
(1993) 01 OHC CK 0005
In the Orissa High Court
Case No : O.J.C. No. 1157 of 1990

Ganesh Rout

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-01-1993

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (1993) 76 CLT 281 : (1994) 1 LLJ 795 : (1993) 1 OLR 380

Hon'ble Judges : B.L. Hansaria, C.J.; S.K. Mohanty, J

Bench : Division Bench

Advocate : J. Patnaik, for the Appellant; B.K. Behura and U.C. Behura, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, C.J.—The petitioner was a member of Railway Protection Force (hereinafter "the Force"). He was appointed as a Constable on October 4, 1987. He was assigned patrolling duty from 00 hours to 08 hours on February 19, (9?) 1989. A disciplinary proceeding came to be initiated against him alleging gross negligence of duty during the aforesaid hours in having failed to prevent and detect pilferage of hard coke coal weighing about 200 kgs. by outsiders from a wagon standing in the new yard Khurda. The charge was denied following which an inquiry followed in which five witnesses were examined on behalf of the department. The following came to light during the inquiry :-

(a) On February 9 (19?), 1989 at about 07.35 hours a railway quarter was searched and 210 kgs. of coal was recovered from one P.K. Barik.

(b) The said Barik in his statement before the officers of the Central Intelligence Bureau (C.I.B.) confessed to have committed theft of coal from a wagon.

(c) The said Barik identified the wagon from where he had committed theft.

(d) About 10 Kgs. of coal was found lying near the wagon.

2. On the basis of the aforesaid evidence, the Inquiring Officer found that the coal had been removed from the wagon which fell within the area the petitioner was to patrol and this had been done during the working hours of the petitioner and so he was found guilty of the charge. It may be stated that in the inquiry Barik had not been examined but one of the witnesses of the Department had stated about the aforesaid statement of Barik. The disciplinary authority accepted the findings and came to the conclusion that an outsider had pilfered coal "with the tacit connivance" of the petitioner, and therefore, took a serious view of the matter and opined that the petitioner was not a fit person to be retained in service in a disciplined Force, and so, removed him from service by an order passed on March 3, 1989. It is this order which has been assailed in this proceeding.

3. Shri Patnaik appearing for the petitioner has advanced two contentions in assailing the order :-

(i) The disciplinary authority went beyond the charge inasmuch as connivance with the outsider was not even the allegation in the charge which only stated about gross negligence in performing the duty in having failed to prevent and detect pilferage; and

(ii) there is absolutely no legal evidence to come to the finding that the coal had been removed during the working hours of the petitioner.

4. The first submission has to be accepted because it is tell-tale. Shri Behura appearing for the department fairly concedes this, but urges that this cannot be a ground by itself to set aside the order of removal because even on the basis of the established charge, a disciplinary authority would have passed the impugned order as the charge is serious enough. In support of this submission, the learned counsel relied on *Sawarn Singh and Another Vs. State of Punjab and Others*, , in paragraph 18 of which it has been stated that where the order of a domestic tribunal makes reference to several grounds, some relevant and existent, and others irrelevant and non-existent, the order will be sustained if the Court is satisfied that the authority would have passed the order on the basis of the relevant and existing grounds, and the exclusion of irrelevant or non-existing grounds could not have affected the ultimate decision. These observations are indeed based on *The State of Maharashtra and Another Vs. B.K. Takkamore and Others*, ; and *State of Orissa Vs. Bidyabhushan Mohapatra*, .

5. Of the aforesaid two decisions *Bidyabhushan*'s case is by a Constitution Bench. In that case, it has been observed in p. 248 that if the order of a disciplinary authority may be supported on any finding as to substantial misdemeanour for which the punishment could lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. It is further observed that the Court has no jurisdiction if the findings of the enquiry officer or the Tribunal *prima facie* make out a case of misdemeanour to direct the authority to reconsider that order

because in respect of some of the findings, but not all, there is some flaw.

6. Because the charge as framed itself is serious, we are satisfied that the punishment of removal could have lawfully been imposed for that charge itself. The first submission of Shri Patnaik has, therefore, no cutting edge.

