
(1997) 01 AHC CK 0002
In the Allahabad High Court
Case No : First Appeal No. 111 of 1987

Surya Bikram Tewari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-01-1997

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 10, 6(1)
Uttar Pradesh Panchayat Raj Act, 1947 — Section 20A(1), 65(1), 96A

Citation : (1997) 01 AHC CK 0002

Hon'ble Judges : C.A. Rahim, J

Bench : Single Bench

Advocate : H.S.N. Tripathi and R.N. Singh, for the Appellant; Lalji Sinha, for the Respondent

Final Decision : Dismissed

Judgement

C.A. Rahim, J.—This appeal has been preferred against the judgment and decree of IVth Additional District Judge, Deoria on 22.8.1983 in Original Suit No. 78 of 1979, dismissing the suit of the Plaintiff for declaration to the effect that removal/dismissal order dated 25.9.1975 passed by Railway Board is illegal and this is still continuing in the service of the Defendant as Assistant Medical Officer.

2. Plaintiff was appointed, on 25.5.1958 as Assistant Surgeon, Grade I in North Eastern Railway and was promoted to the post of Assistant Medical Officer Class II on 7.9.1971. Charge-sheet was served on him by the General Manager, North Eastern Railway, Gorakhpur followed by disciplinary proceeding on the charge that he absented himself without leave from duty from 29.10.1967 to 31.1.1971. Another charge was also framed against him to the effect that the Plaintiff resorted to private practice at Deoria in between January, 1968 to 31.1.1971 in contravention of the Rules. Sri A. K. Ray, Commissioner for Departmental Enquiry was appointed as Inquiring Officer by the General Manager, North Eastern Railway. He enquired into the matter and on the basis of his report the Plaintiff

was removed from services by the Railway Board by its order dated 25.9.1975 with effect from 12.11.1975 when the said order was served on him.

3. In the suit the Plaintiff has challenged the order of removal/dismissal mainly on the ground that the order of removal was in breach of Article 311(2) of the Constitution, in violation of principles of natural justice and various service Rules governing his employment. The learned Judge after framing 12 issues held the trial. His finding is that there was no infringement of Rules, principles of natural Justice and provisions of the Constitution and, accordingly, he has dismissed the suit.

4. Amongst the issues framed by the learned Judge, during appeal, issue Nos. 1 and 8 have been vehemently challenged, which are as follows:

Issue No. 1:

Whether the dismissal or removal of the Plaintiff and whole of the enquiry proceedings passed or held against the Plaintiff are violative, without competence, ineffective and null and void as alleged in Para 6 of the plaint? If so, its effect.

Issue No. 8:

To what relief, if any, is the Plaintiff entitled?

5. Sri H. S. N. Tripathi, appearing for the Appellant has challenged the entire proceeding including the order of removal by stating, inter alia, that no copy of the document relied on by the railway authority was given during inquiries and that the procedure followed in submitting the report by Inquiring Officer directly to the Railway Board through Central Vigilance Commission, who recommended for major punishment, the decision taken by one member of the Board without concurrence of the Railway Board and that no opportunity of hearing before the Railway Board was given to the Appellant.

6. Taking first point into consideration whether the Appellant was entitled to the copy of the documents, during inquiry proceeding, it appears that the learned Judge has held that the Plaintiff was unable to show any Rule under which a railway servant is entitled to the copies of the relevant documents. Rule 9 (5) of the Railway Servants (Discipline and Appeal) Rules, 1968 has made provision that railway servant may, for the purpose of preparing his defence, inspect and take extracts from the documents. In the note it appears that if the railway servant applies in writing for the supply of copies of the statements of witnesses mentioned in the list, the disciplinary authority shall furnish him with a copy each of such statements as early as possible. There is no allegation with regard to the supply of the copy of the statement of the witnesses. The allegation is that while preparing his defence, the Appellant was not supplied with the copies of the documents relied on by the railway authority. The trial Judge referring Ext-A-2 and also referring the order dated 28.9.1972 passed by the Inquiring Officer has held that since the Appellant had inspected all the documents and did not

