SUPREME COURT OF INDIA

Union of India

Vs

Gyan Chand Chattar

C.A.No.4174 of 2003

(Dr. Mukundakam Sharma and Dr. B.S. Chauhan JJ.)

28.05.2009

JUDGEMENT

DR. B.S. CHAUHAN, J.

1. This appeal has been preferred against the judgment and order of the Division Bench of Gujarat High Court at Ahmedabad passed in Letters Patent Appeal No.25 of 1983 by which while affirming the judgment and order of the learned Single Judge dated 27.12.1982 passed in Special Civil Application No.101 of 1982 allowed the cross objections filed by the respondent-employee and set aside the order giving liberty to the disciplinary authority to pass a fresh order of minor punishment on two charges.

2. The facts and circumstances giving rise to this case are that the respondent-employee Gyan Chand Chattar was appointed in the Western Railway as Shroff in the Department of Pay and Cash in the scale of Rs.260-400 w.e.f. 8.2.1971 vide official letter dated 8.2.1971. He was thereafter posted as Cashier in the year 1977 in the pay-scale of Rs.330-480. He was served a charge sheet dated 8.4.1980 containing 6 charges that he traveled in the train in First Class on 24.11.1979 though he

was not entitled to travel in that class; refused to arrange payment of certain amount to the employees against bills dated 12.11.1979; 16.11.1979 and 21.11.1979; while on duty on 24.11.1979 travelling in 1st Class compartment of the Train, played cards with RPF Rakshaks; that on 24.11.1979 the train in which he was traveling was detained by the agitators, railway staff who demanded payment of their pay allowance, he acted extremely irresponsibly and made no attempt to convince them about his difficulties; refused to receive "Control Message"/"Memo" from the superior officer and wanted commission of 1% for payment of pay allowance to the employees.

3. During the course of enquiry both parties led evidence, oral as well as documentary. The Enquiry Officer completed the enquiry and submitted its report dated 22.4.1981 to the disciplinary authority holding all six charges proved against the said respondent-employee. The disciplinary authority agreeing with the findings recorded by the Enquiry Officer and considering the reply to the enquiry report submitted by the delinquent employee, passed the order of punishment dated 2.5.1981 removing the respondent from service. His appeal against the said order was allowed partly by the statutory appellate authority - Financial adviser and Chief Accounts Officer, Western Railway, Churchgate, Bombay vide order dated 10.11.1981 reducing the punishment of removal from service to reversion of the respondent to the lower post of clerk, Grade-II in the scale of Rs.260-400(R) until he was found fit by the competent authority for being considered for the cashier post in the scale of Rs.330-560 (R).

4. Being aggrieved the respondent-employee challenged the order of punishment by filing Special Civil Application No.101 of 1982 in the High Court of Gujarat at Ahmedabad and the same was allowed vide judgment and order dated 27.12.1982 wherein the learned Single Judge after appreciating the entire evidence came to the conclusion that only charge which could be found proved against the respondent-employee was not receiving the memo of superiors as alleged in charge numbers 4 & 5 against him. All other charges were found unproved. Learned Single Judge issued a direction to the disciplinary authority to pass a fresh order imposing minor punishment on the said proved charge nos.4 & 5 for not accepting the "memo" sent by the superiors.

5. Being aggrieved the Union of India filed the Letters Patent Appeal No.25 of 1983 challenging the judgment and order of the learned Single Judge which has been dismissed vide judgment and order dated 1.5.2002. However, the Division Bench allowed the counter objections filed by the respondent to the extent that the direction given by the learned Single Judge to impose minor penalty on charge numbers 4 & 5 was also set aside. However, considering the facts and circumstances of the case, the Division Bench directed that respondent would be entitled to get 50% of the back-wages with all consequential benefits including retrial benefits.

Hence, this appeal.

6. Mr. SWA Qadri, learned counsel appearing for the appellants submitted that there was no scope of interference by the High Court in exercise of its limited powers of judicial review against the finding of facts recorded by the enquiry officer, approved by the disciplinary authority and

confirmed by the Appellate Authority. It was a case of gross indiscipline and of corruption. Six charges against the said employee including the demand of 1% commission for making the payment of pay allowances stood proved. Punishment order passed by the appellate authority did not warrant any interference. More so there could be no justification for the Division Bench allowing the counter objections filed by the respondent employee, quashing the direction given by the learned Single Judge to the disciplinary authority to pass an order of minor punishment on charge nos. 4 & 5. Therefore, appeal deserves to be allowed.