7. It is indeed his second submission which deserves our careful consideration and Shri Patnaik has really pressed the same for acceptance. Now, as already noted, it is the statement of Barik which he had given before the C.I.B. officers relying on which the Inquiring Officer came to the conclusion that the pilferage was during the working hours of the petitioner. This finding has been arrived at because Barik had stated that he had removed the coal at about 07.00 hours. Whether this statement can be regarded as a legal evidence to substantiate the finding is the question on which we shall express our opinion at a later stage. Before that is done, we may deal with two related submissions advanced by Shri Behura. The first is that as the coal had been detected at about 07.35 hours, which has been testified by the officers of the C.I.B. examined before the inquiring Officer, we should presume that the removal also was around that time because the quarter from which the coal was detected was hardly 100 yards away from the wagon. We do not think if law permits us to draw this inference inasmuch as the detection of a theft may at times take place long after the theft had been committed. This circumstance is, therefore, not incriminating and has to be regarded as neutral in so far as the present disciplinary proceeding is concerned. Another evidence which Shri Behura wants to press into service is the one given by p.w. 1 in the enquiry to the effect that at about 07.15 hours, he had received source information that coal was being pilfered from the yard, on receipt of which information this officer along with the Head Constable Papa Rao went towards the new yard and on reaching the colony at about 07.35 hours found that three outsiders were filling coal in bags. On seeing them, two persons fled away and one came to be apprehended, who was Prasanna Kumar Barik. Shri Patnaik states in this connection that though p.w. 1, who is the Constable of the C.I.B., told about his having received information at about 07-15 hours that coal was being pilfered, Papa Rao when examined as p.w. 3 stated nothing about this. The non-corroboration by Papa Rao is, however, not sufficient to discard the evidence of p.w. 1; but then, the information that the coal was being pilfered would not by itself show that the pilferage was from the wagon in question. This evidence could at best be relied on as corroborative of the statement of Barik.

8. Now, we come to the main point, namely, admissibility and probative value of the statement of Barik. In a Court proceeding, be it civil or criminal, what was stated to p.w. 1, or for that matter to p.w. 3, by Barik would not have been admissible, the same being hearsay evidence. But then, the law is well settled that in the departmental enquiry, Evidence Act has no strict application and even hear-say evidence can be admitted. This is what was decided by a Bench of this Court recently to which one of us (Hansaria, C.J.) was a party. That decision was

rendered in O.J.C. No. 3267 of 1987, which was disposed of on December 3, 1992 Narayan Panda Vs. Zonal Manager, Bank of India and Another, Shri Patnaik does not contest this position. Therefore, it is not necessary to reiterate what was stated in the aforesaid O.J.C., in which the aforesaid conclusion was arrived at by referring, inter alia, to some decisions of the apex Court.

9. Shri Patnaik's contention, however, is that even though hearsay evidence is admissible, the same cannot be taken to have been in any way affected by the principle that substantive rules on Evidence Act (as distinct from technical rules), which form part of principles of natural justice, can be ignored by domestic Tribunals, and that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, which is one of the basic principles which cannot be ignored on a mere ground that domestic Tribunals are not bound by the technical rules of procedure contained in the Evidence Act. This is what was stated in paragraph 8 of Central Bank of India Ltd. Vs. Prakash Chand Jain, in which reliance was placed on a statement made by one Nand Kishore to the Internal Auditor, Vazifdar, to the effect that Nand Kishore had paid some amount to the delinquent. The Enquiry Officer accepted the evidence of Vazifdar but ignored the fact that Vazifdar's evidence was not direct in respect of the elements of the charge and Vazifdar was only trying to prove a previous statement of Nand Kishore which was relevant. Nand Kishore, however, when examined as a witness, made no statement that the sum was paid by him to the delinquent. This statement of Nand Kishore was a substantive evidence. The Court observed that what was open to the Enquiry Officer was to say, if he was satisfied that Nand Kishore's statement given before him was in correct, that Nand Kishore had made statements to Vazifdar as deposed by him. But then, the statement of Nand Kishore to Vazifdar could not become substantive evidence to prove the correctness of the elements forming part of the charge. A very pertinent observation was thereafter made by the Court by stating that a finding of a domestic Tribunal may be perverse if it is not supported by any legal evidence. As the finding in that case was based on what Vazifdar deposed about what Nand Kishore had stated to him, it was held that the finding was based on no legal evidence.

10. Shri Patnaik then refers us to Nand Kishore Prasad Vs. State of Bihar and Others, in which it was stated in paragraph 18 that disciplinary proceedings before a domestic Tribunal are of a quasi- judicial character and, therefore, the minimum requirement of the rules of natural justice is that the Tribunal should arrive at its conclusion on the basis of some evidence (underlined in the text of the judgment), i.e., evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. The Court further observed that suspicion cannot be allowed to take the place of proof even in domestic inquiries. Reference was then made to what was stated by the apex Court in Union of India (UOI) Vs. H.C. Goel, that "the principle that

in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules" (p.46)

11. Relying on the above, Shri Patnaik urges that there being no substantive evidence before the Court regarding the time of pilferage of coal, the finding should be held by us to be based on no evidence. The learned counsel submits in the alternative that in any case, there is no material which with some "degree of definiteness" points to the guilt of delinquent, and so, scrupulous care must be taken by us to see that the innocent I petitioner is not punished. We are reminded that the livelihood of the petitioner is involved and protection of Article 21 should be made available to the petitioner, which requires an approach which is fair, just and reasonable.

