
(1991) 09 AHC CK 0064
In the Allahabad High Court
Case No : Second Appeal No. 1243 of 1976

Union of India (UOI)	Vs	APPELLANT
Ramesh Chander Gupta		RESPONDENT

Date of Decision : 11-09-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 14, 309
Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 4(3), 9(11), 9(14), 9(15)

Citation : (1991) 2 AWC 550

Hon'ble Judges : D.P.S. Chauhan, J

Bench : Single Bench

Advocate : Lal Ji Sinha, for the Appellant; A.N. Bhargava and Swami Dayal, for the Respondent

Final Decision : Dismissed

Judgement

D.P.S. Chauhan, J.—Union of India has come up in Second Appeal against the judgment and decree dated 6-3-1976 passed in Civil Appeal No. 268 of 1974, decreeing the suit filed by the Plaintiff, Ramesh Chander Gupta, an employee of Northern Railway, declaring the order of termination dated 7-5-1970 passed by the Divisional Mechanical Engineer, Northern Railway, Moradabad, as illegal, inoperative, null and void, granting continuity of service to him, leaving open, for recourse under Rule 4(3) of the Railway Servants (Discipline and Appeals) Rules, 1968, framed under Article 309 of the Constitution of India (for brevity, hereinafter referred to as "the Rules").

2. The Plaintiff Respondent was working as a Fuel Issuer in the Northern Railway at Moradabad against whom disciplinary proceedings were set in motion by serving on him an article of charges dated 16- 6-1968. The enquiry authority without following the procedure as contained in Sub-rule (11) of Rule 9 conducted the enquiry and submitted the report to the Divisional Mechanical Engineer, Northern Railway, Moradabad, who vide his order dated 7-5-1970

removed him from the service and the appeal there against was summarily dismissed.

3. Ramesh Chander Gupta aggrieved from the order of his removal filed a Suit No 758 of 1970 after complying with the requirement of Section 80 Code of Civil Procedure, seeking relief for declaration of the order of his removal as illegal, inoperative, null and void and claiming continuity of his service by complaining that the enquiry officer while conducting the enquiry ignored the well established and recognised principle of natural justice as the enquiry started with the examination and cross examination of the persons named by him as his defence witnesses and the witnesses in support of the charge were examined subsequently without any intimation to him and the evidence were recorded about a month later providing the prosecution an opportunity to fill up the lacuna.

4. The Trial Court on the pleadings of the parties framed the following five issues out of which every issues except issue No. 1 were decided in favour of the Plaintiff:

1. Whether the order dated 7-5-1970 of the Divisional Mechanical Engineer, Northern Railway, Moradabad, is illegal, inoperative and void? If so, its effect?

2. Is the suit under valued?

3. Is the Court fee paid insufficient?

4. Is the suit bad for want of valid notice u/s 80, Code of Civil Procedure? If so its effect?

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

5. The Trial Court recorded a finding about the commission of procedural irregularities by examining the defence witnesses first, whose statements were recorded between 10-9-1968 to 17-11-1968 and the statement of the witnesses in support of the charge were examined subsequent thereto on 9-12-1968 and (hereafter. The suit was dismissed on 23-7-1974 on the ground of non-establishment of prejudice caused to the Plaintiff owing to non-observance of the established procedure. Against this order, the Plaintiff preferred an appeal which was allowed on 6-3-1976, decreeing the suit The principal point which was raised by the Plaintiff before the lower appellate Court was that the examination of six defence witnesses as well as himself before taking the evidence in support of the charge, vitiated the entire proceedings and they were in violation of sub-Rule (11) of Rule 9 of the Rules and the principle of natural justice The counsel for the Union of India resisted the submission on the plea that the irregularities in procedure committed by the enquiry authority has not caused any prejudice to him. The lower appellate Court he"d that Sub-rule (11) of Rule 9 of the Rules is mandatory and the compliance where of must be made without exception. Then on-compliance of the mandatory provisions vitiated the proceedings irrespective of the fact whether the employee concerned is put to establish any prejudice or not.

6. Heard learned Counsel for the Appellant. Sri Lalji Sinha and the learned Counsel for the Respondent, Sri A.N. Bhargava.

