
(2003) 12 MP CK 0009

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1827 of 2003

Union of India (UOI) and Another

APPELLANT

Vs

A.K. Mishra and Another

RESPONDENT

Date of Decision : 10-12-2003

Acts Referred:

Constitution of India, 1950 — Article 142, 323A

Citation : (2004) ILR (MP) 122 : (2004) 2 JLJ 203

Hon'ble Judges : Kumar Rajaratnam, C.J.; Dipak Misra, J

Bench : Division Bench

Advocate : I. Nair, for the Appellant; Yadav, for the Respondent

Judgement

Kumar Rajaratnam, C.J.—First Respondent was an employee of the Railways. He was in the rank of Travelling Ticket Inspector (for short TTI). He was charge-sheeted under the provisions of the Railway Service Conduct Rules, 1966. A detailed enquiry was held. The Enquiry Officer found that the charges levelled against the 1st Respondent were not proved. The Disciplinary Authority did not agree with the finding of the Enquiry Officer and without show cause notice to the 1st Respondent, imposed penalty of removal from service. The first Respondent (hereinafter referred to as "the employee") preferred an appeal. The appellate authority modified the penalty of removal to that of compulsory retirement.

2. Aggrieved by the order of the appellate authority, the employee approached the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (for short "the Tribunal"). The Tribunal, by order dated 7th May 2003 in O.A. No. 855 of 2000, set aside the order of the appellate authority and directed the Railways to reinstate the employee in service and give him all consequential benefits. It is against this order of the Tribunal, the Railways are before us in this writ petition.

3. The Tribunal rightly held that if the disciplinary authority disagrees with the findings of the Enquiry Officer, there is a duty cast upon it to afford an

opportunity to the employee to show cause why the disciplinary authority disagreed with the findings of the Enquiry Officer (See AIR 1998 SC 273 - Punjab National Bank and Ors. v. Kunj Bihari Mishra). The Tribunal went further and examined the case against the employee and came to the conclusion that this was a case of "no evidence".

4. In fact, the Railways were not able to satisfy the Tribunal as to the nature of evidence against the employee. The Tribunal took upon itself the task of finding out for itself whether a prima facie case has been made out against the employee on the basis of the enquiry report and the evidence collected to enable the disciplinary authority to differ with the findings of the Enquiry Officer.

5. It is perfectly possible for the Tribunal to have set aside the punishment rendered by the appellate authority and direct the disciplinary authority to re-consider the matter and if the disciplinary authority differs with the findings of the Enquiry Officer, to have issued a show cause notice to the employee.

6. The Tribunal did not do this as it should normally have done and ought to have left it to the disciplinary authority to take such steps as were necessary in accordance with law. This is the normal procedure to be adopted. The Courts and Tribunals should be very careful in re-appraising the evidence against an employee in domestic enquiry, for that is the job of the disciplinary authority and the appellate authority. It can never be the job of the Court to re-appreciate the evidence before the Enquiry Officer and come to its own conclusion that the disciplinary authority would have had no alternative except to confirm the finding of the Enquiry Officer.

7. Let us now examine whether this case comes under the nomenclature of "no evidence". The Tribunal examined the allegations against the employee and the findings rendered by the Enquiry Officer.

8. Article No. 1 of the charge-sheet stated that the employee while on checking duty on 14.5.1998 in Train No. 1658 from Bhopal to Chhindwara, in connivance with his colleagues, had collected Rs. 250.00 from on Barat party of 40 passengers and allowed them to travel on the train from Jambhara to Junnardeo. Article No. 2 of the charge-sheet was that after arrival of the train, the employee and his colleague Shri H.R. Ahirwal misbehaved with the on duty Ticket Collector Shri C.G. Pradhan and the employee did not collect railway fare from 38 passengers and there was a loss to the Railways to the extent of Rs. 2,888.00 with respect to the tickets of 38 passengers.

9. It is not doubt true mat the Enquiry Officer has given a finding that the charges have not been proved beyond doubt. But that will not enable the Tribunal to hold that it was the case of "no evidence". If the disciplinary authority reconsiders the matter, it cannot be ruled out that the disciplinary authority may not issue fresh show cause notice and if, after application of mind, the disciplinary authority considers that the report of the Enquiry Officer can be accepted, the employees may be exonerated. But the fact remains that the

disciplinary authority imposed the punishment on the employee disagreeing with the finding of the Enquiry Officer would clearly indicate that there was no application of mind on the part of the disciplinary authority.

