

(1994) 09 RAJ CK 0025
In the Rajasthan High Court
Case No : C.W.P. No. 1346 of 1984

Shriram Yadav

APPELLANT

Vs

Rajasthan State Road Transport Corpn. and Others

RESPONDENT

Date of Decision : 28-09-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (1996) 3 LLJ 1144 : (1995) 1 RLW 667 : (1995) 3 WLC 462

Hon'ble Judges : V.G. Palshikar, J

Bench : Single Bench

Advocate : M. Mridul, S.A, for the Appellant; R.N. Munshi, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Palshikar, J.—By this petition, the petitioner, who was Conductor with the respondent corporation, has challenged the order by which he was removed from service for certain charges of misconduct. He has also challenged the appellate order.

2. On March 30, 1978 he was chargesheeted and suspended for three charges. During three occasions on which few passengers were found without ticket and no entry was made by the Conductor in the Way Bill and the bus was allowed to proceed without handing over the Way Bill to the driver. Each of the charges, therefore, was permitting passengers to travel without ticket and not writing the Way Bill and not handing it over to the driver.

3. On April 10, 1978, the petitioner filed his reply to these charges. In relation to the first Charge it was said that it was due to the error of the passenger that the ticket was not given to him and he was actually penalised. It cannot, therefore, be said that he was allowed to travel without ticket In relation to the Second Charge, two passengers had alighted to urinate. Their ticket was from Ahor to Nimla. They cannot be called as passengers travelling without ticket at that time. In relation to the Third Charge it was said that the petitioner was in the process

of issuing tickets to those six passengers who regained: At the time of checking, the petitioner was in the process of issuing tickets and, therefore, he could not be held guilty. On July 14, 1978, the petitioner was dismissed from service. He raised the dispute regarding his termination, which was accepted on June 9, 1981 and the termination was held illegal, as it was made without enquiry and was in gross violation of the principles of natural justice.

4. That on September 10, 1981 the petitioner was reinstated, in compliance of the order passed by the learned Labour Court, and fresh enquiry was started against him on the same Charges. Evidence was recorded and ultimately on April 12, 1982 an order, was made removing the petitioner from service. However, before making this order, the petitioner was not supplied with the copy of the report of the Enquiry Officer, on the basis of which he was found guilty by the Disciplinary Authority.

5. The petitioner filed an appeal against this order on February 24, 1982. A copy of the Memo of appeal is Anx. 9, page 47 of the paper book. The petitioner had raised several grounds in the memo of appeal. However, this appeal was also dismissed.

6. The petitioner, therefore, applied for raising an industrial dispute u/s 10 of the Industrial Disputes Act, 1947. However, the State Government declined to make a reference on appreciation of the contentions on merit. This obviously was an a illegality. It is, thereafter that the present petition was filed. It was admitted on May 4, 1984 and was pending final hearing since then. It is pertinent to note that on January 13, 1994 the application of the petitioner, for early hearing of the petition, was allowed and the case was directed to be heard on July 11, 1994. However, even on that day it could not be heard. Till that day, no reply, of any kind, was filed on behalf of the respondent-Corporation.

7. It was only on July 18, 1994 that reply came to be filed. The matter was argued at length by both the learned counsel for the petitioner and the respondents.

8. Mr. Mridul, Sr. Advocate, appearing for the petitioner, submitted that because of the violation of the basic principles of natural justice, the entire enquiry proceedings are vitiated and are liable to be quashed because copy of the report of the Enquiry Officer was never supplied to the petitioner. It denied the basic right to the petitioner of making effective representation against the report of the Enquiry Officer. Mr. Mridul then contended that the order of the Disciplinary Authority is not a speaking order, it does not give any reason why the report of the Enquiry Officer is being accepted and why the petitioner is being terminated. In fact, he claims that the petitioner was misled by the Corporation as there is substantial variation in the order served on him. Anx.8, page 46, and the order passed by the Disciplinary Authority, Anx. R/11, page 95. The order dated April 10, 1982 reads thus:--

"I have gone through the report of the Enquiry Officer and I am agreed with the

finding. I find that the conductor has been found guilty of misconduct and hence he is not a suitable hand to be retained in the Corporation. Moreover, the Corporation has no reliance on such persons, hence, Shriram Yadav is ordered to be removed 1 from service of the Corporation. Suspension salary is forfeited."

