

(2013) 11 AHC CK 0021

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 52817 of 2004

Divisional Railway Manager N.R. and Others

APPELLANT

Vs

Salig Ram Mandal and Another

RESPONDENT

Date of Decision : 21-11-2013

Acts Referred:

Citation : (2013) 10 ADJ 643 : (2014) 102 ALR 353 : (2014) 2 AWC 1208 :
(2014) 140 FLR 694 : (2014) 1 UPLBEC 211

Hon'ble Judges : Rakesh Tiwari, J; Bharat Bhushan, J

Bench : Division Bench

Advocate : Kaushlesh Pratap Singh, for the Appellant; Satish Mandhyan, for the Respondent

Judgement

Rakesh Tiwari, J.—This writ petition is preferred by the petitioner challenging the judgment and order dated 2.9.2004 passed by the Central Administrative Tribunal, Allahabad in O.A. No. 319 of 2003 (Saliq Ram Mandal v. Union of India and others). The facts of the case, in nutshell, are that respondent No. 1 was issued charge-sheet dated 31.1.2001 while he was working as Gateman at Gate No. 11-C in Jaunpur City. It was alleged in the charge-sheet that he after taking charge at 6:55 a.m. in the morning left the railway crossing gate open which ought to have been closed for traffic. As a result of his dereliction of duties, an accident took place when Tractor No. U.T.O. 9389 loaded with bricks collided with one S.J. Passenger train at 7:35 a.m. in the morning in which, one person died on the spot. It was further alleged that after the accident had occurred, respondent No. 1 Salig Ram Mandal ran away from the site of the accident without any information to the Assistant Station Master, Jaunpur, and lodged an FIR with the Police Station concerned.

2. When the enquiry proceedings were initiated, Sri V.K. Srivastava, was appointed as Enquiry Officer. After evidence was adduced, he submitted his report finding workman-respondent No. 1 to be guilty of the charges. A copy of the report was also provided to respondent No. 1 who was supposed to submit

his representation within 15 days thereafter on its receipt. The disciplinary authority after considering the representation of the workman concerned awarded punishment vide order dated 27.4.2002 whereby his pay was reduced to the minimum of the pay scale of Rs. 2610-3540/- at basic pay of Rs. 2610/- for a period of one year. The reviewing authority, however, being of the opinion that the penalty awarded to the delinquent employee was inadequate issued a show-cause notice dated 18.6.2002 under Rule 35 (Revision and Review) of D & AR Rules, 1968 to the workman concerned as to why he may not be dismissed from services. Reply to the notice was submitted by respondent No. 1 on 22.7.2002. The reviewing authority, thereafter, imposed penalty of dismissal from service vide his order dated 31.7.2002 under information to the workman concerned that against the order appeal lies before the Additional Divisional Railway Manager-I, Lucknow. The appeal preferred by the workman, respondent No. 2 was considered by the appellate authority, which also was rejected by him vide order dated 17.2.2003.

3. Aggrieved by the aforesaid orders dated 31.7.2002 and 17.2.2003, the workman preferred O.A. No. 319 of 2003 (Salig Ram Mandal v. Union of India and others) before the Central Administrative Tribunal, Allahabad. The Tribunal after hearing and considering the case of the respective parties as well as the evidence on record, allowed the original application aforesaid vide impugned judgment and order dated 2.9.2004 quashing the orders dated 31.7.2002 and 17.7.2003 directing that respondent No. 1 to be reinstated in service within four weeks from the date of receipt of a certified copy of the order but dis-entitling him to any back wages. It was further ordered that the period during which he was not in service pursuant to orders dated 31.7.2002 and 17.2.2003 shall not be treated a break in service for the purpose of computation of pensionary benefits etc. It is against this order of the Tribunal, the Divisional Railway Manager, Northern Railway, Lucknow and others have preferred this petition on the grounds that the impugned order of the Tribunal dated 2.9.2004 is illegal as while allowing the O.A. No. 319 of 2003 the Tribunal over-looked the fact that the claim petition of respondent No. 1 workman being allowed on a technical aspect and therefore, liberty ought to have been provided to the Railway Administration for proceeding against respondent No. 1 afresh in consonance with law and the service rules. The second contention of the learned counsel for the petitioners is that the Tribunal has failed to consider that the reinstatement made as a result of setting aside of the enquiry for failure to furnish the disagreement note should be treated as reinstatement for the purpose of holding fresh enquiry from the stage of furnishing the disagreement note. The order dated 2.9.2004 absolutely leaves no scope for the petitioners to proceed afresh in the enquiry against the workman, respondent No. 1 in accordance with law even though the charge against him was serious one. Hence, under these circumstances, the petitioners have every right against the workman after giving disagreement note.

