
(1976) 07 BOM CK 0029

In the Bombay High Court

Case No : Spl. C. A. No. 1140 of 1976 with Spl. C.A. No. 1487 of 1976

Mohamad Tayum

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 08-07-1976

Acts Referred:

Constitution of India, 1950 — Article 309, 311, 311(2), 311(2)

Citation : (1977) MhLj 153

Hon'ble Judges : V.S. Deshpande, J; R.K. Joshi, J

Bench : Division Bench

Advocate : I.S. Khemani with B.R. Malik, for the Appellant; C.J. Savant and J.H. Parekh, for the Respondent

Final Decision : Allowed

Judgement

V.S. Deshpande, J.—These two special civil applications raise a common question of law and can be disposed of by a common judgment. The petitioner in the first case has been serving in the Western Railway as a Ticket Collector. On 3-2-1976 he was posted at Dadar Station at Exit gate on the island platform No. 2/3 at night shift. The Vigilance Branch Inspectors also appear to have been present near the said Gate at about 5.0 p.m. The petitioner is alleged to have accepted 50 Paise, as illegal gratification, from certain passengers each for allowing them to pass with their unbooked luggage. The Inspectors submitted their report on that very day to the Divisional Superintendent, Bombay Division, Bombay Central, Western Railway, Bombay, the respondent No. 3 herein.

2. The petitioner in the second case was posted as a Travelling Ticket Examiner at Church gate Station. On 10-12-1975 he was working as a Sleeper Coach Conductor of the IInd Class Sleeper Coach No. 2077 on 1 Down Gujrat Mail, Ex-Bombay Central to Ahmedabad. A Vigilance Inspector entered the coach to keep a secret watch on the activities of the petitioner at the Bombay Central finding that several passengers, in need of the reserved accommodation, had surrounded and followed him in the coach in spite of his declaration that no berth

was vacant. All such passengers got down at Palghar. Two berths in Ladies' quota were, however, vacant. Another passenger entered the said coach at Palghar. The said passenger was seen having a talk and handing over something to the petitioner. The passenger was also subsequently found to have occupied one of the ladies' berths. The Inspector, thinking that it was a case of corruption, submitted a report to that effect to respondent No. 3 on 12-12-1975.

3. Relying on these reports, the Divisional Superintendent, i.e. respondent No. 3, concluded that the petitioners had accepted amounts as illegal gratifications and were guilty of such serious misconduct as to render their further retention in service undesirable. He was also further satisfied that in the circumstances of these cases it was not reasonably practicable to bold an inquiry, in the manner provided in the Rules, i.e. Rules 9 to 13 of the Railway Servants (Disciplinary and Appeal) Rules, 1968, hereinafter referred to as "the Rules". He accordingly directed removal of the petitioners from service with immediate effect, dispensing with the issuing of the show cause notice and the inquiry, under sub-rule (ii) of Rule 24 of the said Rules. The order in the first case was passed on 7-2-1976 and that in the second case on 27-12 1975.

4. Mr. Khemani, the learned advocate appearing for the petitioners, contends that circumstances in these cases do not afford any legal justification for dispensing with the show cause notice and enquiry as required under Rules 9 to 13, by recourse to rule 14 of the Rules and the removal of the petitioners from service in gross violation of Article 311 (2) of the Constitution and in breach of the mandatory Rules, is liable to be quashed.

5. Mr. C. J. Sawant, the learned counsel for the respondents, railed a preliminary objection to the maintainability of these petitions, contending that the remedy of the appeal provided under the Rules and specifically indicated in the impugned orders, was not availed of. Mr. Sawant contends that there is no reason why the petitioner should be allowed to invoke the extra ordinary jurisdiction of this Court, when the very grievances could have been disposed of by the appellate authority. Now it is not that the contention of Mr. Sawant is without some substance. This Court is extremely slow in interfering with orders, which can be effectively challenged by recourse to the available statutory remedies. However, the rigour of this rule is relaxable in cases in cases where the impugned orders are shown to have been passed in total disregard of the principles of natural justice or statutory rules to that effect. The ratio of judgment of the Supreme Court reported in the case of Baburam v. Zila Parishad¹ relied-on by Mr. Khemani does support his contention to the above effect. This preliminary objection is thus liable to be over-ruled.

