
(1991) 05 RAJ CK 0051
In the Rajasthan High Court
Case No : Civil First Appeal No. 45 of 1988

Mohan Lal Mali

APPELLANT

Vs

Rajasthan State Road Transport Corporation and Another

RESPONDENT

Date of Decision : 21-05-1991

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 311
Industrial Disputes Act, 1947 — Section 33C

Citation : (1991) 1 RLW 294 : (1991) 2 WLN 495

Hon'ble Judges : S.N. Bhargava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Bhargava, J.—This is plaintiff's first appeal against the judgment and decree passed by the Additional District Judge, Beawar, dismissing the suit of the plaintiff.

2. Plaintiff was appointed as a Conductor in the Rajasthan State Road Transport Corporation (hereinafter referred to as the "Corporation"), on 23.3.1976. While discharging his duties as a Conductor, he was given three charge-sheets-dated 29.10.82, 18.6.83 and 16.12.1983 because some passengers were found without ticket in the bus when a checking was made. An enquiry was held by Shri K.N.Mathur, Depot Manager who found the appellant guilty, and on the basis of the enquiry report submitted by the Enquiry Officer, the plaintiff-appellant was removed from service by an order dated 9.3.1984. The plaintiff preferred an appeal but the same was also dismissed on 31.5.1984. Thereafter, he filed the suit, out of which the present appeal has arisen, for declaration that order of his removal was illegal, unconstitutional and was passed without following the principles of natural justice and hence, was null and void. It was further prayed that the plaintiff may be declared to be in continuous service and entitled to all the benefits. The plaintiff also averred in the plaint that copy of the enquiry report was not furnished to him even though the disciplinary authority had

placed reliance on the same, which clearly amounted to violation of the principles of natural justice. The suit was contested by the defendants. It was asserted on behalf of the defendants that there was no violation of the principles of natural justice and full opportunity was given to the plaintiff to defend himself and no material prejudice has been caused to him. There is no specific denial of the fact that the copy of the enquiry report was not supplied to the plaintiff.

3. On the pleadings of the parties, the trial court framed the following issues:

1- vk;k vkns"k fnukad 9-3-84 o 31-5-84 xyr o voS/k rFkk "kwU; gS tSlk fd okn i= ds pj.k la[k;k 11 es mYysf[kr gS A

2- vk;k bl U;k;ky; dks okn mudk {ks=kf/kdkj ugh gSA

3- vk;k oknh okni= ds pj.k la[k;k 14 o 15 es of.kZr jkf"k if=dk vf/kdkjh gSA

4- vuqrks"k A

4. The plaintiff examined himself as PW-1. The defendants did not lead any oral evidence. Documents have been filed by both the parties. Learned trial court decided Issues No. 1,3 and 4 in favour of the defendants and dismissed the suit. It is against this judgment that the present first appeal has been filed by the plaintiff.

5. At the outset, learned Counsel for the respondents has submitted that the decision of the trial court on Issue No. 2 is erroneous in view of the latest decision of the Supreme Court in Jitendra Nath Biswas Vs. M/s. Empire of India and Ceylon Tea Co. and Another, wherein a bench of two Judges has held that a suit for declaration that the dismissal of the plaintiff from service, was bad and void, for back wages and seeking a relief of reinstatement, is not maintainable before the civil court and therefore, learned Counsel for the respondents has argued that in view of the latest pronouncement of the Supreme Court in the above case. I am not bound by the decision of the division bench rendered in Kalu Ram's case (supra).

6. On the other hand, learned Counsel for the plaintiff-appellant has very vehemently submitted that the decision of the trial court on Issue No. 2 is perfectly correct and in accordance with the views of the Supreme Court and the decision by a Division Bench of this Court. To support his argument, he has placed reliance on The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, wherein a three Judges' Bench has enumerated the following principles applicable to the jurisdiction of the civil court in relation to an industrial dispute:

(1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the Civil Court.

(2) If the dispute is an industrial dispute arising out of a right or liability under the general common law and not under the Act, the jurisdiction of the Civil Court is alternative, leaving it to the election of the suitor concerned to choose his

remedy for the relief which is competent to be granted in a particular remedy.

