

Union of India and Others

Vs

M. B. Patnaik and Others

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Vs

P. N. L. Das

Civil Appeals Nos. 2119-2121 of 1979

(Syed M. Fazal Ali, A. Varadarajan JJ)

11.02.1981

JUDGMENT

VARADARAJAN, J. –

1. These appeal by special leave have been filed against two judgments of a Division Bench of the Orissa High Court [C. A. No. 389 of 1981] arising out of the judgment in Original Jurisdiction Case No. 832 of 1977 and C. As. Nos. 2119-2121 of 1979 of 1979 arising out of Original Jurisdiction Cases Nos. 1261 of 1976 and 833 and 834 of 1877 respectively. P. N. L. Das, the respondent in C. A. No. 389 of 1981 was appointed as a Booking clerk in the South Easter Railway in 1955 and had been duly confirmed at the post. M. B. Patnaik, the respondent in C. A. No. 2119 of 1979, was working as a confirmed Commercial Clerk at Khurda Road in the South Eastern Railway, having been appointed in January-February 1964. D Sahu and S. C. Mitra, the respondents in C. A. Nos. 2020 and 2021 of 1979 respectively were working as confirmed Booking Clerks in the South Easter Railway at about the same time. A departmental enquiry was initiated against these four respondents and three others, namely, Ch. N. Murty, B. S. N. Rao and B. Papa Rao in 1964 on the basis of a report of the Traveling Inspector of Accounts, and two charges were framed against them. The second charge was not pressed, and we are, therefore, concerned only with the disciplinary proceeding relating to the first charge, which led to the removal of all the seven persons from service. The first charge framed against these six persons was this.

On May 20, 1959, 47 third-class express tickets had been issued from Khurda Road to Howrah for a total fare of Rs. 497-73 and these were accounted short on the plea of over-issue of the these tickets on May 12, 1959. The record at Howrah Station indicated that the tickets were actually sold on May 20, 1959 and not on May 12, 1959. The result was the fare amounting to Rs. 497-73 had been misappropriated on December 20, 1959 by tampering with the figure relating to May 12, 1959 in the cash-book. The record foils of foreign express fare tickets issued on May 12, 1959 were fraudulently cancelled and the sum of Rs. 493-53 already accounted in the cash-book against those two foreign express tickets was erased, and to balance the sum a fictitious sale of 47 tickets had been entered in the cash-book.

2. Several points had been raised in the Writ Petition [Original Jurisdiction Case] No. 832 of 1977.

But when that case was taken up the learned counsel for the petitioner P. N. L. Das confined his arguments only to two points, namely, [1] that though the Evidence Act does not strictly apply, suspicion and conjecture cannot form the basis of any conclusion in any detrimental enquiry and [2] reasonable opportunity of defending himself had not been given to the petitioner P. N. L. Das. The disciplinary authority and punishing authority, namely, the General Manager, constituted an Enquiry Committee consisting of the Assistant Commercial Superintendent, Khurda Road and the Assistant accounts Officer, Garden Reach, namely, Shri K. Julhe and Shri B. B. Chatterjee. In the midst of the enquiry Shri K. Julhe and Shri B. B. Chatterjee. In the midst of the enquiry Shri K. Julhe was transferred and thereafter his successor in office Shri B. K. Patnaik and Shri B. B. Chatterjee, the Assistant Accounts Officers, Garden Reach continued the enquiry. The Enquiry Officers found the appellants in these appeals guilty of the charge. The punishing authority, the General Manager, on the representation of the respondents in C. As. Nos. 2119-2121 of 1979, directed supplementary enquiry to be held. Notice of the supplementary enquiry was given in April 1967. At that time Shri B. K. Patnaik, who succeeded Shri K. Julhe as the Assistant Commercial Superintendent, Khurda Road as stated above, had been promoted as a Divisional commercial Superintendent and was posted at Kharagpur while Shri B. B. Chatterjee, who was Assistant Accounts Officer, Garden Reach, had been promoted as the Divisional Accounts Officer and had been posted at Adra. These very persons issued the notice for continuing the enquiry after the General Manager directed the Supplementary enquiry. It is at this stage that P. N. L. Das, the appellant in C. A. No. 389 of 1981 challenged in O. J. C. No. 579 of 1971 the jurisdiction of the enquiry Board. In that writ petition, Misra and Panda, JJ. of the Orissa High court while negating several other contentions raised on behalf of P. N. L. Das, directed that the supplementary enquiry pending against P. N. L. Das, directed that the supplementary enquiry pending against P. N. L. Das shall be continued by the officers holding the post of Assistant commercial Superintendent, Khurda Road and the Assistant Accounts Officer, Garden Reach and not by Shri B. K. Patnaik who had been promoted as the Divisional Commercial Superintendent and was posted at Kharagpur and ceased to be Assistant Commercial Superintendent, Khurda Road and by Shri B. B. Chatterjee who had been promoted as the Divisional Accounts Officer and posted at Adra and ceased to be the Assistant Accounts Officer, Garden Reach.

