

(1968) 03 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Petition No. 1 of 1966

Bhagat Ram

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-03-1968

Acts Referred:

Citation : AIR 1968 Delhi 269 : (1968) 4 DLT 495 : (1968) LabIC 1402

Hon'ble Judges : S.N. Shankar, J

Bench : Single Bench

Advocate : P.N. Nag, for the Appellant; A.C. Sud, for the Respondent

Judgement

(1) By this petition under Article 226 and 227 of the Constitution. Shri Bhagat Ram has prayed that the order passed by the General Manager Himachal Government Transport Simla, Annexure "A" reducing his pay to the time scale of Rs. 80-4-120 dated January 3 1965 may be quashed. This order was passed as a result of department proceedings taken against him for misdemeanor under the following circumstances. He was a driver employed by the Himachal Pradesh Government Transport. One Shri Prem Nath was an Inspector in the same service in the Bilaspur Division. According to the Department the case against the petitioner was that while he was plying his bus from Mandi to Rupar on October 16, 1961 Prem Nath Inspector signaled him at a place near village Jharol to stop the bus, for purpose of checking but the petitioner did not stop and drove on to evade checking. When the bus, however, stopped some distance away the Inspector on checking found that it was carry in three passengers without tickets.

A note to this effect was made by him on the check slips to which the petitioner took strong objection. This led to a quarrel between him and the Inspector during which the Inspector was pushed out of the bus and manhandled by the petitioner. The matter went up to the police and the petitioner was challenged u/s 332 and 189 of the Indian Penal Code. During the pendency of the Criminal case the Department placed him under suspension on November 29, 1961, but later on his being acquitted by the criminal Court on November 6, 1964, he was

reinstated by order of the Regional Manager dated January 2, 1964, but by an order of the same date in exercise of powers conferred on him by sub-rule (1) of the Rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules 1957 hereafter called "the rules" the Regional Manager again suspended him with immediate effect.

A charge-sheet was then served and three charges were framed against him. The first charge related to his failure to stop the bus on being signaled to do so by the Inspector. The second charge was in respect of the embezzlement of Government revenue with mala fide intention and the third charge was for misdemeanor and reads as under:

"Misbehaved and showed highest misdemeanor towards the said Inspector while on duty on 16-10-1961." After inquiry the Inquiry Officer submitted his report holding that the first two charges were not proved but in respect of the third charge he held that there was overwhelming evidence of the rude and indisciplined behavior of the petitioner towards the Inspector and the third charge thus stood proved against him.

After considering the report the General Manager by his order dated October 9, 1964 issued a show cause notice why the penalty of removal from service should not be imposed on him. In compliance with this notice the petitioner showed cause and thereafter the General Manager issued the impugned order dated January 3, 1965, referred to above. From this order an appeal was filed by the petitioner to the Lieutenant-Governor who dismissed the same without giving a hearing to the petitioner.

(2) The impugned order has been assailed by the Learned counsel for the petitioner on several grounds. He submits that the suspension order dated January 2, 1964, copy Annexure "D" had been passed by the Regional Manager who had no authority to do so. That the inquiry held against the petitioner was conducted by an officer who was subordinate to the General Manager and the same was Therefore vitiated and this inquiry was also not fair and the report of the Inquiry Officer was bad in as far as he did not properly appreciate the evidence produced before him. The dismissal of the appeal by the Lieutenant-Governor without giving a hearing to the petitioner is also attacked as being contrary to the rules of natural justice. Lastly, it is urged that the petitioner was entitled to his full pay and allowances for the period of his first suspension i.e., with effect from November 29, 1961, to the date of reinstatement on January 2, 1964.

(3) In support of his contention that the Regional Manager was not competent to pass the order Annexure "D" and to suspend the petitioner the learned counsel 45/56 dated January 30, 1962, issued by the Lieutenant-Governor in exercise of powers conferred upon him by Part II and Part IV of the Schedule to the Central Civil Services (Classification Control and Appeal) Rules 1957 read with clause (B) of sub-rule (2) of rule 14 of the said Rules. He contends that his client was a

class Iii employee falling within the category of "all other Departments (Except 25 General Administration Departments) (District Administration)" and as such in his case the appointment authority was the head of the department and the authority competent to impose penalties on him was also the head of the department; while Regional Manager who suspended him was only a head of office and not the head of the department and as such way not competent to pass the order of suspension.

