
(1972) 12 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Second Appeal No. 65/71

Union of India (UOI)

APPELLANT

Vs

Premchand

RESPONDENT

Date of Decision : 07-12-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1973) RLW 146 : (1972) WLN 1091

Hon'ble Judges : J.P. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.P. Jain, J.—Union of India has filed this appeal against the appellate judgment and decree of the Civil Judge, Ajmer dated 26th August, 1970 by which the decree passed by the Munsif, Ajmer City (East) was reversed and the respondent's suit No. 305/66 was decreed.

2. Premchand was working as a permanent Khalasi in the Carriage Department, Ajmer. He was charged for misconduct and after a preliminary enquiry, he was suspended on 21-5-1965. After a joint enquiry against him Sarv Shri Omprakash Grover and Deoraj, he was removed from service on 11-5-1966 by the order of the Works Manager (Carriage), Ajmer (Ex. 1). He preferred an appeal to the Deputy C.M.E. Ajmer but it was dismissed on 19-11-1966 (Ex A 23). He served the Union of India with a statutory notice u/s 80 C.P.C. After the expiry of the notice, he instituted the civil suit No. 305/66 in the court of Munsif, Ajmer City (East) on 10-12-1966 against the order of his removal from service. He prayed for a declaration that the order of his removal dated 11-5-1966 passed by the Works Manager (c), Ajmer, WAS null and void and he still continues to be in service of the Union of India. He also claimed a decree for Rs. 1233.39 due to him on account of the arrears of pay etc. into the date of the suit. The detail of this amount was given in Annexure A attached with the plaint.

2. The suit was resisted on behalf of the Union of India by written statement dated 20-4-1967. The grounds on which the plaintiff challenged the order of removal were controverted by it. It was insisted that enquiry committee was constituted according to law, the enquiry proceedings took place in conformity with the rules and there was no denial of the rules of natural justice to the plaintiff. The validity of the notice u/s 80 C.P.C. was also disputed.

3. The learned trial Judge settled the questions of controversy between the parties. The issues framed by him are as follows:

1. Whether the findings given by the Board of Enquiry are without jurisdiction?
2. Whether the order of removal has been passed wrongfully and stands vitiated for reasons mentioned in para 3 of the plaint?
3. Whether notice dated 24-9-1966 u/s 80 C.P.C. is illegal and invalid?
4. What should be the relief?

4. After trial, issue No. 3 was not pressed by the Union of India. Issues No. 1 and 2 were found against the plaintiff. The learned trial Judge accordingly dismissed the plaintiff's suit by his judgment dated 30th July, 1968.

5. Being dissatisfied with the decree, the plaintiff approached the District Judge, Ajmer. His appeal was transferred to the Civil Judge, Ajmer for disposal. The first appellate court decided Issue No. 1 against the plaintiff. It also affirmed some of the findings of the learned trial Judge under issue No. 2. However, the grounds taken up in para 3(c), (d), (e), (g) and (k) of the plaint were accepted by him and he reversed the findings of the trial Judge in regard to them. As a result of his findings, he granted a declaration that the order of removal dated 11-5-1966 (Ex. 1) is null and void and inoperative and that the plaintiff still continues to be in the service of the Union of India. As regards the money claim, he granted a decree as its correctness was not disputed. It is this decree that has been challenged in second appeal by the Union of India.

6. During the course of arguments it was realised by the plaintiff that he had not claimed the removal of the appellate order of the Deputy C.M.E. (c), Ajmer dated 19-11-1963 (EX. A-23). He instituted the suit on 10-12-1966. The appellate order had already been passed by that time. The plaintiff sought the amendment of the plaint by adding relief to that effect. After having heard learned Counsel for the parties, I thought fit to allow the amendment. There was a mention in the plaint that the plaintiff had filed an appeal and the defendant did not raise an objection in the written statement about it. The amendment did not cause any prejudice. Accordingly leave to amend was given subject to the plaintiff paying cost to the defendant. The cost was paid. The amended plaint was placed on the record of the trial court and a copy of the same was also ordered to be placed in the file of the second appeal.

