

General Manager, Eastern Railway and Another

Vs

Jawala Prosad Singh

Civil Appeal No. 1186 (N) of 1967

(S. M. Sikri, G. K. Mitter JJ)

20.11.1969

JUDGMENT

MITTER, J. -

1. The question involved in this appeal is, whether the whole proceedings of the inquiry committee constituted to inquire into the charges of misappropriation and handling cash belonging to Government without authority were vitiated by the violation of the principles of natural justice with the result that the order of dismissal passed subsequently on the respondent could not be sustained.

2. The facts necessary for the disposal of the appeal are as follows. The respondent used to serve as treasure guard in the Eastern Railway. A charge-sheet was issued by the Chief Cashier of the Railway on August 3, 1959 where allegations of misappropriation of cash belonging to Government were levelled against him. An inquiry committee consisting of three persons, namely, A. K. Roy Choudhury, Divisional Accounts Officer, Mani Chakraborty, Divisional Personnel Officer and H. N. Chatterjee, Divisional Engineer, was constituted to inquire into the charges. The charge sheet had been issued after a fact finding committee of the very same persons had looked into the matter. After the proceedings of the inquiry Committee had gone on for some time and some witnesses were examined, A. K. Roy Choudhury was transferred to some other place and the vacancy in the Committee was filled up by R. N. Vakil, his successor in office. It is common ground that the proceedings were not started a fresh but were continued from the stage at which A. K. Roy Choudhury had dropped out. The committee submitted a report finding the respondent guilty of all the three charges framed against him. On 1st February, 1961 the Chief Accounts Officer, Eastern Railway issued the second show cause notice and by an order dated March 20, 1961 he was dismissed from service. The respondent's appeal to the General Manager of the railway was unsuccessful. He thereupon moved the High Court dismissed the Bench of the High Court and a learned single Judge quashed the order of dismissal. A Division Bench of the High Court dismissed the appeal of the Union of India. Hence the present appeal by special leave.

3. The Division Bench of High Court took the view that where the persons who decided the matter finally were not the identical persons who had heard the witnesses at least in respect of a part of the evidence the departmental proceedings were vitiated by the violation of the principles of natural justice. Reliance was placed mainly on the decision of this Court in Gullapalli Nageswararao and Others v. A. P. State Road Transport Corporation & Another.(1959 Supp (1) SCR 319)

According to the High Court :

"If the enquiring authority has a duty to come to a conclusion as to the guilt of the

delinquent upon an evaluation or assessment of the evidence, then it is absolutely necessary that he who should decide the case should hear the evidence. It was impossible to evaluate the evidence of a witness taken on proxy, because one of the salient features of such proceedings is to observe the demeanour of the witness."

The High Court turned down the contention that according to the Discipline and Appeal Rules for railway servant the Disciplinary Authority had to look into the record itself in which case any defect in the inquiry committee would not be fatal. The High Court held that if the report of the inquiry committee was tainted with illegality then the entire departmental inquiry was vitiated.

4. In our view the judgment of the High Court cannot be supported. Section V of the Indian Railway Establishment Code, Volume I, lays down by several rules the procedure to be followed for imposition of major penalties on railway servants. Under Rule 1708 the inquiry may be held, as far as may be, under rules 1709 to 1715. Rule 1709 lays down that the Disciplinary Authority must frame definite charges on the basis of the allegations on which the inquiry is proposed to be held and such charges together with a statement of the allegations on which they are based have to be communicated in writing to the railway servant who is called upon to submit a written statement of his defence and also to state whether he desires to be heard in person. Such written statement may be submitted either to the Disciplinary Authority or to the Board of Inquiry or Inquiring Officer where one has been appointed under Rule 1710. Under the last mentioned rule, the Disciplinary Authority may inquire into the charges itself or it may appoint a Board of Inquiry or an Inquiring Officer for the purpose to be termed the Inquiring Authority. Rule 1711 gives the railway servant the right to inspect and take extract from official records as he may specify for preparing his defence. The inquiry procedure is set forth in Rule 1712. This rule lays down that an inquiry has to be made into the charges which are not admitted after the filing of the written statement. At the inquiry, a definite charge in writing must be framed and explained to the railway servant in respect of each offence which had not been admitted by him and the evidence in respect of it along with any evidence, which he may adduce in defence must be recorded in his presence. The accused railway servant may present his case with the assistance of another railway servant. Sub-rule (3) of the rule provides :

"The Inquiring Authority shall, in the course of the inquiry, consider such documentary evidence and take such oral evidence including cross-examination of the railway servant and witnesses as may be relevant or material in regard to the charges. The railway servant shall have the opportunity of adducing relevant evidence on which he relies, the evidence of witnesses shall be taken in presence, he or the person assisting him shall be given the opportunity of cross-examining the witnesses and no materials shall be relied on against him without his being given an opportunity of explaining them."

Under sub-rule (4) :

"At the conclusion of the inquiry, the Inquiring Authority shall prepare a report of the inquiry, recording its findings on each of the charges, together with the reasons therefore ....."