6. Now, in cases of service contracts between any master and servant, there is no security of service, and the doctrine of "hire and fire" operates effectively. However, our Constitution, affords some degree of security to the public servants and Article 311 (2) prevents removal on dismissal of any public servant for any misconduct without giving him a reasonable opportunity to show cause against

the proposed removal or dismissal. This necessitates enquiry even so, the founding fathers engrafted a proviso to Article 311 (2) indicating the contingencies in which obligation to give such an opportunity is liable to be dispensed with. The "Rules" framed under Article 309 of the Constitution to effectuate the above constitutional mandate, provide an elaborate procedure for such an opportunity and also for the contingencies when the same can be dispensed with. Rule 14 (ii) corresponds to Article 311(2) proviso clause. It is thus no doubt open to the dismissing authority under Rule 14 (ii) to dispense, with enquiry required under Rules 9 to 13, if holding of such enquiry is found not be reasonably practicable. This is what respondent No. 3 has done.

7. The real question that falls for consideration is whether the circumstances in these two cases attached the contingency conceived under Rule 14 (ii) to justify dispensing with the enquiry required under Rules 9 to 13 of the Rules. Mr. Khemani contends that even if the circumstances relied on by respondent No. 3 are assumed to be correct the same cannot, warrant the conclusion that holding of enquiry was not reasonably practicable, and justify the dispensation with the inquiry required to be held by way of safeguard to the public servant before he is dismissed from service. Now, the circumstances relied on by respondent No. 3, in his orders and his affidavits in reply, and by Mr. Sawant before us are:

(1) that it was not possible to get the bribe giving passengers to give evidence against the delinquents in view of their being guilty of the of the offences "themselves;

(2) As no other corroboration is available, holding inquiry by examining the Vigilance Inspectors would be idle as it would not take the matter any further than their reports.

(3) Insistence on corroboration would result in corrupt employees going free; and

(4) On being examined as a witness in the enquiry his effectiveness as Vigilance Inspector would cease thereafter and the modus operandi reported for arresting corruption would become ineffective.

8. Now, the first circumstances is founded on three-fold assumptions i.e. (a) the bribe giver equally guilty along with the acceptor thereof (b) he would be reluctant to implicate him after having benefited by the favour sought in consideration of the bribe given; and (c) evidence of an accomplice like him would not carry any weight. There cannot be any quarrel with the first assumption. The two other assumptions are not well founded and are contrary to the legal provisions, actual experience and long practice. Bribes are mostly given under compulsions of the moments and bribe givers rarely decline to make clear breast of every thing as soon as the opportunity arises thereafter. Favour received on payment of bribe seldom creates any sense of gratitude and the bribe givers rarely get more than what they are entitled to as of right even on payment of bribes. Even in cases of bribe givers getting undeserving benefits, one cannot assume unwillingness to disclose the truth without making any

attempt to make them speak. Instances of even such persons coming forth to disclose the truth are not wanting. There is also no inflexible rule that the word of bribe givers can never carry weight, it being dependant on variety of factors. Their evidence is admissible even in law and can be acted upon even without any corroboration, if it can otherwise inspire confidence. This is all the more so in departmental proceedings which are free from technicalities of the Evidence Act. Thus of the three-fold assumptions, first one is correct but thoroughly irrelevant and second and third assumptions are wholly misconceived.

9. Coming to the question of the availability of other corroborative evidence, it is difficult to see why no other witness could have been available either to prove the facts independently or corroborate the Vigilance inspectors. In the very nature of things, many more persons must have been present at the exit gate at the Dadar Station or in the compartment at Palghar, at the relevant time. Many of them could have easily seen or heard what Vigilance Inspector claims to have heard or seen. Some of these, at any rate, can easily be presumed to be disinterested and independent. At any rate, there is nothing to indicate that none of them could see or hear or that none had in fact so done or were unwilling to so say or depose. There was thus no basis for assumption that no other witness to corroborate the inspectors Could be available This is the indication of the total in application of the mind by the respondent No. 3. Secondly, surrounding circumstances can also afford as much corroboration as the direct word of those who have seen or heard along with the inspectors. These are thus the cases in which no attempt whatsoever appears to have been made to contact others and collect any other evidence before or after the receipt of the report. Thirdly there is no rule that one witness such as the author of the report alone cannot be examined and relied on even when he is found reliable.

