
(1983) 12 MP CK 0003
In the Madhya Pradesh High Court

R.J. Divekar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-12-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 304A

Citation : (1985) 1 LLJ 30

Hon'ble Judges : R.K. Vijayvargiya, J;G.G. Sohani, J

Bench : Division Bench

Judgement

G.G. Sohani, J.—This is a petition under Article 226 of the Constitution of India.

2. The material facts giving rise to this petition, briefly, are as follows:

The petitioner, an employee of the Western Railway, was at the material time working on the post of Loco Driver at Ratlam. On 17th April, 1968, a goods train 768-Up going towards Bombay left Meghnagar railway station at 0.20 hours and stopped outside the home signal of Anas B Cabin, as the passenger train 55 Dn. coming from the opposite direction was to pass first towards Ratlam. At that time, another goods train 846-Up coming from Ratlam dashed against 768-Up goods train. At the time of the accident, the petitioner was the driver of goods train 846-Up. He was suspended on 18th April, 1968 and was prosecuted for having committed offences punishable u/s 101 of the Indian Railways Act and Section 304A of the Indian Penal Code. The charges framed against the petitioner were as follows:

First: That you, on or about 17th April, 1968, at Meghnagar, allowed train No. 846-UPDiesel Goods Train to leave a block station without permission to approach the break station and thus contravened General Rule 237(A) and (b) and thereby committed an offence punishable u/s 101 of the Indian Railways Act.

Secondly: That on the same day and at Anas did not pay attention and did not obey the signals and thus contravened General Rule 76(a) and thereby

committed an offence punishable u/s 101 of Indian Railways Act.

Thirdly: That you, on or about the same day and during the same transaction at Anas, allowed Train No. 846-Up Diesel Goods Train the outer home signal when it was on and without having received a written authority from the Station Master to proceed pass such signal in contravention of General Rule 78 and thereby committed an offence punishable u/s 101 of the Indian Railways Act.

Fourthly: That you, on or about the same day at Anas, allowed Diesel Goods Train No. 846 to pass a starter when it was on, without the permission of Station Master in contravention of General Rule 79 and thereby committed an offence punishable u/s 101 of Indian Railways Act.

Fifthly: That on or about the same day at Anas, you failed to keep a good lookout when the train 846-Up was in motion and thus contravened General Rule 122 and thereby committed an offence punishable u/s 101 of the Indian Railways Act.

Sixthly: That you, on or about the same day and during the course of the same transaction at Anas, caused the death of Rajsingh, Chiman, Bijia, Ambalal, Ditia, Mohammad Usman, Tikamsingh, Perthaji, Kantichandra, Ramkishan, Badri and Sheikh Rasool, by doing a rash and negligent act not amounting to culpable homicide to wit by driving 846-Up Diesel Goods Train rashly and negligently, and thereby committed an offence punishable u/s x of the Indian Penal Code and within the cognizance of this Court.

The petitioner was convicted by the trial Court and he was removed from service. The appeal preferred by the petitioner against his conviction was dismissed but in the revision petition preferred by the petitioner the High Court, by its judgments dated 16th November, 1978, found that the prosecution has failed to prove any charge against the petitioner and the petitioner was, therefore, acquitted of the offences charged with. As the conviction of the petitioner was set aside, he was reinstated by the respondents on 17th February, 1979 but on the same day, he was again suspended and a departmental enquiry was instituted against him for having caused the aforesaid accident by contravening Rules 76(a), 79, 98(a) and (b) and 122 of the Rules. The petitioner objected to the enquiry on the ground that the charges leveled against the petitioner in the domestic enquiry were substantially the same as were framed against him in the criminal case, in which he was ultimately acquitted. The enquiry, however, proceeded, overruling the objections of the petitioner and when the petitioner found that his suspension had virtually continued for more than 14 years, he sent a letter by post to Chief Justice of India, which was forwarded to the Registry at Jabalpur and placed before the Chief Justice, who passed the following order on 6th May, 1982:

Call for a copy of the judgment in Criminal Revision No. 75 of 1976, decided on 16th November 1978 from Indore Bench. In case it is found that the applicant was acquitted in that revision by the High Court, treat the application addressed to the Chief Justice of India and forwarded by the Principal Private Secretary to

the High Court, as a petition under Article 226 of the Constitution, provide a counsel from the panel to the petitioner, dispense with court-fee and other formalities and list the case in motion before the appropriate Bench for orders.

Inform the petitioner thereafter.

Sd/- CHIEF JUSTICE 6th May, 1982.

