Arjun Chaubey

Vs

Union of India and Others

Civil Appeal No. 2613 of 1983

(CJI Y. V. Chandrachud, V. D. Tulzapurkar, M. P. Thakkar, R. S. Pathak, D. P. Madon JJ)

23.03.1984

JUDGMENT

CHANDRACHUD, C.J. -

1. The appellant was working as a senior clerk in the office of the Chief Commercial superintendent, Northern Railway, Varanasi. On May 22, 1982 the Senior Commercial Officer wrote letter to him, calling upon him to offer his explanation in regard to 12 charges of gross indiscipline. The appellant submitted his explanation to the charges by his reply dated June 9, 1982. On the very next day, the Deputy Chief Commercial Superintendent served a second notice upon the appellant, saying that the explanation offered by him was not convincing but that another chance was being given to him to offer his explanation regarding the specific charges which were conveyed to him by the letter of May 22, 1982. By this letter, the appellant was also called upon to submit his explanation within three dayes as to why deterrent disciplinary action should not be taken against him. The appellant submitted his further explanation on on June 14, 1982, but on the very next day, the Deputy Chief Commercial Superintendent passed an order dismissing him from service on the ground that he was not fit to be retained in service.

2. The appellant filed a writ petition in the High Court of Allahabad challenging the order of dismissal on various grounds. The Union of India, the Senior Commercial Officer and the Deputy Chief Commercial Superintendent were impleaded to that petition as respondents 1 to 3. That writ petition having been dismissed by the High Court, the appellant has filed this appeal by special leave.

3. The order dismissing the appellant from service was passed by respondent 3 under Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 read with Proviso (b) to Article 311(2) of the Constitution. Respondent 3 recorded his reasons in writing for coming to the conclusion that it was not reasonable practicable to hold an inquiry into the conduct of the appellant in the manner provided by the relevant rules, and thereafter, he proceeded to pass the order of dismissal without holding any inquiry.

4. Quite some time was taken by the appellants counsel in arguing upon the true meaning and intendment of the Discipline and Appeal Rule, 1968 and in urging that the appellant should have been afforded an opportunity of being heard on the question as to whether, it was or was not reasonably practicable to hold an inquiry into the charges levelled against him. It was also urged by the learned counsel that the fact that it was not reasonably practicable to hold a full-fledged inquiry as contemplated by the rules, did not justify the non-holding of any inquiry at all. We do not propose to enter into the merits of these contentions since, the appellant is entitled to succeed on

another ground.

5. The letter dated May 22, 1982 which contains accusations of gross misconduct against the appellant enumerates 12 charges, out of which charges Nos. 2 to 7 and 11 refer to the appellants misconduct in relation to respondent 3. For example, the second charge alleges that the appellant entered the office of respondent 3 and challenged him in an offensive and derogatory language. Charges No. 3 says that the appellant was in the habit of forcing himself on respondent 3 two or three times every day with petty complaints. Charge No. 4 alleges that the appellant stormed into the office of respondent 3 and shouted at him using foul words. Charges Nos. 5, 6 and 7 contain similar allegations. The allegation contained in charge No. 11 is to the effect that behaving as a leader of goondas, the appellant hired the services of other goondas and created security problems for respondent 3 and the members of his family. It is obvious that if an inquiry were to be held into the charges framed against the appellant, the principal witness for the Department would have been respondent 3 himself as the main accuser and the target of appellants misconduct. It is surprising in this context that the explanation dated June 9, 1982 which was furnished by the appellant to the letter of accusation dated May 22, 1982 was considered on its merits by respondent 3 himself. Thereby, the accuser became the judge. The letter written to the appellant by respondent 3 on June 10, 1982 says :

> I have carefully gone through you defence explanation dated June 9, 1982 of the charges given in this office letter of even No. dated May 22, 1982 and the same is not convincing at all. Before taking any action under D. and A.R., I would like to offer you another chance for giving you explanations to the specific charges conveyed to you vide this office letter dated May 22, 1982.

Please submit you defence explanation within three days as to why a deterrent disciplinary action should not be taken against you.

The appellant submitted his further explanation which also was considered by respondent 3 himself. The order of dismissal dated June 15, 1982 which was issued by respondent 3 recites that he was fully satisfied that it was not reasonably practicable to hold an inquiry into the appellants conduct as provided by the rules and that he had come to the conclusion that the appellant was not fit to the retained in service and had, therefore, to be dismissed. Evidently, respondent 3 assessed by weight of his own accusations against the appellant and passed a judgment which is one of the easiest to pass, namely that he himself was a truthful person and the appellant a liar. In doing this, respondent 3 violated a fundamental principle of natural justice. The main thrust of the charges against the appellant related to his conduct qua respondent 3. Therefore, it was not open to the latter to sit in judgment over the explanation offered by the appellant and decided that the explanation was untrue. No person can be a judge in his own cause and no witness can certify that his own testimony is true. Anyone who has a personal stake in an inquiry must keep himself aloof from the conduct of the inquiry. The order of dismissal passed against the appellant stands vitiated for the simple reason that the issue as to who, between the appellant and respondent 3, was speaking the truth was decided by respondent 3 himself.

6. In State of U. P. v. Mohammad Nooh, ((1958) SCR 595, 609 : AIR 1958 SC 86) S. R. Das, C.J., observed, while speaking for the majority that the roles of a judge and a witness cannot be played by one and the same person and that it is futile to expect, when those roles are combined, that the judge can hold the scales of justice even. We may borrow the language of Das, C.J. and record a finding on the facts of the case before us that the illegality touching the proceedings which ended in the

dismissal of the appellants is "so patent and loudly obtrusive that it leaves an indelible stamp of infirmity" on the decision of respondent 3.

7. Mr. Mridul, appearing on behalf of the respondent, contended that though this may be the true legal position, the appellant does not deserve the assistance of the Court since, he was habitually guilty of acts subversive of discipline. This argument does not impress us. In the first place, to hold the appellant guilty of habitual acts of indiscipline is to assume something which remains unproved. Secondly, the illegality from which the order of dismissal passed by respondent 3 suffers is of a character so grave and fundamental that the alleged habitual misbehaviour on the part of the appellant cannot cure of condone it.

8. In the result, we allow the appeal and set aside the judgment of the High Court. The order dated June 15, 1982 whereby the appellant was dismissed from service is set aside. In order, however to avoid needless complications in working out the mutual rights and obligations of the parties, we direct that the appellant, who is due to retire within about six months., shall be treated as having retired from service with effect from April 1, 1984. He shall be paid the arrears of his salary due until March 31, 1984 on the basis of the salary last drawn by him on June 15, 1982, without taking into account the increments which he might have earned subsequent to that date. The provident fund and gratuity shall also be paid to the appellant as calculated in accordance with the rules, as if no order of dismissal was passed against him. The appellant may not and shall not rejoin his duties. He will be treated as on leave between now and March 31, 1984.

9. The arrears of salary until March, 31, 1984 shall be paid to the appellant on the basis indicated above, on or before the date and, in any event, not later than May 1, 1984. The provident fund and gratuity shall be paid to him within a period of two months from today.

10. Mr. Garg made a statement before us on behalf of his client, the appellant, that the appellant is neither in occupation of any official residential accommodation, nor is he in possession of the garage which is referred to in charge No. 6 in the letter of May 22, 1982.

11. The appeal will stand disposed of in terms of the above order. Respondent 1, the Union of India, shall pay to the appellant a sum of Rs. 1000 (Rupees one thousand) as his costs.

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