9. Whereas the order which was served on the petitioner says that a perusal of the Enquiry Report, proceedings of the enquiry, evidence of the witnesses and a careful scrutiny of the record was made by the Disciplinary Authority and, therefore, the Disciplinary Authority agrees with the report of the Enquiry Officer regarding guilt of the accused. It will be seen that there is no mention in Anx.R/11 of perusal of the record or scrutiny of the statements of the witnesses by the Authority. It only mentions of going through the report of the Enquiry Officer. There is no mention in the order Anx.8 regarding the observations of the Disciplinary Authority that the petitioner is not a suitable hand to be retained in the Corporation or that the Corporation has no reliance on such person. In the submission of Mr. Mridul, therefore, grave injustice is done: to the petitioner by non-supply of the copies of the report of the Enquiry Officer. According to him, he could not make an effective appeal against the order of the Disciplinary Authority for two reasons -

(i) The order of the Authority was not a speaking order and;

(ii) The report of the Enquiry Officer was not supplied to the petitioner. It was also the submission of Mr. Mridul that the appellate order is also required to be a speaking order. He has pointed out that the order cannot be held to be a speaking order. In his submission, the necessity of the appellate order being a speaking Order, cannot be over emphasised. It is necessary that it is so speaking because it is subject to judicial review and no effective judicial review is possible if the appellate order is not a speaking order, particularly, when it is based on report and the copy of which was never supplied to the delinquent. In the submission of the learned counsel, therefore, irreparable injury has been caused in defence of the petitioner and, therefore, the entire proceedings are liable to be quashed.

10. Mr. Mridul learned counsel for the petitioner, relied on a very large number of authorities to support his contentions that - (a) the supply of the copy of the report of the Enquiry Officer is a judicial necessity, (b) the orders of punishment are required by law to be speaking orders, even if they are concurring with the enquiry report, (c) irreparable injury is caused by non-supply of the copy and non-speaking orders. However, these propositions broadly speaking, cannot be disputed and there is, therefore, no necessity to refer to each of the authorities so cited.

11. Mr. R.N. Munshi, learned counsel for the respondent - Corporation, submitted in this reply that under the Standing Orders of the Corporation, it is not provided that a copy of the report of the Enquiry Officer should be submitted to a delinquent. According to him, no prejudice is caused to the petitioner by non-

supply of the copy because he has participated in the enquiry. He knew the charges levelled against him and the evidence appearing against him and consequently, he knew the proceedings enough, to make an effective representation against the punishment. The learned counsel for the Corporation then submitted that in view of the case of Mohd Ramzan (1991 1 LLJ 29) (SC), wherein it has been firmly laid down by the Supreme Court of India that supply of the copy of report must be made and non-supply results in vitiating the enquiry, is a decision which has been specifically made prospective in its operation and, therefore, non-supply of the copy of report, prior to the date of judgment of Mohd Ramzan's case (supra), cannot be a reason for setting aside the enquiry. Then Mr. R.N. Munshi, learned counsel, placed heavy reliance on the judgment of the Supreme Court in the case of ECIL and relying on this decision, the learned counsel submitted that the Supreme Court has clarified that the operation of the order in Mohd. Rafnzan's case (supra) is prospective in nature. According to the learned counsel, there is, therefore, no error in this case and the petition is liable to be rejected.

12. The crucial question that requires decision in this case is whether non-supply of the copy of the report of the Enquiry Officer, has resulted in grave injustice to the petitioner in the matter of his defence. It cannot be disputed that supply of copy of the report of the Enquiry Officer is necessary for a delinquent to make effective representation against the report in the event the report finds him guilty of the charges framed against him. I will consider this question in light of the decision cited at the Bar, whether, factually the matter stands concluded by those decisions.

