3 and as aforesaid the said order of dismissal was passed on the score of leakage of railway revenue. He has, therefore, submitted that the impugned order of dismissal passed by the respondent No. 5 should have been quashed by the learned trial Judge and in the facts of the case, the appeal should be allowed.

10. Mr. Mihir Kr. Chakraborty, learned counsel appearing for the Railway administration has, however, submitted that although none of the witnesses examined by the Railway Administration had given any positive evidence to the effect that the articles found in the drawer could be utilized for the manufacture of faked tickets, there is evidence to the effect that the said things were stored for a mala fide purpose. He has submitted that the evidences are to the effect that the Railway Administration did not supply the said papers cut into size of self-printed tickets. The said papers were cut into the sizes of the self-printed tickets. If from the said facts, the Enquiring Officer had drawn the inference that such materials were stored with an intention to manufacture/fabricate tickets, no exception can be taken in the writ proceeding. Mr. Chakraborty has submitted that the High Court in the exercise of its powers under Article 226 of the Constitution of India does not sit as a Court of Appeal on the facts found and evidences adduced in a domestic enquiry. If there is some evidence which reasonably supports that the delinquent officer is guilty of the charge leveled against him and the disciplinary authority accepts it, there is no occasion for the

High Court to interfere with such finding under Article 226 of the Constitution of India. In support of this contention, Mr. Chakraborty has referred to a decision of the Supreme Court reported in the case of State of Andhra Pradesh Vs. Sree Rama Rao, . Mr. Chakraborty has also referred to two other decisions of the Supreme Court made in the cases of State of Orissa V. Murlidhar Jana (AIR 1963 S.C. 404), State of Orissa Vs. Bidyabhushan Mohapatra, . The aforesaid decisions have been cited by Mr. Chakraborty for the purpose of contending that from any of the findings the punishment which has been inflicted by the disciplinary authority can be sustained, the High Court should interfere under Article 226 of the Constitution and it is not necessary for the High Court to weigh as to which of the findings had ultimately weighed with the disciplinary in inflicting the impugned punishment. Mr. Chakraborty, has also referred to another decision of the Supreme Court as made in the case of Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh, for the proposition that inference of fact drawn by the disciplinary authority from the materials before it should not be interfered with by the High Court in the exercise of its power under article 226 of the Constitution of India. It has been held that where a conclusion has been drawn by the disciplinary authority supported by evidence which could have been reached by a reasonable man there is no case for the High Court to interfere, inasmuch as the High Court is not exercising the power of a Court of Appeal in the Constitutional Writ Jurisdiction. Mr. Chakraborty has also contended that the disciplinary authority has accepted the findings made by the Enquiring Officer and it must therefore be presumed that he has taken into consideration of the findings made by the Enquiring Officer in respect of all the charges. Mr. Chakraborty has submitted that the finding made by the disciplinary authority is little one but since he has accepted the reasonings and the findings of the Enquiring Officer it was not necessary for him to elaborate the reasons. He has further submitted that the expression of the disciplinary authority that the delinquent officer has helped in the leakage of Railway revenue is not happily worded. But in the facts and the circumstances of the case it should be held that the disciplinary authority had in effect come to the finding that the materials found in the drawer unlocked by the delinquent officer had been stored for the purpose of manufacturing the fabricated tickets which in turn would bring out the leakage of Railway revenue. Mr. Chakraborty has submitted that apart from charge No. 1, two other charges have been proved as found by the Enquiring Officer and accepted by the Disciplinary authority and accordingly on the basis of the two other charges, the order of punishment of dismissal could be made by the disciplinary authority and when such an order had been passed, the writ court should not consider as to which of the charges had really weighed with the Disciplinary Authority in passing the impugned punishment. In the aforesaid circumstances, Mr. Chakraborty has contended that no interference is called for by the writ court and the learned trial judge was justified in passing the order appealed from.

