Management of Northern Railway Co-Operative Society Ltd.

Vs

Industrial Tribunal, Rajasthan, Jaipur and Another

Civil Appeal No. 496 of 1965

(V. Bhargava, G. K. Mitter JJ)

27.01.1967

JUDGMENT

BHARGAVA, J. –

The appellant in this appeal, brought up by special leave, is the Northern Railway Co-operative Credit Society Ltd., Jodhpur (hereinafter referred to as "the Society") which is an Association of the employees of the Northern Railway at Jodhpur registered in 1920 under the Co-operative Societies Act. The Society had in its employment 10 or 11 persons including Kanraj Mehta, the Head Clerk, Madho Lal, the Accountant, and three other Clerks, A. C. Sharma, V. D. Sharma and G. S. Saxena. At a meeting of the Committee of Management held on 6th April, 1956, it was decided to hold the 36th and 37th Annual General Meeting of the Shareholders for the years 1953-54 and 1954-55 on 28th April, 1956, i.e., after a period of about 22 days. Thereafter, Kanraj Mehta, the Head Clerk, on 8th April 1956, applied for leave on medical grounds, having submitted a certificate from a registered Vaid. Initially, the application for leave was for four days, but, by subsequent applications, he continued to extend his leave up to 2nd May, 1956. The other four Clerks, mentioned above, also put in applications between 12th and 15th April, 1956 on similar Medical Certificates and continued their leave up to dates falling between 30th April and 4th May, 1956. The industrial dispute decided by the award, against which the present appeal is directed, related to four of these Clerks - Kanraj Mehta, A. C. Sharma, V. D. Sharma and G. S. Saxena, against whom the Society decided to take disciplinary action. The case of the Society was that these persons had conspired to paralyse the working of the Society at the time of the impending Annual General Meeting on 28th April, 1956, by collectively submitting sickness certificates. In the case of Kanraj Mehta, the Society issued a letter in response to his application for leave directing him to attend the Railway Dispensary at 7.45 hrs. on 20th April, 1956, and asking him to report to Dr. B. P. Mathur for medical examination. Kanraj did not comply with this direction and continued to send further applications for leave accompanied by the certificates of the Vaid. His leave applications were never actually sanctioned, but he was allowed to resume duty after the expiry of the leave asked for by him in his last application, i.e., on 3rd May, 1956. Then on the 19th May, 1956, the Society issued a charge-sheet against Kanraj Mehta containing five charges which are reproduced below :-

> "(i) To instigate and conspire to paralyse the working of the Society at the time of the impending Annual General Meeting on 28-4-1956 by collectively submitting sick certificates.
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> (ii) Disobedience of orders in not attending for Medical Examination vide Hony. Secretary's letter No. CCS/Est. of 19-4-1956 which goes to show that you were not prepared to face the medical examination as you had pretended to be sick.

(iii) Taking active part in the issue and distribution of certain leaflets issued against the Management of the Society.

(iv) Carrying vilifying propaganda in connection with the elections of the Society at the Annual General Meeting on 28-4-1956.

(v) Instigating the depositors to withdraw their deposits from the Society and thus undermining the very existence of the Institution."

In the charge-sheet, Kanraj was asked to show cause within seven days why he should not be dismissed from service or punished with any lesser penalty. Charge-sheets were also served on the other employees mentioned above. Since in this appeal we are only concerned with the case of Kanraj, we need give details of the facts relating to his case only.

On 25th May, 1956, Kanraj sent his reply to the charge-sheet. In that reply, he took the plea that there were no disciplinary rules framed and issued for the employees of the Society, and added that, if the rules were being enforced on the analogy of the Railway Rules, he would request the Secretary of the Society to let him know what offence he had committed and how that offence had been constituted. He further pleaded that the charges levelled against him were vague and were not specific. He then proceeded to deal with all the five charges, and in the case of four of them viz., (i), (iii), (iv) and (v) the plea put forward was that in the absence of details he could not answer the charges properly, though he denied those charges. At the end, he made a request that if an enquiry is held, he should be allowed to bring either a Railway or a trade Union official, specially shareholders who had interest in the Society's affairs and constituted the very structure of the Society in order to represent him. A Committee of Enquiry was appointed, consisting of Shri Deodutta Gaur as Chairman, and Bhailal and Vishwadeo Purohit as members to enquire into the charges against Kanraj. The information of the Constitution of this Committee was conveyed to Kanraj by the letter dated 28th June 1956, and he was also told that he would be allowed to be accompanied by any employee of the Society at the enquiry if he so desired, but not by any other person as requested by him. Kanraj, however continued to insist that he must be permitted to be accompanied by a Railway employee or a Union official, particularly because he was the senior most employee of the Society and he could not expect to get any assistance from any other junior employee. This correspondence went on, and his request was not acceded to. Ultimately, on the date fixed for enquiry, Kanraj refused to appear on the ground that he had not been allowed to be represented as desired by him.

