Railway Board Representing the Union of India

Vs

Niranjan Singh

Civil Appeal No. 1206 of 1966

(S.M. Sikri, R.S. Bachawat, K.S. Hegde JJ)

04.02.1969

JUDGMENT

HEGDE, J. -

1. This appeal was brought after obtaining from the High Court a certificate under Articles 132 and 133(1)(c) of the Constitution. Before formulating the points arising for decision, it would be convenient to set out the necessary facts.

2. The respondent was holding a permanent post in the Northern Railway. He was a Trade Union worker. On November 7, 1956, a charge-sheet was served on him levelling two charges against him. Under the first charge, he was accused of having been instrumental in compelling the air compressor being shut down at about 8-15 a.m. on May 31, 1956. Under the second charge he was accused of having contravened the direction given by the General Manager, Northern Railway, as per his letter No. 961/E/O (Evi), dated June 19, 1956, by addressing meeting within the railway premises on June 23, 1956, June 25, 1956, July 24, 1956, July 25, 1956 and July 27, 1956. On these charges he was called upon to show cause why he should not be removed from service under Rule 1708 of the Indian Railway Establishment Code, Vol. I, or punished with any lesser penalties specified in Rule 1702. After receiving his explanation an enquiry committee consisting of three officers was appointed to enquire into the charges. The said committee came to the conclusion that the first charges was not proved beyond all reasonable doubt but he was guilty of the second charge. The Disciplinary Authority i.e., the General Manager remitted the case back to the enquiry committee for submitting a fresh report after examining the witnesses mentioned in his order. Even after examining those witnesses the enquiry committee adhered to its earlier conclusions. After examining the reports of the enquiry committee, the General Manager as per his order of May 25, 1957, accepted its finding on the second charge but differing from its conclusion on the first charge tentatively came to the conclusion that the respondent was guilty of that charge as well. As a result thereof he ordered the issue of a notice to the respondent to show cause why he should not be removed from service. The respondent submitted his explanation to the show cause notice. The General Manager did not accept his explanation and by his order of August 20, 1957, he directed that the respondent be removed from service. The respondent challenged that decision before the High Court of Punjab by means of a writ petition under Article 226 of the Constitution. The single judge of the High Court who heard the petition opined that the General Manager was not right in holding on the material on record that the first charge is established and on the second charge he held that the General Manager's direction as per his letter of June 19, 1956, is void as being violative of Article 19(1) of the Constitution. On appeal the appellate court upheld the conclusion of the learned single judge on the first charge but it was unable to accept his finding that the order of the General Manager of June 19, 1956, was violative of Article 19(1) of the Constitution. All the

same it affirmed the decision of the learned single judge with these observations :

> "It is by now a generally recognised principal that where an order such as an order of detention or removal from service is based on a number of grounds, and one or more of these grounds disappear it becomes difficult to uphold the order when it is not clear to what extent it was based on the ground found to be bad."

3. The findings of the learned single judge as well as the judges of the appellate court were challenged before us by the appellant. It was urged on its behalf that the finding of the General Manager on the first charge being a finding of fact, the same not having been held either not supported by any evidence or as perverse, it was not open to the High Court to review the evidence afresh and come to a conclusion of its own. It was further urged on its behalf that the opinion of the Appellate Court that if one of the several charges on the basis of which a punishment is imposed is held to be unsustainable, the punishment imposed should be set aside as it is not known whether the authority in question would have imposed the impugned punishment without that charge having been established, does not represent the correct legal position as expounded by this Court. The learned counsel for the respondent not only supported the conclusions of the appellate court, he also strongly commended for our acceptance the finding of the learned single judge that General Manager's direction contained in his letter of June 19, 1956, was violative of Article 19(1)(a) to (c).

4. The questions that arise for decision in this appeal are (1) whether the High Court was within its jurisdiction in the exercise of its powers under Article 226 of the Constitution to set aside the conclusion reached by the General Manager on the first charge, (2) whether the direction issued by the General Manager on June 19, 1956, is violative of Article 19(1)(a) to (c) and (3) whether the appellate court was right in its view that if an order of removal is based on number of grounds and one or more of those grounds are found to be unsustainable, the order is liable to be struck down.

5. Now coming to the first charge, we may first set out the undisputed facts. On May 31, 1956, the Union of which the respondent was the Vice-President declared a token strike. The strike in question was declared by the respondent and he took a leading part in it. During the time of the strike the compressor was not worked. The enquiry committee came to the conclusion and that conclusion was neither challenged before the High Court nor before this Court that the compressor driver must have started the compressor in the East Compressor House at 8-00 hrs. and there must have been certain circumstances which made the driver to shut it off at 8-15 hrs. The only question for decision is whether the respondent was responsible for shutting it off. Two witnesses namely Subrati, the compressor driver and Rameshwar, his assistant emphatically stated before the enquiry committee that it was the respondent who led a group of strikers and compelled them to close down the compressor. The enquiry committee felt that their evidence cannot be accepted at its face value as they were not able to name any other person in the group. But the General Manager did not agree with the enquiry committee on that point. He fully accepted their evidence. It was open to the General Manager to do so. He was not bound by the conclusions reached by the enquiry committee, see Union of India v. H. C. Goel. ((1964) 4 SCR 718) This is not a case where it can be said that the finding of the Disciplinary Authority is not supported by any evidence nor it can be said that no reasonable person could have reached such a finding. Hence the conclusion reached by the Disciplinary Authority should prevail and the High Court in the exercise of its certiorari jurisdiction could not have interfered - with its conclusion, see Syed Yakoob v. K. S. Radhakrishnan and Others. ((1964) 5 SCR 64)

