

(1999) 11 DEL CK 0055

In the Delhi High Court

Case No : Letters Patent Appeal No. 64 of 1993

Indian Railway Construction Co. Ltd.

APPELLANT

Vs

Ajay Kumar

RESPONDENT

Date of Decision : 29-11-1999

Acts Referred:

Discipline and Appeal Rules, 1981 — Rule 23, 30

Citation : (2000) 1 AD 482 : (2000) 83 DLT 242 : (2000) 52 DRJ 598 : (2000) 1 LLJ 1160

Hon'ble Judges : Usha Mehra, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Mr. A.K. Singla, for the Appellant;

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The Appellant preferred an appeal under Clause X of the Letters Patent directed against the judgment and order dated 9th July, 1993 passed by a learned Single Judge of this Court in Civil Writ Petition No. 389 of 1984. By the impugned judgment and order, the learned Single Judge quashed the order dated 7th December, 1983 dismissing the Respondent from service. The Respondent was also granted all consequential benefits.

2. The Respondents joined the services of the Appellant on probation as a Junior Engineer (Civil) on 29th June, 1981 and was posted under the Project Manager, Indian Railway Construction Co. Ltd., Anpara in the State of Uttar Pradesh. Apparently, his performance was not very satisfactory and, therefore, by an order dated 28th June, 1982 he was transferred to the Corporate Office in New Delhi and his probation period was also extended by six months.

3. According to the Appellant, the Respondent committed some irregularities for which his Explanation was called for by a Memorandum dated 24th January, 1983. He was also alleged to have unauthorisedly marked his presence in the attendance register, tampered with some records and preferred false claims

for conveyance charges. For these reasons, he was issued another Memorandum dated 7th June, 1983 calling for his Explanation. In view of his conduct, the services of the Respondent were not confirmed and he continued to remain on probation.

4. Subsequently, by an order dated 10th November, 1983 the Respondent was again transferred to Anpara but he did not accept the transfer and challenged the same in a Civil Court which granted an injunction against his transfer.

5. It was alleged by the Appellant that on 6th December, 1983 at about 2.30p.m. the Respondent along with some associates barged into the cabin of a senior official of the Appellant, namely, Mr. S.L. Gupta. The Respondent was alleged to have abused Gupta and even gave threats to his life. Later in the day, at about 5.00 pm, the Respondent along with another employee physically assaulted and manhandled Gupta in his office cabin. At that time also the Respondent was accompanied by a few employees. Abusive and filthy language was said to have been used and the purse of Gupta was removed from his table. Gupta cried for help and so some other officers, including one lady come to his rescue. These officers were also abused and threatened. Gupta managed to escape from his cabin after which the Respondent and his associates left the room.

6. Written complaints about the two incidents which occurred at 2.30pm and 5.00 pm on 6th December, 1983 were made to the General Manager (Admn.) of the Appellant by Gupta and four witnesses. A First Information Report was also lodged by Gupta with the concerned police station.

7. Thereafter, the General Manager of the Appellant passed an order dated 7th December, 1983 dismissing the Respondent from service with immediate effect. This action was taken by the General Manager in exercise of powers conferred by Rule 30(ii) of the Indian Railway Construction Co. Ltd. Conduct, Discipline and Appeal Rules, 1981 (hereinafter referred to as the Rules). Rule 30 (ii) reads as follows :

"Rule 30 SPECIAL PROCEDURE IN CERTAIN CASES:

Notwithstanding anything contained in Rules 25 or 26 or 27, the disciplinary authority may impose any of the penalties specified in Rule 23 in any of the following circumstances :-

(i) xxx xxx

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules; or

(iii) xxx xxx"

The penalties specified in Rule 23 includes dismissal from service.

The disciplinary authority, that is, the General Manager recorded his reasons for

dispensing with the enquiry and this is what he had to say :

"....After considering the following aspects, I am of the opinion that IT is not reasonably practical to hold an enquiry in the manner provided under rule 25 of the said conduct rules :-

(a)The delinquents have taken the extreme step of freely using abusive language and assaulting Shri S.L. Gupta right in the centre of the activities of the Corporate Office of the Company. Withsuch high-handed and recalcitrant attitude of the delinquents, I am convinced that they can indulge in such intimidating and violent acts against other employees when they come forward to give evidence during the course of the enquiry. It will Therefore be difficult to hold a proper enquiry and witnesses may not come forward to give frank and true evidence.

