
(2004) 08 MP CK 0030

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 4874 of 2004

Union of India (UOI) and Others

APPELLANT

Vs

Mohd. Naseem Siddiqui

RESPONDENT

Date of Decision : 05-08-2004

Acts Referred:

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

Citation : (2004) ILR (MP) 821 : (2005) 1 LLJ 931

Hon'ble Judges : R.V. Raveendran, C.J.;K.K. Lahoti, J

Bench : Division Bench

Advocate : Indira Nair and S. Aole, for the Appellant; Sujoy Paul, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Raveendran, C.J.—The respondent was an employee of the Central Railway. A charge- sheet was issued on November 1, 1999 alleging fraud and misappropriation by him while working as Head Booking Clerk at Bhopal. One S.P. Nigam was appointed as Inquiry Officer. After inquiry, the Inquiry Officer submitted a report holding the respondent guilty of the charges. Acting on the said report, the Disciplinary Authority by order dated October 29, 2001 imposed the punishment of removal from service. The appeal filed by the respondent was rejected on April 3, 2002.

2. Feeling aggrieved, the respondent approached the Central Administrative Tribunal, Jabalpur Bench, in O.A. No. 408/2002. The Respondent urged that the domestic inquiry was opposed to principles of natural justice and therefore vitiated on the following two grounds:

(i) The Disciplinary Authority did not appoint any Presenting Officer to present the case. The Inquiry Officer himself acted as the Presenting Officer and conducted regular examination-in-chief of the prosecution witnesses and put questions suggestive of answers supporting the charges. The Inquiry Officer also

cross- examined the defence witnesses. The action of Inquiry Officer acting also as the Presenting Officer, amounts to Judge acting as a prosecutor which is opposed to principles of natural justice.

(ii) The documents requested by the Respondent to establish his case (Voucher Entry Book for the dates February 26, 1997 and February 27, 1997 and Cash Remittances (sic) dated February 27, 1997, March 1, 2, 4, 6, 7, 10 and 11, 1997) were neither produced nor made available for inspection, in spite of respondent insisting that they were necessary to prove that he was not guilty and one Albert Tigga and S.K. Dubey were responsible. The Respondent was thus prevented from effectively presenting his case to establish that he was not guilty.

3. The Tribunal by order dated March 25, 2004 allowed the application. It held that the Inquiry Officer acted as the Presenting Officer and thus the inquiry was vitiated as it violated the principles of natural justice. The Tribunal therefore set aside the orders of the Disciplinary Authority and the Appellate Authority and remitted the matter to the Disciplinary Authority to conduct an inquiry against the respondent afresh from the stage of appointment of Presenting Officer.

4. Feeling aggrieved, the Railway administration has filed this appeal. Ms. Indira Nair, learned senior counsel appearing for the petitioners relying on Rule 9(9)(c) of the Railway Servants (Discipline & Appeal) Rules, 1968 ("Rules" for short) and the Railway Board circular dated October 20, 1971, contended that it was not necessary for the Disciplinary Authority to appoint a Presenting Officer in every case and he had the discretion either to appoint or not to appoint a Presenting Officer. She also placed reliance on the decisions of the Supreme Court in *Workmen in The Workmen Employed in B and C Mills, Madras Vs. The Management of B and C Mills, Madras*, and *Mulchandani Electrical and Radio Industries Ltd. Vs. The Workmen*, in support of her contention.

5. Rule 9(9)(c) of the Rules relied on by the Railway administration is extracted below for ready reference:

"Where the disciplinary authority itself inquires into an article of charge or appoints a Board of Inquiry or any other inquiring authority for holding an inquiry into such charge, it may, by an order in writing, appoint a Railway or any other Government servant to be known as "Presenting Officer" to present on its behalf the case in support of the articles of charge."