7. Admittedly a joint enquiry was held against the plaintiff and two other

persons, namely Shri Omprakash Grover and Shri Deoraj Shri Grover and Shri Deoraj did not belong to the Carriage Department. With a view to ascertain as to who passed the order of joint enquiry, Mr. R.C. Bhargava, learned Counsel representing the Union of India was asked to place the relevant order on the record. He placed on record copies of the two letters dated 18-8-1964 from Shri D.C. Joshi, Deputy C.A.O, (T.A). Along with them, copies of five other letters were also produced. Learned Counsel for the respondent had no objection to their being filed. With a view to do justice between the parties, I allowed these document to be placed on record. For the sake of convenience, I have marked these documents as Ex. C-1 to Ex. C-7.

8. Coming to the merits of the case, I will now take up issue No. 1. The contention of the plaintiff before the lower appellate court in this connection was two fold. That the Board of Enquiry which consisted of three persons, namely Shri B.R. Bhandari, Shri S.N. Mathur and Shri Kartar Singh, it was urged, was not validity appointed as all the three of them belonged to different departments and the authority appointing them was not the Disciplinary Authority of all the three officials against whom the enquiry was proposed to be Hone. Another submission was that after the transfer of Shri Kartar Singh, Shri K.L. Mehra, his successor, joined the Board of Enquiry without any specific order of the Disciplinary Authority The learned Judge of the lower appellate court while deciding the issue concentrated himself to the second submission and he failed to give a finding on the first. It has been strenuously urged by learned Counsel for the respondent that a joint enquiry was not in accordance with Rule 1718 of the Railway Establishment Code. The appointment and the constitution of the Board of Enquiry contravened Rule 1710 of the Code and, therefore, the proceedings before the Board of Enquiry and the findings of that Board are without jurisdiction. On the other hand, Mr. Bhargava supported the appointment and the constitution of the Board of Enquiry and the proceedings before it. He however, conceded that Rule 1718 did not apply to the joint enquiry held in the present case. According to him, the joint enquiry was proposed by Shri D.C. Joshi, Deputy Chief Accounts Officer (Traffic Accounts) vide Ex C-1 and Ex. C-2 and after the concurrence of Shri D.V. Ketkar, Deputy C.M.E. (w) vide Ex-C-4 and that of the Divisional Superintendent, Ajmer (Ex C-3), one officer from each department was nominated to constitute the Board of Enquiry. It was so done as the three delinquent officials were from three departments and one officer from each was appointed to hold the joint enquiry.

9. It is no doubt true that the lower appellate court did not address itself to this aspect of the respondent's contention though it was raised before it. The learned appeal Judge after having placed reliance on some authorities proceeded to observe as follows:

...

It is clear that the breach of a statutory rule can be made a ground of action in a Court of law but if the other party is able to show that this breach of rule was

acquiesced by the appellant, then according to the Rule of Estoppel, the plaintiff is estopped from challenging the breach of that rule and to make it a ground of attack against the constitution of the Enquiry Board or its Report. This fact is fully borne out by the three rulings--one of the Mysore High Court and the other of our own Hon"ble High Court and the third of their Lordships of the Supreme Court, cited by learned Counsel of the respondent. It is true that Shri K.L. Mehra was not nominated on the Board by any specific order of the Disciplinary Authority, but in this case, almost most of the enquiry was conducted while Shri K.L. Mehra worked as Member of the Enquiry Board, but the plaintiff never objected to his inclusion in the Enquiry Board. Even after the submission of the report, a written representation was filed by the appellant to challenge the findings of the Enquiry Board. That representation has been marked Ex A/14. No objection WAS raised before the Disciplinary Authority that the constitution of the Board was wrong or against the rules or it was unauthorised. Thus the appellant who acquiesced in the proceedings conducted by the Enquiry Board and took part in the enquiry at every stage, cannot now turn round and say that because the enquiry report has gone against him, the constitution of the Board is against the rules and its report is unauthorised. He is estopped from saying this. I, therefore, find that the learned lower court was right in deciding Issue No. 1 against the appellant and in favour of the respondent.

10. From the above observations of the learned first appellate court, it is abundantly clear that it concentrated its attention only to the effect of Shri K.L. Mehra taking the place of Shri Kartar Singh without any specific order of the Disciplinary Authority. He gave no finding as to whether the initial appointment of the Board of Enquiry consisting of three members was at all valid. I will now address myself to this question.

11. The only rule relating to joint enquiry is Rule 1718 in the Railway Establishment Code. It reads as follows:

1718. Joint Enquiry: (1) Where a railway servant/servants and other government servant/servants are concerned in any case, the President or other authorities competent to impose the penalty of dismissal from service on such Government Railway servants may make an order joint order directing that disciplinary action against all of them may be taken in a common proceeding.