(3) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute, as the case may be

7. This authority of Premier Automobiles''s case (supra) was followed by a bench consisting of three Judges in Rohtas Industries Ltd. and Another Vs. Rohtas Industries Staff Union and Others, In Sudhir Chandra Sarkar Vs. Tata Iron and Steel Co. Ltd. and Others, , a bench consisting of three Judges has held that jurisdiction lies in the civil court for recovering gratuity. A two Judges'' Bench of the Supreme Court again in Ram Kumar Vs. State of Haryana, has held that a suit against an illegal termination of service of a Bus Conductor could be entertained by the Civil Court. Another bench of two Judges, in Prathma Bank v. Vijay Kumar 1989 (5) SLR 381 has held that a civil suit lies for reinstatement with back wages.

8. My attention has also been drawn to another decision (by two Judges) in U.P. State Road Transport Corporation Vs. Muniruddin, wherein a Bus Conductor in UPSRTC was dismissed as a result of disciplinary enquiry after a trap was laid against him. The delinquent filed a suit questioning his dismissal. The trial court dismissed the suit and the appeal was also dismissed but the High Court in second appeal set aside the order of dismissal since principles of natural justice were not followed. The order of the High Court was confirmed by the Supreme Court.

9. As far as this Court is concerned, this matter was referred to Division Bench in the case of Mohan Lal alias Hanuman Singh Vs. State of Rajasthan, wherein the division bench of this Court replying on Premier Automobiles'' case (supra) and other cases, held that the jurisdiction of the civil court is not barred.

10. I have given my thoughtful consideration to the whole matter and have also gone through the authorities cited at the bar.

11. Premier Automobiles'' case (supra) had been decided by a bench consisting of three Judges and this authority has been followed by another bench consisting of three. Judges in Rohitash Industries Ltd. ''s case. In Prathma Bank''s case (supra), a bench consisting of two Judges taken the same view, so also in Muniruddin''s case (supra), whereas Hon''ble the Supreme Court in Jitendra Nath''s case (supra) has not referred to any of the above cases earlier decided by it, and have placed reliance on an earlier decision in Bombay Union of Journalists and Others Vs. The State of Bombay and Another, In the case of Muniruddin (supra) their lordships of the Supreme Court upheld the decision of the High Court in a second appeal, setting aside the order of dismissal on account of

violation of the principles of natural justice, meaning thereby that the civil court had jurisdiction to try such suits. In this view of the matter, I am not inclined to agree with the view of the learned Counsel for the respondents that I am not bound by the judgment of the division bench of this Court in Kaluram's case (supra) and as such, I reaffirm the finding of the trial court with regard to Issue No. 2 and hold that the civil court had jurisdiction to try such suit.

12. Now coming to the second important question arising in this appeal, as to whether the order of dismissal is vitiated for want of following the basic principles of natural justice. One of the grounds canvassed in the appeal by the learned Counsel for the appellant is that the plaintiff was not supplied a copy of the enquiry report wherein he was found guilty of the charges against him, and this has resulted in material prejudice to him as well as amounts to violation of the principles of natural justice, more particularly when the disciplinary authority has placed implicit reliance on the enquiry report. In this connection, learned Counsel for the appellant has placed reliance on Union of India (UOI) Vs. H.C. Goel, Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another, , State of Maharashtra Vs. Bhaishankar Avalram Joshi and Another, wherein a bench consisting of three Judges has held that the non supply of a copy of the enquiry report amounts to denial of reasonable opportunity. My attention has also been drawn to Avtar Singh v. I.G.P. Punjab 1968 (2) SLR 131 (SC) wherein a bench consisting of four Judges has held that non-furnishing a copy of the findings of the enquiry officer amounts to non-compliance of Article 311 of the Constitution of India. He has also drawn my attention to Ram Singh Rathore v. R.S.R.T.C. 1986 (1) Judicial Surveyor 129 (Rajasthan), U.P. Govt. v. Sabir Hasan 1975 SCR 354 and State of Gujarat v. R.C. Tere Desai and Anr. Reliance has also been placed on Union of India v. E.Bashyan AIR 1988 SC 1000 wherein it has been held that in the event of failure to furnish a copy of the report of the enquiry officer the delinquent is deprived of crucial and critical material which is taken into account by the authority who holds him guilty, namely the disciplinary authority. Non supply of the copy of the report would therefore constitute violation of the principles of natural justice.

