

(1994) 04 BOM CK 0046
In the Bombay High Court
Case No : Second Appeal No. 242 of 1994

Ramchandra Nama Adhav

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-04-1994

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1995) 1 BomCR 137 : (1995) 70 FLR 642 : (1995) 1 MhLj 73

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Judgement

M.F. Saldanha, J.—Two points of law arise for decision in this Second Appeal, the first being the question as to whether the judicial review is permissible by a Civil Court in relation to the disciplinary proceedings that have gone through the full exercise of a Departmental Enquiry or in other words, put very briefly, whether the Civil Court would be justified in virtually sitting in Appeal over such Departmental disciplinary proceeding. More importantly, the cardinal issue canvassed is as whether in cases where the incident is trivial and the evidence both patchy and shaky, a department of the Government is at all justified in law in flitting away public time and money by going through the exercise of disciplinary proceedings, not to mention the harassment, torture and trauma, to which the employee is subjected. Put more briefly, the point that crystallises is as to whether or not there exists a responsibility on the concerned Department to first ascertain as to whether there exists a justifiable case to proceed against the errant employee.

2. The facts of this case are as gross as they are pathetic. The appellant Ramchandra Adhav was a Senior Engine Driver with the Central Railway, having put in about 30 years of service as per the statement made by his counsel Mr. Master at the bar. He appears to have risen from the lowest rung of the ladder and on 21-1-1978 was operating the engine of goods train No. S-40. Up running from Daund to Pune. At about 19-10 hours the train stopped at the Home Signal

of the Khamgaon railway station. The engine in question was a steam engine and admittedly there were two other firemen in the Engine. According to the Petitioner, because of the stiff gradient and some leakage in the vaccum system, the train came to a halt. It was a long goods train with about 45 wagons and the appellant walked down the side of the train to ascertain where the fault was and after locating it, he walked upto the brake van which was the last of the bogies. The R.P.F. Inspector Mr. Gaur, was in the brake van. According to him he saw some ladies carrying lumps of coal on their heads and he apprehended them. It is his case that he also recovered a sum of Rs. 5/- from the pocket of the appellant. According to him the appellant was responsible for dropping the coal from the tender of the engine, that the said coal was thereafter allowed to be taken away by the three women from whom the appellant is alleged to have recovered 1/- rupee each. Appropriate proceedings were subsequently instituted which resulted in the service of a charge-sheet against the appellant. The two charges against him were that being a railway servant, he had deliberately dropped the coal from the tender of the engine and secondly he is alleged to have recovered Rs. 1/- each from the three women and committed an act of misconduct by recovering money through illegal disposal of railway property.

3. The appellant denied the charges and he contended that he had absolutely nothing to do with the alleged removal of lumps of coal by the three women. He submitted that the R.P.F. Inspector, had implicated him under suspicion. Significantly enough, he pointed out that the train was a very long one, that it was a goods train with no light in any of the wagons except the engine and brake van; that it was dark at that time as admitted by the guard himself and that consequently it was physically impossible for a person who was in the brake van at the opposite end of the goods train, to have been able to even see what was happening the engine and who was responsible for the same. The Enquiry Officer, however, relied heavily on the fact that even though the three women denied in the enquiry that they either knew the appellant or that they had paid him any money or that he had dropped coal for them, relied on the fact that these women had been convicted by the learned Magistrate for being in unlawful possession of the railway property namely the coal and held the present appellant guilty of the charges of misconduct. After consideration of his representation, the disciplinary authority passed an order for removal from service. It is this order, that came to be challenged by the appellant in Regular Civil Suit No. 57 of 1979.

4. The learned trial Judge dismissed the suit filed by the present appellant essentially on the ground that in his opinion there existed sufficient material to justify the order that had been passed against him. The appellant thereafter filed Civil Appeal No. 598 of 1982 which also came to be dismissed by the learned 4th Additional District Judge, who basically held that there was no ground for interference. The appellant thereafter preferred the present Appeal and as indicated by me, the essential head of challenge basically proceeds on the footing that there was no warrant or justification for the initiation of the

disciplinary proceeding against the present appellant, that the decision to initiate and continue with such proceeding proceeds mechanically and without due application of mind and that consequently the proceedings in question are liable to be quashed. I am conscious of the position that this being a Second Appeal, the aspect of assessment or reconsideration of evidence is well past and that it is only on the basis of a substantial point of law that the appeal can be considered.