The Committee then submitted its report on 4th August, 1956. In the report, the Committee first considered the question whether it should proceed to record evidence of persons who had lodged complaints regarding the charges levelled against Kanraj, or whether it should submit its report and findings on the basis of the record available before the Committee. The report of the Committee mentions that it decided to submit its report and findings on the basis of the record before the Enquiry Committee, and that, thereafter, the evidence already available on record, which had been earlier considered by the Vice-Chairman before issue of the charge-sheet, was duly examined. The Committee further considered it inadvisable-to comment on this material as it held it to be as good as before and recorded its view that the charges still stood proved. On receipt of this report, the Vice-Chairman of the Society asked the Committee to give its independent opinion in the case as to whether Kanraj was guilty of the charges levelled or not. In reply to this, the Committee mentioned that the charges stood proved. In this subsequent report, the Committee added that, before arriving at the decision, it had examined all evidence on record independently, and had also examined three to four witnesses verbally and had found that they corroborated the evidence already on record. It

was stated that the witnesses examined verbally related to charges (i), (iii), (iv) and (v) [in the report (ii) is an error for (iii)].

Thereafter, on 5th September, 1956, the Vice-Chairman issued a fresh notice to Kanraj, stating that he had come to the provisional decision that Kanraj should be dismissed from service for offences detailed in the charge-sheet, and calling upon him to show cause in writing not later than the end of seven days from the date of receipt of the notice why the proposed penalty should not be imposed upon him. Thereupon, Kanraj, on 13th September, 1956, sent a letter requesting the Vice-Chairman to supply to him a full copy of the proceedings and findings of the Enquiry Committee enumerated in its report, which had been considered by the Vice-Chairman resulting in the provisional decision to remove him from service. He added that on receipt of this material, he would reply to the above show cause notice. The Honorary Secretary of the Society, on the same day, sent a reply to this letter, stating that the application of Kanraj had been considered by the Vice-Chairman who had asked the Secretary to inform him that it was only as a matter of grace that he was being given another three days to reply to the show cause notice, and that there was no enquiry report envisaged in the Railway Board's order as the enquiry could not be held. It was further added that the report was only that the employee did not participate, and Kanraj was told that any dilatory replies would not be taken as proper replies and action would be taken under the Rules. Kanraj, on 16th September, 1956, sent a further letter in reply to this letter sent by the Hony. Secretary. In this letter, he made a grievance of the fact that he had not been permitted to be represented as desired by him in the enquiry, and took notice of the fact that the provisional decision of the Vice-Chairman had been arrived at on the basis of the report of the Enquiry Committee which only reported that he did not participate. Then he proceeded to plead not guilty to the charges and again gave an explanation on each individual charge. Once again, the grievance made included the plea that the charges were vague. On 17th September, 1956, a letter was then issued under the signature of the Honorary Secretary informing Kanraj that he had been removed from service with effect from the 17th September, 1956, and he was asked to hand over charge to the Accountant, Megh Raj. Minor punishments were also awarded to three other employees, A. C. Sharma, V. D. Sharma and G. S. Saxena.

Thereupon, the dispute relating to the removal of Kanraj and the award of punishment to the other three employees was taken up by the Uttariya Railway Mazdoor Union, Jodhpur, and at the request sent through the Secretary of that Union, a reference was made by the Government of Rajasthan to the Industrial Tribunal, Rajasthan, Jaipur, under section 10(1)(d) of the Industrial Disputes Act No. 14 of 1947. In the reference, two issues were raised which were as follows :

> "(1) Whether the removal of Shri Kanraj by the Management of the Northern Railway Co-operative Credit Society, Jodhpur on the 17-9-1956 and the stopping of the grade increments of Sarvashri Acheleshwar, V. D. Sharma and G. S. Saxena was illegal or unjustified;
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> (2) If so, what relief these workers are entitled to ?"