13. My attention has further been drawn to Union of India and others Vs. Mohd. Ramzan Khan, wherein a bench consisting of three Judges has held that deletion of the second opportunity from the scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage enquiry under Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the action of the enquiry officer holding that all or some of the charges are established and holding the delinquent guilty of such charges and in their conclusion, they have observed as under:

Wherever there has been an enquiry officer and he has furnished report to the disciplinary authority at the conclusion of the enquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or

not, the delinquent is entitled to a copy of such report and is also entitled to make a representation against it if he was dismissed and the non furnishing of the report would amount to violation of the rules of natural justice and make the final order liable to challenge hereafter.

14. Reliance has also been placed on a recent decision of this Court in *Tejkaran Jain v. State of Rajasthan*, (Writ Petition No. 1285/1985, decided on 8.2.1991) wherein after considering several authorities in detail, this court also came to the conclusion that the non-supply of a copy of the enquiry report amounts to violation of the principles of natural justice.

15. On the other hand, learned Counsel for the respondents, on this aspect, has referred to Standing Order No. 35(vi)(c) of the Corporation, which runs as under:

If on the conclusion of the enquiry, or as the case may be, of the criminal proceeding, the workmen has been found guilty to charge and it is considered that an order of dismissal may meet the ends of justice, the employer shall pass orders accordingly. When such orders are passed the workman shall be deemed to have been absent from duty during the period of such suspension and shall not be entitled to any remuneration for such period but the subsistence allowance already paid to him shall not be recovered:

Provided that in case of a workman to whom the provisions of Clause (2) of Article 311 of the Constitution applies the provisions of the Article shall be complied with.

Learned Counsel for the respondents has submitted that under the Standing Orders of the Corporation, it is not necessary for the R.S.R.T.C. to furnish or supply a copy of the enquiry report to the delinquent officer/official. He has further submitted that it is for the delinquent officer to have asked for a copy of the enquiry report and if he had asked for a copy and the Corporation had refused to supply a copy of the enquiry report, then, it may amount to violation of the principles of natural justice and in this connection he has placed reliance on *Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers" Union*, He has also placed reliance on *Union of India and Another Vs. Tulsiram Patel and Others*, which has discussed the effect of the Constitution 42nd Amendment Act, 1976 which further amended and/substituted Clause (2) of Article 311 of the Constitution. He has also placed reliance on *The State of U.P. v. Om Prakash* 1969 SLR 890 wherein their lordships have held that what principles of natural justice should be applied in a particular case, depends on the facts and circumstances of that case. All that the courts have to see is as to whether non-observance of any of those principles in a given case is likely to result in defeating the course of justice. In that case, it was further found that the mistakes in copies of statements supplied to the delinquent officer will not vitiate the enquiry and minor irregularity in conducting enquiry or non-giving of finding on one of the charges by the enquiry officer will not vitiate the enquiry. It has further been observed in that case that non-supply of the copy of enquiry

report to the delinquent, if he did not ask for it, does not amount to denial of reasonable opportunity.

16. I have given my thoughtful consideration to the whole matter and have also considered the various authorities cited at the bar.

17. Their lordships of the Supreme Court in Tulsi Ram's case were considering the effect of the Constitution (42nd Amendment) Act, 1976 amending and substituting Clause (2) of Article 311 and after referring to Ajay Hasia, have observed as under:

The principles of natural justice have thus come to be recognised as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject matter of that Article."

In other words, "violation of rule of natural justice results in arbitrariness which is the same as discrimination.

18. It has further been observed in that case that Clause (2) of Article 311 of the Constitution is merely an express statement of the audi alteram partem rule which is implicitly made part of the guarantee contained in Article 14 as a result of the interpretation placed upon that Article by recent decisions of that Court.

19. Their lordships in the case of Tulsi Ram Patel were not confronted with the same situation as in the present case. They were not called upon to decide as to whether non supply of copy of the enquiry report to the delinquent officer specially when the disciplinary authority had relied on the said enquiry report, amounts to violation of principles of natural justice. S.S. Railway Company's case (supra) relied by the learned Counsel for the respondents was a case where their lordships were considering regarding the modification of the Certified Standing Orders and in that case, it was observed that the modification of the Standing Order requiring giving of second show cause notice at the stage of imposing punishment of removal cannot be considered as fair or reasonable and should be set aside under Article 136. To import such a requirement from Article 311 in such--matters is neither necessary nor proper.