The petition was admitted and on 12th August, 1983, it was directed that the petition be sent to the Bench at Indore for disposal as the case arose from Ratlam. The case was accordingly fixed for final hearing on 25th November, 1983 when the counsel for the Railway prayed for a short adjournment and the case was fixed for hearing on 1st December, 1983. The case was accordingly heard on 1st December, 1983 and at the request of the counsel for the Railway, the hearing was further adjourned to 3rd December, 1983, on which date, we were informed that on 1st December, 1983, the disciplinary authority had passed an order removing the petitioner from service. A copy of the order was also filed by the learned Counsel for the respondents.

3. The petitioner was not represented by a counsel and he desired to argue in person. His main contention was that as in Criminal Revision No. 75 of 1976, the High Court had found that the charges leveled against him were not proved, the departmental enquiry instituted against him into the same charges and the consequent order passed in that enquiry, deserved to be quashed. On behalf of the respondents, it was contended that the charges in the departmental enquiry were not the same as were framed in the criminal case instituted against the petitioner and that the acquittal of the petitioner was, therefore, no bar to the holding of a departmental enquiry against the petitioner. It was also contended that even if the charges were the same, acquittal of the petitioner did not bar holding of a departmental enquiry.

4. It is, therefore, necessary to examine first the contention advanced on behalf of the petitioner that the charges framed against him in the Criminal Case and those framed against him in the departmental enquiry are substantially the same. We have reproduced the charges in the Criminal Case, which include the charge of contravention of Rules 76(a), 78, 79, 122 and 237(a) and (b) made punishable u/s 101 of the Indian Railways Act. The allegation in the departmental enquiry against the petitioner is that the petitioner contravened Rules 76(a), 79, 98(a) and (b) and 122 of the Rules. It was urged on behalf of the respondents that contravention of Rule 98(a) and (b) was not the subject-matter of charges framed against the petitioner in the criminal case. Rule 98(a) and (b) reads as under:

G.R. 98: Manning of Engine in Motion -

(a) Except when otherwise provided by special instructions, no engine shall be allowed to be in motion on any running line unless the Driver as also the Assistant Driver or the Fireman are upon it.

(b) Subject to the provisions of Sub-rule (c), in no circumstances shall a person other than the Driver or a duly qualified superior, drive an engine on any running line.

In the statement of allegations, on which the charges in the departmental enquiry are based, all that is stated is as follows: -

In that, while working 846-Up Diesel Goods at 22.45 hours ex Ratlam on 17th April, 1968 his train arrived at Meghnagar at 00.46 hours and ran through starter and the advance starter signals of MGN station at danger and entered the MGN-ANS "B" block section on the Up main line without an authority to proceed. This resulted in a serious collision in rear with 768-Up goods, which was starting from ANS "B" and was about to enter the single line section between ANS "B" and ANS "A" Cabins. As a result of this accident, brake van and 7 wagons of 768-Up goods containing live stock and their attendants were smashed and 12 persons lost their lives of which 4 were railway employees.

He is, therefore, held responsible for entering MGN-ANS "B" block section against signals and without an authority to proceed in contravention of GR 76(a), 79,98(a) and (b) and 122 thereby causing collision in rear with 768-Up goods at ANS "B" and serious damages to the railway property as well as loss of human lives as also of the live stock.

The fact that the petitioner was not driving the engine at the time of the accident, is not mentioned in the statement of allegations. Thus, not a single fact, on the basis of which, charge of contravention of Rule 98(a) and (b) can be founded, is disclosed in the statement of allegations furnished to the petitioner. That is why the disciplinary authority, while imposing the penalty of removal on the petitioner, by order dated 1st December, 1983, observed as follows: -

As regards the charge that Shri Divekar himself was not driving the train but his Diesel Assistant was driving, which has been touched upon in para. 3.3 of the Finding by the Enquiry Officer and by Shri Divekar in his final representation as well as during his statement, it is seen that this did not conform part of the charges framed against him, vide the Memorandum for a major penalty dated 21st January, 1980 referred to above and, therefore, it is not considered necessary to discuss this part and no cognizance is being taken of the same.

In these circumstances, the contention advanced on behalf of the respondents, that reference to the charge of contravention of Rule 98(a) and (b) in the articles of charges in the departmental enquiry showed that that enquiry related to a charge, which was distinct from the charges framed against the petitioner, cannot be upheld. It was also contended that in the Criminal Case, in the charges framed against the petitioner, it was mentioned that the accident took place at "Anas" while the charge in the Departmental Enquiry was that the petitioner was responsible for entering "Meghnagar Anas B block section against signals in contravention of the rules" and hence, the Departmental Enquiry was for charges distinct from the charges in the Criminal Court. The contention cannot be upheld.

