
(1985) 10 PAT CK 0002
In the Patna High Court
Case No : S.A. 676 of 1977

Mahabir Roy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-10-1985

Acts Referred:

Constitution of India, 1950 — Article 309, 310, 311
Industrial Disputes Act, 1947 — Section 11A
Railway Protection Force Act, 1957 — Section 11, 3, 9

Citation : (1986) 34 BLJR 328 : (1986) PLJR 207

Hon'ble Judges : Lalit Mohan Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Lalit Mohan Sharma, J.—The plaintiff-appellant was employed as a Rakshak in the Railway Protection Force and was removed from service in 1969 by the order in Ext. E, following disciplinary proceeding. He has challenged his removal illegal, unconstitutional and void in the present suit.

2. The suit was decreed by the trial court, but on appeal, the learned Subordinate Judge, Begusarai, has reversed the Munsif's decision and dismissed the suit.

3. In 1967, the plaintiff was posted at Garhara Railway Yard A charge-sheet was served on him alleging that he was detected to be carrying a bag containing ten seers of rice, near the Loco Shed of Garhara Yard by his superior officer and on being challenged he confessed of having illegally removed the the articles. Instead of prosecuting the goods from thieves, he himself, according to the charge, was guilty of stealing, A departmental enquiry was thereafter commenced in which the charge was held to have been proved. Consequently the order in Ext. E was passed.

4. According to his case, after his duty house at midtion night, the plaintiff was

proceeding to the Railway Protection Force Barrack line through the Loco Shed when he saw a labour carrying the rice bag, which on seeing the plaintiff, he threw away and escaped. The plaintiff picked up the bag and would have deposited the same in the Railway Protection Force line but could not do so as he was confronted by his superior officer. Re-challenged his signed confessional statement as having been made under duress. He has challenged the validity of the disciplinary proceeding on the ground that the conclusion arrived at therein was based on the said confessional statement and that the finding is otherwise also erroneous. He prayed for a decree for his reinstatement in the post and other consequential reliefs.

5. The learned Munsif who tried the suit held that in view of the evidence of the plaintiff (P.W.2), he did not intend to appropriate the rice to his personal use and his confessional statement was obtained under threat and illegal and the order of the plaintiff's removal from service in Ext-E being based upon the same was bad in law. He also held that the evidence led in the enquiry proceeding was not sufficient to establish the charge. The suit was accordingly decreed.

6. The Union of India filed an appeal which was allowed by the Subordinate Judge, Begusarai, who held that the civil court is not entitled to sit in appeal over the findings of fact recorded by a competent authority in a properly conducted departmental enquiry except on the ground that the findings were not supported by any evidence or where rules of natural justice were violated. On a consideration of the records of the case, the Subordinate Judge further held that the findings recorded in the enquiry report cannot be said to be based on no evidence and cannot, therefore, be ignored or set aside. The appeal was accordingly allowed and the suit dismissed. The plaintiff has now come in second appeal.

7. Mr. Balbhadra Singh, the learned Counsel for the appellant, challenged the view expressed by the Subordinate Judge on the scope of the suit and contended that the civil court is fully authorised to reappraise the evidence for the purpose of testing the correctness of the findings of the Enquiry Officer. Referring to Section 11A of the Industrial Disputes Act, 1947, the learned Counsel urged that a finding of fact recorded in a disciplinary proceeding has, since the amendment, ceased to be sacrosanct and it is now permissible to examine the merits of the case with reference to the evidence. I am afraid, the argument proceeds from an illegal assumption that the provisions of the Industrial Disputes Act are applicable to a suit. The vital difference between the power of a civil court while deciding a suit, and that of an Industrial Tribunal has been discussed in many decisions and I do not consider it necessary to deal with this aspect. Suffice it to say that provisions of the Act do not apply to a suit and a civil court's power has not been widened by Section 11A thereof.

8. The Force to which the plaintiff belonged was constituted u/s 3 of the Railway Protection Force Act, 1957 for the better protection and security of the Railway Property. Section 9 of the Act dealt with the dismissal, suspension, reduction in

rank and other punishments with respect to the members of the force and Section 11 provides for framing of rules. Accordingly, the Railway Protection Force Rules 1949, were framed, Chapter IX whereof is headed as "Discipline" and deals with the procedure with respect to the departmental disciplinary procedure with respect to the departmental disciplinary proceedings, the nature of the penalties and the conditions in which they can be imposed as also the officers authorised in that regard. They are consistent with Section 9(1). Section 9(2) read with Chapter X of the Rules deals with appeals, revisions and petitions. The disciplinary proceeding in the present case was commenced, conducted and concluded in accordance with these provisions.

9. The defendants produced all the relevant documents in this case which have been marked as Exts. A, B series, C, D and E. The enquiry report (Ext. D) is a long detailed order indicating that there was, besides the confessional statement of the plaintiff, oral evidence of several witnesses, which were accepted by the Enquiry Officer. The question is as to whether the evidence cannot be re-appraised in a suit for testing the correctness of findings of fact recorded in the proceeding. I have no hesitation in saying that the answer is in the negative,

10. Article 309 of the Constitution authorises the legislature to regulate conditions of service of Government servants and the Act and Rules under which the departmental enquiry was held and orders passed were accordingly enacted and made. The authority who is empowered to act has passed the impugned order. In the circumstances, even if the authority wrongly decides, the question of fact, it cannot be questioned in a civil court.

11. In *S.B. Dutt Vs. University of Delhi*, while examining the correctness of an award, the Supreme Court held that the award was illegal on its face as it directed the reinstatement of the appellant in service which is forbidden by the Specific Relief Act. However, if an order of termination of service of a Government servant is illegal and void, the civil court can make a declaration to that effect and can also pass a consequential decree. The pleasure thereby of the President or the Governor, as the case may be, enshrined in Articles 310(1) of the Constitution is subject to the provisions of Article 311(2). In *Khem Chand Vs. The Union of India (UOI) and Others*, while considering the scope of these two Articles, the Supreme Court observed that the limitations imposed on the exercise of the pleasure of the President or the Governor in the matter of dismissal, removal or reduction in rank of Government servants, constitute the measure of the constitutional protection afforded to the Government servants by, Article 311(2) of the Constitution. This protection does not vest the Court with power to re-assess the evidence on which the appointing authority bases the order of termination of service, while repelling the argument similar to the one pressed before me, the Supreme Court in *K.L. Shinde Vs. State of Mysore*, (arising out of a suit) observed that "regarding the appellant's contention that there was no evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and re-

assess the evidence" and that "whether or not there is sufficient evidence against a delinquent to justify his dismissal from service is a matter on which the Court cannot embark".

12. I, therefore, hold that the power of a civil court to grant relief to a dismissed Government servant arises only if the order of dismissal is found to be illegal and void and it does not extend to an examination on merits of the probative value of the evidence led before the Enquiry Officer.

13. This second appeal is, accordingly, dismissed with costs.