
(1991) 03 PAT CK 0035

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 341 of 1986 (R)

N. Rama Rao

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 22-03-1991

Acts Referred:

Citation : (1991) 03 PAT CK 0035

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—This application is directed against an order dated 11.7.83 passed by Respondent No. 1 in Ref. case No. 3 of 1978 whereby it was held that the domestic enquiry held by Respondent No. 2 was fair and proper as contained in Annexure-2 to the writ application as also the award dated 13.12.1985 passed in the aforementioned Reference case whereby Respondent No. 1 answered the reference in favour of the Management and against the workman-Petitioner.

2. The fact of the matter lies in a very narrow compass.

3. The Petitioner was appointed by Respondent No. 2 and at the material time had been holding the permanent post of Wardkeeper. The Petitioner was served with a chargesheet dated 31.8.1974, a copy whereof is contained in Annexure-1 to the writ application whereby the Petitioner was directed to show cause as to why disciplinary action should not be taken against him under the Work Standing Order. The charges levelled as against the Petitioner are as follows:

On 21.8.1974 when you were working in the Despatch Section of the Materials Management Department (Auto), you entered both on the packing list as well as on the despatch note the actual materials packed and delivered to the road transport carrier. "M/s. Road India" a consignment of the following rejected materials to be transported in truck No. BRV 8901. You also prepared the material gate pass No. 14164 dt. 21.8.74 for twenty cases, obtained the signature of the Incharge and handed over the same to the transport carrier for taking the material out of the Work gate:

Name of the forms Nos. of cases Materials.

1. M/s. Neloac Rubber Works, Calcutta. 14 Rubber Mouldings (Rejected.)
2. M/s. Kolay Iron Works Calcutta. 3 Casting (Rejected).
3. M/s. Crompton Calcutta. 2 Pan Belts(?)
4. M/s. Dhar Rubber Works, Calcutta. 1 Rubber Parts(?)
5. M/s. E.M.C. Calcutta.

Aluminium ingots appro. 3 M/tonne.

On a surprise check of the above-referred packed cases despatched by truck No. BRV 8901, the following excess materials were found packed by you in those cases, without any authority:

- (a) 387 Cylinder Head Gaskets (PC Engine-Part No. 3180160380 contained in 87 cartons placed in Case No. 1194 in which Anr. small case bearing No. 1194 was placed;
- (b) 485 Assembly Fuel Lines (Part No. 0180700138 J) in case No. 1800;
- (c) Oil Pump Cover castings... 169 Nos. in Case No. 8051 and 8053.

You thus committed theft of 387 Cylinder Head Gaskets 425 Fuel Lines and 169 Oil Pump Cover castings belonging to the Company and got the same packed in Case Nos. 1194, 2851, 2853 and 1288 without authority. You neither entered the details of these materials in the packing list nor in the despatch. You then delivered these Cases to the road transport carrier "M/s. Road India" to be taken out of the Works Gate. You thus committed theft, fraud and dishonesty in connection with Company's business and property.

4. In terms of the aforementioned charge-sheet, issued on 31st August, 1974, the Petitioner filed a show cause. In the domestic enquiry, the Petitioner was found guilty, wherefor a report was submitted on 16.12.1974. The disciplinary authority thereafter directed that the services of the Petitioner be terminated with effect from 31.8.1974. An industrial dispute was thereafter raised on behalf of the Petitioner and the State of Bihar referred the following dispute for adjudication by Respondent No. 1:

Whether the dismissal of Sri N. Rama Rao T. No. 6685/66287/1 Wardkeeper of M/s. Tata Engineering and Locomotive Co., Jamshedpur is proper and justified? If not whether he is entitled to reinstatement and/or any other relief?

5. Before Respondent No. 1, Respondent No. 8 filed an application that the validity of the domestic enquiry be taken up for hearing as a preliminary issue and by reason of the impugned order dated 11th July, 1983 as contained in Annexure-8 to the writ application, Respondent No. 1 held that the domestic enquiry held against the workman was fair and proper and in consonance with

the principles of natural justice.

6. Respondent No. 1, thereafter, considered the materials of the domestic enquiry and came to the conclusion as follows:

(a) In view of the aforesaid discussions of the evidences on record, and in the facts and circumstances, detailed above, I find and hold in agreement with the finding of the Enquiry Officer, as well as, with the observation of my learned predecessor in my office, that the workman is guilty of committing theft of the materials of the company, as detailed in the chargesheet.