The contention of the petitioners is that as the Rule uses the word "may appoint a Presenting Officer", appointment of a Presenting Officer is not mandatory and such appointment depends on the discretion of the disciplinary authority. A careful reading of the said rule shows that it is an enabling provision which gives discretion to the disciplinary authority to appoint - any rail way or other Government servant as a Presenting Officer to present the case on behalf of the Disciplinary Authority. But, the said provision does not permit an Inquiry Officer to act as the Presenting Officer and conduct examination-in-chief of the departmental witnesses and cross-examine the defence witnesses.

6. The Railway Board Circular No. E(D&A) 705 RG-6-41 dated October 20, 1971 relied on by the petitioners reads thus:

"The Disciplinary authority may, by an order in writing on Standard Form No. 8 (Specimen in Appendix II) nominate a Railway Servant or any other Government Servant to be known as "Presenting Officer" to present the case in support of the charges, before the Inquiring authority. The nomination of a Presenting Officer by disciplinary authority is not obligatory but only discretionary with the disciplinary Authority. In case, where no Presenting Officer is appointed, the inquiring authority may itself examine and cross-examine the witnesses to find out the truth of the charges."

Such clarificatory circulars are issued by the Railway Board from time to time. These circular instructions change from time to time and are merely guidelines which have no statutory force. Though such circulars may be useful to regulate the affairs of the railway establishment, they cannot be pressed into service before a Labour Court or Tribunal to justify any illegal action. In fact, the said circular relied on by the department, has been diluted and modified in several subsequent circulars. Initially the practice was to appoint Presenting Officer only in cases of gazetted officers into whose cases the departmental inquiries were conducted by Commissioners for departmental inquiries in the Central Vigilance Commission. By subsequent circular dated August 23, 1975, the Railway Board decided that even in departmental enquiries against non-Gazetted Staff Presenting Officers may be appointed where action is initiated at the instance of SPE/CBI. By subsequent circular dated January 20/22, 1979, appointment of Presenting Officer was permitted in complicated vigilance cases. We have referred to the subsequent circulars only to show that the circular instructions, by, themselves are not decisive and cannot be pressed into service unless they are in accordance with law.

7. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause. This principle consists of seven well recognised facets: (i) The adjudicator shall be impartial and free from bias, (ii) The adjudicator shall not be the prosecutor, (iii) The complainant shall not be an adjudicator, (iv) A witness cannot be the Adjudicator, (v) The Adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges, (vi) The Adjudicator shall not decide on the dictates of his Superiors or others, (vii) The Adjudicator shall decide the issue with reference to material on record and not reference to extraneous material or on extraneous considerations. If any one of these fundamental rules is breached, the inquiry will be vitiated.

8. In Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, while dealing with this principle, the Supreme Court observed thus at pp. 554 & 555 of LLJ:

"10. Since the rules of natural justice were not embodied rules it is not possible and practicable to precisely define the parameters of natural justice.One

of the cardinal principles of natural justice is "Nemo debet esse iudex in propria causa (no man shall be a judge in his own cause). The deciding authority must be impartial and without bias. A pre-disposition to decide for or against one party without proper regard to the true merits of the dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias

11. ... For appreciating a case of personal bias or bias to the subject matter, the test is whether there was a real likelihood of a bias even though such bias has not in fact taken place. DE SMITH IN HIS JUDICIAL REVIEW OF ADMINISTRATOR ACTION (1980 Edition at Page 262) has observed that a real likelihood of bias means at least substantial possibility of bias. In R. v. Sunderland Justices (1901 [2] KB 357) it has been held that the Court will have to judge the matter as a reasonable man would judge of any matter in the conduct of his own business. In R. v. Sussex Justices (1923 All E.R. 233) it had been indicated that answer to the question whether there was a real likelihood of bias depends not upon what actually was done but upon what might appear to be done. In HALSBURY'S LAWS OF ENGLAND (4th Edition Vol. 2 Para 51) it has been indicated that the test of bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious misapprehension of bias. The same principle has also been accepted by this Court in Manak Lal Vs. Dr. Prem Chand, . This Court has laid down that the test is not whether in fact, a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done."