This argument has no merits because this notification specifies only the authorities competent to inflict the penalties specified in rule 13 of the Rules. The suspension of the petitioner vide Annexure "D" was not ordered by way of penalty. Action was taken under rule 12 of the Rules, which provides that the appointing authority or any other authority to which it is subordinate or any authority empowered by the President in that behalf may place a Government servant under suspension. It is the petitioner's own case that his suspension was ordered pending departmental action. The inquiry was not started immediately, probably because of the pendency of the criminal case and was started only after its final decision but that did not change the nature of the suspension.

(4) According to S.R.O. 608 dated February 28, 1957, issued by the President in exercise of powers conferred by sub-rule (1) of rule 12 of these Rules the President empowered every officer competent to impose any of the penalties specified in R.13 of the Rules to exercise the power under R. 13 to place the Government servant under suspension. The notification dated January 13, 1962, relied upon by the learned counsel for the petitioner clearly shows that the head of the office in case of class Iii posts to which the petitioner admittedly belonged was competent to impose any of the penalties specified in sub-clause (1) (2) and (3) of rule 13. The S.R.O. No. 608 dated February 28, 1957, Therefore read with the notification dated January 30, 1962, in view empowered the Regional Manager who it is not disputed was the head of the office to pass the order of suspension against the petitioner. The contention said raised, Therefore, in regard to the suspension order has no force and is hereby repelled.

(5) The second submission that the inquiry against the petitioner was conducted by an officer who was subordinate to the General Manager and was, Therefore, for this reason vitiated is also without merit. The only fact that the inquiry officer was in a position subordinate to the publishing authority did not vitiate the inquiry. It is not the petitioner's case nor has it been urged that the inquiry officer in this case was in fact biased or prejudiced against the petitioner. The mere fact that he was a subordinate employee of the same department and subordinate in position to the General Manager or the Regional Manager is no indication of the fact that he could not form his own independent judgment and was under the influence of his superior Officers. Reference in this connection may with advantage be made to Ram Naresh Lall Ram Yash Lall Vs. The State of Uttar Pradesh and Others, in support of this proposition.

(6) It was then urged that the inquiry was not fair and the Inquiry Officer had

not properly construed the evidence. Nothing has been pointed out to show how and why the inquiry was unfair. The point urged is that the inquiry officer had misappreciated the evidence placed before him in arriving at the conclusion arrived at by him is based on evidence but it is contended that this evidence should have been discarded by him. It is hardly for this Court as a Court of writ to appraise the evidence and to substitute its finding for the finding of the inquiry officer. The contention thus has no merits.

(7) The grievance that principles of natural justice were not observed by the Lieutenant, Governor in so far as the petitioner was not granted opportunity of oral hearing at the stage of appeal is also without justification. In support of this submission the learned counsel has placed reliance on *Dharani Mohan Barman v. State of Assam*, Air 1963 Guhawati 183, With utmost respect I am unable to subscribe to the proposition urged. The rules do not prescribe a personal hearing and the nature of the appeal before the appellate authority under the rules also does not warrant such a condition being construed to be implicit in them.

(8) Appeal against an order imposing penalties is provided in Part Vi of the Rules. Rule 21 provides that no appeal shall lie against any order made by the President. Rule 22 deals with appeal against orders of suspension. Rule 23 deals with orders imposing penalties and rule 24 deals with appeal against other orders. Limitation for filing of the appeals is prescribed by rule 25 and the form and the contents of the appeal are laid down in rule 26. Rule 27 sets out the manner in which the appeal is to be submitted while rule 28 gives powers to the authority to withhold the appeals submitted to it in the cases specified therein. If the appeal is not so withheld then it has to be transmitted to the appellate authority in accordance with rule 29.