7. Before this Court also the question for consideration is the same as was before the Lower Appellate Court, i.e. about the resolution of non-observance of the principle of fair play as embedded in Sub-rule (11) of Rule 9 of the Rules Sub-Rules (11)(14) and (15) of Rule 9 of the Rules are as extracted below:

(11). On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved, shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer, if any, and may be cross examined by or on behalf of the Railway servant. The Presenting Officer, if any, shall be entitled to re-examine the witnesses on any points on which they have been cross examined, but not on any new matter without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(14). The evidence on behalf of the Railway shall then be produced. The Railway servant may examine himself, in his own behalf, if he so prefers. The witnesses produced by the Railway servant, shall then be examined by or on behalf of him and shall be cross examined by or on behalf of the Presenting Officer, if any. The Railway servant shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the enquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15). The inquiring authority may, after the Railway servant closes his case, and shall, if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him.

These rules viewed together go to establish that they are embodiment of the principle of fair play and equality of treatment and the same are principle of natural justice.

8. In a society governed by rule of law, observance of law is one of the essential requirements and as such the statute or the statutory rules for enabling the doing of something prescribed way for doing the same. They seldom lay down as to what would be the legal consequences of failure to observe the prescription. It is the point where Courts of law to get activated to resolve the impasse by process of determination of the nature of the provision, which has resulted in prejudice, whether the same is mandatory or directory.

(i) It is a well settled rule of fair play which finds place in Sub-rule (11) of Rule 9 of the Rules, that the accuser must come forward first to prove the accusation against the person accused of who to put his defence thereafter. The person accused of has a right to get the disciplinary proceedings against him, which may

result him in. loss of his livelihood, conducted not according to humour hurbis but according to law and justice. The principle of fair play and equality are the aspects of the principle of natural justice, which have been embodied in Sub-rules (11) and (14) of Rule 9 of the Rules which could not be stamped out on the plea that the Plaintiff Respondent is not entitled to complain failure unless he could show prejudice caused to him by such failure. The view finds support from the Supreme Court case of S.L. Kapoor Vs. Jagmohan and Others, . The relevant portion is as extracted below:

In our view the principles of natural justice know of No. exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non observance of the natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced.

(emphasis supplied)

9. The provisions of Sub-rule (11) of Rule 9 of the Rules contains the principle of natural justice do not leave the discretion on the authorities to comply with the procedure or not to comply. If such a discretion, which ultimately affects the principle of natural justice and also deprives a person of his livelihood, allowed to be placed at the discretion of the authorities, the same will work havoc and result in negation of fair play contained in Article 14 of the Constitution of India. The principle of natural justice are based on equity and according to the maxim *equitas est aequalitas* which means equality is equity. The principle laid down under Sub-rule (11). If Rule 9 of the Rules is equitable principle and any discretion disturbing such a equality cannot be permitted by holding the provisions as directory.

10. Counsel for the Appellant, Sri Lalji Sinha very fairly submitted that in view of a decision of this Court in the case of Union of India v. Raghubir Saran 1992 UC 5 894, the controversy is involved in the present appeal is No. more *res integra*. The relevant paragraph 5 is as extracted below:

5. Examination of the Respondent and his witnesses before departmental witnesses was not only irregular but violative of basic principle of enquiry on charge of misconduct etc. In order to bring home the charge framed against delinquent the enquiry must stand on its own That is, the department should not only lead evidence first but prove it affirmatively that the employee was guilty of the charge framed As king Respondent to appear first and examination of his witness was putting the burden on Respondent to prove the negative that he was not absent in an unauthorised manner. Prejudice is writ large in such faulty procedure. How could the Respondent speculate on evidence and the manner in which his absence was going to be established Enquiry Officer may have discretion in examination of certain witness or he may change the order of examination as held in L.T. Inspecting Asstt. Commr. v. S.K. Gupta 1975 Lab IC

1647 , but examination of Respondent and his witness before departmental witnesses particularly in a case where No. evidence was disclosed in the charge sheet was certainly contrary to procedure of enquiry and principle of natural justice.

11. In view of what has been stated above, the appeal has No. force and is liable to be dismissed.

12. The appeal is accordingly dismissed. The parties shall bear the costs of this Court.