9. A domestic inquiry must be held by an unbiased person who is unconnected with the incident so that he can be impartial and objective in deciding the subject matters of inquiry. He should have an open mind till the inquiry is completed and should neither act with bias nor give an impression of bias. Where the Inquiry Officer acts as the Presenting Officer, bias can be presumed. At all events, it clearly gives an impression of bias. An Inquiry Officer is in position of a Judge or Adjudicator. The Presenting Officer is in the position of a Prosecutor. If the Inquiry Officer acts as a Presenting Officer, then it would amount to Judge acting as the prosecutor. When the Inquiry Officer conducts the examination-in- chief of the prosecution witnesses and leads them through the facts so as to present the case of the disciplinary authority against the employee or cross- examines the delinquent employee or his witnesses to establish the case of the employer/ disciplinary authority evidently, the Inquiry Officer cannot be said to have an open mind. The very fact that he presents the case of the employer and supports the case of the employer is sufficient to hold that the Inquiry Officer does not have an open mind.

10. But there is however a clear and real distinction between an Inquiry Officer acting as the Presenting Officer, and an Inquiry Officer putting some questions to

any witness to clarify the evidence or ascertain the truth. While the first would vitiate the inquiry the second would not. We may refer to a few relevant decisions on this aspect.

11. In *M.G. Wagh and Others Vs. Jay Engineering Works Ltd.*, the Supreme Court considered a case where the Manager of the Estate presided over the inquiry, recorded the statements, cross-examined the delinquent employees and also recorded his own statement. The Supreme Court held at p. 317:

"..... The Manager did not keep his functions as the Enquiry Officer distinct but became witness, prosecutor and Manager in turn. The record of the enquiry as a result is staccato and unsatisfactory"

12. In *Abdul Wajeed v. State of Karnataka* (1981 (1) SLR 454), a single Judge of the Karnataka High Court (RAM Jois J, as he then was) held:

"In my view, the cross-examination of PW-11 who had supported the version of the petitioner, and more particularly the cross- examination of the two defence witnesses by the Enquiry Officer suggesting to them that they were uttering falsehood is sufficient to hold that the Enquiry Officer was biased ... In my view, the cross-examination of defence witnesses by the Enquiry Officer was in plain violation of the principles of natural justice and consequently enquiry proceedings were vitiated."

13. In a subsequent decision in *Bharath Electronics Ltd. Vs. K. Kasi, (Kant)*, the same Judge stated the law succinctly thus at p. 208:

"8. ... There is no legal compulsion that Presenting Officer should be appointed. Therefore, the mere fact that the Presenting Officer was not appointed is no ground to set aside the inquiry. It is true that in the absence of Presenting Officer, if the Inquiring Authority plays the role of the Presenting Officer, the inquiry would be invalid.

9. if the Inquiring Authority plays the role of a prosecutor and cross-examines defence witnesses or puts leading questions to the prosecution witnesses clearly exposing biased state of mind, the inquiry will be opposed to principles of natural justice....."

14. In *Workmen in Buckingham & Carnatic Mills v. Buckingham & Carnatic Mills* (supra) and *Mulchandani Electrical & Radio-Industries Ltd. v. Workmen* (supra), the Supreme Court held that the inquiry will not be vitiated where the Inquiry Officer puts questions to the witnesses (whether prosecution witnesses or defence witnesses) to obtain; clarifications wherever it becomes necessary, provided the Inquiry Officer permits the delinquent employee to cross-examine the witnesses on such clarifications. It was made clear that this will be the position even though there is no Presenting Officer representing the employer/ disciplinary authority.