7. On the contrary, Shri Bhargava V. Desai, learned counsel appearing for the respondent-employee submitted that the High Court after appreciating the entire evidence reached the conclusion that there was no occasion for the disciplinary authority to initiate the disciplinary proceedings and there was no evidence on the basis of which any of the charges leveled against him could be held to have been proved. The High Court rightly quashed the order of punishment passed by the statutory authorities. Division Bench of the High Court set aside the direction to the disciplinary authority to pass a fresh order of minor punishment, as a period of twenty years had elapsed and delinquent had suffered from mental agony and harassment Therefore, the appeal is liable to be dismissed.

8. We have considered the rival submissions made by learned counsel for the parties and perused the record.

9. The disciplinary authority framed the following charges against the respondent-employee.

"1. You have traveled in First Class on 24.11.1979 by 47 DN.

When you are not entitled to this case.

2. You refused to arrange payment of the following amounts to the following employees against bill bearing No.C06 No.EBS/186 dated 12.11.1979, C06 No.EBS/40 dated 16.11.1979, PMR No.2145 dated 21.11.1979, when the staff approached you for the said payment:

a) Vana Anop. P. Man Rs.476.65 b) Mohan Jetha -do- Rs.211.05 c) Kesha Bhika -do- Rs.298.00 d) Raiji Mansukh T/S Rs.256.90 e) Bechav Mansing. -do- Rs.175.00 f) Manoo M. -do- Rs.265.75 g) Soma Salu P. Man Rs. 92.75

3. While you were on duty on 24.11.1979, in 1st Class compartment train No. 47 DN. you played cards with RPF Rakshaks on duty. This was contrary to rules 3(i) (ii) and 3(i) (iii) of Railway Service Conduct Rules, 1966 - in that you have shown absolutely lack of devotion to duty and your conduct was unbecoming of a Railway Servant.

4. On 24.11.1979 at about 11.00 hrs. the train No. 47 DN. was detained by agitators, Railway staff who demanded payment of their pay allowance covered under PMR No.2145 dated 20.11.1979. Even after knowing about this detention as a Railway men you acted extremely irresponsibly and made no attempt to convince them about your difficulties. On the other hand you refused to receive "Control Message"/Memo" from DOS leading to greater detention of the train.

5. In the back ground of detention of train brought out under charge No.4 Sr. DAO/BRC was contacted by control and he wanted you to speak to him in control. When you were told about this and were handed over control message/ memo to this effect - you refused to accept the said memo thereby sowing a great sense of irresponsibility, lack of duty and a willful disobedience of orders of your superiors.

6. It is also alleged by the staff of Chandodia station that you refused to make payment to the concerned staff on 24.11.1979 because you wanted a commission of 1% on the arrears which the staff were unwilling to pay. Your refusal to make the payment on the said day and the consequent agitations and detention of train arose from your alleged malafide intention of receiving commission on the arrears payment."

10. Enquiry Officer found all the six charges proved against the delinquent. The disciplinary authority agreed with those findings and imposed the punishment of removal from service which was modified by the appellate authority imposing the punishment of reversion to lower rank.. The learned Single Judge dealt with all the issues elaborately. The judgment runs to 140 pages.

11. In order to appreciate the facts in correct perspective, it may be necessary to make reference to the findings recorded by the learned Single Judge and the grounds on which the opinion had been formed. So far as Issue No.1 is concerned, after appreciating the evidence, the learned Single Judge came to the conclusion that the respondent had been asked by the higher authorities to travel by 47 DN. known as Viramgam passenger for disbursing the cash as the regular disbursing cashier was ill. Thus, the respondent employee had traveled in first class compartment. However, the said charge could not have been held proved unless a finding of fact was recorded by the Enquiry Officer or the disciplinary authority that he was not entitled to travel in first class compartment.