11. Mr. Pal, the learned counsel for the appellant in reply to the said contentions

of Mr. Chakraborty has, however, submitted that the disciplinary authority has not passed the impugned order for punishment on consideration of charges Nos.2 and 3, but he has confined his order on consideration of charge No. 1, and as aforesaid, the disciplinary authority proceeded on the footing that the delinquent officer had actually committed the offence and thereby there had been leakage of Railway fund. Mr. Pal has further submitted that as no evidence had been led to substantiate the case of the Railway administration that the articles which were found in the drawer opened by the delinquent officer could at all be utilized for the purpose of fabricating forced tickets in a SPT system, no punishment could be inflicted on the basis of charge No. 1. Mr. Pal has contended that it is not the case that this court in exercise of the powers under writ jurisdiction is appraising the evidences and taking one view or the other where two views are possible. Mr. Pal has submitted that if no evidence had been led to bring home the charge, then any finding made on the basis of such honest evidence cannot but be a perverse finding and the High Court in exercise of its powers under article 226 of the Constitution of India not only has a power to look into the evidence but also has a duty to see as to whether or not there is any evidence on the basis of which a reasonable view about the commission of the offence indicated in the charge can be established. In this connection, Mr. Pal has referred to a decision of the Supreme Court made in the case of Nand Kishore Prasad Vs. State of Bihar and Others, . In the said case, the Supreme Court has held that the disciplinary proceeding before the domestic bodies is of quasi-judicial character. Therefore, the immediate requirement of the rules of natural justice means that the tribunal should arrive at a conclusion on the basis of some evidence i.e. evidential material which with some degree of definiteness will point to the guilt of the delinquent in respect of the charge leveled against him. It has been further held that suspicion cannot be allowed to take the place of proof even in a domestic enquiry. In the said decision, the Supreme Court has further held that there was no impropriety on the part of the High Court in looking into the evidence for the purpose of finding out as to whether or not there was any evidence of primary fact. Mr. Pal has also referred to a decision of the Supreme Court in Solanki Chimanbhai Ukabhai Vs. State of Gujarat, . It has been held in the said decision that although the High Court does not sit as Court of Appeal on the finding of the disciplinary authority, the High Court can look into the evidence for the purpose of finding as to whether or not the conclusion made by the disciplinary authority is based on no evidence because in that case such finding will be perverse and interference by the High Court in the writ jurisdiction is only justified. He has also referred to another decision of the Supreme Court in the case of Sawai Singh Vs. State of Rajasthan, . The Supreme Court in that case also considered the evidence for the purpose of finding that the evidence did not bring home the charges leveled against the delinquent officer. Mr. Pal has, therefore, submitted that the disciplinary authority will have no occasion to consider the charge No. 1 because there is no evidence which establishes the possibility and or feasibility of fabrication of forged tickets on the basis of the materials found in the drawer. Mr. Pal has further submitted that the Court may

direct the disciplinary authority to consider the enquiry report so far as the charges nos. 2 and 3 are concerned if the court feels that such charges are required to be considered specifically. In that event, this Court should give specific direction to the disciplinary authority that with regard to charge No. 3, the disciplinary authority should take into consideration as to whether or not under the extent order of the Railway administration there was any obligation on the part of the delinquent officer to get the declaration of cash made by him in the personal Cash register countersigned by the superior officer.