The Tribunal discussed in detail the case of Kanraj and held that the demand of Kanraj to be allowed to take assistance from a stranger to the Society was unjustified and Kanraj could not succeed in assailing the validity of the proceedings of the Board of Enquiry on this ground. The Tribunal, however, held that Kanraj was justified in demanding from the Vice-Chairman of the Society copies of the documents which he mentioned when the second notice was issued to him, as he was entitled to receive copies of both the reports of the Committee before he could be called

upon give an adequate reply to the show cause notice. The Tribunal also accepted the plea of Kanraj that the charges which had been framed against Kanraj were rather vague and Kanraj was not wrong in his averment before the Board of Enquiry that the charges were vague and that he could not defend himself on that account. On this view, the Tribunal set aside the order of removal of Kanraj from service passed by the Society, but left it open to the Society, if they so desired, to re-institute the enquiry and to proceed against him in accordance with law. It was further ordered that, meanwhile, Kanraj stood restored to the position in which he was on 13th September, 1956. The Tribunal also made suitable orders in the cases of the other three employees, A. C. Sharma, V. D. Sharma and G. S. Saxena, but the orders in their cases need not be reproduced, as the appeal before us does not relate to their cases. The appeal by the Society is directed against the order of the Tribunal insofar as it governs the case of Kanraj Mehta. In this appeal, learned counsel appearing for the Society urged three points before us and we proceed to take them one by one.

The first point urged was that, in this case, the reference to the Industrial Tribunal was incompetent, because the dispute referred to the Tribunal was an individual dispute of four employees and was not an industrial dispute as it was not taken up by the workmen of the Society. It was urged that the Union which had sponsored the dispute was a Union of Railway employees only and not of the workmen of the Society which was separate and distinct from the Railway Administration. When this point was raised on behalf of the appellant, a preliminary objection was taken by learned counsel appearing for the respondents that this plea sought to be raised on behalf of the appellant was barred by the principle of res judicata. It was urged that, while the reference was pending before the Industrial Tribunal, the Society filed a petition under Article 226 of the Constitution in the High Court of Judicature for Rajasthan at Jodhpur, praying that a writ of prohibition be issued directing the Industrial Tribunal to refrain from taking any proceedings in this reference on the ground that the reference did not relate to an industrial dispute. The plea that the reference did not relate to an industrial dispute was on the same ground which was sought to be urged before us, viz., that the dispute had not been taken up by the workmen of the Society and the sponsoring of the dispute by the Railway Employees' Union did not make it an industrial dispute. A Division Bench of the High Court, by its judgment dated 7th February, 1962, dismissed the petition holding that the reference was competent on the ground that it was at least sponsored by 4 out of 11 workmen of the Society. Against that judgment of the High Court, the appellant could have come up to this Court in appeal, but failed to do so and submitted to that judgment. The plea of the learned counsel for the respondents was that that judgment having become final it was no longer open to the appellant to raise this plea in the present appeal against the subsequent award given by the Tribunal after exercising jurisdiction which the Tribunal was permitted to exercise by that judgment of the High Court.

On behalf of the appellant, learned counsel, however, urged that the order made by the High Court was in the nature of an interlocutory order and it was open to the appellant to challenge the correctness of that decision of the High Court in this appeal. In support of his proposition that it is not necessary that an interlocutory order must be challenged immediately by an appeal and can be challenged when an appeal is filed against the final order in a civil proceeding, learned counsel relied on a decision of this Court in Satyadhyan Ghosal and Others v. Sm. Deorajin Debi and Another. ([1960] 3 S.C.R. 590) In that case, a question had arisen about the applicability of section 28 of the Calcutta Thika Tenancy Act, 1949. The plea relating to it was rejected by the Munsif trying the suit. Against that order of the Munsif, a revision was filed in the High Court under section 115 of the Code of Civil Procedure. The High Court held that the operation of section 28 of the Act was not affected by the subsequent Amendment Act and remanded the case to the Munsif for disposal according to law. Thereafter, the Munsif passed the final decree in the suit, and against that