3. In W. Ps. [O. J. C.] Nos. 1261 of 1976 and 833 and 834 of 1977 Misra and Mohanty, JJ. of the Orissa High court found that by the time the decision in the said O. J. C. No. 579 of 1971 was rendered by Misra and Panda, JJ. on September 20, 1972, the enquiry against the respondents in C. As. Nos. 2119-2112 of 1979 of 1979 had been disposed of and the disciplinary authority had taken into account the material collected in the supplementary enquiry found the respondents in these three appeals guilty, in consequence of which these respondents were removed from service by the punishing authority. Writ Petitions [O. J. C.] Nos. 1271 of 1976 and 833 and 834 of 1977 were filed for challenging the removal of the respondents in C. As. Nos. 2119-2121 of 1979 from service. Misra and Mohanty, JJ. held in these three writ petition is their judgment dated January 10, 1979 that in view of what has been stated in the decision in Writ Petition [O. J. C.] No. 579 of 1971 [P. N. L. Das v. Union of India] the supplementary enquiry made by Shri B. K. Patnaik who had ceased to be the Assistant Commercial Superintendent, Khurda road and Shri B. B. Chatterjee who had ceased to be the Assistant Accounts Officer, Garden Reach, must be held to be without authority of law, and having regard to the fact that the case of the railway administration was not that the material gathered in the supplementary enquiry had not been used by the enquiry officers and the disciplinary authority, the finding of guilt and the imposition of punishment on the basis of that finding could not be sustained. Accordingly, the learned Judge allowed these Writ Petitions [O. J. C.] Nos. 1261 of 1976 and 833 and 834 of 1977 and quashed the order made in the disciplinary

proceedings and directed that each of the three petitioners before them, namely, the respondents in C. As. Nos. 2119-2121 of 1979 shall be deemed to be continuing in service and would be entitled to appropriate service and would be entitled to appropriate service benefits on that footing.

4. Mr. Pal, who appeared for the Railway Administration before Misra and Mohanty, JJ., in these three writ petitions requested the learned Judges to indicate that it is open to the disciplinary authority to continue the proceeding in accordance with law. We are of the opinion that the learned counsel was perfectly justified in doing so. This Court had held in *Anand Narain Shukla v. State of M. P.* that when the earlier order of reversion was quashed on a technical ground, a second enquiry on merits could be held and that the order of reinstatement pursuant to the quashing of the earlier order on a technical ground is not a bar, and this Court negated the contention that after the earlier order of reversion was quashed by the High Court and the government servant was reinstated, no second enquiry on the very same charge could be held and no second order of reversion could be legally and validly made. A similar view has been taken by this Court in *Superintendent [Tech. I] Central Excise I. D. D., Jabalpur v. Pratap Rai* in which it has been held that where an order passed in appeal vacates the order of the First Tribunal on purely technical grounds and expressly states that it was being passed without prejudice, which means that it was not an order on merits of the case, such an order does not debar fresh adjudicator proceedings which may be justified under the law and that when an order is struck down as invalid being in violation of the principle of natural justice, there is no final decision of the case and all that is done is that the inherent defect is removed but the proceedings are not terminated. But Misra and Mohanty, JJ. declined to consider favourably the request of the learned counsel for the Railway administration before them namely, that they should indicate that it is open to the disciplinary authority to continue the proceeding in accordance with law on the ground that 15 years had elapsed since the charges were framed and the petitioners before them namely, the respondents in C. As. Nos. 2119-2121 of 1979, had been suffering on account of being subjected to disciplinary proceedings for such long time and that it would be a mockery of justice if after the lapse of so many years the enquiry should commence again on the same charges.

5. When the supplementary enquiry, mentioned above, commenced and P. N. L. Das, the respondent in C. A. No. 389 of 1981 was examined, he insisted upon production of certain documents and witnesses but they were not made available here on the plea that the documents were not available and the witnesses who appeared to be ticket collectors, could not be correlated. However, as already stated, he was adjusted guilty of the charge on the footing that he had misappropriated the sale proceeds of express fare tickets. Misra and Mohanty, JJ. observed in their judgment in *W. P. (O. J. C.) No. 832 of 1977* that there is no positive material worth the name to support that charge and lead to the conclusion that tickets had actually been utilized, that the relevant documents appeared not to have been preserved on account of negligence on the part of the administration and that on the ground that the evidence is not available prejudice cannot be allowed to be caused to the petitioner before them by relying upon suspicion and conjecture as evidence. The learned Judges further observed that as things stood it is indeed difficult for them to hold that there is any evidence on record to support the charge. In that view they allowed the writ petition and quashed the punishment imposed on P. N. L. Das and held that he continues to be in service and is entitled to all the service benefits admissible to him. These civil appeals by special leave have been filed against these judgments of the Orissa High Court.

