

(2006) 08 AP CK 0032
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 895 of 2006

K. Yadaiah

APPELLANT

Vs

Chief Security Commissioner, Railway Protection Force, South
Central Railway and Others

RESPONDENT

Date of Decision : 28-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 99A
Constitution of India, 1950 — Article 14, 19, 21, 311(2)
Railway Protection Force Rules, 1987 — Rule 153(16), 153(6), 187

Citation : (2006) 6 ALT 49

Hon'ble Judges : G.S. Singhvi, C.J;G.V. Seethapathy, J

Bench : Division Bench

Advocate : D. Ramakrishna, for the Appellant; Gouri Shankar Sanghi, S.C., for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, C.J.—This appeal is directed against order dated 7-2-2006 passed by the learned Single Judge whereby he dismissed the writ petition filed by the appellant for quashing enquiry report dated 23-8-1995 and order of punishment dated 16-9-1995.

2. The appellant joined the service as Naik in the Railway Protection Force on 17-11-1979. By memorandum dated 26-4-1995, the disciplinary authority initiated departmental enquiry against him under Rule 187 of the Railway Protection Force Rules, 1987 for short "the Rules" on the following charge;

Sri K. Yadaiah, Naik - 974/DR/UBL is hereby charged for his gross misbehaviour and indiscipline actin that:

While he was on cash escorting duty of Pay Unit No. 7 with Arms and Ammunition along with cashier Sri M. Mahattma, Sri G.G. Chowdhary and Constable Sri B.R. Beshnur and while camping at Cash Office/GDG during the

night of 10/11-4-1995 he pointed out rifle at Sri M. Mahattma, Cashier/Hubli, Sri G.G. Chodhari.ASIPF/DRAJBL when performing sentry duty and kept them wrongly confined in the cash office/ Gadag till morning up to 7.00 hours of 11-4-1995.

3. Sri Gurubasappa, who was appointed as enquiry officer, examined seven witnesses produced by the department. The appellant did not adduce any evidence. After considering the departmental evidence, the enquiry officer submitted report dated 22-8-1995 with the finding that the charge levelled against the delinquent has been proved. A copy of the enquiry report was sent to the appellant along with letter dated 23-8-1995 of Divisional Security Commissioner, Railway Protection Force, Hubli and he was given opportunity to make representation. After considering the reply filed by him, the disciplinary authority passed order dated 16-9-1995 whereby the appellant was removed from service. Appeal preferred by him was dismissed by Chief Security Commissioner, South Central Railway vide his order dated 11-12-1996. The appellate authority observed that the punishment imposed on the appellant was commensurate with the misconduct found proved against him and there was no justification to reduce the same. The appellate authority further held that the delinquent had been given reasonable opportunity of hearing and the disciplinary authority rightly punished him.

4. The appellant questioned the enquiry report as well as punishment order in Writ Petition No. 25246 of 1996. He pleaded that the proceedings of enquiry are vitiated due to violation of Rule 153(16) of the Rules, inasmuch as, he was not given opportunity to make a statement. He also pleaded that the punishment of removal from service was shockingly disproportionate.

5. The learned Single Judge analysed the factual matrix of the case, considered the points taken by the petitioner (appellant herein) and held that non-compliance of Rule 153(6) does not have the effect of vitiating the order of punishment because the petitioner had not suffered prejudice. The relevant extracts of the order under challenge, which contain discussion on this issue, are reproduced below:

While it is true that no statement of the petitioner was recorded after all the relevant evidence had been brought on record, the fact, however, remains that the statement submitted by the charge sheeted employee, in his defence, was taken note of both by the enquiry officer and the disciplinary authority. Except for stating that this statement was not recorded in the departmental enquiry, the petitioner has not pleaded nor is it contended before this Court by Sri D. Ramakrishna, learned Counsel for the petitioner, that the petitioner suffered any prejudice thereby or that failure to provide such an opportunity has resulted in manifest injustice to him.