(b) Hence, the offence of theft stand proved against the workman. The manner in which the theft has been committed must be viewed seriously. The management has rightly pleaded that it lost confidence in the workman. Therefore, I am of the opinion, that the workman does not deserve sympathy and he is not entitled to any relief.

7. Mr. D. Das learned Counsel appearing on behalf of the Petitioner submitted that the impugned order dated 11.7.83 as contained in Annexure-8 to the writ application is bad in law inasmuch as the Enquiry Officer failed to take into consideration that despite prayer of the workman to supply copies of the deposition of the witnesses in the preliminary enquiry in terms of his letter which is contained in Annexure-6 to the writ application, and the same having not been supplied, the domestic enquiry must be held to be not fair.

8. Learned Counsel further submitted that the Petitioner filed an application for examining some witnesses whose evidences were material for the purpose coming to a just decision, and the enquiry officer having not summoned the said witnesses, the departmental enquiry must be held to be bad in law.

Learned Counsel in this connection has relied upon decisions of the Supreme Court in Kashinath Dikshita Vs. Union of India (UOI) and Others, ; in The State of Punjab Vs. Bhagat Ram, and in Dr. Murlidhar v. The State of Maharashtra reported in 1986 LIC 121.

9. It was further submitted that the enquiry officer was biased inasmuch as he not only gave a report as against the Petitioner but also recommended that the Petitioner should be dismissed from service which was not within his jurisdiction.

10. With regard to Annexure-3, learned Counsel submitted that Respondent No. 1 failed to take into consideration that the only material witness examined on behalf of the Management was S. Rao who spoke of packing of materials in respect of packet No. 1194 only on 16.8.1974 and thus he having not stated anything with regard to the packings which were made on 17.8.74; 18.8.84 and 21.8.84, Respondent No. 1 should have held that the findings of the Enquiry Officer were perverse.

11. Mr. Rana Pratap Singh learned Counsel appearing for Respondent No. 2, on the other hand submitted, that the Petitioner raised only one grievance before

the Enquiry Officer, that is, non-furnishing of the report of the preliminary enquiry which having not been relied upon by the Enquiry Officer, the question of supply thereof to the workman did not arise nor the same can be said to be violative of the principles of natural justice.

12. Learned Counsel further submitted that as the Enquiry Officer gave full opportunity to the Petitioner to examine his witnesses, the question of violation of the principle of natural justice does not arise. Learned Counsel in this connection has relied upon the following decisions:

1969 UJ SC 305 : Tata Engineering and Locomotive Co. Ltd. v, S.C. Prasad.

1974 LIC 522 ; Jessop and Co. Ltd. v. 5th Industrial Tribunal and Ors.

1977 LIC 968 ; M/s. Pure Drinks Pvt. Ltd. v. Mumbai Mazdoor Sabha and Anr.

1975 LIC 641 ; Indian Explosives Ltd. v. Presiding Officer, Labour Court, Patna.

13. It is now well known that the court while exercising its jurisdiction under Articles 226 and 227 of the Constitution of India does not and cannot sit in appeal over the findings of the disciplinary authority or the award of a Labour Court.

14. It is further well known that sufficiency of evidence is not a matter which can be taken into consideration by this Court and even if there are some materials on record on the basis whereof the finding of Respondent No. 1 can be supported, this Court will not interfere therewith in exercise of its writ jurisdiction.

15. From the evidence of Sri Srinivas Rao who is the main witness, it appears that his evidence was taken in a preliminary enquiry, A copy of his deposition was produced before the Petitioner on 12.10.74.

16. Sri S. Rao was examined by Respondent No. 2 and cross-examined in part by the Petitioner on 12.16.1974, the statement of the said witness in his examination in-chief is in 2 1/2 pages whereas cross-examination appears to be in 4 1/2 Pages on 12.10.74. On 13.10.74, the Petitioner issued a letter to the enquiry officer wherein he stated as follows:

With due respect I want to state that for my further cross-question with the witnesses and for my statement I meant the copies of the statement of the following persons.

1. Mr. K.C. Madian (Store Officer)
2. Mr. S. Natarajan Procurement Officer.
3. Mr. Mardekar Security Officer.
4. Mr. Sharfy do.
5. Mr. S. Rao Temporary Worker.

Kindly take the statement of Mr. V.E. Rao Sr. Store Keeper, Mr. Durga Carpenter and other casual labours who were working in despatch section. The statement of Mr. V.L. Rao, Mr. Durga and other casual labour are very essential in this case.