(b)The holding of the enquiry will take some time and with the attitude of the delinquents mentioned above, I am convinced that they will continued to indulge in such violent activities which will seriously disrupt the functioning of the Company apart from effecting the safety of the employees.

(c) The delinquents have threatened the life of, the senior Officer of the rank of a Manager in scale Rs. 1500-2000 openly in the office premises after hurling abuses. This assault appears to have been intentional and deliberately executed. It can reasonably be inferred that the delinquents can resort to such methodsa gainst other higher officers also in case an enquiry is held...."

8. The Respondent preferred a writ petition challenging the order dated 7thDecember, 1983. He submitted before the learned Single Judge that the workmen employed in the Corporate Office of the Appellant and in their various projects had formed a trade union called IRCON Employees Union (hereinafter referred to as the Union) which was registered with the Registrar of Trade Unions on 9th November, 1983. The Respondent was the first President of the Union. He alleged that on 10th November, 1983 he had sent a letter to the Appellant requesting for recognition of the Union but by way of retaliation, he was transferred out to Anpara on the same day. According to the respondent since he had challenged the order of transfer and had obtained an injunction from the Civil Court, the management of the Appellant got further annoyed. The Appellant coerced several members and office bearers of the Union to resign from its membership. The Respondent submitted that since he belonged to a Scheduled Caste, head dressed a letter on 5th December, 1983 to the Commissioner of Scheduled Castes and Scheduled Tribes stating his grievances and voicing an apprehension that he may be removed from service on account of his union activities. The Commissioner took action on his complaint on the same day by writing to the Appellant and attaching there with a copy of the complaint made by the Respondent. The Respondent alleged that the action to dismiss him from service was mala fide and was with a view to victimise him for his union activities.

9. The Respondent further alleged that along with him one V.K. Talwar who was the General Secretary of the Union was also dismissed without any enquiry being

held against him. Later, on 5th January, 1984 the Respondent and Talwar were called by the Managing Director of the Appellant and were told to sign a letter and thereafter the order of dismissal would be withdrawn. While the Respondent declined to sign the letter, Talwar agreed to do so because he was facing an acute financial crisis. In the letter which was signed by Talwar, it was mentioned, inter alia, that he had no relation with the Union and had dissociated himself there from. He further stated that "For all that has happened I sincerely beg apology... and a chance may be given to me to prove my worth and ability." We were told that despite this Talwar was not reinstated. As mentioned earlier, the writ petition filed by the Respondent was allowed by the learned Single Judge and the order dated 7th December, 1983 was quashed.

10. We heard learned counsel for the Appellant and the Respondent in person on 25th and 26th October, 1999 and 15th, and 24th November, 1999 when judgment was reserved.

11. Learned counsel for the Appellant submitted before us that the learned Single Judge was wrong in holding that the order of dismissal was liable to be set aside because it was passed by an authority inferior in rank to the authority who actually appointed the Respondent. Learned counsel submitted that the protection offered by Article 311 of the Constitution was not available to the Respondent. He also submitted that the learned Single Judge was in error in judicially reviewing the decision to dispense with the enquiry. According to learned counsel, the learned Single Judge had transgressed the limits of judicial review and it was not permissible for him to go behind the decision to dispense with the inquiry, even if it was a mala fide decision. Learned counsel did not attempt to justify the decision to dispense with the inquiry. Consequently, if we disagree with learned counsel and hold that the decision to dispense with the inquiry is judicially reviewable, then, in the absence of any justification for that decision, we have no alternative but to quash the same.

12. In support of his first contention, learned counsel for the Appellant relied upon three decisions of the Supreme Court, namely, Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd., Pyare Lal Sharma Vs. Managing Director and Others, and State of Bank of India Vs. S. Vijaya Kumar, .

13. In Dr. S.L. Agarwal, the Supreme Court held that an employee of a company (entirely owned by the Union of India) ".....does not answer the description of a holder of 'a civil post under the Union'....." and ".....was not entitled to the protection of Article 311." (paragraph 10 of the Report)

14. In Pyare Lal Sharma, the Supreme Court was concerned with an employee of a company wholly owned and managed by the State of Jammu and Kashmir. The Supreme Court held (in paragraph 19 of the Report) that "...employees of the company are not civil servants and as such they can neither claim the protection of Article 311(1) of the Constitution of India or the extension of that guarantee on parity." The Supreme Court further held that "An employee of the company

cannot, Therefore, claim that he can not be dismissed or removed by an authority subordinate to that by which he was appointed."