Rule 153(16) is undoubtedly a provision whereby the delinquent is provided a reasonable and adequate opportunity to put-forth his defence in the form of a

statement. In the present case, the petitioner cross-examined the prosecution witnesses but, however, chose not to examine any witness in his defence or to place any documentary evidence, except a defence statement which was considered both by the enquiry officer and the disciplinary authority. Nothing has been stated in the affidavit, filed in support of the writ petition, as to how the petitioner was prejudiced as a result of non-compliance with Rule 153(16), in not having his statement recorded in the domestic enquiry. Having failed to avail the opportunity of adducing evidence in his defence, it is not open to the petitioner to contend that failure to record his statement, as prescribed in Rule 153(16) would be fatal to the enquiry proceedings necessitating the entire disciplinary proceedings being set aside, more so since the statement submitted by him in his defence has been considered both by the enquiry officer and the disciplinary authority. No prejudice has been shown to have been caused as a result of non-compliance with the requirement of recording the statement of the petitioner on completion of the enquiry. I therefore see no reason to interfere with the impugned order for non-compliance of Rule 153(16) of the Rules.

6. The learned single Judge also rejected the argument based on doctrine of proportionality and held that the discretion exercised by the employer to impose penalty of removal from service does not suffer from infirmity.

7. We have heard learned Counsel for the parties. In our opinion, order dated 16-9-1995 passed by Divisional Security Commissioner, Railway Protection Force, Hubli does not suffer from any legal infirmity and the learned single Judge rightly refused to interfere with the same.

8. The charge levelled against the appellant was extremely grave. He had pointed rifle at two of the officers of the cash department and kept them illegally confined for a period of almost twelve hours. His conduct was totally unbecoming of security personnel. His duty was to protect the officers who were possessing cash, but he acted just the contrary. Instead of protecting them, the appellant confined the officers in a room by misusing his position as armed guard. Therefore, the view taken by the employer that the allegation levelled against the appellant was serious and warranted imposition of one of the extreme penalties, cannot be faulted.

9. The Court's power to interfere with the punishment imposed on the delinquent employee has become subject matter of scrutiny in large number of cases. The terms and phrases like arbitrary, unreasonable, unconscionable and shockingly disproportionate are often used by the advocates representing the delinquent employees who seek intervention of the Court for invalidation of the order of punishment. The doctrine of proportionality and Wednesbury rule have also been pressed into service for persuading the Courts to interfere with the employers' prerogative to punish the employee. But, the courts have to constantly remain guard against adopting a populist approach in such matters and refrain from interfering with the punishment imposed by the employer on a delinquent employee. The power of judicial review in such cases should be

exercised with great care and circumspection. Only in exceptional cases, the Court may interfere with the punishment, if it is convinced that the same is wholly arbitrary or shockingly disproportionate to the misconduct found proved. For determining this, the Court has to take into consideration the factors like length of service of the delinquent, the nature of duties assigned to him, sensitive nature of his posting and job requirement, performance norms, if any laid down by the employer, the nature of charges found proved, the past conduct of the employee and the punishment, if any, imposed earlier. The Court has also to keep in mind the paramount requirement of maintaining discipline in the services and the larger public interest,

10. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, . the Supreme Court invoked the doctrine of proportionality for quashing the order of punishment because the same was found to be shockingly disproportionate to the misconduct found proved against the appellant. The proposition laid down in that case reads asunder:

Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review.

11. In *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, . the doctrine of proportionality was considered along with *Wednesbury* rule and the following propositions were laid down:

(1) To judge the validity of any administrative order or statutory discretion, normally the *Wednesbury* test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the *Wednesbury* test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational - in the sense that it was in outrageous defiance of logic or moral standards. The possibility of

other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU principles.

(3) (a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3) (b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4) (a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4) (b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.

12. In *Om Kumar v. Union of India* (2001) 2 SCC 386 . the Supreme Court considered the applicability of the doctrine of "Proportionality" in the context of Article 14 of the Constitution, referred to the judgments in *Ranjit Thakur v. Union of India* (1 supra), *B.C. Chaturvedi Vs. Union of India* and others, . and held:

(1) In this context, we shall only refer to these cases. In *Ranjit Thakur v. Union of India* (1 supra) this Court referred to "proportionality" in the quantum of punishment but he Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In *B.C. Chaturvedi v. Union of India* (4 supra) this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the" matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in *Ganayutham* (2 supra).