20. A constitution bench of the Supreme Court in H.C.Goel's case (supra), more than a quarter century ago, observed as under:

Enquiry report along with the evidence recorded by the enquiry officer constitutes the material on which the disciplinary authority has ultimately to act. That is the only purpose of the enquiry and the report which the enquiry officer makes as a result thereof.

21. Their lordships of the Supreme Court in E. Bhashyan's case (supra), after referring to the case of H.C.Goel (supra) have observed that the findings recorded by the enquiry officer become infused with life only when the disciplinary authority applies its mind to the material which inter-alia consists of

the report of the enquiry officer along with the evidence and the record. If therefore, the basic material comprising of the report of the enquiry officer which has been taken into consideration by the disciplinary authority for holding that the delinquent was guilty as per the view expressed by the enquiry officer is not made available to the delinquent till the axe falls on him, can it be said that the principles of natural justice have been complied with. Can it be said that the delinquent had an opportunity to address the mind of the disciplinary authority who alone in reality found him guilty.... Thus, non supply of the copy of the enquiry report will amount to violation of the principles of natural justice since the delinquent has been denied reasonable opportunity.

22. H.C.Goel's case (supra) was again followed by a three Judges' bench of the Supreme Court in B.A. Joshi's case (supra) and it was affirmed that the failure on the part of the competent authority to provide the delinquent officer a copy of the report of the enquiry officer amounts to denial of reasonable opportunity. Another bench consisting of four Judges of the Supreme Court in Avtar Singh's case (supra) again held that non supply of findings of the enquiry officer amounts to denial of reasonable opportunity. This court also in Ram Singh's case (supra) while dealing with an employee of the Rajasthan State Road Transport Corporation has held that the non supply of copy of the enquiry report violates the principles of natural justice even though there is no provision in the Standing Orders for supplying a copy of the enquiry report to the delinquent person. In the recent decision of a bench consisting of three Judges of the Supreme Court, in Mohd. Ramzan Khan's case (supra), relying on H.C. Goel, Avtar Singh, B.A. Joshi, Sabir Hasan and R.C. Tere Desai (supra), it has again been held that the delinquent is entitled to a copy of the enquiry report and non furnishing of the copy of the report would amount to violation of rules of natural justice inspite of 42nd Amendment in the Constitution. This court also recently in Tej Karan Jain's case (supra), decided on 8.2.1991 has held that non supply of a copy of the enquiry report to the delinquent amounts to violation of the principles of natural justice.

23. In a case where the disciplinary authority delegates its power to an enquiry officer to hold enquiry, the enquiry officer enquires into the charges, records evidence, the delinquent officer is also permitted to produce his witnesses and also to cross-examine the witnesses and thereafter, the enquiry officer submits all this record along with his report for consideration of the disciplinary authority, who after considering the material on record, including the report of the enquiry officer, takes a decision in the matter. The delinquent officer must know as to what is the conclusion of the enquiry officer. Merely because Certified Standing Orders do not require supplying a copy of the enquiry report to the delinquent person does not mean that there is any prohibition that he should not be supplied with a copy of the report or should be supplied a copy of the report only if the delinquent demands such a copy. The delinquent officer even does not know as to when the report of the enquiry officer is submitted and what are the conclusions of the enquiry officer. If suppose the enquiry officer, after recording

evidence and holding enquiry comes to the conclusion that the charges against him are not proved, there will be no occasion for the delinquent officer to make any representation to the disciplinary authority. If the delinquent officer comes to know only when he receives an order of punishment passed by the disciplinary authority upon the report of the enquiry officer, such an order of punishment is void ab initio.

24. In view of the several authoritative pronouncements of the Supreme Court quoted above, and specially keeping in view the recent observations in Ramjan Khan's case (supra), I have no hesitation in holding that non-supply of a copy of the report of the enquiry officer amounts to denial of reasonable opportunity and therefore, violates the principles of natural justice. I have no hesitation in holding that the court below should have decided Issues No. 3 & 4 also in favour of the plaintiff and the suit should have been decreed.

25. In the result, this appeal is allowed, the judgment and decree passed by the trial court are set aside and the suit of the plaintiff is decreed with costs throughout.