12. After Considering the respective contentions made by the learned counsels appearing for the parties, it appears to us that so far as the charge No. 1 is concerned, there is no evidence adduced on behalf of the Railway Administration to show that the materials since found in the drawer unlocked by the delinquent officer could be effectively utilized for fabricating self-printed tickets in the self-printed ticket machine. In our view, Mr. Pal is justified in his contention that P.W.1 had specifically stated that he could not say whether the same could be utilized for fabricating the tickets and inspite of such statement having been made by the P.W.1, no other witness was asked to state as to whether or not the materials could at all be utilized for fabricating self-printed tickets in the machine. Unless there is such evidence, in our view, it can be very forcefully contended on behalf of the appellant that the charge No. 1, cannot be brought home because the said charge proceeds on the footing that the said materials were kept for the purpose of manufacturing faked tickets. In our view, the writ court should not weigh the evidence taken into consideration by the disciplinary authority for the purpose of finding out as to whether or not the said evidence are sufficient for taking one view or the other. If on the basis of the evidence adduced in a disciplinary proceeding, a view can reasonably be taken and such view has been taken by the disciplinary authority, this Court in exercise of the powers under Article 226 of the Constitution of India, cannot interfere with such finding. But if there is no material evidence on the basis of which a finding can at all be made by any reasonable person, then such finding made by the disciplinary authority cannot but be perverse and the writ court in our view has not only power but also a duty to consider the evidences for the purpose of finding out as to whether or not such finding is without any material evidence and as such perverse. The law is well-settled by the Supreme Court that the disciplinary authority cannot be allowed to make a finding on mere suspicion and not co-related with the evidence adduced in a disciplinary proceeding, and even in a case of domestic enquiry, the Tribunal has a paramount duty to base its finding on the evidences adduced. In the facts and circumstances of the case, the decision cited by Mr. Chakraborty, therefore, can have no manner of application. It also appears to us that the disciplinary authority has not taken into consideration the findings made by the enquiring officer with regard to charges nos.2 and 3 for the purpose of passing the impugned order of dismissal.

13. It also appears to us that as the disciplinary authority had proceeded on the footing that the delinquent officer was responsible for the leakage of the Railway

found, the impugned order of punishment has been passed by the disciplinary authority. In the circumstances, the impugned order of punishment cannot be sustained and should be set aside. The appeal is, therefore, allowed and the impugned order of punishment is set aside. The disciplinary authority is directed to take into consideration the findings made by the enquiry officer with regard to charges nos.2 and 3 and the materials on record in connection with these charges and to pass such order as may deem just and proper to him. We may only indicate here that so far as the charge No. 3 is concerned, the enquiring officer has come to the finding that there was contributory negligence on the part of the Railway officials in not counter-signing the disclosures made by the delinquent officer and other booking clerk in the Personal Cash Declaration Register. In our view, it is necessary for the disciplinary authority to take into consideration a to whether or not there was any extent rule under which there was an obligation on the part of the delinquent officer to get such declarations made by him in the personal cash register counter-signed by the superior officers because admittedly such extent order was not produced at the enquiry. If there was no such obligation on the part of the delinquent officer, but the concerned officers had failed and neglected to countersign the declarations made, in our view, there will be no occasion to impose any punishment for such lapses on the part of the Railway officers. Since the matter is hanging for a pretty long time, it is only desirable that the disciplinary authority should dispose of the disciplinary proceeding after taking into consideration the findings of the enquiring officer with regard to charges Nos.2 and 3 in the light of the observations made hereinabove as early as practicable, preferably within two months from the date of communication of this order. Since the impugned order of dismissal from service is set aside, the appellant must be deemed to be in service and as such entitled to his salaries from the date of dismissal till to-day and also future salaries and emoluments until the final conclusion of the disciplinary proceeding. Let the arrear salaries and emoluments upto March 1987 be paid within two months from the date of the communication of this order. The appellant need not join his service until the disposal of the disciplinary proceeding by the disciplinary authority but the respondents will be at liberty to ask him to join his duties even before the conclusion of the disciplinary proceeding.

14. As the disciplinary authority has been directed to conclude the disciplinary proceeding afresh on consideration of charges Nos.2 and 3 in the light of the observations made in this order, let a copy of this judgment countersigned by the Assistant Registrar (Court) be handed over to the learned counsel of the appellant for communication to the disciplinary authority at an early date on an undertaking by the appellant to apply for certified copy of the order in the usual manner. The appeal is accordingly disposed of. There will be no order as to cost.

K.M. Yusuf, J.

15. I agree.

Appeal disposed of.