The difference in phraseology in describing the place of accident will not make any difference so long as the acts attributed to the petitioner and forming subject-matter of charges framed in the Criminal Case and the Departmental Enquiry are the same. In these circumstances, it must be held that the allegations, on the basis of which, charges were framed in the Criminal Case, are the same as formed the subject-matter of Departmental Enquiry against the petitioner.

5. It has further to be noted that the acquittal of the petitioner in the Criminal Case is on merits and not on any technical ground. In Criminal Revision No. 75 of 1976 (Ramakant v. State of M.P.), a learned single Judge of this Court, after appreciating the evidence on record, held that the prosecution had failed to prove that the petitioner had contravened the provisions of Rules 76(a), 78, 79 and 122. This Court further held that even assuming for the sake of argument that the petitioner was not vigilant and did not obey the signals, the Railway authorities themselves had contravened the rule of allowing a driver rest for 30 hours after 58 hours running duty in as much as, though the petitioner had put in running duty for 150 hours and 40 minutes, yet he was not allowed to take rest because of shortage of drivers. This Court further observed as follows:

It is true that when the applicant Ramakant was refused 30 hours rest and was called on duty, he came on duty, without any protest. The contention of the learned Counsel on behalf of the State is that when the applicant Ramakant agreed to attend his duty despite the fact that he had not availed of 30 hours rest, he ought to have performed his duty vigilantly. It may be noted that there is nothing on record to indicate that the applicant Ramakant deliberately disobeyed the signals simply because he was made to work during the time, in which he was entitled to take the rest. It may be borne in mind that the rule of 30 hours rest after doing the duty of 58 running hours, must have been made, keeping in view the physical capacity of a human being to work. It may be that the applicant Ramakant being a sincere and faithful worker, agreed to come on duty. However, one fact cannot be lost sight of that after all he was a human being and due to exhaustion, which might have resulted on account of continuous night duty, it was not unlikely that his senses refused to cooperate for a proper lookout. It is hazardous on the part of the Railway authorities to extract work from the employees beyond their physical capacity.

The aforesaid observations cannot be construed to mean that the petitioner was found to be not vigilant. These observations were obviously made while dealing with the contention urged on behalf of the petitioner in the alternative, this even if he was not vigilant, he could not be held guilty in the circumstances of the case. That is why these observations are prefaced by observing that "even presuming though not conceding, that the applicant Ramakant driver was not very vigilant and did not obey the signals, the question for consideration would be whether he can be held liable for the offence u/s 101 of the Indian Railways Act." In the earlier part of the judgment, this Court, after discussing the evidence

has found in unambiguous terms that the petitioner is not proved to be guilty of contravention of Rules 76(a), 78, 79 and 122 or of any other charge framed against him. The acquittal of the petitioner was, thus, "honorable." This position was not disputed before us.

6. It is thus clear that 11 years after the incident, a departmental enquiry was instituted against the petitioner for substantially the same charges, as were framed against him in a criminal case, in which he was acquitted on merits. The question for consideration is whether in these circumstances, the action of the respondents in holding a departmental enquiry can be held to be proper.

7. On the question as to whether a judgment of a Criminal Court acquitting an accused on the merits of a case, would bar disciplinary proceedings against him on the basis of same facts, there are conflicting decisions. In *Syed Qamarali Vs. State of Madhya Pradesh*, a learned single Judge of this Court held that where a Government Servant was prosecuted for an offence and honourably acquitted, he cannot be subjected to a departmental enquiry on the same facts again. This decision was dissented from by the Bombay High Court in *Bhautdo Dagadu Thakur v. The State of Maharashtra* 1972 Lab I.C. 1453 and by the Gujarat High Court in *Motisingh Chhaqasingh Vaghela v. S.D. Mehta* 1966 I L.L.J. 55 . In *Shaik Kasim Vs. The Superintendent of Post Offices, Chingleput Dn. and Another, M. Anantanarayanan, J.*, formulated the following principles: -

Firstly an Administrative authority, in initialing disciplinary proceeding, is not bound to wait for the verdict of a criminal Court. But where the criminal Court has tried the concerned person and acquitted him, it would be improper, and such a proceeding is liable to be quashed as not in consonance with the principles of natural justice, if the Administrative authority later initiates disciplinary proceedings on the identical facts, and identical charge and records a contrary conclusion. But, of course, the acquittal should have been substantially on the merits; technical acquittals on grounds like sanction may not inhibit departmental disciplinary proceedings, or a contrary verdict therein.