5. Shri Master, learned counsel appearing on behalf of the appellant points out to me that basically the aspect of judicial review is very essential in a proceeding of the present type, because the order in question has such far reaching consequences in so far as the appellant suffered economic death when his services were terminated, and that therefore, he approached a Civil Court principally in order to get reliefs both interim and final which would not have been available to him departmentally. I need to record here that the capacity of the Civil Court to entertain the proceeding has not been vigorously disputed but I must record that Mr. Tated, on behalf of the Respondent did submit that there exists a legal bar in the way of the appellant not because of Civil Court should be precluded in law from reviewing the decision, but because the appellant had not exhausted the remedy of a Departmental Appeal. This obligation coming as it does at this point of time would not assist the respondents. I do agree that Mr. Tated is fully justified in pointing out that it is only after exhausting the Departmental remedies that judicial intervention can be sought. This however is not an absolute rule because instances may arise where a party even during the pendency of the proceeding may seek judicial intervention such as in the stray cases where there is absolutely no justification for commencement of the disciplinary proceedings or in cases where flagrant breach of the rules of natural justice takes place such as material sought to be relied upon is not supplied or no opportunity is given to the errant employee to defend himself. Barring these instances however, Mr. Tated is right that the departmental remedies ought to have been exhausted. That objection should have been canvassed, to my mind, at the earliest point of time when the appellant approached the trial Court, which was not done. Mr. Master submitted that there is no procedure under which a termination order is stayed even pending an appeal and therefore it was essential for his client to approach the Civil Court instead of filing an appeal and secondly he submits that an appeal would have been an infructuous remedy. On the special facts of this case I cannot uphold the objection canvassed by Mr. Tated at this late point of time, more so since the respondents have submitted quite willingly to the jurisdiction of the trial Court.

6. Mr. Master demonstrated to me that there are certain salient and admitted facts in the present proceeding namely that the incident took place at about 19-10 hours at remote railway track when the place was completely dark and that Inspector Gaur admittedly was at the opposite end of a very long goods train. At no stage was it the case of the Department that he had seen the appellant dropping the coal from the engine. On the contrary the evidence of the three women was to the effect that they had picked up the coal that was fallen

besides the railway track, the women have gone to the extent of stating that when they picked up the coal there was no train present there. These facts emerge from the record and it is on this basis that Mr. Master has submitted that the Court must also take cognizance of one more fact namely that there were to other persons in the engine apart from the present appellant, who were the firemen, and who are the persons who normally handled the coal. Coupled with these facts, Mr. Tated also lays emphasis on the other aspect of the case namely that the amount of Rs. 5/- that is supposed to have been recovered from the appellant's pocket is not a marked currency note that can be traced to the three women or any other person, and that significantly enough the department itself has no explanation how if there women had paid Re. 1/- each, Inspector Gaur could have seized a 5/- rupee note. The limited submission canvassed by the learned counsel is that without going into aspect of appreciation of evidence, taking the record as its face value that it is impossible to hold that there was any prima facie case against the appellant. It is his contention that if there was no justification whatsoever for instituting the departmental proceeding against the appellant quite apart from other considerations that the order passed terminating his services must be quashed and set aside.

7. This position is seriously disputed by Mr. Tated. According to him three women were found in possession of the coal and they have admitted this position and been convicted by the Criminal Court. He further points out to me that the record of a judicial proceeding was something which the Enquiry Officer was entitled to rely upon. He also contends that Inspector Gaur was travelling in that very train and that it was only after he apprehended the three women who had carried the coal that he caught hold of the present appellant because those women admitted at that point of time that he had not only dropped the coal but recovered Re. 1/- each from them. I need to record that as far as this last aspect of the matter is concerned, that I do not find anything to support the statement on the present record. Mr. Tated, further went on to submit that in cases of this type, it is basically the circumstantial evidence and inferences that matter and that consequently the authorities were fully justified in instituting the disciplinary proceedings. Even though the case appears to be a relatively trivial one. Mr. Tated submits that it is really a matter of curbing serious malpractices because the loss to the railways would be considerable if activities of such type are permitted to continue. He justified the institution of the enquiry proceeding by contending that even if the money value were to be low and the incident were to appear rather insignificant, that it could not have been ignored because such a situation would have only encouraged dishonestly of this type to continue. In sum and substance, Mr. Tated has defended the correctness of the order and he had also contended that since the proceedings were justified, this Court ought not to interfere with the concurrent findings.

