
(2001) 08 AP CK 0170
In the Andhra Pradesh High Court
Case No : Writ Petition No. 15632 of 2001

S.A. Muneer

APPELLANT

Vs

The Divisional Commercial Manager, S.C. Railway, Vijayawada
Division

RESPONDENT

Date of Decision : 18-08-2001

Acts Referred:

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 9, 9(2)

Citation : (2002) 2 ALD 419 Supp

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—This Writ Petition is directed against a Judgment and order dated 18.7.2001 passed by the Central Administrative Tribunal, Hyderabad Bench in O.A.No.326 of 2000 whereby and whereunder the Original Application filed by the petitioner herein was dismissed.

2. Briefly noted the facts are:

The petitioner was working as Senior Ticket Collector/TTE in South Central Railway since 1993. He was placed under suspension on 15.12.1998 pending initiation of disciplinary proceedings, but the same was revoked on 21.1.1999. Thereafter he was issued a charge sheet dated 7.6.1999 wherein the following charges were framed:

1. The applicant has demanded and collected Rs.26/- excess over and above the railway dues by providing berth No.34 in S5 coach.
2. During vigilance check he had produced Rs.95/- excess in railway cash in a total transaction of Rs.1,075/- i.e., he had produced Rs.1,170/- against the railway cash accounted through E.F.T's to a total of Rs.1,075/-.
3. According to the petitioner, as per Rule 9(a)(1) of the Railway Servants (D. &

A) Rules, 1968, (for short "the Rules") the disciplinary authority has to appoint an enquiry officer after considering the explanation of the delinquent officer to the charge memo, but, in the instant case, the enquiry officer was appointed on the same day when the charge memo was issued. Challenging the charge memo dated 7.6.99, the petitioner filed O.A.No.326 of 2000 and the Tribunal granted interim suspension of the proceedings on 3.3.2000. It appears that during the pendency of the said O.A., the petitioner was removed from service by order-dated 22.2.2000 and in spite of the fact that the Tribunal suspended the disciplinary proceedings on 3.3.2000; the removal order was served on the petitioner on 15.3.2000. The petitioner initiated contempt proceedings and the Tribunal by order dated 25.4.2000 set aside the orders passed after 5.3.2000 with liberty to take further action to reinstate the petitioner. However, by the order under challenge, the Tribunal dismissed the O.A. holding that there was no violation of the rules.

4. The petitioner contends that the Tribunal proceeded on the premise that the disciplinary proceedings are still pending though the removal order was kept in abeyance pending disposal of the O.A. It is urged that having regard to the fact that the disciplinary proceedings were concluded, the Tribunal ought to have disposed of the matter on merits.

5. The learned Tribunal interpreting the provisions of 9(2) and 9(a)(i) of the Rules held that an enquiry officer could be appointed on the initiation of the disciplinary proceedings itself or after considering the explanation but the decision whether to proceed with the inquiry or not has to be taken only after the explanation is submitted by the delinquent.

6. Mr. Sudheer, learned counsel appearing on behalf of the petitioner submitted that as the initiation of the proceedings was itself without jurisdiction, the learned Tribunal must be held to have erred in passing the impugned judgment.

7. Rule 9(a)I) and 9(2) of the Rules reads as follows:

9(a)(i): On receipt of the written statement of defence, the disciplinary authority shall consider the same and decide whether the inquiry should be proceeded with under this rule.

9(2): Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against a railway servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, (a Board of Inquiry or other authority) to inquire into the truth thereof.

8. The aforesaid rules are procedural in nature. In our opinion, compliance of the said rules may not be necessary where the delinquent officer is in no way prejudiced.

9. In the instant case, a finding of fact has been arrived at by the learned Tribunal to the effect that the enquiry officer has been appointed upon

consideration of material facts.

10. The learned Tribunal has also rejected the contention of the petitioner to the effect that he has received the charge memo only after the appointment of the enquiry officer, inter alia, on the ground that such a question had not been raised in his representation before the disciplinary authority.