15. In inquiries where there are not many witnesses or where the documents are

admitted or where the matter does not involve complex issues, the disciplinary authority may routinely decide to dispense with the appointment of a Presenting Officer. When there is no Presenting Officer, what is permissible conduct for an Inquiry Officer and what is not, can be explained by the following illustration:

Let us take a case where the Disciplinary Authority causes the production of the relevant documents before the Inquiry Officer. The prosecution witnesses appear before the Inquiry Officer and give their statements which are recorded by the Inquiry Officer. There is no examination-in-chief. The Inquiry Officer merely asks the prosecution witnesses as what they have to say about the charges against the delinquent employee and records the statements of the Prosecution Witnesses. He also puts some questions to elicit the truth and clarify the evidence. Thereafter, the Inquiry Officer permits the delinquent employee or his representative to cross-examine the prosecution witnesses. After the conclusion of the prosecution evidence, the statements of the delinquent employee and his witnesses, if any are recorded. The Inquiry Officer then puts questions to the delinquent employee and his witnesses to seek some clarifications to arrive at the truth. In such a case, the conduct of the Inquiry Officer is proper and within limits and the inquiry is not vitiated. But in such an inquiry, if the Inquiry Officer examines the prosecution witnesses as a Prosecutor does by taking them through the prosecution case stage by stage and puts leading questions or questions which are intended to build up the case of the prosecution, and also cross-examines the defence witnesses or puts suggestions to them, to establish the prosecution case, then he crosses the Laxman Rekha and becomes the prosecutor and consequently the inquiry becomes vitiated.

16. We may summarise the principles thus:

- (i) The Inquiry Officer, who is in the position of a Judge shall not act as a Presenting Officer, who is in the position of a prosecutor.
- (ii) It is not necessary for the Disciplinary Authority to appoint a Presenting Officer in each and every inquiry. Non- appointment of a Presenting Officer, by itself will not vitiate the inquiry.
- (iii) The Inquiry Officer, with a view to arrive at the truth or to obtain clarifications, can put questions to the prosecution witnesses as also the defence witnesses. In the absence of a Presenting Officer, if the Inquiry Officer puts any questions to the prosecution witnesses to elicit the facts, he should thereafter permit the delinquent employee to cross-examine such witnesses on those clarifications.
- (iv) If the Inquiry Officer conducts a regular examination-in-chief by leading the prosecution witnesses through the prosecution case, or puts leading questions to the departmental witnesses pregnant with answers, or cross-examines the defence witnesses or puts suggestive questions to establish the prosecution case employee, the Inquiry Officer acts as prosecutor thereby vitiating the inquiry.

(v) As absence of a Presenting Officer by itself will not vitiate the inquiry and it is recognised that the Inquiry Officer can put questions to any or all witnesses to elicit the truth, the question whether an Inquiry Officer acted as a Presenting Officer, will have to be decided with reference to the manner in which the evidence is let in and recorded in the inquiry.

Whether an Inquiry Officer has merely acted only as an Inquiry Officer or has also acted as a Presenting Officer depends on the facts of each case. To avoid any allegations of bias and running the risk of inquiry being declared as illegal and vitiated, the present trend appears to be to invariably appoint Presenting Officers, except in simple cases. Be that as it may.

17. In this case, no Presenting Officer was appointed. The evidence on behalf of the Disciplinary Authority has been presented by the Inquiry Officer, by conducting regular examination-in-chief of prosecution witnesses by taking them through the prosecution case. The Inquiry Officer has also conducted regular cross-examination of the defence witnesses. This is not a case where the Inquiry Officer merely put a few questions to clarify certain aspects. The Inquiry Officer has put questions to present the prosecution case and make out the prosecution case. Leading questions suggestive of answers have been put to the prosecution witnesses. The fact that Inquiry Officer acted as the Presenting Officer is not seriously disputed. In fact it is sought to be justified as permissible as per Railway Board circulars. In the circumstances, we find that the inquiry was vitiated.

18. We find no error in the order of the Tribunal. The Tribunal has reserved liberty to petitioners to resume the inquiry from the stage of appointment of Presenting Officer. The petition is, therefore, dismissed.