13. It is true that the Standing Orders of the Corporation do not provide for supply of copy of report. However, this Court has taken a view in *Ram Singh : Rathore v. R.S.R.T.C. and Ors.* 1986 1 JS 129, wherein the contention of Mr. Munshi on behalf of the Corporation that supply of copy is not necessary, is squarely dealt with in para 4, which reads as under:-

"Mr. Munshi has further submitted that it is not necessary to supply the copy of the report of the Enquiry Officer as the same is not the requirement under the Standing Orders. I am afraid this submission of Mr. Munshi is also without any basis. When an incumbent is found guilty and statute gives him a right of appeal, it is natural that the person should be supplied with the copy of the report of the Enquiry Officer so that he can know that what has been found against him and he can examine whether that finding is right or not. This would enable him to prefer the appeal effectively. Simply because in the Standing Orders such provision does not find place, it is not a valid defence to commit breach of principles of natural justice. The sweep of natural justice is too wide and it can be read consistently with Standing Orders."

14. In view of this judgment, it is obvious that even if the Standing Orders do not so require, the copy must be supplied in obedience to the principles of natural justice. However, according to Mr. Munshi, this judgment is not of any

consequence in view of the judgment in Mohd. Ramzan's case (Supra) holding that the supply of the copy is a must and directing that the ratio should operate prospectively, the efficacy of this judgment, according to him, is lost.

It is, however, pointed out by Mr. Mridul that this judgment has not been overruled or reversed by any Superior Court. According to Mr. Mridul, even if the Standing Orders do not so require, the Corporation is bound by the judgment in Ram Singh's case (supra). Failure on the part of the Corporation to supply copy of the report is, therefore, liable to be taken seriously and has left material infirmity in the proceedings.

15. It will be worthwhile to consider the judgment in the case of Union of India v. Mohd. Ramzan Khan (Supra). By this judgment, the controversy (regarding supply of copy of the report of the Enquiry Officer to the delinquent, after the Forty-Second Amendment of the Constitution of India, was set at rest. In para 15 it has been observed by the Supreme Court of India as under:-5

"We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position,"

16 Then in para 17 the views of different High Courts, contrary to the view taken by the Supreme Court, were declared to be no longer good law and then in para 18 the proposition was again made clear :--

"We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry, 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 will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter".

17. In para 17, however, it is laid down by the 2 Supreme Court that this law shall have prospective application and no punishment imposed shall be open to challenge on this ground. Heavy reliance was placed on these observations by Mr. Munshi for pleading the punishment inflicted in the present "A case in 1982 cannot, therefore, be reopened.

18. The Supreme Court considered and observed in the case of Mohd Ramzan (Supra) regarding the law laid down by it being prospective in its Constitution Bench of Five Hon'ble Judges. In the judgment in the case of Managing Director, ECIL, Hyderabad v. B. Kanmakur (1994 1 LU 162), the Constitution Bench of the Supreme Court held that the need to make the law laid down in Mohd Ramzan Khan's case (supra) prospective in operation, requires no emphasis. It then reiterated the position in law that the law laid down in Mohd Ramzan's case

(supra) is prospective in its operation. However, while so observing, the Supreme Court did take into consideration cases where the matter of punishment was pending before Courts or Tribunals. Observations of the Supreme Court of India in this connection made in para 44 require careful consideration:-

"44. It will, therefore, have to be held that notwithstanding the decision of the Central Administrative Tribunal in H.G. Patel's case (supra) and of the Gujarat High Court in Premnath K. Sharma's case (supra) and of the other courts and tribunals, the law was in an unsettled condition till at least November 20, 1990 on which day the Mohd Ramzan Khan's case was decided. Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the disciplinary authority after November 20, 1990. This is so, notwithstanding the ultimate relief which was granted there which, as pointed out earlier, was per incuriam. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the inquiry report to the delinquent employee. The proceedings pending in courts/tribunals in respect of orders of punishment passed prior to November 20, 1990 will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in Mohd Ramzan Khan's case (supra). This is so notwithstanding the view taken by the different Benches of the Central Administrative Tribunal or by the High Courts or by this Court in R.K. Vashist's Case (supra)".