4. Before considering the facts of the case, an extract of relevant paragraph Nos.

7 to 9 of the judgment and order rendered by the Tribunal may be reproduced here for appreciation of the case:

7. Respondents have opposed this O.A. and have submitted that the orders passed by the respondents are absolutely valid, legal and call for no interference because the applicant had himself admitted in the FIR that the gate was opened at the instance of the Tractor's Driver, therefore, he is responsible for the accident.

8. Perusal of findings as extracted above show two things clearly (i) the ASM namely, Sri R.K. Singh, who was on duty, did not exchange the private number with Gate Keeper, (ii) the primary responsibility lies with Sri R.K. Singh, ASM, JOP, whereas in the show-cause notice dated 18.6.2002 the respondents have stated that Sri Saligram failed to close the gate for road traffic even after exchanging of private number with ASM JOP. He also held that the gateman was primarily responsible for dashing of ISJ passenger with tractor. We have no hesitation to state that both these facts are contrary to the findings recorded by the E.O. At this stage, it would be relevant to quote the judgment of Hon''ble Supreme Court in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , wherein it was held as follows :

when the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer.

The above stand was reiterated by the Hon''ble Supreme Court in the case of S.B.I. and Others Vs. Arvind K. Shukla, . In view of the above law laid down by the Hon''ble Supreme Court, it is clear that the next authority ought to have given his disagreement note alongwith his reasons before taking any action against the delinquent officer. As we have stated above, no reason has been given in the show-cause notice as to why he was disagreeing with the findings recorded by the E.O. On the contrary, straight-away a different finding was recorded by DSE IV, N.R., Lko. which is definitely contrary to the law laid down by the Hon''ble Supreme Court, therefore, any order passed on the said show-cause notice cannot be sustained in law. Even otherwise perusal of the order dated 31.7.2002 shows that the applicant has been dismissed from service merely by adding two sentences in a printed format without giving any reason, even at this stage for disagreement with the E.O. Or dealing with any of the points raised by the applicant in his representation. By no stretch of imagination can we say, that this order is a speaking order. In fact not only this, even the appellate order dated 17.2.2003 has been passed in a total mechanical manner, again on printed format, which shows total non-application of mind. Therefore, both these orders cannot be sustained in law. There is yet another ground on

which these orders cannot be sustained. The E.O. had categorically recorded in his finding that Sri R.K. Singh was primarily responsible for dashing of ISJ Passenger train with Tractor. The applicant has made a specific averment to this effect in para 4.11 of the O.A. that no punishment was given to Sri R.K. Singh. In the counter, the respondents have not disputed this fact at all. On the contrary, a very vague kind of reply has been given. In these circumstances, when a finding had already been recorded by the E.O. holding Sri R.K. Singh to be primary responsible and Sri Saligram to be secondary responsible, it is not understood why no action has been taken by the authorities against Sri R.K. Singh, ASM, JOP, therefore, the orders dated 31.7.2002 and 17.2.2003 are not sustainable in law. The applicant has not challenged the basic order dated 27.4.2002 passed by the disciplinary authority, whereby his pay was reduced to the minimum of the time scale, therefore, that punishment remains as it is.

9. In views of the above discussion, the orders dated 31.7.2002 and 17.2.2003 are bad in law. They are accordingly quashed and set aside. However, it is made clear that applicant would not be entitled to any back wages as he had not worked during all this period. Applicant shall be reinstated within a period of four weeks from the date of receipt of copy of this order, but this period shall not be treated as break in service for pensionary benefits etc. The O.A. is accordingly partly allowed. No order as to costs.

5. Learned counsel for the respondent, on the other hand, submits that when the accident took place, there was no information or communication to the delinquent employee with regard to moving of train by the Assistant Station Master Sri R.K. Singh from the main station towards railway crossing-gate and that there was extremely foggy condition at the time near the site of accident where the S.J. Passenger train collided with a tractor trolley. It is asserted that no document in support of charge was ever served upon the charge-sheeted employee alongwith the charge-sheet; that inspite of request made by him through an application, no document was supplied to him, as such, the enquiry is vitiated on this ground alone. Sri R.K. Singh, Assistant Station Master, Jaunpur Station, who has been found to be primarily responsible for the accident and that the representation made by the employee against the enquiry report though having been served upon the disciplinary authority yet he by order dated 27.4.2002 imposed punishment of reduction to lower pay scale for a period of one year without commutative effect.

