

**SUPREME COURT OF INDIA**

Union of India

Vs.

Prakash Kumar Tandon

C.A.No.7349 of 2008

(S.B. Sinha and Cyriac Joseph JJ.)

17.12.2008

**JUDGMENT**

**S.B. SINHA, J.**

1. Leave granted.

2. This appeal is directed against a judgment and order dated 12.05.2005 passed by a Division Bench of the Madhya Pradesh High Court whereby and where under a writ petition filed by the appellant herein from a judgment and order of the Central Administrative Tribunal allowing the respondent's original application, was dismissed.

3. Respondent, at all material times, was and still is working as Inspector of Works at Satna. Allegedly, on the premise that he had accepted substandard quality of wood, a charge-sheet was issued. Indisputably, the procedure for imposition of major penalties on Railway Servants is governed by Chapter V of Establishment Code Volume-I; paragraph 3 whereof reads as under :

"3. Appointment of Board of Inquiry or Inquiring Officer (R.1710). The Disciplinary Authority may enquire into the charges itself or if it considers necessary, it may, either at the time of communicating the charges to the Railway servant under Rule 1709 or at any time thereafter, appoint a Board of Inquiry or an Inquiring Officer for the purpose, which will be termed as the "Inquiring Authority".

Note--This is an enabling rule. The inquiry may be conducted by the Disciplinary Authority itself or he may get the same done through an agency of his choice. The choice is confined either to a Board or a named Officer. The procedure in all cases is to be in accordance with that laid down in Rule 1709 ante."

4. An Enquiry Officer was appointed for holding the said disciplinary enquiry. He was a Chief Engineer being on deputation to the Vigilance Department. Whereas the appointing authority of the respondent was of the rank of District Railway Manager, the Disciplinary

authority is only a Senior Executive Engineer. The District Railway Manager of Railways is also the appellate authority.

5. Before the disciplinary proceedings commenced, respondent, indisputably by a letter dated 20.2.1996 requested the Inquiry Officer to summon the Assistant Engineer Mr. B.S. Walia, stating :

"You will be kind enough to fix up date of the next inquiry in first Fortnight of March 1996 anywhere as per your convenience. Shri B.S. Walia, A.E.N.(M) STA now A.E.N. (M) N.G.P. "Headquarter" must be called for as the AEN who recorded 100% test check. All other witnesses to whom the vigilance wants to examine may be called and their presence be ensured. Further the inquiries date to be fixed for examination and the same sequence arguments are also submitted. This will facilitate early completion of an inquiry. EX AEN (C) STA Shri B.S. Walia, who is of course is a Rly. Witness but since he is very much involved in measurements and checking in supply, he may be specifically be requested to be present to clear many contradiction to enable the inquiry officer to derive at a fair and free judicious conclusion."

6. The said letter was not responded to. It was not rejected either. Concededly, the said Mr. Walia was not examined.

7. In the disciplinary proceedings, respondent was found guilty. Punishment of reduction of pay to the lower stage in the scale of 6500- 10500/- for a period of two years with cumulative effect was imposed on him by the disciplinary authority by an order dated 6.1.1998. He preferred an appeal thereagainst before the Appellate Authority which was also dismissed. The Appellate Authority enhanced the penalty by directing reduction of his pay to the lowest stage of Rs.6500/- in the scale of pay of Rs.6500-10500/- for a period of three years with cumulative effect.

8. Order of the Appellate Authority was questioned by the respondent by filing an original application before the Central Administration Tribunal. In the said application, respondent, inter alia, contended that Inquiry Officer being superior in rank to the Disciplinary Authority and Mr. B.S. Walia having not been examined as a witness by the Department, the order imposing penalty was unsustainable. The learned Tribunal held :

"After hearing the learned counsel for the parties, we find from Annexure-A3 that "AEN is responsible for correctness of m/ment for all works" and applicant has also requested the respondents to call the AEN for clarifying the picture. But, he was not called whereas he was main person to clarify the picture. In the reply the respondents have stated that Shri Walia was interrogated by the vigilance and nothing was found against him. Hence he was not called nor cited as witness. It seems to be not satisfactory, therefore, the contention of the respondents is rejected. We have also found that the enquiry officer was from a different department and of a different division and thus there is no question of daring to disagree or a reappraised the findings by independent application of mind. However, the argument advanced by the

respondents also does not seem to be proper and justified. The enquiry officer must be junior to the disciplinary authority. He may be of any department. If the enquiry officer is senior to the disciplinary authority, the same is neither legal nor justified and it is against the principles of natural justice."