19. From the above observations, it is obvious that the proceedings which are pending in Courts or Tribunals in respect of orders of punishments passed prior to November 20, 1990 will have to be decided according to law that prevailed prior to the said date and not according to the law laid down in Mohd Ramzan's case (supra).

20. I would like to point out that the judgment in Mohd Ramzan Khan's case (Supra) was delivered by Hon'ble Mr. Justice Ranganath Misra, the Chief Justice of India and Hon'ble Mr. Justice P.B. Sawant and Hon'ble Mr. Justice K. Ramaswamy were the members of the Bench. The judgment in the Constitution Bench of Five Judges in the case of Managing Director, ECIL (supra), was delivered by Hon'ble Mr. Justice P.B. Sawant, speaking for the majority of the Court and a separate opinion as written by Hon'ble Mr. Justice K. Ramaswamy. He : broadly agreed with the interpretation of Article 311(2) of the Constitution of India but he disagreed with the conclusion that the application of Mohd Ramzan's ratio in those cases was per incuriam. Hon'ble Mr. Justice Ramaswamy then proceeded to give his reasons and has observed in para 75 that Mohd. Ramzan Khan's ratio giving the benefit to him and companion appellants was valid in law and not, therefore, per-incuriam and was legally given the reliefs.

21. Then reliance was placed by Mr. R.N. Munshi on the judgment of the Supreme Court in the case of Krishan Lal Vs. State of Jammu & Kashmir, This

judgment considered both the reasoning in : Mohd Ramzan Khan's case (supra) as also in ECIL's (supra) case. In that case, the matter was ultimately sent to the High Court to Consider in the light of the observations made in the case of ECIL (para 31). (Para 31 will have to be considered separately). Re- ; lying on these observations, therefore, it was contended by Mr. Munshi that the order of termination cannot be automatically set aside in this case.

22. In this connection, it will be necessary to consider the judgment of this Court in the case of M.K. Soni v. State of Rajasthan and Ors. 199 (s) RAJ 229, wherein Hon"ble Justice Mr. M.R. Calla, carefully considered the judgments in Mohd. Ramzans case (supra) and Ram Singh v. R.S.R.T.C. (supra) and while considering the prospective option of the law laid down in Mohd Ramzan s case (supra), it was observed thus :--

"Thus, so far as the proposition of law is concerned, it must now be taken to be settled that furnishing of the copy of the inquiry report is a condition precedent and a pre-requisite before passing the final order of punishment at the hands of the Disciplinary Authority. But the question still remains, that once the Supreme Court has observed that this proposition will have a prospective application and no punishment imposed shall be open to challenge on this ground then what should be the fate of the punishment orders which have already been passed without giving the copy of the inquiry report. Shri R.P. Dave submits on mis basis that notwithstanding the above position of law, the punishment which has already been imposed in this case should not be interfered with and the impugned order of punishment should be allowed to stand because according to the Supreme Court itself this proposition of law has prospective application only. On the other hand, it has been urged by Shri Kamal Joshi that the cases in which the punishment order is already under challenge and has not become final, cannot be exempted from this proposition on the theory of prospectively. I find considerable force in the argument of Shri Kamal Joshi and am of the opinion that his argument carries conviction and deserves to be accepted. Once it has been held by the Supreme Court that the furnishing of the copy of the inquiry report is a condition precedent, it will be reasonable to apply this proposition against all those orders of punishment which have not attained the finality and it sounds reasonable and plausible to apply the observations made by the Supreme Court in the context in which the observations have been made. Had the intention of the Supreme Court been to cover all those punishment orders which have been imposed prior to the date of this judgment on the basis of prospectivity the Supreme Court would not have interfered with the order passed in the case which was there before the Supreme Court itself, and this reasoning lends strength to the proposition that the observation about prospective application made by the Supreme Court means to cover only those cases in which the punishment order have already become final and have already withstood the challenge before the court of law. The observation in this Supreme Court decision that - it will have prospective application and no punishment

imposed shall be open to challenge on this ground", in my opinion means to cover only those cases which have already become final and which are not facing any challenge before any authority or in a pending case at any stage before any Court."