decree, an appeal was brought to this Court after going through the usual procedure of moving the other Courts having jurisdiction. It was in these circumstances that this Court held that the order of the High Court, holding that section 28 of the Act was applicable, could not operate as res judicata in the appeal before this Court, because the High Court's order of remand was merely an interlocutory order which did not terminate the proceedings pending in the Munsif's Court and which had not been appealed from at that stage. Consequently, in the appeal from the final decree or order it was open to the party concerned to challenge the correctness of the High Court's decision. It is to be noted that there were two special features in that case. One was that the order of the High Court, which was held not to bring in the principle of res judicata, was an interlocutory order, and the other was that it was made in a pending suit which, as a result of that order, did not finally terminate. In fact, the order of the High Court did not finally terminate any proceedings at all. On the other hand, in the case before us, the order relied upon by learned counsel for the respondents was not an interlocutory order and was not made in the proceedings pending before the Tribunal. The order of the High Court was made in a completely independent proceeding instituted by a petition under Article 226 of the Constitution for issue of a writ or prohibition. It was held by this Court in Ramesh and Another v. Gendalal Motilal Patni and Others ([1966] 3 S.C.R. 198) that "when exercising jurisdiction under Article 226 of the Constitution, the High Court does not hear an appeal or revision. The High Court is moved to intervene and to bring before itself the record of a case decided by or pending before a Court or Tribunal or any authority within the High Court's jurisdiction. A petition to the High Court invoking this jurisdiction is a proceeding quite independent of the original controversy. The controversy in the High Court, in proceedings arising under Article 226, ordinarily is whether a decision of, or a proceeding before, a Court or Tribunal or authority, should be allowed to stand or should be quashed for want of jurisdiction or on account of errors of law apparent on the face of the record. A decision in the exercise of this jurisdiction, whether interfering with the proceeding impugned or declining to do so, is a final decision in so far as the High Court is concerned because it terminates finally the special proceeding before it." This view was expressed when dealing with the question of applicability of Article 133 of the Constitution in respect of the order of the High Court. In that connection, the Court further pointed out that an appeal or a revision is a continuation of the original suit or proceeding and the finality must, therefore, attach to the whole of the matter and the matter should not be a live one after the decision of the High Court if it is to be regarded as final for the purpose of appeal under Art. 133. Notice was taken of the fact that the whole of the controversy had not been decided by the High Court when there is an appeal or revision against an interlocutory order. In these circumstances, it is clear that if the appellant wanted to challenge the correctness of the decision of the High Court holding that this dispute was an industrial dispute, the appropriate remedy was to come up in appeal against the judgment of the High Court either by a certificate under Article 133 or by special leave under Article 136 of the Constitution. The appellant having failed to do so, the judgment of the High Court became final, and, consequently, binding between the parties. The parties to that petition were the parties now before us in this appeal. In this appeal brought up against the award of the Tribunal, consequently, it is no longer open to the appellant to raise the plea which was rejected by the High Court by its judgment dated 7th February, 1962. The first point raised on behalf of the appellant, therefore, fails.

The second point urged by learned counsel was that, in this case, the Tribunal in its award held that, when the enquiry was held by the Committee appointed by the Society, Kanraj was not entitled to claim that he must get assistance from a stranger to the Society and that the rejection of his request was justified, so that the validity of the proceedings before the Committee of Enquiry was not open to challenge by Kanraj. It was urged that in this appeal also, since there is no appeal on behalf of

Kanraj or the Union representing him, this Court could not go into the question whether the enquiry by the Committee was valid or invalid. The Court should confine itself to the proceedings subsequent to 13th September, 1956, which is the date to which Kanraj has been relegated by the Tribunal by directing that he will stand in the position in which he stood on that date. It was further urged that after 13th September, 1956, it was not at all incumbent on the Vice-Chairman to issue a second show cause notice or to give a fresh opportunity to Kanraj to show cause, and that if the Vice-Chairman did so, it was as a matter of indulgence. The provisions of Article 311 of the Constitution did not apply, because Kanraj was not a public servant, and the principles of natural justice did not require that a second show cause notice must be given by every employer after the employer forms his provisional opinion that the punishment or dismissal or removal should be awarded. It was urged that, consequently, the Tribunal was wrong in setting aside the order of removal of Kanraj on the mere ground that the Vice-Chairman refused to supply to him the reports of the Enquiry Committee.