(2) Any such order shall specify:

(i) the authority which may function as the Disciplinary Authority for the purpose of such common proceedings;

(ii) the penalties specified in Rule 1707 which such Disciplinary Authority shall be competent to impose; and

(iii) whether the procedure prescribed in Section V or Section VI may be followed in the proceeding.

This rule obviously envisages a case where an enquiry has to be done against a

railway servant and a Government servant (who is not a railway servant). In such a case, the President or any other authority competent to impose a penalty of dismissal from service on such Railway and Government servant may make an order for joint enquiry. In the present case, all the delinquents are Railway officials. It is manifest that Rule 1718 will not apply. It is not disputed that the plaintiff was a Khalasi in the Carriage Shop and belonged to the mechanical branch. His Disciplinary Authority was Works Manager(C) Ajmer. The higher authority of this branch was Shri D.V. Ketkar, Deputy C.M.E. (W). Omprakash Grover was a clerk in the Traffic Accounts Department and thus belonged to the Accounts Branch. His Disciplinary Authority was Deputy Chief Accounts Officer (T.A.) It was Shri D.C. Joshi at the relevant time. Shri Deoraj was SPC/CNW and belonged to the Personnel Branch In his case, the Disciplinary Authority was Divisional Superintendent. It appears from the letters Ex. G-1 and Ex C-2 addressed by Shri D.C. Joshi, Dy. CAO (T.A.) to Shri D.V. Ketkar, Dy. CME (w) and Shri S.C. Samant, D.S. Ajmer that a fact finding enquiry against these three persons was conducted to enquire into a complaint against them and that he was of the opinion that a confronted joint enquiry should be held against all the three together. He also suggested that one assistant officer from each branch be nominated to conduct the said enquiry On his part he appointed Shri B.R. Bhandari, AAO (Gen) from the Accounts Branch. He further asked Shri Ketkar to appoint his Assistant Works Manager (p) and suggested to Shri Samant to appoint Shri Sobhagmal Mathur APO, From these two letters Ex C-1 and Ex C-2 it clearly transpires that he only asked them to appoint, their nominees on the Board of Enquiry though he made a reference of the confronted joint enquiry, but he did not ask them if a joint enquiry was feasible or they agreed to that. In answer to these two letters, Shri D.V. Ketkar nominated Shri Kartar Singh AWM (P) Loco, Ajmer and by letter Ex. C- 3 Shri S.M. Mathur informed Shri Joshi that D.S. Ajmer has nominated him as a member of the Joint Enquiry Board From this it is abundantly clear that it was a decision of Shri D.C. Joshi to hold a joint enquiry. Shri D.C. Joshi, Dy CAO (Traffic Accounts) had no right to order a joint enquiry. Assuming for a moment that all the three disciplinary authorities concurred to hold a joint enquiry, I am afraid this was not permissible under any of the Discipline and Appeal Rules prescribed for the Railway Servants. Here a reference to Rule 1710 may be made. It runs to the following effect:

1710. Appointment of Board of Inquiry or Inquiring Officer: The Disciplinary Authority may inquire into the charges itself, if it considers necessary, it may, either at the time of communicating the charges to the railway servant under Rule 1708 or at any time there after, appoint a Board of Inquiry or an Inquiring Officer for the purpose, which will be termed as the "Inquiring Authority.

It cannot be disputed that it is open to the Disciplinary Authority to enquire into the charges itself or may appoint a Board of Inquiry or an Inquiring Officer for the purpose of inquiry. The "disciplinary authority" as defined in Rule 1702 is set out below:

1702 (ii) "Disciplinary Authority," in relation to the imposition of penalty on a Railway servant means, the authority competent to impose on him that penalty, provided that for imposing penalties of compulsory retirement, removal or dismissal that authority shall be the "Appointing Authority," and in relation to the issue of charge sheets, etc. under Rules 1709 to 1712 and 1716 means, any authority competent to impose any of the penalties specified in Rule 1707.

(1) "Appointing Authority," in relation to a railway servant, means-

(a) the authority empowered to make appointments to the service of which the railway servant is for the time being a member or to the grade of the service in which the railway servant is for the time being included, or

(b) the authority empowered to make appointment to the post which the railway servant for the time being holds, or

(c) the authority which appointed him to such service, grade or post as the case may be, or

(d) Where the railway servant having been a member of any other service or having held any other permanent post, has been in continuous employment under the Ministry of Railways, the authority which appointed him to that service or to any grade in that service or to that post,

whichever authority is the highest authority.