6. It was next contended that in arriving at his conclusion on the first charge the General Manger

had relied on the hearsay evidence given by DeMellow and hence his conclusion is vitiated. The evidence of the witnesses examined during the enquiry is not before us. Hence it is not possible to accept the contention that DeMellow's evidence was hearsay. In this view it is not necessary to go into the question whether hearsay evidence can be relied on at all in an enquiry under Article 311 and if so within what limits. Some of the inferences drawn by the General Manager were objected to by the learned Counsel for the respondent. They appear to be inferences of fact, evidently drawn from the material before him and as such cannot be properly objected to. It was open to him to draw those inferences.

For the reasons mentioned above, we hold that the High Court exceeded its powers in interfering with the finding of the General Manager on the first charge.

7. Before we take up for consideration point No. 2 formulated above, it would be convenient to deal with point No. 3. It was not disputed before us that the first charge levelled against the respondent is a serious charge and it would have been appropriate for the General Manager to remove the respondent from service on the basis of his finding on that charge. But we were told that we cannot assume that the General Manager would have inflicted that punishment solely on the basis of that charge and consequently we cannot sustain the punishment imposed if we hold that one of the two charges on the basis of which it was imposed is unsustainable. This contention cannot be accepted in view of the decision of this Court in State of Orissa v. Bidyabhan Mahapatra, ((1962) Supp 1 SCR 648) wherein it was held that if the order in an enquiry under Article 311 can be supported on any finding as substantial misdemeanour for which the punishment imposed can lawfully be imposed it is not for the Court to consider whether that ground alone would have weighed with the authority in imposing the punishment in question.

8. Now we come to the second charge. In order to examine the contentions of Mr. Garg, the learned Counsel for the respondent relating to that charge, it is necessary to set out the circular issued by the General Manager on June 19, 1956. That was a circular issued to all the heads of the departments. It reads :

> "It has been brought to notice that in a number of cases railway employees have held meeting inside railway premises such as inside workshops, inside stores depots and within office compounds. It may be pointed out that this practice is extremely objectionable and has to be stopped forthwith. All staff may be warned that if any one of them is found organising or attending a meeting inside railway premises or at places of work, he will render himself liable to severe disciplinary action as such action on his part will amount to misconduct arising out of violation of administrative instructions. Meetings of workers can be held on open grounds away from places of work with the permission of the railway authorities concerned if such open grounds fall within railway boundary.
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> You are to note these instructions very carefully and to ensure their strict compliance in future.
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> Please acknowledge receipt."

9. The direction with which we are concerned in this appeal is that which prohibits the holding of meeting within the railway premises including open grounds forming part of those premises. That direction does not deprive the workers any of the freedoms guaranteed to them under Article 19(1). It merely prohibits them from exercising any of them within the railway premises. What is

prohibited is the holding of meeting for any purpose within the railway premises. The question is whether such a direction is violative of Article 19(1) ? In the instant case we are concerned with the meetings held outside the main time office and it was not denied that that place formed part of the railway premises.

10. It was strenuously urged on behalf of the respondent that the rights guaranteed under Article 19(1)(a), (b) and (c) are inviolable and they cannot be interfered with, excepting in accordance with sub-articles 2, 3 and 4 of the said Article. According to Mr. Garg, the railway workers have a right to assemble in any place they choose and give expression to their view so long as they do not disturb the work going on in the premises and that right is guaranteed to them under our Constitution.

11. It was not disputed that the Northern Railway is the owner of the premises in question. The fact that the Indian Railway are State undertakings does not affect their right to enjoy their properties in the same manner as any private individual may do subject only to such restrictions as the law or the usage may place on the them. Hence unless it is shown that either under law or because of some usage the railway servants have a right to hold their meetings in railway premises, we see no basis for objecting to the direction given by the General Manager. There is no fundamental right for anyone to hold meetings in Government premises. If it is otherwise there is bound to be chaos in our offices. The fact that those who work in a public office can go there does not confer on them the right of holding a meeting at that office even if it be the most convenient place to do so.

