SUPREME COURT OF INDIA

Amalendu Ghosh

Vs.

District Traffic Superintendent. North Eastern Railway, Katihar

C.A.No.291 of 1958

(B. P. Sinha, C.J.I., P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta and J. C. Shah, JJ.)

15.01.1960

JUDGEMENT

GAJENDRAGADKAR, J.:

1. The appellant was employed as Assistant Station Master at Rawtara on the Katihar-Jogbani branch of the North-eastern Railway. On January 9, 1957, he was served with an order reducing him to the rank of Signaller. The validity of this order was challenged by him by a writ petition filed in the High Court of Judicature at Patna on July 3, 1957. The High Court, however, summarily rejected the said petition on July 4, 1957. The appellant's application for a certificate under Arts. 132 (1) and 133 (1) (c) of the Constitution was likewise rejected by the High Court. Thereupon the appellant applied for and obtained special leave from this Court. The appellant's grievance is that the impugned order has been passed against him without giving him an opportunity to meet the charge as required by Art. 311 of the Constitution. This contention appears to be well-founded; and so the appeal will have to be allowed. It appears that the material facts under which the impugned order came to be passed were not properly brought to the notice of the High Court; otherwise the High Court would not have summarily dismissed the appellant's petition.

2. On June 9, 1956, there was a collision between the train engine of 313 Down and a bullock cart as a result of which the cartman died though the buffaloes drawing the cart were not hurt. A departmental enquiry was held into this accident as required by the statute, and as a result of this enquiry it was found that "the accident was due to not locking with chain the level crossing gate between Up, Outer and Home at Rawtara in front of an in-coming train (313 Dn.)". The committee which held the enquiry came to the conclusion that the accident was due to the violation of G. S. R. 229/5 by both the appellant and the pointsman Shri Raghunath Koori. On July 26, 1956, the appellant was served with a notice calling upon him to show cause by written explanation within seven days why the penalty specified in item 1702 (5) or any lesser penalty specified in the said list should not be imposed on him. On receipt of this notice the appellant complained that he had been given no opportunity to meet the charge, that he was innocent and had committed no misconduct and he prayed that local witnesses should be examined. He also referred to the fact that soon after the accident took place the local police officer had made an investigation and his report showed that the appellant was not responsible for the accident. It appears that no subsequent enquiry was held nor was any opportunity given to the appellant to show cause in respect of the charge that he was responsible for the accident. Ultimately on January 9, 1957, the impugned order was passed against him. The appellant appealed against the said order but his appeal failed. It is on these facts that the validity of the said order is challenged by the appellant.

3. It is obvious that the enquiry into the accident which was held by the statutory committee was not directed against the appellant as such. It was an enquiry held as is always done in cases of accident to find out who was responsible for the accident. In this enquiry the appellant gave evidence and so did other witnesses. It does appear that the committee held that the statements made by the appellant in support of the pointsman were not true and that along with the pointsman the appellant was also negligent in the discharge of his duties. Incidentally it may be pointed out that the first part of the finding which is signed by Mr. Basu, the President of the Enquiry Committee, seems to hold only the pointsman responsible for the accident, though in the latter part the appellant and the pointsman both are held responsible. There is some substance in the grievance made by the appellant that it is not clear from the record when the latter part of the finding was added to the report. But, apart from this aspect of the matter there can be no doubt that it is as a result of this departmental enquiry into the accident that occasion arose to take action against the appellant; and it was obviously necessary that he should have been given a chance to show his innocence by holding an enquiry in respect of the charge that he was responsible for the accident. The findings reached by the enquiry committee as a result of the statutory enquiry cannot be said to be findings made against the appellant in a departmental enquiry made against him for alleged neglect of duty or violation of the statutory rules. This position is fairly conceded before us by Mr. Ganapathi Iyer, and indeed it is patent on the record that, before issuing notice calling upon the appellant to show cause why the proposed penalty should not be imposed on him, no enquiry into the alleged misconduct had really been held. It may be that the authorities concerned took the view that the departmental enquiry into the accident was enough but that clearly is not right. At the departmental enquiry nobody is accused of negligence or dereliction of duty. It is a kind of investigation made by the department under statutory rules. Therefore, we are satisfied that the appellant is justified in challenging the validity of the impugned order on the ground that a proper enquiry has not been made and he has not been given a reasonable opportunity to meet the charge against him. The said order must, therefore, be set aside.

4. On behalf of the appellant Mr. Ghosh wanted to satisfy us that the appellant was not guilty of any negligence, much less of any violation of statutory rules; but we did not allow Mr. Ghosh to address us on this point. All that we can do in the present appeal is to set aside the impugned order. It would then be for the department to take appropriate proceedings against the appellant and deal with him in accordance with law.

5. The result is the appeal is allowed, the order passed by the High Court reversed and the impugned order reducing the appellant to the rank of signaller passed on January 9, 1957, is set aside. In the circumstances of this case we direct that parties should bear their own costs particularly because the learned counsel of the respondent fairly conceded that he could not successfully resist the main contention raised by the appellant.

Appeal allowed.

</html