17. The enquiry Officer in reply to the said letter issued a letter dated 15.10.1974 addressed to the Petitioner, stating as follows:

Please note that you will get full opportunity to make note of the enquiry proceedings during the enquiry, for such use as you may deem necessary. But your request for issue of copies of the enquiry proceedings to you cannot be acceded to.

You will also be given full opportunity to produce any witness you want to produce during the enquiry. As such, you will be free to call M/s. V.L. Rao and Durga as your witness as during the enquiry.

18. From the letter dated 15.10.1974 issued by the Enquiry Officer to the Petitioner, it appears that as per his request enquiry which was to be held on 15.10.74 was refixed at 9 a.m. on 12.10.74. On 22.10.74, the Petitioner cross-examined Sri S. Rao again, which runs into six pages. The enquiry was then postponed to 23.10.1974. On 23.10.74, the Petitioner issued a letter to the Enquiry Officer which contained in Annexure 6/1 to the suit petition and reads as follows:

During the course of evidence of Mr. S. Rao he named the following persons alleging that I along with him went to them to bring cases on 16.8.74 between 9.00 a.m. to 10.30 a.m.

I humbly submit that the persons named below having nothing to do with supply of cases and mischievously the aforeaid statement has made by Mr. S. Rao.

It therefore necessary for the ends of justice and for fair and proper inquiry that the persons named below may be examined as witnesses.

I therefore request that the persons named below may be examined as witnesses on this enquiry.

List of witnesses:

1. Mr. V.L. Rao CRS PLANT III
2. Mr. M.A. Khan. "
3. Mr. Gopal Rao "
4. Mr. K.J. Rao, Inspection Plant III.

19. The evidence of the Enquiry Officer before Respondent No. 1 is contained in Annexure-4 to the writ application. In his evidence he has stated that all the papers relating to preliminary enquiry were shown to the Petitioner. The endorsement of the Petitioner in this regard dated 12.10.74 is contained in

Anaexure-10 to the writ application.

20. In this circumstance, it cannot be said that non-supply of the deposition of Sri S. Rao and some other witnesses before the preliminary enquiry to the Petitioner was violative of the principles of natural justice. A preliminary enquiry is conducted for a limited purpose, namely, to find out as to whether a case for initiating a disciplinary proceeding has been made out or not.

21. The report of a preliminary enquiry was not and could not have been relied upon by an Enquiry Officer. Evidently, the Petitioner wanted to have a copy of the deposition of Sri S. Rao. However, such a fact does not clearly appeal from Annexurs-6. From Annexure-6, it appears that he wanted copies of the statements of five persons for farther cross-question which, in my opinion, means further cross-examination. As noticed hereinbefore, the Petitioner had already seen the deposition of Sri S. Rao in the preliminary enquiry on 12.10.74 and he had also cross-examined the said person at great length on 12.10.74.

22. As indicated hereinbefore, Sri S. Rao was further cross-examined at great length on 22.10.74. From Annexure-6 therefore, it does not appear that the Petitioner asked for a copy of the deposition of Sri S. Rao and other witnesses in the preliminary enquiry held against him.

23. Further it is evident that the Petitioner did not raise this question even before the Labour Court. This aspect of the matter has not been dealt with by Respondent No. 1 at all while passing the impugned order as contained in Annexure-6 to the writ application. In such a situation, in my opinion, it cannot be said that there is any violation of the principles of natural justice.

24. The Petitioner was also not entitled to receive a copy of the report of preliminary enquiry which was not relied upon and could not have been relied upon by the Enquiry Officer.

25. In *The State of Punjab Vs. Bhagat Ram*, , the Supreme Court held that copies of the statements of the witnesses examined during investigation must be supplied to Government servant. In that case, only the synopsis of the statements of the witnesses, as reported by the Vigilance Committee during the preliminary enquiry were supplied. Such is not the case here inasmuch as noticed hereinbefore, the statement of Sri S. Rao was produced before the Petitioner and he did not make any prayer for the copy of his deposition in the preliminary enquiry should be given to him.

26. In *Kashinath Dikshita Vs. Union of India (UOI) and Others*, , the Supreme Court relied upon *The State of Punjab (supra)* and other decisions and held that the Appellant before it was not afforded reasonable opportunity as no copy of the deposition of witnesses was given to him which he demanded. In that case 38 witnesses were examined and 112 documents running into hundreds of pages were produced to substantiate the charges. In such a situation, the Supreme Court observed:

In the facts and circumstances of the case we find it impossible to hold that the Appellant was afforded reasonable opportunity to meet the charges levelled against him. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental inquiry depends on the facts of each case. We are not prepared to accede to the submission urged on behalf of the Respondents that there was no prejudice caused to the Appellant in the facts and circumstances of this case.

