
(1969) 06 CAL CK 0009
In the Calcutta High Court

Chittaranjan Roy

APPELLANT

Vs

The General Manager, Chittaranjan Locomotive Works and
Others

RESPONDENT

Date of Decision : 20-06-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 74 CWN 473

Hon'ble Judges : A.K. Sinha, J

Bench : Single Bench

Advocate : Balai Chanda Roy, for the Appellant; S.K. Guha, for the Respondent

Final Decision : Allowed

Judgement

Mr. A.K. Sinha, J.—In this Rule the Petitioner prays for quashing a disciplinary proceeding culminating in the issue of second show cause notice with the tentative order of removal of the Petitioner from his service.

2. Briefly, the relevant facts as set out in the petition are as follows:

3. The Petitioner was appointed since October 15, 1949 as Motor Driver-cum-Mechanic in Chittaranjan Locomotive Works in a permanent post on salary of Rs. 147/- per month in the scale of Rs. 118-185/-. On 7th November, 1961 the Petitioner was charge-sheeted for conspiracy with one Jang Bahadur, Motor Diver in smuggling the Railway properties and for trying leave for Calcutta with him on 31.8.61 to dispose of some materials namely, (1) 12 Volt Battery, (2) Cutter No. 2. . . 15 Sets and (3) High speed Hackshaw Blades 3 dozen. An enquiry was made and after issue of second show cause notice for his removal from service the Petitioner moved this Court in writ jurisdiction whereupon ultimately the entire proceedings were undertaken to be withdrawn by the Respondents.

4. On May 6, 1964 a fresh charge-sheet was issued to the Petitioner for (I) absenting himself from work from 12-45 hrs. to 16-30 hrs. on 31.8.61 with the sole object of committing the offence (II) dishonestly attempting to remove out

of Chittaranjan Locomotive Works in collusion with driver Jang Bahadur deputed to drive a Truck from Chittaranjan to Calcutta with ulterior motive of making illegal gain from illegal disposal of "(A) One 12 volt Battery, (B) 15 sets of cutter No. 2 and (C) 3 dozen of high speed Hacksaw Blades". After the issue of the charge-sheet the Petitioner moved this Court for drawing a contempt of Court proceeding against the Respondents Nos. 1 to 3 for violating an order passed by Banerjee J. on September 9, 1963 relating to his order of suspension which is pending. The Petitioner, however, in spite of representation was not allowed to inspect several documents for which he could not give reply to the charge-sheet. At the enquiry it transpired that several items of documents were not available at all and the Petitioner pointed out before the Enquiry Committee that he could not give any written reply. The Enquiry Committee, however, proceeded with the enquiry but failed to examine Jang Bahadur as witness. Two defence witnesses Ukil Murmu and Jnan Bhadur were also not examined. A report was submitted by the Enquiry Committee with a finding that the first charge was established but not the second relying upon the statements made on a previous enquiry although such disciplinary proceedings entirely were quashed by this Court.

5. The Respondent No. 2, the Works Manager, accepted the finding of the Enquiry Committee in respect of the first charge but on the second charge it was also of the opinion that it was proved and issued a notice at the second stage upon the Petitioner with his provisional finding and also proposed punishment of removal. The Petitioner submitted an explanation and also pointed out that in view of the pendency of the contempt rule and the illegalities and irregularities of the disciplinary proceedings resulting in violation of rules and principles of natural justice the entire proceeding would be withdrawn but there was no reply from the Respondents. That is how the Petitioner felt aggrieved and obtained the present Rule.

6. Upon these facts the main grievance as pressed before me by Mr. Balai Chandra Roy learned Advocate for the Petitioner was that there was gross violation of rules and principles of natural justice and also the rules for conducting the dispensary proceedings started against the Petitioner and, therefore, the entire proceedings were bad in law. First, it was argued that the Petitioner was not given permission to inspect several items of documents for the purpose of preparing his defence but he was referred to the Enquiry Committee for placing his grievance. This, it was submitted was in clear violation of Rule 1711 of "the Discipline and Appeal Rules" under the Indian Railway Establishment Code. Rule 1711 provides: "The Railway servant shall, for the purpose of preparing his defence, be permitted to inspect and take extracts from such official records as he may specify, provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Disciplinary Authority, such records are not relevant for the purpose or it is against the public interest allow him access thereto."

Such being the rule, in the present case as appears from the annexure "A" to the

affidavit-in-opposition on behalf of the Respondents, the Petitioner was given copies of the specified documents mentioned in his letter and at the same time it was pointed out that in the standard form in which the charge-sheet was issued as there being no other document mentioned under the list of documents no reliance would be placed upon any other document excepting the documents in respect of which copies were already supplied to the Petitioner. This, in my view, was clearly misleading for it appears from the report of the Enquiry Committee that there were several important documents as mentioned in paragraphs 1, 2 and 3 of the enquiry report which according to the Committee in spite of its best efforts were not made available. The Committee in absence of attendance register had to make use of wage bill. If that be so, then while issuing the charge-sheet in the standard form these facts of non-availability of this very important document should have been sufficiently clarified by the disciplinary authority, as clearly, for this omission the Petitioner has been deprived of filing a written statement which was one of the most important steps in the entire process of his defence. Even so, strictly speaking there was no violation, in this case, of Rule 1711 but, clearly, there has not been any compliance with Rule 1709 in the sense that the standard form which was used for issuing such charges has been kept blank in material portion particularly with regard to the list of documents. In spite of such lapses on the part of the disciplinary authority I cannot, however, grant any relief to the Petitioner at this stage for he submitted to the jurisdiction of the Enquiry Committee and participated in the enquiry proceeding.