15.S. Vijaya Kumar is to the same effect, but this decision proceeded on an admission as mentioned in paragraph 24 of the Report.

16.TheRespondent,whowas initially represented by an advocate but ultimately decided to argue his case in person, submitted that he was appointed by one V.K.J. Rane, General Manager in the pay scale of Rs2500-2750but was dismissed by one A.K. Raman who was a Deputy GeneralManager re-designated as General Manager and holding the pay scale ofRs.2250-2500.Accordingtothe respondent his services were terminated by an officersubordinate to the appointing authority and this was contrary to law and the learned Single Judge was right in deciding in his favour in this regard.

17.Having examined the judgments cited by learned counsel for the Appellant, we are of the view that the decision of Pyare Lal Sharma fully covers the question in favor of the Appellant and against the Respondent. There is no dispute about the fact that the Appellant is a company wholly owned and controlled by the Government of India. He have already extracted the relevantportion of the decision in Pyare Lal Sharma. In view of the unequivocal statement of law by the Supreme Court, we accept the contention of the Appellant and hold that the learned Single Judge was in error insetting aside the order of termination on the ground that it was passed byan officer subordinate to the appointing authority.

18.In support of his second submission, learned counsel for the Appellant relied upon Union of India and Another Vs. Tulsiram Patel and Others, , Satyavir Singh and Others Vs. Union of India (UOI) and Others, A.K. Sen and Others Vs. Union of India (UOI) and Others, and Kuldip Singh Vs. State of Punjab & Ors., .

19.Contraryto what was submitted by learned counsel for the Appellant, the Constitution Bench of the Supreme Court has clearly stated in Tulsiram Patel that :

"...The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives ormerelyinordertoavoidtheholdingofaninquiryorbecausetheDepartment"s case against the government servant is weak and must fail.The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the Court will strike down the order dispensing with the inquiry as also the order imposing penalty...." (Paragraph 130ofthe Report).

20. It was further stated by the Constitution Bench in paragraph 138 of the Report :

"...The finality given by clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of malafides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated.....".

That a Court can judicially review an order dispensing with an enquiry was also accepted by the Supreme Court in *Satyavir Singh* (Paragraph 6(104 to 114) of the Report) and in *Kuldip Singh* (paragraph 8 of the Report), the decision in *A.K. Sen* does not say anything to the contrary.

21. The Respondent, appearing in person, drew our attention to the findings of the Supreme Court in the case of *Jaswant Singh Vs. State of Punjab and others*, of the Report as follows :

"...The decision to dispense with the departmental enquiry can not, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer....".

22. In view of the law clearly laid down by the Constitution Bench of the Supreme Court, we have no doubt that an order dispensing with an inquiry can be judicially reviewed. We, therefore, reject the contention of learned counsel for the Appellant in this regard. Since learned counsel made no attempt to support the order dispensing with the inquiry, we have no option but to affirm the finding of the learned Single Judge that the order dispensing with the inquiry was mala fide and deserves to be quashed.

23. On the question of relief, learned counsel for the Appellant submitted that the Respondent should not have been granted consequential benefits. Learned counsel placed reliance on *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, and State of Uttar Pradesh and Another Vs. Atal Behari Shastri and Another*, . It was also submitted by learned counsel that the Appellant may now be allowed to hold a departmental inquiry into the incident and take appropriate action. In support of this submission, reliance was placed on *State of Orissa and Others Vs. Dinabandhu Beheta and Others*, (1997) 10 SCC 383, *M. K. Agarwal Vs. Gurgaon Gramin Bank and Ors.* : [1987] 3 SCR 640 *Jaswant Singh Vs. State of Punjab & Ors.* JT (1990) 4 554.

24. We would have considered these submissions and the cases relied on by learned counsel if the order dispensing with the inquiry was bonafide but was otherwise not sustainable in law, for whatever reason. However, since the order was mala fide (and no attempt was made to support it). We do not find it appropriate to consider whether the learned Single Judge was right in granting all consequential benefits or not. As regards the holding of an inquiry, we think that the Respondent has already suffered enough for the last 16 years and given the attitude of the Appellant, a fair inquiry may not be possible on the facts and in the circumstances of this case.

25. Accordingly, the appeal is dismissed. The setting aside of the order dated 7th December, 1983 by the learned Single Judge is affirmed. The Respondent will be entitled to all consequential benefits including back wages, seniority etc. There will, however, be no order as to costs.