want to inspect any other additional document and since he received the copies of the statements of the prosecution witnesses recorded during investigation which is apparent from the signature of the Appellant at the margin of the order-sheet and his admission as P.W. 1, there was sufficient compliance of the Rules. Ext-9 is the letter of the Appellant for supplying copies of the relevant documents as, according to him, inspection of documents or taking extracts thereof would not be sufficient unless copies were made available to him. There is no denial that there was no inspection of the documents or he was not allowed to take notes of them. Rule does not provide supply of the copy of any document and if the said procedure was not observed and if facility available according to Rules was according to the Plaintiff, I agree with the learned trial Judge that there was no infringement of Rules and hence no adverse finding is required to be made in this respect.

7. The next submission of the learned Counsel is that the Inquiring Officer submitted the report through Central Vigilance Commissioner, who recommended for major punishment, which is beyond the Rules. He has also alleged that by such recommendation, the disciplinary authority was influenced by it and did not apply his mind while imposing the sentence to the Appellant.

8. The trial Judge held that there was no breach of Rules in submitting the report by the Inquiring Officer through Central Vigilance Commissioner for onward transmission to the Railway Board and to disciplinary authority, i.e., General Manager, North Eastern Railway. He has also held that the recommendation of the Central Vigilance Commissioner before accepting or rejecting the finding of the Inquiring Officer does not amount to influencing the disciplinary authority with regard to the imposition of penalty.

9. Sri Tripathi has submitted that not only that the report of the Inquiring Officer was routed through the Central Vigilance Commissioner but the copy of the recommendation of the Central Vigilance Commissioner was not given to the Appellant, which is against the principles of natural Justice. He has referred the case of Indra Sawhney and Others Vs. Union of India (UOI), In that case, the Inquiring Officer submitted the report directly to the disciplinary authority was reverted back with the direction to send it to the Central vigilance Commissioner. The finding of the Inquiring Officer was reversed by the Central Vigilance Commissioner when the said report was submitted to him and found the delinquent guilty but no copy of the said decision was given to the delinquent. The Supreme Court accordingly held:

Non-supply of C.V.C. recommendation, which was prepared behind the back of the Respondent (delinquent) without his participation and one does not know on what material which was not actually sent to the disciplinary authority but was examined and relied, was certainly violative of the procedural safeguard and contrary to fair and just inquiry.

The fact of that case is distinguishable. In that case, the finding of the Inquiring

Officer was in favour of delinquent. But the Central Vigilance Commissioner reversed the finding by writing out a parallel judgment copy of which was not given to the delinquent. But in this case, no such reversal of the finding of the Inquiring Officer was done by the Central Vigilance Commissioner. The Inquiring Officer after going through the evidence and materials on record held the Appellant guilty on both the counts and sent the report through Central Vigilance Commissioner, his superior officer, who endorsed the finding and recommended for major punishment.

10. Sri Lalji Sinha appearing for the railway authority has referred the case of Sunil Kumar Banerji v. State of West Bengal and Ors. AIR 1980 SC 1170, wherein it has been held:

We think that if the disciplinary authority arrived at its own conclusion on the materials available to it, its finding and decision cannot be said to be tainted with any illegality merely because the disciplinary authority consulted the Vigilance Commissioner and obtained his views on the various immaterial.

The findings which were communicated to the Appellant were thus of disciplinary authority and it was wholly unnecessary for the disciplinary authority to furnish the Appellant with a copy of the report of the V. C. when the findings communicated to the Appellant were just of the disciplinary authority and not of the Vigilance Commissioner.