10. Mrs. I. Nair, learned Senior Counsel for the Railways fairly conceded that the procedure adopted by the disciplinary authority was contrary to the law and that the disciplinary authority ought to have issued show cause notice to the employee and given reason as to why he differed with the findings of the Enquiry Officer. This having not been done, learned Senior Counsel for the Railways submitted that the matter may be remitted to the disciplinary authority. She, however, did not support the view taken by the Tribunal that this was a case of "no evidence".

11. The Supreme Court in *Kuldip Singh v. Commissioner of Police and Ors.* (1992) 2 SCC 10 pronounced that the Court can interfere with the finding of guilt if it is based on "no evidence" or is such as could not be reached by an ordinary prudent man or is perverse or is made at the dictates of a superior officer. The Supreme Court laid down the conditions precedent of "no evidence" before a Court can exercise judicial review and interfere in the service matters. We do not think that this is a case of "no evidence". Equally we do think that this is a case where the disciplinary authority is bound to interfere with the findings of the Enquiry Officer.

12. All that we can say at this stage after perusing the records is that the order of compulsory retirement in the facts and circumstances of this case appears to be harsh and shockingly disproportionate. None of the witnesses in the domestic enquiry appears to have fully supported the case against the employee. There is also element of doubt as to whether the employee had any pecuniary advantage in allowing the 38 passengers to travel in the train. It also cannot be ruled out that in spite of the best efforts of the employee, the marriage-party barged into the train and the employee was helpless. This unfortunately happens quite frequently in the trains in Bihar and Madhya Pradesh. The marriage-parties and political volunteers barge into the train and very often the Ticket Checker is helpless in the matter and sometimes he is threatened by the passengers, who travel without tickets. However, these are all mitigating circumstances, which may go to reduce the quantum of punishment. Therefore, it would be appropriate for the disciplinary authority to carefully peruse the findings of the Enquiry Officer and give adequate reasons as to why the disciplinary authority should differ with the report of the Enquiry Officer. The disciplinary authority is the best judge to examine the evidence and the report in its totality and come to an objective finding. Even if the disciplinary authority were to differ with the finding of the E.O., it is the duty of the disciplinary authority to impose such punishment based on equity and good conscience.

13. In the totality of the circumstances, we felt it appropriate to impose a lesser penalty on a consensus so that the litigation may come to an end in this Court.

14. We were faced with the inevitable consequences of setting aside the order passed by the Appellate Authority and the disciplinary Authority. Financial consequence is mind-boggling, for the fault of the disciplinary authority in not issuing the show cause notice on the employee. It has been brought to our notice that if the employee is reinstated and if the law is allowed to take its course, the amount of back-wages would amount to lacs of rupees and ultimately for the fault of the disciplinary authority, the Railways will be visited with the liability running into lacs of rupees in the form of back wages and reinstatement.

15. We have endeavoured to save the railways of this liability to pay back wages on account of the mistake committed by the Disciplinary Authority and requested Shri Yadav, learned Counsel for the employee to concede on back wages running into lacs of rupees on condition that his client, the employee, in reinstated without back wages and lesser punishment is imposed on him than compulsory retirement. Shri Yadav, learned Counsel for the employee submitted that his client (the employee) has declined to accept any relief arising out of the order which inflicted the punishment of compulsory retirement since the matter is sub judice.

16. If we adopt the strait jacket approach, the consequential order this Court will have to pass will be setting aside the order of the appellate authority and directing reinstatement of the employee with back-wages and continuity of service. The consequential order of the Court will be to set aside the order of the Appellate Authority and to direct reinstatement of the employee with with back-wages and continuity of service and give liberty to the Disciplinary Authority to issue fresh show cause notice to the employee as to why he differs with the enquiry report.

17. The whole drama will start once again in the form of show cause notice, reply, punishment if the employee is held guilty, appeal and needless to say Writ Petitions and Letters Patent Appeals.

18. Having reached thus far, is it permissible for the Court to substitute a lesser punishment if the evidence so warrants without remitting it to the Disciplinary Authority ? The answer is "No" in general, and "Yes" in rarest of rare cases.