27. In *Dr. Murlidhar v. The State of Maharashtra and Ors.* reported in 1986 Lab I.C. 121, not only the copies of the statement of witnesses recorded during the preliminary enquiry were denied to the Petitioner, but he was also denied a right to cross-examine the preliminary enquiry officer Dr. Karandikar to establish his plea that the statements of the witnesses were procured by duress and under police pressure. The High Court observed:

It may be that on the facts and circumstances in a given case, it may not be possible to say that no reasonable opportunity was given, e.g. when it is found that the statements were on record freely available for perusal and the delinquent made use of them during the evidence, though copies thereof however were not supplied to him in advance. But here the rules referred to above are more breached than observed. In spite of specific demand, the statements of witnesses and the preliminary enquiry report, though referred to in the statement of evidence as forming part of the enquiry were denied to the Petitioner.

It is only in that situation it was held that the delinquent employee was denied a right to effectively cross-examine the witnesses and, thus, he was prejudiced.

28. However, from the said decision, it would appear that the question as to whether a delinquent officer was prejudiced by reason of non-service of the report of the preliminary enquiry and/or statements of the witnesses examined therein or not, depends on facts of each case.

29. In the instant case, as indicated hereinbefore report of the preliminary enquiry and/or evidence of witnesses were not made subject matter of the charge nor were the same relied upon by the Enquiry Officer.

30. In *Tata Engineering and Locomotive Co. Ltd. v. S.C. Prasad* reported in 1969 UJ (SC) 66, it was held:

The last ground was the omission by the company to produce the preliminary reports on the strength of which the charges against those workmen were founded. Those reports were collected by the company to satisfy itself whether disciplinary action against these workmen should be launched or not. They did not form part of the evidence before the enquiry officers nor were they relied on by them for arriving at their findings. That being so, it was not obligatory on the company to disclose them and the omission could not be a ground for holding that their non-disclosure was a non-observance of the rules of natural justice.

31. In *Jessop and Co. Ltd. v. 5th Industrial Tribunal and Ors.* reported in 1974 LAB I.C. 522, it was held:

What is required is that all the materials relied against the delinquent workman in coming to the conclusion by the enquiring body should be fairly and clearly made known to the workman concerned.

32. In *Indian Explosives Limited v. Presiding Officer, Labour Court, Patna and Anr.* reported in 1975 LAB I.C. 641 a Division Bench of this Court has held as follows:

From the facts and the circumstances already stated above when the Respondent No. 2 effectively cross-examined all the witnesses examined by the Petitioner with respect to the material allegations which were sufficiently disclosed in the charge-sheet the report lodged before the police was read over to him and exhibited in the case and he did not make a grievance then that the report to the Petitioner was different from the report made to the police and he should be supplied with a copy thereof, the statements of the witnesses examined were recorded in his presence and he was also provided reasonable opportunity to defend himself by examining a large number of witnesses without making any grievance at that stage in my opinion, it cannot be held that on account of the non-production of the complaint of Akhilesh Prasad, any prejudice has been caused to Respondent No. 2 or that inquiry held by the Petitioner was in any way vitiated on account of the violation of the principles of natural justice.

33. In *M/s. Pure Drinks Pvt. Ltd. v. Mumbai Mazdoor Sabha and Anr.* reported in 1977 LAB I.C. 968, it was held :

What also cannot be lost sight of is that, as rightly contended by Mr. Shetye, not only was B.B. Singh cross-examined at great length, but none of the statements recorded at the time of the preliminary investigation formed part of the enquiry proceedings, nor was any reliance placed on the same by the Enquiry Officer while submitting his report nor was the order of dismissal based upon the statements recorded during the preliminary investigation. No material was relied upon or used against the workman without his being given an opportunity to explain it. In a departmental inquiry such as the present, the observance of strict rules of evidence as contemplated by the Evidence Act is not called for. However, what is required is that the principles of natural justice must be observed. This was done in the matter before us.

34. From the discussions aforementioned, it is, therefore clear that in the instant case, neither any specific demand was raised by the Petitioner nor the evidence of Sri S. Rao in the preliminary enquiry was relied upon by the Enquiry Officer. The preliminary enquiry report was also not relied upon by the Enquiry Officer and in the facts and circumstances of this case, as the deposition of Sri S. Rao was produced before the Petitioner on 12.10.74 and on that date also on 22.10.74 the Petitioner cross-examined the said witness fully, it cannot be said that there has been a violation of the principles of natural justice, or the Petitioner was in any way prejudiced thereby. In any event, it is evident that in

view of the fact that the said point was not raised by the Petitioner before Respondent No. 1, the same cannot be permitted to be raised for the first time in this Court.