Secondly, there could be no rigid or inflexible rule that the finding of a criminal Court is conclusive in every sense, upon Administrative Authorities. If the finding is purely a technical acquittal, the Administrative Authority may conceivably punish, on the same facts. It can certainly punish where the acquittal is solely based on lack of sanction, or some technical defect in procedure. It could punish, on the same facts, for some lesser charge, which may not amount to a criminal offence, but may well amount to grave dereliction of duty, entitling disciplinary action. For instance, a school-master may be acquitted of a charge of rape alleged to have been committed against a girl-student in his care. But that cannot preclude the departmental authority upon these very facts, from punishing him for grave impropriety in his relationships with the girl-students, which disentitles him to that office.

Thirdly, where the acquittal is substantially on merits, on identical facts and

charges, it will not be proper for a disciplinary Tribunal to record a finding of guilt, and to punish thereon. This is a basic principle of jurisprudence, and I cannot see that it makes any difference that the departmental authority acts before the criminal proceedings, or after it. This Court, in exercise of the jurisdiction under Article 226 of the Constitution, would be justified in striking down the action based on such findings as not in consonance with principles of natural justice. Otherwise grave anomalies might follow, as stressed in AIR 1952 Mad. 953: AIR 1952 Mad. 953.

8. Now, turning to the decision of the Supreme Court having a bearing in this behalf, we find that in *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, a workman had been acquitted by the criminal Court on the ground that the case against him was not free from doubt. In view of that judgment, the Industrial Tribunal refused to approve the order of dismissal. The Supreme Court held that the Tribunal erred in not granting approval. From this decision of the Supreme Court, it is clear that no duty is cast on an employer to withhold the domestic enquiry during the pendency of criminal proceedings and that when the acquittal is based on the finding that the case against the employee was not free from doubt, the order of dismissal of the employee on the basis of the domestic enquiry, cannot be held to be illegal. In *State of Andhra Pradesh Vs. Sree Rama Rao*, the Supreme Court held that the judgment of the criminal Court could not always be regarded as binding in a departmental enquiry. In *R.P Kapur v. Union of India* and Anr. 1966 I L.L.J. 164 it was observed by the Supreme Court as follows:

If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, even in case of acquittal proceedings may follow, where the acquittal is other than honourable.

From the aforesaid observations, it is clear that if departmental proceedings follow an acquittal, where the acquittal was "other than honourable", such proceedings are not barred. However, where departmental proceedings follow on honourable acquittal, can such proceedings be justified? The view taken in *Kundan Lai v. The Delhi Administration and Ors.* 1976 Lab. I.C. 811 by Delhi High Court and in *A.P. Naidu Vs. General Manager, South Central Railway and Others*, by the Andhra Pradesh High Court is that initiation of departmental proceedings in such circumstances is not proper. Rangarajan in *Kundanlal v. Delhi Administration* (supra) after surveying the authorities in this behalf, observed as follows: -

The above survey of judicial opinion seems to point to a preponderating preference for the middle view, which is that when there is a substantial acquittal of the accused on a criminal charge, there should not be a departmental proceeding against him in respect of the same charge on the same facts unless there are present conditions like the acquittal being on a technical ground or establishing conduct which would make it unworthy of the said officer continuing in office etc.

We respectfully agree with the aforesaid observations.

9. Now, in the instant case, as we have already observed, the acquittal is not on technical grounds. It is also not based on the ground that the case against the petitioner is not free from doubt. The judgment of the High Court in Criminal Revision No. 75 of 1976, instead of establishing that the conduct of the petitioner was such as would make it unworthy of the said government servant continuing in office, or would disentitle him from holding that office, shows that the Railway authorities by flouting the rule providing for rest to a driver after doing the duty for a particular number of hours, had extracted work from the petitioner beyond his physical capacity. The statement of allegations in the charge-sheet and the order of removal passed by the disciplinary authority do not show that apart from alleged contravention of rules, which was the subject-matter of the criminal case, any other conduct of the petitioner constituted the subject-matter of departmental enquiry. In these circumstances, the departmental proceedings against the petitioner cannot be held to be proper and the order of removal passed against the petitioner deserves to be quashed. It would also follow that the petitioner would be entitled to be paid salary and allowances, in accordance with the rules in that behalf from 18th April, 1968 when he was suspended till his reinstatement.

10. For all these reasons, this petition is allowed with costs. The departmental proceedings-initiated against the petitioner and the order of his removal passed on 1st December, 1983, are quashed. The petitioner is also held entitled to receive his salary and allowances in accordance with rules in that behalf from the date of his suspension till his reinstatement.