19. We have done some home work on this matter by perusing the pronouncements of the Supreme Court. Our concern is that nobody should suffer in this protracted litigation, which will take us nowhere. We also desire to rid the liability of the Railways to pay back-wages for the folly of the disciplinary authority in not issuing the show cause notice. Even the Appellate Authority did not notice this vital defect in the procedure.

20. Ultimately, the financial liability will have to be borne by the Railways for the error committed by the Disciplinary Authority. The employee was dismissed from service by order dated 11.1.2000 and we are at the end of 2003. Back-wages for three years or more can be saved if adequate punishment commensurate to the gravity of charges is inflicted upon the employee without going through the

rigour of procedure in extra-ordinary circumstances to do complete justice to both parties.

21. Our thoughts went to the pronouncement of the Supreme Court in *B.C. Chaturvedi Vs. Union of India and others*, , *Hansaria, J.* concurring with the judgment of *K. Ramaswamy, J.* pronounced as follows :

21.1 am in respectful agreement with all the conclusions reached by learned brother *Ramaswamy, J.* This concurring note is to express my view on two facets of the case. The first of these relates to the power of the High Court to do "complete justice", which power has been invoked in some cases by this Court to alter the punishment/penalty where the one awarded has been regarded as disproportionate, but denied to the High Courts. No doubt, Article 142 of the Constitution has specifically conferred the power of doing complete justice on this Court, to achieve which result it may pass such decree or order as deemed necessary; it would be wrong to think that other Courts are not to do complete justice between the parties. If the power of modification of punishment/penalty were to be available to this Court only under Article 142, a very large percentage of litigants would be denied this small relief merely because they are not in a position to approach this Court, which may, inter alia, be because of the poverty of the person concerned. It may be remembered that the framers of the Constitution permitted the High Courts to even strike down a parliamentary enactment, on such a case being made out, and we have hesitated to concede the power of even substituting a punishment/ penalty, on such a case being made out. What a difference ! May it be pointed out that Service Tribunals too, set up with the aid of Article 323A have the power of striking down a legislative act. 22. The aforesaid has, therefore, to be avoided and I have no doubt that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has, in view of a long line of decisions of this Court, to which reference is not deemed necessary, as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience.

And concluded as follows :

26.1 had expressed my unhappiness qua the first facet of the cases, as Chief Justice of the Orissa High Court in paras 20 and 21 of *Krishna Chandra Pallai v. Union of India*, by asking why the power of doing complete justice has been denied to the High Courts. I feel happy that I have been able to state, as a Judge of the Apex Court, that the High Courts too are to do complete justice. This is also the result of what has been held in the leading judgment.

The Supreme Court in the case of *Director General R.P.F. and Others Vs. Ch. Sai Babu*, pronounced at paragraphs 6 and 7 as follows :

6. As is evident from the order of the learned single Judge, there has been no consideration of the facts and circumstances of the case including as to the

nature of charges held proved against the Respondent to say that penalty of removal from service imposed on the Respondent was extreme. Merely because it was felt that the punishment imposed was extreme was not enough to disturb or modify the punishment imposed on a delinquent officer. The learned single Judge has not recorded reasons to say as to how the punishment imposed on the Respondent was shockingly or grossly disproportionate to the gravity of charges held proved against the Respondent. It is not that in every case of imposing a punishment of removal or dismissal from service a High Court can modify such punishment merely by saying that it is shockingly disproportionate. Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a Tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works.

7. In the present case we do not find that there has been a consideration of all the relevant facts and the learned single Judge has not recorded reasons in order to modify the punishment imposed. The Division Bench of the High Court also did not examine the matter in proper perspective but simply concurred with the order passed by the learned single Judge. Normally in cases where it is found that the punishment imposed is shockingly disproportionate, High Courts or Tribunals may remit the cases to the disciplinary authority for reconsideration on the quantum of punishment. In this case the disciplinary proceedings were initiated in the year 1989 and to shorten the litigation, we think it appropriate to set aside the impugned order and remit Writ Appeal No. 952 of 1998 to the Division Bench of the High Court to reconsider the case only on the quantum of punishment imposed on the Respondent having regard to all relevant factors including the fact that the Respondent was a member of the Railway Protection Force and in the light of the observations made above. Since the proceedings are pending for quite some time, we request the High Court to dispose of the writ appeal expeditiously. The impugned order is set aside and the appeal is ordered in the above terms. No costs.