Under sub-rule (5) the record of the enquiry shall include the charges framed against the railway servant and the statement of allegation furnished to him under Rule 1709, his written statement of defence, if any, the oral evidence taken in the course of the inquiry, the documentary evidence

considered in the course of inquiry, the orders, if any, made by the Disciplinary Authority in regard to the inquiry and a report setting out the finding on each charge and the reasons therefore. Under rule 1713 the Disciplinary Authority, if it is not the Inquiring Authority, shall consider the record of the inquiry and record its finding on each charge.

5. It is after the observance of all the above formalities that penalty may be imposed under Rule 1704 or Rule 1715.

6. In our opinion, the above procedure does not leave any scope for the guidance of a member of an Inquiry Committee consisting of more than one person by the impression formed by him about the truthfulness or otherwise of a particular witness examined during the inquiry. From the stage antecedent to the framing of the charges everything is recorded in writing : the allegations on which the charges are based are made known to the railway servant and he is called upon to file his written statement after looking into all the relevant records. The oral evidence of all the witnesses tendered during the inquiry is recorded in writing. Whereas here the oral evidence is recorded in the presence of three persons constituting the Inquiry Committee, any impression created by the demeanour of a particular witness on the mind of any one member cannot affect the conclusion afterwards arrived at jointly by them. It cannot be suggested that all the three persons would record their impressions separately about the demeanour of a witness and it is quite possible that a particular witness may appear to one member of the committee to be untruthful without his being considered so by the others. The members of the Inquiry Committee cannot record their findings separately but it is their duty to record findings on each of the charges together with the reasons therefore. It is to be noted that the duty of the Inquiry Committee ends with the making of the report. The Disciplinary Authority has to consider the record of the inquiry and arrive at its own conclusion on each charges. Whatever may be the impressions created by a particular witness on the mind of one member of the committee, the same is never translated into writing and the Disciplinary Committee merely goes by the written record after giving a personal hearing to the railway servant if he asks for it. Even if the Inquiry Committee makes a report absolving the railway servant of the charges against him, the Disciplinary Authority may, on considering the entire record, come to a deferent conclusion and impose a penalty. This is amply borne out by a judgment of this court in *Union of India v. H. C. Goel* (AIR 1964 SC 364), where it was said that neither the findings nor the recommendations of the Inquiry Committee are binding on the Government.

7. In such a state of affairs a change in the personnel of the Inquiry Committee after the proceedings are begun and some evidence recorded cannot makes any difference to the case of the railway servant. The record will speak for itself and it is the record consisting of the documents and the oral evidence as recorded which must form the basis of the report of the Inquiry Committee. The committee is not the punishing authority and the personal impression of a member of the committee cannot possibly affect the decision of the Disciplinary Authority. In a state of affairs like this, we cannot see any reason for holding that any known principles of natural justice is violated when one member of the committee is substituted by another.

8. The observations of this Court in *Gullapalli Nageswararao's case* (Supra) have no bearing on the facts of the present case. There it was held that if a personal hearing is given by the Secretary of a Department and the Minister of the state has to decide on the notes put up by the secretary, the procedure defeats the object of personal hearing. The observations at p. 367 that :

"Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party

appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides then personal hearing becomes an empty formality."

Can have no application of the facts of the case before us. The members of the Inquiry Committee who heard the argument had the entire record before them and they had to go by the record.

9. In proceeding before ordinary trial courts of the land, both civil and criminal, it is not uncommon to find oral evidence recorded before more than one presiding Judge or Magistrate. Common convenience requires it and statutes provide for it. It cannot be suggested that the Legislatures have enacted laws in disregard of an elementary principle of natural justice. Besides not unoften witnesses have to be examined on commission. Whenever a witness is so examined, the Judge does not have the benefit of watching his demeanour. The Criminal Procedure Code provides for more than one Magistrate recording the evidence of witnesses. Section 363, Cr.P.C., enjoins upon a Session Judge or a Magistrate to record such remarks (if any) as he thinks material respecting the demeanour of a witness whilst under examination. Order XVIII, Rule 15 of the Code of Civil Procedure empowers a Judge to treat the evidence recorded by his predecessor in office as if it had been taken down by him or under his direction under the said rule and he may proceed with the suit from the stage at which his predecessor left it, whenever his predecessor-in-office is prevented from concluding the trial of a suit by reason of death or transfer or some other cause. Instances are not rare when such powers have to be used either by a Judge hearing a civil suit or a Magistrate or a Sessions Judge hearing a criminal matter. In the vast majority of cases, both civil and criminal, a Judge does not come to any conclusion merely on the impressions created by a witness while he is in the witness box. In all matters which go up in appeal, the appellate court does not have any opportunity of watching the demeanour of the witness; it has to go by the record of the case. Of course if any comment is made by the trial Judge about the demeanour of a witness, the appellate court takes note of it. But it never guides itself entirely by such comments. The entire evidence has to be looked into and assessed as a whole. Whereas here the punishing authority does not hear the evidence but goes by the record of the case the demeanour of a particular witness when giving evidence can have but little meaning and cannot influence the mind of the Disciplinary Authority in awarding punishment. We, therefore, hold that the High Court was not right in quashing the order of dismissal on the ground that the report of the Inquiry Committee was vitiated by the Inquiry of any principle of natural justice as stated in the judgment. The appeal is therefore allowed and the order of the High Court set aside. There will however be no order as to costs.

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