7. This brings me to the second point raised by Mr. Roy which is that the Enquiry Committee came to its finding on the first charge against the Petitioner on consideration of evidence of one Nagi in a previous enquiry proceeding in preference to his evidence in the present enquiry proceeding and the statement of another witness Jang Bahadur was relied upon without examining the said witness or producing him for cross-examination by the Petitioner. It appears that particulars of statement made by Nagi in the previous enquiry against the Petitioner which as noticed earlier was quashed by this Court have been given in paragraph 10 Clause (b) (i) to (v) in the additional affidavit of the Petitioner and this would appear also from the report of the Enquiry Committee. In the affidavit-in-opposition to this additional affidavit in paragraph 8 these statements have not been denied but the deponent sought to crave leave to refer to the statement of Nagi dated 26.8.64 for "its proper appreciation" to be produced at the time of hearing. Such then being the position, it is clear that the statement of this witness made in the previous enquiry in any view of the matter could not be relied upon or preferably accepted by the Enquiry Committee without producing that statement in the enquiry proceeding and allowing the Petitioner to cross-examine the witness on such statement. This no doubt resulted in violation of rules and principles of natural justice. See (1) AIR 1961 SC 1070, Jagdish Prosad v. State of W.B.

8. Then again, it is admitted that the statement of one Jang Bahadur who could not be examined by the Enquiry Committee as he was already removed from his

service had also to be relied upon but it is stated in paragraph 10 of the affidavit-in-opposition to the additional affidavit that since the Petitioner was absolved from the charge No. 2 by the Enquiry Committee which concerned Jang Bahadur's statement, there was no point in the contention of the Petitioner as such statement did not form the basis of the findings of the Enquiry Committee with regard to the charge No. 1 against the Petitioner. Had the matter remained there such contention would have been of some substance but what I find is that the disciplinary authority at the stage of issuing second show cause notice upon the Petitioner found (though provisionally) that charge No. 2 was also established relying on statement of Jang Bahadur as follows: "When Sri Jang Bahadur was questioned by Sri Nagi at the Gate No. 3, as to how those unauthorized material was found in his truck, Sri Jang Bahadur is reported to have replied "I don't know anything about these materials excepting the battery and whatever has been in this respect has only been done by Sri C. R. Roy". (Statement of Sri K. P. Mondal).

From this statement and evidence on record as stated above, I am convinced that Sri Roy was a party to a conspiracy to smuggle out unauthorized railway material out of Chittarajan. His continuation in Railway Service would be harmful to the public interest, and I have, therefore, tentatively decided to remove him from service. A show-cause notice may be issued to him. A copy of the report of the Enquiry Committee be issued to him. A copy of the report of the Enquiry Committee together with the copy of my note (memorandum) may also be supplied to him."

So, from the finding as made by the Disciplinary Authority on the second charge it seems to me quite clear that the Disciplinary Authority decided to remove the Petitioner from his service on a finding on charge No. 2 in violation of rules and principles of natural justice and thereby depriving the Petitioner of reasonable opportunity of defending his cause. It was, however, contended on behalf of Respondent that final order has yet to be passed after the Petitioner would submit his explanation to the second show cause notice and, therefore, no interference by issuing a writ was called for at this stage. It is true that normally this Court will be reluctant to issue a writ in the midst of a proceeding but there are exceptions as well. Where there is lack of jurisdiction or the proceedings are ultra vires or there has been violation of rules and principles of natural justice in carrying or completing such proceeding it is open to the aggrieved party to ask for appropriate writ for quashing the proceeding. This view which I am taking finds support in a decision of the Supreme Court, (2) M/s. Baburam Prakash Chandra Maheswari v. Antarim Zila Parishad, now Zila Parishad, Muzaffarnagar. (Civil Appeal No. 605 of 1966), (Unreported). While dealing with identical question though under different circumstances Ramaswami J. delivering the judgment for the Court observed inter alia as follows: "There are at least two well-recognised exceptions to the doctrine with regard to the exhaustion of statutory remedies. In the first place, it is well settled that where proceedings are taken before a Tribunal under a provision of law, which is ultra vires it is open

to a party aggrieved thereby to move the High Court under Article 226 for issuing appropriate writs for quashing them on the ground that they are incompetent, without his being obliged to wait until those proceedings run their full course. See the decisions of this Court in *Carl Still, G. m. b. H v. The State of Bihar*, and *The Bengal Immunity Co. Ltd. v. The State of Bihar*. In the second place, the doctrine has no application in a case where the impugned order has been made in violation of the principles of natural justice (See *The State of Uttar Pradesh v. Mohammad Nooh*).

9. In this case it is clear that the entire enquiry proceeding culminating in the provisional finding on both the charges and proposed punishment of the Disciplinary Authority suffered from serious infirmities for non-compliance with the rules and principles of natural justice and, therefore, must be struck down as invalid.

10. The result is, the petition succeeds in part. The entire disciplinary proceedings from the stage of enquiry proceedings resulting in the issue of second show cause notice with the provisional finding on both the charges i.e. charges No. 1 and 2 and proposed punishment of removal of the Petitioner from his service are quashed.

11. The Rule is made absolute to the extent indicated above. But there will be no order as to costs.

12. I, however, make it clear that nothing in this judgment shall prevent the Disciplinary Authority from starting a fresh proceeding from the enquiry stage and complete the disciplinary proceeding in accordance with law.

13. Let a writ in the nature of Certiorari issue accordingly.