11. The trial court held that there was no breach of Rules. He has referred the case of Bhibhuti Bhushan v. State of West Bengal AIR 1967 Cal 29. It is true that consideration of extraneous matter in determining the guilt of a Government servant amounts to denial of reasonable opportunity of hearing. But in this decision it appears that consultation or recommendation of the Central Vigilance Commission would not vitiate the proceedings provided that the conclusion of the authority concerned are based on material on record.

12. The Vigilance Manual on Indian Railways shows that in the matter of corruption, the Railway Administration has allowed the Central Vigilance Commissioner to deal with the matter of inquiry. It has provided therein that the inquiry report shall be submitted to the Board through Central Vigilance Commissioner. So after considering all these materials, I do not find that there was any breach of Rules or that there was any procedural error for which the Appellant suffered from any tainted decision.

13. Sri Tripathi has also submitted that the decision of one member of the Board without concurrence of the Railway Board vitiate the entire proceedings. On this point, the trial court has held that the said decision of one member of the Board is in accordance with the Rules of the Board. Learned Counsel for the Respondent has referred Paras 202 and 204 of Chapter II of Railway General Code, Volume I and submitted that as per Rules one member, who was incharge of staffs, has taken decision in the matter of imposing penalty on the Appellant and the said decision of one member should be considered as decision of the Railway Board.

14. Para 202 provides that the Railway Board shall consist of three members, each incharge of engineering, staffs and transportation respectively. Para 204 provides that each of the member is responsible in dealing with all technical aspects of the subject of which he is incharge. Concurrence of other members are necessary before issuing any order where the said matter encroaches upon the function of another member.

15. Learned Counsel for the Appellant has referred the case of Anirudhsinhji Jadeja and another Vs. State of Gujarat, . In that case the jurisdiction to grant approval invoking TADA u/s 20A (1) lies with the District Superintendent of Police but it sought approval of the Addl. Chief Secretary who gave sanction. The Court, therefore, held:

This is a case of power conferred by one authority being really exercised by another. If a statutory authority has invested with the jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercised under the direction or in compliance with some higher authority's instructions then it will be a case of failure to exercise discretion altogether.

In other words, the discretion vested in the D.S.P. in this case by Section 20A (1) was not exercised by the D.S.P. at all.

16. In the case of Swami Prasad Pradhan Vs. Hargovind Sahai Mathur and Others, , it was held:

In pursuance of Section 96A (U.P. Panchayat Raj Act) power u/s 95(1)(g) has been delegated to the Sub-Divisional Officer, but not to the Collector. It follows that the Collector has no authority to exercise power u/s 95(1)(g). Where a plain reading of the order of suspension passed by the Sub-Divisional Officer shows that it was under the Collector's order that the Pradhan of the Gaon Sabha was placed under suspension and not as a result of the judgment of the Sub-Divisional Officer himself, it is invalid. It may be that the Sub-Divisional Officer was convinced that the Pradhan of the Gaon Sabha has committed irregularities but the decision to suspend him is of the Collector and not of the Sub-Divisional Officer and hence the order of suspension is invalid.

17. Both the decisions are not applicable in the present situation. In the instant case the power of the Railway Board, on their own arrangement, according to the Rules framed by the Railways, exercised by one of the member of the Railway Board with the recommendation of the Central Vigilance Commissioner does not in any way indicate that the said order was passed by any extraneous body without any application of mind by the disciplinary authority. In those two referred oases the power was actually exercised by superior authority and the disciplinary authority acted accordingly. But in this case, it appears that after receiving the report of the Inquiring Officer through Central Vigilance Commissioner, the General Manager of North Eastern Railway sent a letter to the Railway Board on 30.3.1974 for taking decision into the matter. Another detailed note dated 30.11.1974 was prepared and put up before the Railway Board for its

consideration. In the said note, the entire matter was dealt with in details and on which decision for imposing the order of dismissal was passed. A show cause notice thereafter was issued to the Appellant which he replied. So it does not seem that any extraneous matter came in, while taking ultimate decision into the matter. Paras 202 and 204 are specific about the power enjoyed by one of the member on behalf of the Board and no further concurrence is required to be obtained accordingly. According to Para 204, concurrence is necessary only in the case of encroachment on the functions of the other member. In this case, there was no occasion of encroachment since the member who was incharge of the staff acted as sole person capable of taking all the decisions on behalf of the Board.