10. It is also not correct to assume that examination of author of the report as witness cannot carry the matter any further. The importance of cross-examination seems to have been totally lost sight of. The delinquent can always elicit answers from him either to explain the allegations made by placing them in proper context, or to demonstrate the bias, misconception or misunderstanding, or the interest of the author in trumping up a false case and prove their falsity in cases where the same are untrue. He can prove the falsity of the case by producing his evidence in rebuttal. He may fail, if the allegations are true. Enquiry cannot be held to be impracticable merely because no investigation whatsoever was made or because of the unfounded belief that the author of the report may have nothing more to add in his evidence. Such contemplated impracticability cannot be equated with the reluctance or failure to collect the necessary material either due to the incompetence or misconceptions or other kinds of lapses of the departmental machinery itself.

11. Third circumstance is equally misconceived and involves an element of fallacy. Proof of the guilt depends on the quality of material. The need for corroboration arises only when the existing material is shaky or unequivocal.

Guilt can be established even from the unblemished deposition of Vigilance Inspectors alone. Evidence is to be weighed and not counted. If the existing material is unreliable or even unequivocal, the delinquent is entitled to be cleared of the charges. It is as good as the total lack of the material. Any amount of anxiety to eradicate corruption cannot justify the conclusion of guilt in any arbitrary manner when the available material is unreliable or far too inadequate to found such conclusion. It is an error to assume any public servant to be corrupt, merely on suspicion or even on strong feeling of the authority. In such a case it is equally fallacious to assume that corrupt employee goes free. Even the reasons for the unreliability or inadequacy of the material are not relevant in this context. In such a case the authority owes to the delinquent, the administration and to himself a duty to give a clean chit to the delinquent. Where adequate material exists, further investigation can be dispensed with as an idle multiplicity thereof, and waste of time can be avoided where more material of better quality cannot be traced. Even so, absence of any other material for corroboration by itself cannot render an opportunity and enquiry impracticable.

12. Respondent No. 3 then also seems to have been obsessed with the fear that they would cease to be of any use as detectives on exposing the identity of the Vigilance Inspectors. The material before us does not indicate the nature and extent of their functions and duties and we would prefer not to express any opinion on the advisability of relying on them. Three clauses of the proviso to Article 311 (2) and corresponding Rule 14 presumably do not rule out relying on one-sided reports from privileged sources, disclosures of which is liable to be withheld. There may be rare such cases where collection and production of other material and giving an opportunity to the delinquent is rendered impossible due to insurmountable difficulties and compulsive urgency of the situations. It is unnecessary to go into the question when these exceptional situations can arise. Suffice it to note that the two cases under consideration do not fall under any such exceptional situations and the fear of respondent No. 3 is wholly misplaced. As discussed earlier, other evidence in those cases could have been collected, if it was necessary to withhold the identity of the Vigilance Inspectors.

13. Respondent No. 3 also speaks of some "modus operandi" for detection of such offences "by a secret watch". The material before us is bereft of the necessary details thereof to facilitate examination and comments. Reliance on the mere detective reports for dismissal of Government servants involving penal consequences requires the existence of some exceptional situation. If the manner in which respondent No. 3 has dealt with in these cases is indicative of this modus; it contemplates acting on the reports of the detectives without even the semblance of any attempt to get full facts or verify their accuracy. The reports contain impressions and inferences from sketchy pictures rather than the necessary facts. He has almost yielded his judgment to those of the reporters. The detection of every misconduct or an offence must be followed by investigation and adjudication, if the dismissals are not be matters at the whim or caprice or sweet will of the authorities. The dispensation of enquiry in

exceptional situations under the proviso to Article 311 (2) and Rule 14 goes to eliminate only part of the adjudication process confined to the show cause notice and opportunity part thereof. It does not relieve the authority of his obligation to investigate and adjudicate even after hearing of the delinquent is dispensed with. The modus operandi adopted thus is erosive of the security of the servants as also the rule of law. Rather than eradicate corruption, it may encourage it, and also the whispering campaign and then resultant sense of insecurity amongst the employees. The circumstances relied on for making recourse to Rule 14 (ii) thus are as much either misconceived or irrelevant, as also the modus operandi.