23. Then the question regarding remanding the matter back to the Disciplinary Authority was considered and it was observed that it is not a fit case for doing so-

"Now the question remains as to whether the matter should be remanded back to the Disciplinary Authority for an enquiry de novo, or the matter should be closed, it may be straight- way observed that admittedly the incident is as old as of 1977-78 and as per the impugned order dated August 25, 1989 wherein it has been observed while dealing with point No. 11 that there -was no oblique motive on the part of the petitioner and it is a case of technical breach of some procedure/rule, it will not be proper at this stage after 13 years to remand the matter back to the Disciplinary Authority for a trial de-novo. Shri -Kamal Joshi appearing on behalf of the petitioner has cited before me the cases Gwalior District Co-operative Central Bank Ltd., Gwalior Vs. Ramesh Chandra Mangal and Others, and Bhgat Ram v. State of H. P. reported in (1983 11 LLJ 1) and has submitted that in all these decisions the Supreme Court has taken the view that the de-novo inquiry should not be ordered in the case where the subject matter of the charge is old and stale. I, accordingly, -hold that it is not a fit case in which the matter should be remanded back to the Disciplinary Authority for an inquiry de-novo and I direct that this chapter should be considered to be closed forever."

24. It will, thus, be seen that grave injury is done to the petitioner by non-supply of the copy. He has been materially prejudiced in the matter of his defence. He was unable to make effective appeal before the appellate authority. I have already pointed out above that there is discrepancy in the order of termination, as was served on the petitioner, and the one factually passed by the disciplinary authority. It cannot, therefore, be disputed in the present case that serious prejudice in the matter of defence is caused to the petitioner and the proceedings against him are, therefore, vitiated. The only question which remains thereafter is, therefore, what relief is to be granted in the peculiar circumstances of the case,

25. Similar view has been taken by another Single Judge of this court in the case of Vikram Singh v. State of Rajasthan and Ors. 1993 I WLR 573, where in it has been held that giving of a copy of report to the delinquent is necessary. Yet another judgment by the same learned Judge is reported immediately thereafter at page 577. It pertains to the Rajasthan State Road Transport Corporation itself and holds that the judgment in Ram Singh's case (supra) reflects the correct position of law on the requirement of supply of copy of the enquiry report to the delinquent. A perusal of this judgment will show that I am supported by these judgments in the view that I have taken, namely, causing of serious prejudice in

the matter of defence. That brings me back to the question of relief

26. Observations of the Supreme Court of India in para 31 in the case of Managing Director ECIL v. B. Karunakar (supra) will have to be borne in mind, which read thus:-

"Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of Punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to shortcuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority /management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeded in the fresh inquiry and is directed to be reinstated the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law".

27. Equally important will be observation of the Supreme Court quoted above, i.e. para 44 of that case. A careful consideration of these observations, therefore, require that I should adjudicate upon the injury caused to the petitioner by non-supply of copy of the enquiry report. As observed by me above, serious prejudice

has been caused and consequently, the relief that must be granted in the circumstances is setting aside the orders of punishment resulting in removal from service of the petitioner. However, 12 years have passed since the petitioner is terminated from service. It is obvious that for last 12 years it is impossible to presume that the petitioner has survived without any other employment. No gainful purpose will be served by directing reinstatement Of the petitioner and permitting the Corporation to start the enquiry de-novo from the stage of supply of copy of the report to the petitioner and giving an opportunity to explain the report and then passing an order of punishment, if any. In my opinion, interest of justice will be met in this case by setting aside the orders of punishment as violative of the basic principles of natural justice, for non-supply, without granting reinstatement of any kind to the petitioner and instead the Corporation is directed to pay to the petitioner, a compensation of Rs. 1,00,000/- (Rupees One Lakh only), in view of reinstatement and payment of back wages. In my opinion, interest of justice would be met by such payment of compensation.

28. In the result, the petition succeeds and, is allowed in terms mentioned above.

29. In the circumstances, there will be no orders as to costs of this petition.