18. Learned Counsel has submitted that no opportunity of hearing before the Board was given to the Appellant for which the penalty imposed on the Appellant is illegal and void. The trial Judge held that there is no scope of extending personal hearing before the order of removal was passed. So it is not illegal in the absence of any provision in the Rules.

19. Under Rule 10 of the Railway Servants (Discipline and Appeal) Rules, 1968, it has been provided in Sub-rule (5)(iii) that the disciplinary authority shall consider the representation made by Railway servant in pursuance of the notice given to him under Clause (i) and determine what penalty, if any, should be imposed on him and make such order as it may deem fit.

20. Sri Lalji Sinha has referred the case of Union of India (UOI) and Others Vs. K. Rajappa Menon, , wherein it has been held that It is not obligatory on the disciplinary authority to discuss the evidence and the facts and circumstances established at the departmental inquiry in details as if it were an order or a judgment of Judicial tribunal.

21. In the case of Union of India v. Mahabir Prasad Srivastava 1973(1) SLR 813 , it has been held by this Court that "learned counsel for the Petitioner has failed to bring to our notice any provision in the Railway Servants (Discipline and Appeal) Rules, 1968 which requires the disciplinary authority to discuss in details the oral and documentary evidence produced in the case before passing an order punishing the Railway servants." It has also been held that the Rules are to be read not in a pedantic manner but in a practical and reasonable way and that a substantial compliance with them is sufficient.

22. In the case of State of Madras v. Shri Niwas Singh AIR 1976 SC 1827, it has been held:

It is unreasonable to suggest that the State Government must record its reasons as to why it accepts the finding of the tribunal.

23. The Railway Servants (Discipline and Appeal) Rules, 1968 does not provide any scope for making oral submissions along with the representation made by delinquent in reply to the second show cause notice. What the rules require is

that the authority shall consider the representation and determine the penalty, if any. In the absence of any rules thereof, it cannot be said that by not providing an opportunity to the Appellant to conduct any hearing at that stage, the disciplinary authority has violated the procedural norms or principles of natural justice. It appears that the detailed representation made by the appeal was considered and an order of removal was passed. In view of the given decisions, it is also not necessary to write out a judgment or to give any details which the Inquiring Officer already considered and made finding.

24. After perusing the materials on record, I find that two charges were framed for his absence from 29.10.1967 to 31.1.1971 and for resorting to private practice in between January, 1968 to 31.1.1971. The Inquiring Officer has followed the provisions while conducting the inquiry and came to the conclusion with the finding of guilt and referred the matter to the Railway Board through Central Vigilance Commissioner, who passed the order of removal after due consideration. It appears that the actions taken by all the authorities at different stages are in accordance with Rules and I also find that the decision of the trial Judge in this respect was in right direction. There is no infirmity in the judgment of the learned trial court which calls for interference at this stage.

25. Learned Counsel has submitted that the penalty imposed on the Appellant is too excessive. Rules 6 (1) provides for major punishment. The allegations are serious in nature. A medical practitioner absented for more than two and half years without taking any leave and resorted to private practice at the cost of ailing patients admitted to the hospital for his self-gain ignoring the laws and rules of the institution, would have adverse effect, if any lenient decision with regard to the penalty is taken. So I do not consider that this is a case where any leniency with regard to the punishment be taken at this stage as the matter has been dealt with by different authorities at different stages but each of the authorities has come to the finding adverse to the interest of the Appellant which I feel he deserves.

26. I do not find any merit in this appeal and hence it is dismissed with costs.