35. So far as the grievance of the Petitioner that the witnesses were not summoned by the Enquiry Officer in terms of the request of the workman as contained in his letter dated 23.10.74 as contained in Annexure 6/1 is concerned it is well known that the Enquiry Officer is not a court of law and as such he may not be in a position to summon the witnesses. It is not the case of the Petitioner that he could not produce the witnesses as they were reluctant to depose in the enquiry in his favour. Such a complaint had not been made by the Petitioner even before Respondent No. 1. The Petitioner could have examined the said witnesses upon obtaining summons from Respondent No. 1 for the purpose of showing that the witnesses cited by the Petitioner could not be examined by him as they were not allowed to depose in favour of the Petitioner by the Management or they did not receive summons from the Enquiry Officer.

36. In TELCO's case (supra) (1969 UJ (SC) 305) this aspect of the matter had been dealt with and the Supreme Court held:

The Tribunal ought to have appreciated that the enquiry officer had no power as a court has to summon witnesses and therefore there was no failure on his part when he told Vishnu Lal that he could not produce nor compel the company to produce those witnesses and therefore just as the company had produced its witnesses the workman had to take steps to produce his witnesses.

37. It is, therefore clear that on this ground also it cannot be said that the domestic enquiry held against the Petitioner was not fair and proper.

38. So far as the contention of Mr. Das to the effect that the Enquiry Officer was biased, the same has also no substance. It is true that an Enquiry Officer need not make any recommendation with regard to the quantum of punishment. But only because he did so, it cannot be said that the disciplinary authority inflicted punishment upon the Petitioner only on the basis thereof and without application of his own mind. In the instant case, even Respondent No. 1 has held that in the facts and circumstances of this case, the punishment imposed upon the workman was justified.

39. So far as the merit of the case is concerned, this Court cannot enter into the same. However, from a perusal of deposition of Sri S. Rao which is contained in Annexure 10/1 to the supplementary affidavit, it does not appear that the contention of Mr. Das to the effect that Sri S. Rao has deposed only with regard to the packing which took place in respect of Case No. 1194 dated 16.8.74 is correct. The said witness has given the entire sequence as to what happened on 16.8.74 and 21.8.74.

40. The Petitioner was not only charged of committing fraud of 387 Cylinder Head Gaskets, 425 Fuel Lines and 169 Oil Pump cover castings by getting the

same packed without authority but also charged that he did not enter the details of those materials in the packing list nor in the despatch list but delivered them to Road Transport Carrier.

41. It is therefore clear that the Petitioner was charged and found guilty of omission to make entry with regard to the details of the material in the packing list as also in the despatch list which according to the Management was done deliberately.

42. Respondent No. 1 in his impugned award, inter alia, perused the entire evidence placed on record, relied upon the testimonies of the witnesses examined before the Enquiry Officer including the evidence of Sri S. Rao in relation whereeto he held:

He worked under the guidance of the workman. There is no reason for this workman to depose falsely against the workman. His evidence is direct and he is unshaken in his cioss-examination. Therefore, I find that the E.O. has rightly placed reliance on the evidence of this witness.

The Labour Court in paragraph 9 of the award held as follows:

Thus, from a perusal of his lengthy explanation, it is obvious that he owned that packing according to the despatch notes was his prime responsibility. He prepared the packing notes as well as despatch notes himself in the instant case. There is no satisfactory explanation as to how cases within cases could be packed. It could not have been possible without the knowledge of this workman. Mr. S. Rao on whom he has tried to throw the entire blame, was only temporary labourer of hardly 6 months service in the Material Section. The list of jobs enumerated above is laden with repetition only. It may not be out of place to mention here that he has admitted that he dealt with inside officials and outside parties and prepared material gatepass. In view of the aforesaid stand of the workman, himself it is difficult for him to escape the responsibility of the alleged theft.

43. It appears that the Management not only brought on record various documents but examined 8 witnesses. The workman also examined Sri V.N. Rao, M.A. Khan.

44. For the reasons aforementioned, it cannot bo said that Respondent No. 1 acted illegally in passing the impugned award.

45. In the result this application is dismissed However, in the facts and circumstances of this case, there will be no order as to costs.