12. It is true that the freedoms guaranteed under out Constitution are very valuable freedoms and this Court would resist abridging the ambit of those freedoms except to the extent permitted by the Constitution. The fact that the citizens of this country have freedom of speech, freedom to assemble peaceably and freedom to form associations or unions does not mean that they can exercise those freedoms in whatever place they please. The exercise of those freedoms will come to an end as soon as the right of someone else to hold his property intervenes. Such a limitation in inherent in the exercise of these rights. The validity of that limitation is not to be judged by the tests prescribed by sub-articles (2) and (3) of Article 19. In other words the contents of the freedoms guaranteed under clauses (a), (b) and (c), the only freedoms with which we are concerned in this appeal, do not include the right to exercise them in the properties belonging to others. If Mr. Garg is right in his contentions then a citizen of this country in the exercise of his right under clauses (d) and (e) of Article 19(1) could move about freely in a public office or even reside there unless there exists some law imposing reasonable restrictions on the exercise of those rights.

13. In support of his contention Mr. Garg strongly relied on the decisions of the Supreme Court of United States of America in Marsh v. Alabama, (90 Law Edn 265) and Tucker v. State of Taxex. (90 Law Edn 274) Tucker's case was decided on the basis of the rule laid down in Marsh's case. Hence it is not necessary to consider it separately. In Marsh's case the Supreme Court laid down that the constitutional guarantees of freedoms of press and of religion precludes the enforcement against one who undertook to distribute religious literature on a street of a company-owned town, contrary to the wishes of the town's management, of a State statute making it a crime to enter or remain on the premises of another after having been warned not to do so. In order to appreciate this decision it is necessary to bear in mind the facts of the case. The appellant therein was a Jehovah's witness who came into sidewalk of a private town situate near the post office and undertook to distribute religious literature. In the store the corporation had posted notice which read as follows :

> "THIS IS PRIVATE PROPERTY AND WITHOUT WRITTEN PERMISSION, NO STREET, OR HOUSE VENDOR, AGENT OR SOLICITATION OF ANY KIND WILL BE

PERMITTED."

14. The appellant was warned that she should not distribute the literature without a permit and told that no permit would be issued to her. She protested that the company rule could not be constitutionally applied so as to prohibit her from distributing religious writings. When she was asked to leave the sidewalk and Chickasaw she declined. The deputy sheriff arrested her and she was charged in the State Court for violating the law. The town in question is described in the judgment thus :

> "The town, a suburb of Mobile, Alabama, known as Chickasaw, is owned by the Gulf Ship Building Corporation. Except for that it has all the characteristics of any other American town. The property consists of residential buildings, streets, a system of sewers, a sewage disposal plant and a business block on which business places are situated. A deputy of the Mobile County Sheriff, paid by the company, serves as the town's policeman. Merchants and service establishments have rented the stores and business places on the business block and the United States uses one of the places as a post office from which six carriers deliver mail to the people of Chickasaw and the adjacent area. The town and the surrounding neighbourhood, which cannot be distinguished from the Gulf property by anyone not familiar with the property lines, are thickly settled, and according to all indications the residents use the business block as their regular shopping center. To do so, they now, as they have for many years, make use of company-owned paved street and sidewalk located alongside the store fronts in order to enter and leave the stores and the post office. Intersecting company-owned roads at each end of the business block lead into a four-lane public highway which runs parallel to the business block at a distance of thirty feet. There is nothing to stop highway traffic from coming into the business block and upon arrival a traveller may make free use of the facilities available there. In short the town an its shopping district are accessible to and freely used by the public in general and there is nothing to distinguish them from any other town and shopping center except the fact that the title to the property belongs to a private corporation."
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> 15. From the above description it is clear that the roads and sidewalks in that town had been dedicated for public use. It is in that context Justice Black observed :
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> "The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it."

The learned judge further observed :

> "We do not think it makes any significant constitutional difference as to the relationship between the rights of the owner and those of the public that here the State, instead of permitting the corporation to operate a highway, permitted it to use its property as a town, operate a 'business block' in the town and a street and sidewalk on that business block .....
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> As we have heretofore stated, the town of Chickasaw does not function differently from any other town. The 'business block' serves as the community shopping center and is freely accessible and open to the people in the area and those passing through. The managers appointed by the corporation cannot curtail the liberty of press and religion of these people

> consistently with the purposes of the constitutional guarantees and a State statute, as the one here involved, which enforces such action by criminally punishing those who attempt to distribute religious literature clearly violates the First and Fourteenth Amendments to the Constitution."

16. In our opinion the rule laid down in Marsh's case does not apply to the facts of this case. The premises with which we are concerned in this appeal unlike the roads and sidewalks of Chickasaw town were not open for use of the general public. They were intended for certain specified public purposes. They could not be used for any other purposes except with the permission of the concerned authority.

Neither the language of Article 19(1) nor the purpose behind it lend support to the contentions of Mr. Garg. On the other hand their acceptance might lead to the confusion in public offices. Hence we are unable to accept them.

17. In the result the appeal is allowed and the writ petition dismissed but in the circumstances of the case we direct the parties to bear their own costs throughout.

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