6. In the course of hearing of these appeals it was represented to us that Ch. N. Murty, B. S. N. Rao and B. Papa Rao have since retired and that all payments have been made to them in full. It was also represented that even P. N. L. Das had been reinstated and all arrears etc. due to him have been paid.

Mr. M. M. Abdul Khader, learned counsel appearing for the appellants in all these cases, submitted that the view expressed in *P. N. L. Das v. Union of India* that the supplementary enquiry directed to be held by the disciplinary authority should be held only by officers and Assistant Accounts Officer, Garden Reach and not by the officers who had held those posts at the time of the original enquiry and ceased to hold posts subsequently, is incorrect. The learned counsel submitted that this position would appear from the decision of this Court in *General Manager, Eastern Railway v. Jwala Prosad Singh* referred to in the judgment of the learned Judges of the Orissa High Court itself. The learned Judges of the Orissa High Court have extracted the following passage from the judgment of this Court in *General Manger, Eastern Railway v. Jwala Prosad Singh* in their Judgment : (SCC pp. 106-07, paras 6 & 7)

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 oral evidence of all the witnesses tendered during the enquiry is recorded in the presence of three persons constituting the Inquiry Committee, any impression created by the demeanor 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 be a 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 therefor. It is to be noted that the duty of the Inquiry Committee is 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 charge. Whatever may be the impression created by a particular witness on the mind of the member of the Committee, the same is never translated into writing and the Disciplinary Authority 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 different conclusion and impose a penalty. This is amply borne out by a Judgment of this Court in *Union of India v. H. C. Goel*, where it was said that neither the findings nor the recommendations of the Inquiry Committee are binding on the Government.

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 make 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 the 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 principle of natural justice is violated when one member of the Committee is substituted by another.

7. It would appear from the above extract that it is not at all necessary that the enquiry which had been held in part by more than one enquiry officers should be continued by the same enquiry officers until the end. The post which the members of the Inquiry committee held originally might have even ceased to exist at a later stage, or one or more of the members of the Inquiry Committee may no longer be available either on account of retirement or due to any other cause. For that

reason, it could to be held that the enquiry could not be continued at all. Therefore, there could be no valid objection to the supplementary enquiry being continued by the very two individuals, even after they had ceased to hold their respective offices which they held at the time of the original enquiry. The plea of mala fides raised against the two Enquiry Officers on behalf of P. N. L. Das of the respondent in C. A. N. 389 of 1971 before Misra and Panda, JJ. when writ petition (O. J. C.) No. 579 of 1971 was heard was rejected by the learned Judges who have observed in their judgment that after bearing the counsel they were satisfied that no good foundation has been laid for the plea of mala fides, bias or prejudice by the enquiry officers and it was also conceded by the learned counsel who appeared for P. N. L. Das in that Writ Petition that on the material on records it may be difficult for him to persuade them to hold in favour of the petitioner before them in regard to the plea of mala fides. Therefore, we are clearly of the opinion there could be no bar to B. K. Patnaik and B. N. Chatterjee who were originally the Assistant Commercial Superintendent, Khurda Road and Assistant Accounts Officer, Garden Reach respectively, holding the supplementary enquiry even after they ceased to hold their respective offices by reason of their promotion as Divisional Commercial Superintendent, Kharagpur and Divisional Accounts Officer, Adra sometimes before the commencement of the supplementary enquiry. However, we agree with Misra and Mohanty, JJ. of the Orissa High Court that it would be inequitable for a fresh enquiry being made into the charge framed against the respondents in C. As. Nos. 2119-2121 of 1979 or to go into the merits of case against P. N. L. Das the respondent in C. N. No. 389 of 1981, having regard to the long lapse of time, the offences having been stated to have been committed in about 1955. Mr. M. M. Abdul Khader, learned counsel for the appellants in these appeals represented before us that no recovery will be made from Sarvshri Ch. N. Murty, B. S. N. Rao and B. Papa Rao who have retired from service and also from P. N. L. Das the respondent in C. A. No. 389 of 1981 who has been reinstated subsequent to the decision of the Orissa High Court in Writ Petition (O. J. C.) No. 382 of 1977. We, accordingly, dismiss these appeals and direct the parties to bear their respective costs. Advocates fee Rs. 1000, one set.

8. It was also represented before us by Mr. M. M. Abdul Khader that Rs. 22, 240 Rs. 19,250 and Rs. 19,250 would be payable to the respondent in C. As. Nos. 2119-2121 of 1979 respectively if these appeal had been disposed of against the railway Administration of merits and that the Administration would, however, pay Rs. 12,000 to each of these persons, namely, M. B. Patnaik, D. Sahu and S. C. Mitra. We accept this offer as being beneficial to these three respondents in C. As. Nos. 2119-2121 of 1979 who will be entitled to recover from the Railway Administration a sum of Rs. 12,000 each up to January 22, 1981 on account of arrears of salary etc. payable to them from the date of their suspension.

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