11. The petitioner has approached the Tribunal when an enquiry in terms of Rule 9 of the Rules was proposed to be held. A report has been submitted by the enquiry officer holding him guilty of the articles of charges. A copy of the enquiry report has also been furnished to him and only he had been asked to submit his explanation. The petitioner did not submit any explanation and he approached the Tribunal at that stage. In our opinion, the petitioner's application before the Tribunal was a premature one. When a show cause notice has been issued to him duly annexing the report of the enquiry officer to submit his explanation, the delinquent officer was at liberty to raise all objections in his explanation. It is now well known that normally a writ petition challenging the show cause notice would not be entertainable. In STATE OF UP. V BRAHM DATT SHARMA¹

12. The High Court was not justified in quashing the show cause notice. When a show cause notice is issued to a Govt. servant under a statutory provision calling upon him to show cause, ordinarily the Govt. servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that would be premature. The High Court in our opinion ought not to have interfered with the show cause notice.

13. The learned counsel for the petitioner submitted that the entire proceeding was mala fide and thus the same cannot be held to be in consonance with the principles of natural justice. Reliance placed by Mr. Sudheer on the decision of the Apex Court in STATE OF PUNJAB v V.K. KHANNA², in our opinion, is misplaced. In the said decision, it was held:

Bias admittedly negates fairness and reasonableness by reason of which arbitrariness and mala fide move creep in ... The expression "mala fide" has a definite significance in the legal phraseology and the same cannot possibly emanate out of fanciful imagination or even apprehensions but there must be existing definite evidence of bias and actions which cannot be attributed to be otherwise bona fide - actions not otherwise bona fide, however, by themselves would not amount to be mala fide unless the same is in accompaniment with some other factors which would depict a bad motive or intent on the part of the doer of the act.

14. Similarly, likelihood of bias may not be a ground for entertaining a writ petition at any stage.

15. In *COAL MINES v UNION OF INDIA*³ Calcutta High Court having regard to the decision of the Court of Appeal in *REGINA v GOUGH*⁴ held thus:

That test was applied in *Reg vs Mulvihill* (199) 1 WLR 438 when a Judge tried a robbery case where the loser was a bank in which he held shares, the court distinguishing between the role of the Judge and the jury. The Topping test, if one can use that abbreviation, was also applied in *reg vs Morris (orse. Williams)* (1990) 93 Cr App R. 102 by this court. During a trial on indictment for theft from Marks and Spencer Pick. It emerged that one of the jurors was an employee of that organization though working at a different branch. In quashing the conviction the court held that the Judge when asked to discharge the juror had not gone into the question of the appearance of bias.

16. It is difficult to discover any basis on which these two lines of authority can live together. Mr Moran has submitted that a distinction can be drawn between the test to be applied in jury cases and that which is appropriate for magistrates' courts or other inferior tribunals entrusted with fact finding responsibilities. We feel we must accept this distinction because there is no other way of reconciling most of the authorities, though it is difficult to understand why the test of bias should be any different in considering the position of a magistrate compared with that of juror. The only case which cannot be fitted into this dichotomy is the one last cited, namely *Reg vs Morris (orse William)*, in which giving the judgment of the court 1 applied the Topping test (1983) 1 WLR 119 to the position of a juror. The decision in *reg. Vs Morris (orse. Williams)*, 93 Cr.App. R. 102 cannot stand with that of the five judge court in *Reg vs Box*, (1964) 1 O.B. 430; and, having regard to the decision of the House of Lords in *Reg. Spencer* (1987) A.C. 128, *Reg vs Morris (orse Williams)* should not be followed to the extent that it applies the Topping test to trials on indictment.

17. Accordingly, the appeal fails on this point because of the application of the real danger test to jury trials in cases of bias. It is, therefore, not necessary to decide whether (a) the application of the Topping test would have caused a different result, or (b) whether there was in fact any bias.

18. This aspect of the matter has also been considered by the Apex Court in *KUMAON MANDAL VIKAS NIGAM LTD. V. GIRIJA SHANKAR PANT*⁵ wherein it was held:

The word "Bias" in popular English parlance stands included within the tributes and broader purview of the word "malice", which in common acceptation mean and imply "site" or "ill-will" (stroud's Judicial Dictionary (5th Ed.) Volume 3) and it is now well-settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice.

19. Recently this aspect of the matter has also been considered by this Court in K. VENKATARATNAM V UNION OF INDIA⁶.

20. For the reasons aforesaid, we find no merit in the Writ Petition which is accordingly dismissed. No order as to costs.