8. As far as the concurrent findings are concerned, I am sorry to have to record that the two Courts have virtually put a rubber stamp to the disciplinary proceedings. To my mind, had the matter been independently examined, the

appellant ought to have succeeded before the trial Court itself. Even the order of the Enquiry Officer and the Disciplinary Authority are both cryptic and totally and completely unsustainable both on facts and in law. In these circumstances, to my mind, interference in this Second Appeal is very essential.

9. This Court had already an occasion to observe while deciding Second Appeal No. 276 of 1984, *The Union of India and others v. Smt. Vasudha Anant Kulkarni*, decided on 9th March, 1994 that the right of judicial review in respect of disciplinary proceedings is not barred or taken away within the framework of Article 311 of the Constitution. I therefore, do not need to reconsider that aspect of the matter. Furthermore, this Court had occasion to observe in that judgment that public authorities must be extremely cautious and circumspect while commencing the disciplinary proceedings having regard to the tremendous amount of public time and expenditure that is involved in the conduct of the proceed in, not to mention, the trauma, hardship and torture that result to the employee. It is, therefore, necessary that the authorities incharge of the institution of such proceedings must examine the material before them judiciously and having regard to the fact that most of the time, the Officers concerned are laymen, it would be advisable for them to seek appropriate legal advice before commencing the disciplinary proceeding. Though such a procedure all those cases in which there is little or no evidence or where there is no justification for proceeding must be dropped, so that there would be sufficient time and energy to concentrate on the genuine cases. Non-application of mind at this point of time is a serious legal infirmity that would ultimately vitiate the entire proceeding because it will render it not only arbitrary but capricious.

10. On the record of the present case, I have no hesitation in holding that there was no justification for the commencement of this proceeding against the present appellant because the material on record did not make out either a prima facie or any case whatsoever against him. The argument that suspicion was sufficient as has been presumed and as has been put forward by Mr. Tated, as the last resort, unfortunately cannot be upheld for the simple reason that since it is a question of the career and future of an employee, it is only where there is good enough evidence and material that the public authority would be justified in commencing the disciplinary proceedings. This duty is implicit and if the record discloses that such a judicious scrutiny has not been gone through the institution of the proceeding itself would be legally untenable and would vitiate the entire proceeding. It would be identical to a case in criminal law where a charge is framed against the accused person without the material justifying the framing of the charge. In such instances, the entire trial would be vitiated.

11. Having regard to the material before me, the irresistible and only conclusion possible is that there was nothing to justify the institution of the disciplinary proceeding. The material that came on record thereafter did not salvage the position and in these circumstances, the order of termination passed against the present appellant is bad in law and the same is quashed and set aside. As a

consequence of this order, the Respondent will have to treat the appellant as though he is deemed to have continued in service all through and he would be entitled to all consequential benefits such as pay and allowances, promotions, increments, etc. as though he were in service upto the date of his having attained normal superannuation. The appeal accordingly succeeds. The orders passed by the trial Court and the Appeal Court are set aside. In the circumstances of the case there shall be no order as to costs.

12. At this stage, Mr. Master, on behalf of his client submitted that his client is an old man and he does not have the capacity to institute further proceedings for recovery of his dues. Mr. Master is directed to forthwith forward a certified copy of the judgment to the concerned railway authorities along with a covering letter from the learned Advocate. The railway authorities shall compute within a period of four weeks from the receipt of the certified copy the dues payable to the appellant and ensure that the same are in fact paid over the received by him within a period of four weeks. Having regard to the age of the appellant and grossness of this case, no extension of time shall be granted under any circumstances and it shall be open to the appellant to pray for appropriate contempt action against the respondents in the event of their committing any breach.

Certified copy expedited.

13. Order accordingly.