Rule 30 then prescribes the mode for the consideration of the appeal. Sub-rule (1) of the Rules reads as under:

"In case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of rule 12 and having regard to circumstances of the case the order of suspension is justified or not and confirm or revoke the order accordingly." Sub-rule (2) then deals with the appeal in regard to penalties other than suspension and finally sub-rule (3) provides as under:

"In the case of an appeal against any order specified in rule 24 the appellate authority shall consider all the circumstances of the case and pass such orders as it deems just and equitable." Nowhere in these Rules a personal hearing to the appellant is provided, nor has any right been conferred on the Government Servant to claim such a hearing. Sub-rule (3) of rule 24 in itself says that it is for the appellate authority to consider all the circumstances of the case and pass such orders as it deems just and equitable. The scheme of the Rules and this aspect of the matter has further to be appreciated in the background of the law relating to master and servant and the provisions, of Art. 310 of the Constitution

of India in case of a Government servant holding a civil post. This article provides that the post is held by him during the pleasure of the President. The only fetter on this pleasure is provided by Article 311. If the provisions of Article 311 have been fully complied with there is no just occasion for a Government servant to raise any further grievance and to claim any further hearing. No opportunity beyond those prescribed by sub-clause (2) of Article 311 can be claimed by a Government servant. At the stage of appeal under the Rules it is a matter for the appellate authority to satisfy itself that the necessary provisions of law have been duly complied with and then after taking into consideration all the circumstances of the case pass such order as it deems just and equitable.

(9) Natural justice is a very elastic term. Its rules vary from tribunal to tribunal and we cannot universally apply the same principles in all cases or to determine the question with reference to any preconceived notions. Reference in this connection may be made to *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, where the question of observance of rules of natural justice in relation to the various tribunals and statutory bodies came up for consideration before the Supreme Court. Their Lordships held.

" The rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the Act under which they function. The question whether or not any rules of natural justice had been contravened should be decided not under any preconceived notions, but in the light of the statutory rules and provisions. Where no such rules which could be said to have been contravened by a tribunal is brought to the notice of the Court it is no ground for interference either under Article 226 or 227 simply because the tribunal had viewed the matter in a light which is not acceptable to the Court." (10) As I have pointed out above the constitution of the appellate authority under the Rules to decide the appeal filed by a Government servant in the manner it deems just and equitable after taking into account all the circumstances of the case does not carry by implication an obligation cast upon it to afford a personal hearing to the person filing the appeal. This aspect of the case has not been noticed in the Assam authority. I am, Therefore, not able to sustain the submission of the learned counsel for the petitioner in this respect.

(11) The claims of the petitioner that he was entitled to his full pay and allowances for the period of his first suspension from November 29, 1961 to January 2, 1964 because he was acquitted by the criminal Court is also not tenable. Reference in this connection may be made to the observations of the learned Judicial Commissioner in the appeal filed by the Union of India against the acquittal of the petitioner. The learned Judicial Commissioner found on the basis of evidence on the record that the witnesses were unanimous in saying that Prem Nath Inspector had been pushed out of the bus and man handled by the petitioner driver. He further observed that this was also corroborated by the circumstances of the case. The acquittal was recorded only on the technical

ground that the Inspector was not shown to be acting in the discharge of his duty as a public servant because the prosecution had failed to prove the authority of the Inspector to check the bus and, Therefore, the offence charged against him was not technically made out. In the circumstances it cannot be said that the initial suspension of the petitioner was not justified or that on his reinstatement because of this technical acquittal he was entitled to claim his full salary etc. I have, Therefore, no hesitation in rejecting this claim.

(12) The learned counsel for the petitioner has also every vehemently argued that the order inflicting punishment on the petitioner is wholly against law inasmuch as he could not be punished under the charges on which he had been acquitted by the criminal Court. Reliance in this connection has been placed on Shaik Kasim v. Supdt. of Post Offices, Chingleput Division Air 196 Mad 502 and Vasu Vs. Chakki Mani, . In the Madras case their Lordships held that where the criminal Court had tried the concerned person and had acquitted him it would be improper and such a proceeding would in fact be liable to be quashed as not in consonance with the principles of natural justice, if the administrative authority later initiates disciplinary proceedings on identical facts and charges.

But this was a cause in which the Government servant concerned had been acquitted on merits. Their Lordships on page 505 column 2 have observed:

"But of course, the acquittal should have been substantially on the merits; technical acquittals on grounds like sanction may not inhibit departmental disciplinary proceedings, or a contrary verdict therein." The Mysore case is also similarly distinguishable. In that case their Lordships also found that the disciplinary proceedings had not been commenced in good faith and that there was extraordinary and inordinate delay in the commencement of these proceedings. It does not help the petitioner. In a case like the present on where the Criminal Court acquitted the accused purely on a technical ground, I see no bar to the department holding an inquiry for purposes of departmental action.

(13) In view of my above discussion I do not find any merit in this petition and the same is dismissed but the parties will bear their own costs.

(14) Petition dismissed.