On behalf of the respondents, this plea was challenged and it was urged that it was open to the respondents to support the order of the Tribunal even on grounds decided against the respondents or grounds not urged before the Tribunal which might be apparent on the face of the record, even though the respondents have filed no appeal. Reliance for this proposition was placed on a decision of this Court in Ramanbhai Ashabhai Patel v. Dabhi Ajitkumar Fulsinji and Others. (A.I.R. 1965 S.C. 669) In that case, an appeal was brought to this Court against the judgment of an Election Tribunal, and one of the respondents wanted to support the order of the Tribunal on grounds which had been negatived by the Tribunal. On behalf of the respondent, reliance was placed on the principle laid down in O. XLI rule 22 of the Code of Civil Procedure. This Court took notice of the fact that in the Rules of this Court there was no Rule analogous to rule 22 of O. XLI, C.P.C., but held that the provision nearest to it was the one contained in O. XVIII, rule 3 of the Rules of this Court which required parties to file statements of cases. Sub-rule (1) of that rule provides that Part I of the statement of the case shall also set out the contentions of the parties and the points of law and fact arising in the appeal. It further provides that in Part II a party shall set out the proposition of law to be urged in support of the contentions of the party lodging the case and the authorities in support thereof. The Court held that there is no reason to limit the provisions of this rule only to those contentions which dealt with the points found in favour of that party in the judgment appealed from. The Court further proceeded to hold that "apart from that, we think that, while dealing with the appeal before it, this Court has the power to decide all the points arising from the judgment appealed against and even in the absence of an express provision like O. XLI, rule 22 of the Code of Civil Procedure, it can devise the appropriate procedure to be adopted at the hearing. There could be no better way of supplying the deficiency than by drawing upon the provisions of a general law like the Code of Civil Procedure and adopting such of those provisions as are suitable. We cannot lose sight of the fact that normally a party in whose favour the judgment appealed from has been given will not be granted special leave to appeal from it. Considerations of justice therefore, require that this Court should, in appropriate cases, permit a party placed in such a position to support the judgment in his favour even upon grounds which were negatived in that judgment."

In an appeal brought up against a judgment of the Labour Court in Powari Tea Estate v. Barkataki (M. K.) and Others (A.I.R. 1965 S.C. 669), this Court was examining the correctness of the decision reached by the Labour Court and, while doing so, it appeared that the decision of Labour Court could be justified on a ground to which the Labour Court had not made any reference. The Court held : "But it appears from the record that the decision reached by the Labour Court can be justified on another ground to which the Labour Court has not referred, but which is patent on the record." After expressing this view, the Court proceeded to examine this ground which was patent on the

record and upheld the order of the Labour Court on that ground. In these circumstances, we consider that learned counsel for the respondents is justified in urging before us that the respondents are entitled to support the decision of the Tribunal setting aside the order of Kanraj even on grounds which were not accepted by the Tribunal or on other grounds which may not have been taken notice of by the Tribunal while they were patent on the face of the record.

The facts of this case, as enumerated by us above, show that the charge-sheet which was served on Kanraj was in fact very vague and did not contain any such details as could enable him to give any explanation. Charge No. 2 was the only charge in respect of which full details were mentioned. That charge was of disobedience of orders in not attending for medical examination in accordance with Honorary Secretary's letter of 19th April, 1956, from which an inference was drawn that Kanraj was not prepared to face the medical examination because he had pretended to be sick. So far as this charge is concerned, there is nothing to indicate that there were any rules of the Society under which Kanraj was required to obey the orders given by the Honorary Secretary to appear for medical examination by the particular doctor nominated by him. In the absence of any rules, Kanraj could very well feel justified in relying on certificates obtained by him from a registered medical practitioner even though he might only be a Vaid practicing Ayurvedic medicine. The charge of disobedience of orders, which were not enforceable under any rule, could neither be the basis of any order of dismissal or removal, nor could it lead to any inference that Kanraj had merely been pretending to be sick.