6. It is vehemently argued by the learned counsel for the respondent No. 1 that even though Sri R.K. Singh, Assistant Station Master, Jaunpur City Station was found to be primarily responsible for the accident yet he was neither served with any charge-sheet nor any enquiry was held against him. Saddling the entire brunt of the accident upon the workman-respondent No. 1, was wholly illegal and unjust, as such, the finding recorded in appeal are bad and illegal for non-consideration of this vital aspect of the matter. Since there was no disagreement note of the disciplinary authority at any stage under intimation to the answering

respondent and show-cause notice was issued to him straight away for enhancement of the punishment for dismissal from service without even noting that there already was the order of punishment in existence about the same incident dated 27.4.2002 and as such, for this reason also, the Tribunal has rightly allowed original application by placing reliance on the judgment in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , wherein it has been held that:

When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer.

7. In the aforesaid case the judgment rendered by the Apex Court in S.B.I. and Others Vs. Arvind K. Shukla, , was referred to by the Court. Since both the orders dated 31.7.2002 and 17.2.2003 are non-speaking orders hence have rightly been held to be bad and quashed by the Tribunal.

8. The law is well entrenched that in any inquiry, department or management desires to rely upon any document in proving of the charge, it is incumbent upon them that the copies of those documents are supplied to the delinquent employee for satisfying principles of natural justice. An Inquiry Officer is an independent person and is not a brief holder of the department. He is a quasi judicial authority whose functioning is to examine the evidence presented by the department and to ensure even in absence of delinquent official that evidence before him is sufficient to hold the charges as proved. He has to follow the procedure and observe the principles of evidence for proving of the documents submitted by the department in evidence against the employee with regard to the charges leveled against him. It has been held by the Apex Court in State of U.P. and Others Vs. Saroj Kumar Sinha, , that:

Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

When a departmental enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a Government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

9. In the instant case, the dissenting note was not provided to the petitioner,

which was clearly in violation of the principles of natural justice. In the case of Roop Singh Negi Vs. Punjab National Bank and Others, , where the documents were not made available to the delinquent employee by the department, which relied upon the same and no evidence was examined to prove the said documents, it was held thus:

Indisputably, a departmental proceeding is a quasi-Judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceedings. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

10. In the instant case, the dissenting note remained unproved, therefore, the findings against the employee was in the direction of the miscarriage of justice in saddling the workman with the misconduct of having caused the accident, for which Sri R.K. Singh, Assistant Station Master was found primarily guilty in appeal was incorrect. The aforesaid principles of law have been followed in a large number of other cases, such as in Subhash Chandra Sharma Vs. Managing Director, U.P. Co-op. Spg. Mills Federation Ltd., Kanpur and another, , wherein the Court held that date, time and place of the enquiry are must to be informed to the delinquent employee for participation in the inquiry and that oral and documentary evidence against him should be led in his presence and he should have been afforded an opportunity to cross-examine the witnesses against him as well as to produce his own witnesses and evidence. The Court has further went to say that in such a case departmental enquiry may be held but his services cannot be terminated without affording him an opportunity.

11. The departmental proceedings are like proceedings taking in the Court. The burden of proof lies on the department which can only be proved by collecting evidence and proving of the documentary evidence by oral evidence. As stated earlier, the documentary evidence filed by the department upon which it was relying was neither provided to the delinquent employee nor was proved by oral evidence. In fact, evidence relied upon by the department were not exhibited.

12. We are therefore of the considered opinion that once a finding came on record that Assistant Station Master, Jaunpur City was the person primarily responsible for the accident as he had not communicated information of moving of the train to gateman-respondent No. 1, the gateman-respondent No. 1 could not be held to be guilty in the facts and circumstances of the case particularly when it has not been disputed that the workman was not informed by the Assistant Station Master about moving of the train from the station for closing of the gate of the railway crossing. The workman could not have seen the moving

train in extremely foggy weather conditions in the morning at 7:35 a.m. when the accident took place.

13. It appears that the workman concerned had lodged the FIR without delay. It also appears that the petitioners somehow wanted to take-out their vengeance against him for they did not for reasons best known to them wanted to save the skin of the Assistant Station Master, Jaunpur. This is supported by the fact that the department did everything in their power to protect the Assistant Station Master Sri. R.K. Singh who had neither been proceeded against in departmental enquiry nor given any notice of dismissal from service as was given to the workman. The workman appears to have been made a scapegoat whereas the person primarily guilty of the accident namely, Sri R.K. Singh, Assistant Station Master has neither proceeded with any enquiry nor has been charge-sheeted, therefore, it is crystal clear that the petitioner has been discriminated in procedure as the department has failed to initiate any departmental inquiry against the persons primarily responsible for the accident and proceeding against one employee who was not guilty of the misconduct alleged as well as in awarding him punishment. For the reasons stated above, the writ petition fails and is accordingly dismissed. No orders as to costs.