(2) Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury

principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment.

13. In *Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another*, the Supreme Court outlined the mode to be adopted for determining whether the punishment imposed by the disciplinary authority is shockingly disproportionate and observed as under:

The Court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. The scope for interference is very limited and restricted to exceptional cases. In the impugned order of the High Court no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. A mere statement that it is disproportionate would not suffice. It is not only the amount involved by the mental set-up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptional.:

(Underlining is ours)

14. In *Director General R.P.F. and Others Vs. Ch. Sai Babu*, the Supreme Court reiterated that the High Court should not ordinarily interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed:

Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works.

15. Reference also deserves to be made to the decisions of the Supreme Court in *State Bank of India and Others Vs. Samarendra Kishore Endow and Another*, . *State of U.P. and others Vs. Ashok Kumar Singh and another*, . *State of U.P. and others Vs. Nand Kishore Shukla and another*, . *State of Punjab and others Vs. Bakhshish Singh*, . *U.P. State Road Transport Corpn. and Others Vs. A.K. Parul*, . *Union of India (UOI) Vs. J.R. Dhiman*, . *Secretary, A. P. SWREI Society v. J. Prathap*, (2002) 2 LLJ 454SC . wherein the Supreme Court disapproved the invoking of the doctrine of proportionality by the High Courts.

16. By applying the ratio of the aforementioned judgments to the facts of this case, we hold that the punishment imposed on the appellant is neither arbitrary nor shockingly disproportionate so as to warrant interference by the Court.

17. The argument of Sri D. Ramakrishna that the proceedings of enquiry should be declared as vitiated due to violation of Rule 153(16) is liable to be rejected because the petitioner has neither pleaded nor produced any evidence before the learned Single Judge to show that his case was prejudiced on account of denial of opportunity to make statement. The rules of natural justice are multi-dimensional and multi-faceted, but their applicability differs from case to case. One of the facets of the rules of natural justice is that no one shall be condemned unheard. In Sixties, Seventies and Eighties, the Courts insisted on rigorous compliance of the rule of hearing and the action taken by the employer against delinquent employee used to be invalidated on the ground of violation of the rule of hearing simpliciter and the theory of empty formality used to be rejected on the premise that prejudice should be presumed in the cases involving violation of the rules of natural justice. This trend has perceptibly changed and the judicial precedents of last fifteen years given a clear indication of the shift. Now, the Courts do not invalidate the action taken by the employer to punish the delinquent employee only on the ground of violation of the rules of natural justice or violation of the procedure laid down by the rules, unless it is shown that such violation has prejudiced the defence/cause of the employee. In this connection, reference can usefully be made to the judgments of the Supreme Court in *Jankinath Sarangi Vs. State of Orissa*, . *R.C. Sharma Vs. Union of India (UOI) and Others*, . *Sunil Kumar Banerjee Vs. State of West Bengal and Others*, . *Sunil Kumar Banerjee Vs. State of West Bengal and Others*, . *Mumtaz Hussain Ansari Vs. State of U.P. and Another*, . *Kashinath Dikshita Vs. Union of India (UOI) and Others*, . *Chandramma Tiwari v. Union of India (1987) Suppl. SCC 518* . *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, . *Krishan Lal Vs. State of Jammu & Kashmir*, . *State Bank of Patiala and others Vs. S.K. Sharma*, ; *State Bank of Patiala and others Vs. S.K. Sharma*, . *State of U.P. Vs. Shatrughan Lal and Another*, . *Foor Corporation of India v. Padamkumar Bhuvan (1999) SCC (L & S) 620* . *State of U.P. Vs. Harendra Arora and Another*, . *Oriental Insurance Co. Ltd. Vs. S. Balakrishnan*, . *State of Uttar Pradesh v. Rameshchand Manglik (2003) 3 SCC 443* . *Indra Bhanu Gaur Vs. Committee, Management of M.M. Degree College and Others*, . and *Divisional Manager, Plantation Division, Andaman and Nicobar Islands Vs. Munnu Barrick and Others*, .