As regards the remaining four charges, they were clearly very vague. The first charge, in general terms, stated that Kanraj had instigated and conspired to paralyse the working of the Society by collectively submitting sickness certificates. The charge did not mention whom he had instigated or with whom he had conspired, nor did it indicate how this conspiracy was being inferred. Similarly, the third charge of taking active part in the issue and distribution of certain leaflets against the management of the Society did not at all indicate what those leaflets were and what part Kanraj had taken in the issue and distribution of those leaflets. The fourth charge of carrying vilifying propaganda in connection with the elections of the Society at the Annual General Meeting on 28-4-1956 was again similarly vague as there was no specification as to the persons with whom this propaganda was carried on by Kanraj and where and when it was done. In the same way, the last and the fifth charge of instigating the depositors to withdraw their deposits from the Society was again very vague as there was no mention as to which depositors had been instigated and when they were instigated. In theses circumstances, Kanraj was fully justified in pleading that the charges were vague and he was unable to show cause against the charges served on him.

It is true that the Tribunal correctly held that Kanraj was not entitled to be represented by a stranger to the Society at the enquiry proposed to be held against him. In fact, the correspondence which passed between Kanraj and the Society shows that Kanraj was taking a very unreasonable and undesirable attitude in this matter and his conduct in persistently demanding representation by a stranger and on that account refusing to participate in the enquiry deserves to be condemned. That circumstance however, will not make the enquiry valid, unless it be held that an adequate opportunity was given to Kanraj to meet the charges framed against him. The charges, as we have indicated above, which were served on Kanraj were very vague and he had no opportunity to give a reply to them. The material which was available in support of these charges was also never disclosed to him. The mere fact that Kanraj did not appear on the date fixed for the enquiry will not, in these circumstances, satisfy the requirement of the principles of natural justice that he should have been told of the details of the charges and the material available in support of theses charges should have been disclosed to him. It seems to us that it was in view of this omission that the

subsequent notice was given by the Vice-Chairman to Kanraj to show cause when the Vice-Chairman had formed his provisional opinion on the basis of the report of the Committee of Enquiry that the charges were proved and Kanraj should be removed from service. This subsequent show cause notice by the Vice-Chairman was, no doubt, not required by any rule or law analogous to Article 311 of the Constitution, but in the instant case this subsequent opportunity which was offered by the Vice-Chairman was the only opportunity which could have satisfied the requirement of principles of natural justice, because in the earlier enquiry Kanraj had already been prejudiced by the vagueness of the charges and by the omission to disclose to him the material in support of those charges. In the enquiry, no adequate opportunity having been given to Kanraj, the Tribunal was perfectly justified in setting aside the order of removal based on the report of the Committee of Enquiry, and it appears that it was in view of the aspect explained by us above that the Tribunal proceeded to lay down that it was open to the Society to institute a fresh enquiry and give an opportunity to Kanraj to show cause after supplying copies of necessary documents to him as claimed by him when the notice dated 13th September, 1956 was issued to him. Consequently, we consider that the order passed by the Tribunal was fully justified.

The third and the last point urged by learned counsel for the appellant was that, even if the Tribunal held that the order of removal of Kanraj was unjustified, the Tribunal should not have directed his reinstatement, because the Society had taken a specific plea before the Tribunal that the Society had lost confidence in Kanraj. In support of this proposition, learned counsel relied on the decision of this Court in Assam Oil Co. Ltd. New Delhi v. Its Workmen. (A.I.R. 1960 S.C. 1264) It appears to us that there might have been some force in this submission if the position had still remained as it was when the Tribunal made its direction for reinstatement. We were, however, informed by learned counsel for the appellant that, subsequent to the order of the Tribunal, Kanraj was actually reinstated and fresh proceedings for his dismissal were taken by the Society against him. The information given was that, in fact, a fresh order of removal of Kanraj from service has already been passed and that order is the subject-matter of another industrial dispute before an Industrial Tribunal. In that industrial dispute, the question of the compensation payable to Kanraj is also under consideration. We think, that in view of these subsequent proceedings, it would not now be at all appropriate for this Court to set aside the order of the Tribunal directing reinstatement of Kanraj and thus create complications in respect of these subsequent proceedings. The position might have been different if we had come to the view that the Tribunal was altogether wrong in setting aside the order of removal from service of Kanraj. While we are of the view that that order was justified, we do not think that any interference with the rest of the order of the Tribunal is called for.

The appeal fails and is dismissed with costs.

Appeal dismissed.

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