12. We have duly considered the aforesaid submissions of Shri Patnaik. According to us, Shri Patnaik has rightly invoked Article 21 because after the decision in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, , Article 21 has close relationship with Article 14. This is indeed a fall-out of *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, in which inter-relationship of fundamental rights was accepted by overruling *A.K. Gopalan Vs. The State of Madras*, . We would further state that principles of natural justice have been accepted as a part of Article 14 by two Constitution Bench decisions, these being *Union of India and Another Vs. Tulsiram Patel and Others*, , and *Charan Lal Sahu Vs. Union of India*, (paragraphs 42, 109 and 110). Now, it having been held in *P.C. Jain's case (supra)* that principles of natural justice cannot be ignored by domestic Tribunals, Article 21 protection is available to the petitioner.

13. P.K. Bank not having been examined in the domestic enquiry, what was deposed by the C.I.B. officers before the Inquiring Officer relating to what was told to them by P.K. Barik cannot be taken to be substantive evidence and a finding based on what was stated by P.K. Barik to the C.I.B. officers has, therefore, to be regarded as perverse as it is not supported by any legal evidence, which was the view expressed in *P.C. Jain's case*. There is also force in the second submission of Shri Patnaik that in any case there is no evidence with any degree of definiteness to find the petitioner guilty of the charge. At best, what was deposed by C.I.B. officials may raise suspicion against the petitioner, which even in a domestic enquiry cannot take the place of proof, as opined in *Nand Kishore's case*.

14. There being no other evidence in the case, the only fact of detection of coal at 07.35 hours in a nearby quarter cannot be taken to be a proof by any standard that the coal itself had been pilfered around that hour. The evidence of p.w. 1 that he was informed at about 07.15 hours that coal was being pilfered is also a very weak circumstantial evidence to hold that the pilferage in all probability was from the wagon in question.

15. Before closing, a faint but sincere submission advanced by Shri Behura

deserves to be dealt with. The learned counsel submits that the petitioner being a member of the Armed Force, Article 33 of the Constitution has conferred power on the Parliament to modify the rights given by Part III of the Constitution by a law, inter alia, to ensure proper discharge of duties by the members of the Armed Force; and the petitioner's negligence being related to discharge of his duty, we may not take a serious view of the little flaw in the finding arrived at by the Inquiring Officer. There are several answers on this proposition, namely:-

First, the petitioner is a member of the Railway Protection Force which is not Armed Force but merely a Force. In law, there is a distinction between "Force" and "Armed Force", as would appear from *Akhilesh Prasad v. Union Territory of Mizoram*, AIR 1981 SC 806, 1981 Cri LJ 407 in which, while deciding the question whether the Central Reserve Police Force (C.R.P.F.) is "Armed Force" or not, it was required to be examined, as stated in paragraph 4, whether the C.R.P.F. is "Force" and if so, whether it is an "Armed Force". The C.R.P.F. was regarded as Armed Force, because Section 3(1) of the Central Reserve Police Force Act has recognised that force as an Armed Force. Section 3(1) of the Railway Protection Force Act, 1957 (hereinafter "the Act") describes this force only as a "Force".

Secondly, Article 33 has permitted the Parliament to modify the fundamental rights, and by law. The rules framed by the Central Government under the Act can neither be said to have been made by the Parliament, nor can they be regarded as law. The submission of Shri Behura that the rules are required to be laid before the Parliament as stated in Section 21(3) of the Act would not make the rules as a piece of enactment by the Parliament. The requirement of laying the rules before the Parliament is a device of Parliamentary control and nothing beyond that.

Thirdly, Section 9 of the Act has made dismissal etc. of the members of the Force subject not only to the provisions of Article 311 of the Constitution but also of the rules made by the Central Government; and as such, any departure from the rules would not be permitted by law.

Fourthly, procedural safeguards cannot be violated even in cases of persons governed by the Army Act and the rules framed thereunder and who had been subjected to proceedings of Court martial, as stated in *Ranjit Thakur Vs. Union of India (UOI) and Others*, .

So, the above submission of Shri Behura cannot be used as a prop of sustain the weak case of the opposite parties.

16. In view of all the above, we are of the opinion that it is a fit case where this Court's power under Article 226 should be invoked to set aside the impugned order, and while doing so we quash the impugned order. The petitioner would, therefore, be reinstated; but in the facts and circumstances of the case, without any arrear salary. He shall, however, be deemed to have been in continuous service for other service benefits.

17. The petition is allowed accordingly.

S.K. Mohanty, J.

18. I agree.