18. In some of the earlier judgments, the Supreme Court has also expressed the view that burden to prove that the employee's cause had not been prejudiced on account of violation of the statutory rules or the rules of natural justice is on the employer, but, after the judgment of the Constitution Bench in *Managing Director, ECIL v. B. Karunakar* (21 supra), the said view can no longer be treated as good law.

19. In *B. Karunakar's case* (21 supra), the Constitution Bench of the Supreme Court considered the apparent conflict or views expressed by two Benches in *Union of India and others Vs. Mohd. Ramzan Khan, . and Kailash Chander Asthana Vs. State of U.P. and Others, .* on the interpretation of Article 311(2) of the Constitution as amended by 42nd amendment. The Constitution Bench framed the following questions:

(i) Whether the report of the enquiry officer is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him?

(ii) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?

(iii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

(iv) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

(v) Whether the law laid down in *Mohd. Ramzan Khan's case* (32 supra) will apply to all establishments-Government and non-Government, public and private sector undertakings?

(vi) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

(vii) From what date the law requiring furnishing of the report, should come into operation?

(viii) Since the decision in *Ramzan Khan's case* (32 supra) has made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz. What was the law prevailing prior to 20th November, 1990?

20. After answering the first question in affirmative, their Lordships considered the ancillary questions and answered question No. (vi) in the following words:

The next question to be answered is what is the effect on the order of

punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the Employee or not on account of the denial to him of the report-has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

The Constitution Bench then held:

Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he was not already secured it because coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/ Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, [and not any internal appellate or revisional authority", there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.

(Underlining is ours)

21. In Harendra Arora's case (27 supra), the Supreme Court referred to the earlier judgment of the Constitution Bench in *Managing Director, ECIL v. B. Karunakar* (21 supra) and laid down the following propositions:

(i) From the case of ECIL it is plain that in cases covered by the Constitutional mandate i.e., Article 311(2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. Therefore, requirement in the statutory rules of furnishing copy of the enquiry report cannot be made to stand on a higher footing by laying down that question of prejudice is not material therein.

(ii) Every infraction of the statutory provision could not make the constant action void and/or invalid. The statute may contain certain substantive provisions, e.g., which is the competent authority to impose a particular punishment on a particular employee. Such provision must be directly complied with as in such cases the theory of substantial compliance may not be available. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose cases the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than that of fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touch stone of prejudice.

(iii) Even in the CPC there are various provisions viz. Section 99A and 115 besides Order 21, Rule 19 where merely because there is defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Cr.P.C. also Section 465 lays down that no finding, sentence or order passed by competent Court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the Court a failure of justice has, in fact, been occasioned thereby. There is no reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions of Rule 55-A of the CCS (CCA) Rules in relation to the disciplinary proceedings. Rule 55-A embodies in it nothing but the principles of reasonable opportunity and natural justice.

22. In *Indra Bhanu Gaur v. Committee, Management of M.M. Degree College* (30 supra), the Supreme Court considered the question whether non-payment of subsistence allowance could be a ground for quashing the order of punishment. While remanding the case to the High Court for fresh adjudication, the Supreme Court observed as under:

It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso-facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employees handicap because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute proposition of law that non-payment of subsistence allowance amounts to denial of opportunity of hearing and vitiates the departmental proceedings.

(Emphasis added)

23. In *Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick* (31 supra), the Supreme Court referred to the judgments of the Constitution Bench in *B. Karunakar's case* (21 supra) and observed that, "the principles of natural justice cannot be put in a straight jacket formula. It must be viewed with flexibility. In a given case where a deviation takes place as regards compliance with the principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before it. The employee must show sufferance of prejudice by non-supply of a copy of the enquiry report. A court will refrain from interfering with an order having regard to "useless formality theory, in a given case".

24. In view of the above discussion, we hold that the learned Single Judge did not commit any error by refusing to nullify the enquiry report and the order of punishment.

25. No other point has been argued.

26. In the result, the writ appeal is dismissed.