According to the definition extracted above, Disciplinary Authority is one who is competent to impose the penalty and in case the penalty is of compulsory retirement, removal or dismissal, that authority must be the appointing authority. In the present case, Premchand plaintiff, who was in the mechanical branch, could not have been removed from service either by Shri D.C. Joshi, Deputy CAO (Traffic Accounts) or by the Divisional Superintendent of Ajmer Division. Each of the three disciplinary authorities, referred to above, could appoint a Board of Inquiry for the delinquent under him but not for anyone else. Shri D.C. Joshi could not appoint a Board of Inquiry for the plaintiff or for Deoraj as he was not a disciplinary authority of these two officials, namely Shri Prem Chand and Shri Deoraj. Similarly, Shri Ketkar, not being the disciplinary authority of Shri Deoraj and Shri Omprakash, could not appoint an Inquiring authority for them. For the same reason, the Divisional Superintendent, Ajmer, could not appoint an Inquiring authority for Shri Omprakash and Shri Premchand plaintiff. It is borne out from evidence that Shri B.R. Bhandari, the nominee of Shri Joshi from the Traffic Accounts was the Chairman of the Board of Inquiry. The appointment of the Board of Inquiry by Shri Joshi or by all the three of them in concurrence is certainly in violation of Rule 1710 of the Railway Establishment Code. Shri Omprakash Grover & Shri Deoraj are punished with minor penalty. Their increments for two years with cumulative effect were stopped, whereas the plaintiff was removed from service. Breach of statutory rule is a good ground for an action challenging the order of removal in a court of law. It may also be

pointed out that though Rule 1718 has got no application to the inquiry conducted in the present case, but it is quite manifest from the reading of the rule that the joint enquiry can be ordered by an authority who must be competent to impose a penalty or dismissal from service on all the officials against whom an enquiry is contemplated. For that reason alone, that power under Rule 1718 has been given to the President or some such authority who may be competent to impose penalty on a Govt. as well as a Railway servant. In the present case, one disciplinary authority could not impose a penalty on all the railway officials concerned in the case. If the order for joint enquiry had been made by the General Manager or some such authority who was competent to impose a penalty of dismissal from service on the plaintiff, Omprakash Grover and Deoraj, the matter would have been different. I am clearly of the opinion that the order for holding the joint enquiry by Shri D.C. Joshi or for that matter by all the disciplinary authorities in occurrence and the appointment of the Board of Inquiry in the manner it was done was not in accordance with law and it contravened Rule 1710. The proceedings before the Board of Inquiry and the finding arrived at by them are, therefore, illegal and without jurisdiction and their finding cannot form the basis for the removal of the plaintiff. Learned Counsel for the Union of India could not point out any rule which permitted such a joint enquiry and the appointment of the Board of Inquiry consisting of officers from various departments to which the delinquents belonged. Nor could he lay his hand on any decision in support of his contention that the joint inquiry and the appointment of the joint Board of Inquiry was within the ambit of Rule 1710.

12. There was an inherent lack of jurisdiction in the joint Board of enquiry; and no amount of acquiescence or consent of the parties can confer jurisdiction on it, which it did not possess. Therefore participation of the plaintiff in the enquiry will not estop him from challenging the jurisdiction of the Board of enquiry.

13. As noticed above, the learned Judge of the lower appellate court accepted the grounds of attack as alleged by the plaintiff in para 3(c), (d), (e), (g) and (k) of the plaint. He dealt with grounds No. 3(c), (d) and (g) together. According to him, Rules 1713 and 1715 of the Railway Establishment Code were violated. As regards the grounds 3(e) and (k) he was of the opinion that it contravened the rules of natural justice and Rule 1731 of the Railway Establishment Code. I do not wholly agree with the conclusions of the learned Judge. But it is not necessary for me to express my firm opinion on these points as I have already held above that the very appointment of the Joint Board of Inquiry was invalid and not warranted by Discipline and Appeal Rules prescribed for the purpose. The appeal can be disposed of in view of my findings on issue No. 1.

14. As a result of the foregoing discussion. I affirm the decree passed by the lower appellate court though on different grounds. It is also added that the order passed by the appellate authority dated 19-11-1966 (Ex. A-23) upholding the original order dated 11-5-1966 passed by the Works Manager(c), Ajmer. will also stand set aside. Accordingly, the appeal is dismissed with costs.