(emphasis by the Court)

The Supreme Court in the case of *Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar*, has in paragraphs 15 and 16 pronounced as follows :

15. It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union* observed: (All ERp.

1154 h) "The giving of reasons is one of the fundamentals of good administration." In *Alexander Machinery (Dudley) Ltd. v. Crabtree* it was observed : "Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "Inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings notwithstanding acquittal in the criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon the facts of each case and even that cannot have universal application.

16. In the peculiar circumstances of the case, it would be appropriate to send the matter back to the High Court for fresh consideration. The High Court shall only consider the punishment aspect, treating all other matters to be closed and to have become final. The appeal filed by the employer is accordingly disposed of while that filed by the employee is dismissed.

(emphasis by the Court)

22. Looking at the law as enunciated by the Supreme Court and taking into account the totality of circumstances, it is permissible in the rarest of rare cases for the High Court to substitute a punishment if that punishment would meet the ends of justice. This is not to say that in all cases, the High Court or the Tribunal has the power for substitution of punishment. The general rule is if the punishment is hockingly disproportionate, it should invariably be sent to the Disciplinary Authority for re-appraisal of the matter in accordance with law. But there are rare occasions when the Court comes to the conclusion that the punishment so imposed is so shockingly disproportionate that it requires interference by the Court. It may on those rare occasions set aside that punishment and render a punishment that would sub-serve the larger interest of the employer and employee and such substituted punishment would be in public interest.

23. We have carefully examined the facts of the case and the materials on record

with reference to whether a case is made out as bringing it under the category of "no evidence". In this regard, we have perused the report of the enquiry officer and the evidence placed on record. It appears from the enquiry report that the employee would be entitled to benefit of doubt. The main witnesses did not support the prosecution. However, the fact of the matter is that two passengers who did not have tickets were apprehended and 38 were allowed to go off. The Disciplinary Authority never took into account the ground reality that the ticket-less passengers force themselves into the compartment and the employee is not able to control this aspect.

24. The findings of the Enquiry Officer are that the prosecution witnesses failed to bring out and confirm what has been alleged in the complaint dated 14.5.1998. So far as the realization of the amount of Rs. 260 is concerned, the Enquiry Officer has concluded that it has not been established from the evidence collected during the course of enquiry. However, in conclusion, the Enquiry Officer has held that the delinquent employees are responsible as there would be no smoke without fire and for giving evidence not in tune with their original statement. The Disciplinary Authority disagreeing with the findings of the Enquiry Officer has held that the case is based upon the original statements of the prosecution witnesses. All the prosecution witnesses have accepted their original statements given at the time of detection except the complainant. Each and every prosecution witness has stated about the barat-party consisting of 40 passengers and regarding realization of Rs. 250.00 from the complainant with an assurance that all 40 passengers would be allowed to be let-off from the station. Their statements given at the time of detection are in conformity with each other except the complainant who is one of the beneficiaries in the said happening. On the basis of evidence of the prosecution witnesses and keeping in view the contradictions which have crept in, the Disciplinary Authority has agreed only with the second part of conclusion reached by the Enquiry Officer that the delinquent employee is responsible for the charges leveled against him and disagreed with first part thereof and concluded that there is sufficient circumstantial evidence available on record that the employee is guilty of the said charges. On the basis of the material available on record, we can certainly record that the present is not the case of "no evidence".

25. Taking all these factors into account, it would be in the interest of the Railways and the employee to put an end to this litigation without a fuss. We feel, after a careful consideration of the evidence, after taking into account the evidence, the report of the Enquiry Officer, the folly of the Disciplinary Authority, the liability of the Railways to pay the huge back-wages and after hearing Smt. I. Nair, Senior Counsel for Railways and Shri Yadav, learned Counsel for the employee, and keeping in view the equity and good conscience that the first Respondent employee should be visited with the punishment of withholding three increments with cumulative effect with a direction to the Railways to reinstate him in service without back-wages but with continuity in service.

26. Accordingly, we modify the order of the Tribunal and dispose of the writ petition with the following directions :

(i) The punishment imposed by the Appellant authority on the employee, 1st Respondent, is set aside and instead the first Respondent employee is awarded punishment of withholding of three increments with cumulative effect.

(ii) The Railways are directed to reinstate the employee (first Respondent) in service without back-wages but with continuity in service within a period of one month from the date of receipt of the order.

There shall be no order as to costs.

We place on record the assistance rendered by Smt. I. Nair, Senior Counsel and Shri Yadav, Advocate.