9. The writ petition filed by the appellant has been dismissed by the High Court by reason of the impugned judgment.

10. Ms. Rajni Ohri Lal, learned counsel appearing on behalf of the appellant, would submit that respondent cannot be said to have been prejudiced by reason of the appointment of the Chief Engineer as an enquiry officer who was on deputation to Vigilance Department as he was from a different department and, thus, the disciplinary authority or the appellate authority were not working under him. In any event, had such a plea been raised by the respondent before the disciplinary authority, the enquiry officer could have been changed and in that view of the matter, he must be held to have waived his right. It was urged that as the function of the disciplinary authority and the enquiry officer are different, the question of suffering any prejudice by the respondent did not arise. So far as non- summoning of the witness of Mr. Walia is concerned, the learned counsel would contend, he had been interrogated by the vigilance department and as he was found to be innocent, it was not found necessary to examine him. It was always open to the prosecution, the learned counsel would contend, to examine or not to examine any witness on behalf of the department.

11. Mr. Raju, learned counsel appearing on behalf of the respondent, on the other hand, would contend that examination of Mr. Walia was essential as the passing of timber and wood work was within the domain of the Executive Engineer.

12. The learned counsel appears to be correct. The Central Railway Administration as far back as on 3.4.1990 issued a clarification as to whether the power of the Assistant Engineer to pass the timber/wood work has been taken away or not, to state :

"The matter has been scrutinized & it is observed that the confusion has arisen due to use of the word 'Engineer' in the specification No.1001. Correlating the word Engineer with GCC implied Divisional Engineer and hence the interpretation was extended accordingly in the circular referred above.

However, after reconsidering the matter and going through the instructions on delegation of powers in respect of measurement (RB's letter No.71/W1/CT/16 dated 23.7.87) it is seen that AEN is responsible for correctness of m/ment for all works. Wood work and other materials have been traditionally been passed by Asst. Engineer. Hence, it has been decided by CE in partial modification of above circular that woodwork shall continue to be passed by Asst. Engineer."

13. Respondent, in his defence, contended that the measurement book was checked by Mr. Walia on 5.7.1991 and 6.7.1991. According to him, he was not at all responsible either as regards the quality of wood or the correctness of measurement of the timber in question.

14. The disciplinary proceedings were initiated only after a raid was conducted by the Vigilance Department. The enquiry officer was the Chief of the Vigilance Department. He evidently being from the Vigilance Department, with a view to be fair to the delinquent officer, should not have been appointed as an enquiry officer at all.

15. From the evidence of another Assistant Engineer who had taken part in the raid, it is evident that the alleged loss caused to the railways was negligible and mere marginal allowances are permitted for measurement of 'scantlings and planks'.

16. In the aforementioned situation, we are of the opinion that the Tribunal as also the High Court cannot be said to have erred in holding that the said Mr. Walia should have been examined as a witness.

17. The principles of natural justice demand that an application for summoning a witness by the delinquent officer should be considered by the enquiry officer. It was obligatory on the part of the enquiry officer to pass an order in the said application. He could not refuse to consider the same. It is not for the Railway Administration to contend that it is for them to consider as to whether any witness should be examined by it or not. It was for the enquiry officer to take a decision thereupon. A disciplinary proceeding must be fairly conducted. An enquiry officer is a quasi judicial authority. He, therefore, must perform his functions fairly and reasonably which is even otherwise the requirement of the principles of natural justice.

18. In *M.V. Bijlani v. Union of India & Ors.*<sup>1</sup>, this Court has held :

"Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

19. If the disciplinary proceedings have not been fairly conducted, an inference can be drawn that the delinquent officer was prejudiced thereby.

20. In *S.L. Kapoor v. Jagmohan & Ors.*<sup>2</sup>, this Court has held that non-compliance of the principles of natural justice itself causes prejudice. We are not oblivious of the fact that the said principle has since been watered down but in a situation of this nature, we are of the opinion that the concurrent findings of the Tribunal, as also the High Court cannot be said to be unreasonable or suffering from any legal infirmity warranting interference.

21. The appeal, therefore, is dismissed with costs. Counsel's fee assessed at Rs.10,000/-.

<sup>1</sup>[2006] 5 SCC 88]

<sup>2</sup>(1980) 4 SCC 379