14. Mr. Sawant contends that in either case the decision as to the impracticability of the enquiry and reasonableness thereof is left to the dismissing authority. It will not be open for this Court, contends Mr. Sawant, to substitute its own decision or judgment in place of thereof, arrived at by him bona fide. That such a decision is left to such an authority is, no doubt, true. But it is not immune from the judicial review of this Court if and when challenged. We have discussed and indicated how the considerations weighing with the respondent No. 3 are misconceived and irrelevant. Such decision deprives the public servant of the constitutional protection to his tenure of service as also to his good name and reputation. The safeguards provided against wrongful dismissal are as much in the interest of the delinquent as of the good administration. That respondent No. 3 or the reporting inspectors may have acted without malice and with lofty motives is besides the point. The readiness with which the respondent No. 3 proceeded to act under rule 14 (ii) and rely on the reports of the Vigilance Inspectors in both the cases betrays lack of appreciation of the true scope of Rule 14 (ii), the importance of the procedural safeguards afforded to the public servants and the responsibility of the disciplinary authority as Adjudicator in such matters. Impracticability of enquiry may result from the peculiarity of the incident in particular or of the situation existing in general, making it impossible or useless to collect or produce any other material, and give opportunity and hearing to the delinquent. Reasonableness of such Impracticability shall have to be tested by balancing it against the constitutional safeguards secured for the public servants. No inflexible test of impracticability or its reasonableness can be evolved. This can admit of no hard and fast rules. Proper investigation and fair enquiry is expected to be the rule, and dispensation thereof, an exception, to be resorted to only when collection and production of evidence and enquiry is not possible. The decision arrived at by respondent No. 3 is liable to be ignored, being superficial and based on irrelevant and misconceived notions.

15. It may be that in the wake of Emergency, Railway administration is trying to take effective and immediate steps to improve its tone and the action taken by respondent No. 3 is only a part of this campaign to eradicate the corruption. With the laudable object with which the action is taken by respondent No. 3, there can hardly be any quarrel. There is also no doubt that corruption is rampant in our public life and situation calls for immediate drastic action with some sort of missionary zeal. However, any action taken for its eradication has got to be in a

disciplined manner and accord with the laws of the land. As discussed earlier, provisions of Article 311 as also the rules in dispute, requiring inquiry before the person concerned is condemned as corrupts, are engrafted with a view to afford security to the public servants. Security to the public servants is as much important to the society as the protection of the Society itself against the misconduct of such servants. Any attempt to whittle down such security or dispensation of the safeguards will not be justified unless the circumstances enumerated in the proviso to Article 311 (2) and incorporated under Rule 14 (ii) are Strictly found to exist. In spite of Emergency and suspension of right to enforce fundamental rights, safeguards under Article 311 are not suspended, nor the provisions are amended. There is no warrant to interpret the provisions differently from how the same could have been interpreted before Emergency. In fact, it is difficult to know, what the cases of corruption has directly to do with the situation which necessitated the proclamation of Emergency. Urgency to remove corruption is one thing while urgency to remove the supposedly corrupt officer is quite different thing. Implications and the requirements of the two are different. Tendency to find an alibi in Emergency for every lapse and omission has got to be discouraged; It is an error to search, for some nexus with Emergency in areas where the authors of the Emergency themselves have, in their wisdom, hesitated to tread. In this view of the matter, the orders of removal in both the cases are liable to be quashed. This, however, will not prevent respondent No. 3 from collecting more required material and holding the inquiry afresh, if he is so advised.

16. Rule is accordingly made absolute.

17. The petitioners will get their costs from the respondents.