Certain circulars had been referred to and relied upon by the respondent-employee that for a person

performing such a duty, there has to be reservation in second class compartment by the railway department itself; otherwise he would be entitled to travel in first class compartment. As the second component of the issue, i.e.

as to whether the respondent was entitled to travel in first class compartment or not had not been dealt with at all, the first charge could not be held to have been proved. The learned Single Judge held that as per the submissions made by the respondent employee before the department in the enquiry and in the memo of appeal that he was entitled to travel by first class compartment to facilitate safety of the cash and its transaction and nothing contrary having been proved, it was not a charge in which it could be held that the railway employee committed a misconduct warranting major punishment of removal from service or reduction in rank in such facts and circumstances. The learned Single Judge reached the following conclusion:

"it must be held that so far as charge No.1 is concerned, it is not established on the record of this case in the light of the evidence led before the inquiry officer and even on the basis of the findings arrived at by him on that charge. ... . the findings arrived at by the inquiry officer on charge No.1 do not show that all the basic requirements and ingredients of charge No.1 have been brought home to the petitioner and on the contrary, the ultimate finding on charge No.1 as arrived at by the inquiry officer is not supported by evidence on record and is totally perverse. Consequently, it must be held that charge No.1 is not legally proved against the petitioner."

12. So far as the Charge No. 2 is concerned, learned Single Judge referred to the departmental circulars particularly office circular No.23 of 1969 which provided that the disbursement of amount of more than Rs.500/- could not be made without securing the presence of a Gazetted Officer to witness the payment. During the transaction, the respondent employee made his stand clear that as no Gazetted Officer was available at Chandlodia, the disbursement was not permissible and the learned Single Judge came to the conclusion that mere error of judgment or lack of tact on the part of the employee could not make him liable to face disciplinary proceeding in such circumstances. Therefore, the charge No.2 was not found to be proved.

13. The charge No.3 has been dealt with elaborately by the learned Single Judge and came to the conclusion that the findings recorded by the Enquiry Officer that respondent was playing cards with RPF Raksaks while making disbursement of the amount was totally baseless as the evidence at the most could be that in the course of journey towards his destination the respondent to while-away time played cards with RPF Raksaks. That could not be a conduct of unbecoming of a railway employee on duty as Rule 3(i) (ii) and (iii) of Railway Services Conduct Rules, 1966 provided that every railway employee shall (i) maintain absolute integrity ; (ii) maintain devotion to duty; and (iii) do nothing which is unbecoming of a railway or Government servant. Thus, the conclusion was that there was no evidence to support the charge against him as the respondent did nothing which may fell within the mischief of either of the above clauses of Rule 3 of the Rules 1966.

14. The charge no.4 had been that the respondent-employee had shown extreme irresponsibility and

made no attempt to convince the agitators, Railway staff who demanded payment of their pay allowance and did not receive the control message. The learned Single Judge came to the conclusion that so far as the first part of the allegation is concerned he may be failing in being tactful but it cannot be a case of misconduct and on his count, no disciplinary proceeding could be initiated against him. However, he was found guilty of not receiving the "control message".

15. Charge No.5 was also found to be proved as the employee refused to receive the "message"/ "memo" of his superiors.

16. So far as charge no.6 i.e. asking for 1% commission for making the payment of pay allowances is concerned, the learned Single Judge has appreciated the evidence of all the witnesses examined in this regard and came to the conclusion that not a single person had deposed before the Enquiry Officer that the respondent employee had asked any person to pay 1% commission for making payment of their allowances. It was based on hearsay statements. All the witnesses stated that this could be the motive/reason for not making the payment. Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the concerned employee. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities. Witnesses were examined before the Enquiry Officer that they have heard that the said respondent was asking but none of them was able to point out who was that person who had been asked to pay 1% commission. One of such witnesses deposed that some unknown person had told him. Learned Single Judge came to the conclusion that the knowledge of the witnesses in this regard was based on "hearsay statement of some unknown persons whom they did not know". This was certainly not legal evidence to sustain such a serious charge of corruption against an employee.

17. Thus, the writ petition was disposed of directing the disciplinary authority to impose a minor penalty on the charges of not receiving the control message/memo.

18. The Division Bench after considering the facts involved herein, came to the conclusion that the findings of fact recorded by the learned Single Judge did not warrant any interference being based on evidence available on record. As a long time of about two decades had elapsed and the respondent employee was not granted any benefit of the judgment and order of the learned single Judge and it was a case of no evidence except on charge nos.4 & 5 and the said employee had already suffered a lot, the matter should come to an end. The court issued the following directions.

"it would be just and reasonable to direct the appellants authorities to pay 50% of the back wages and all the consequential benefits including the retiral benefits without further imposing any minor penalty as directed by the learned Single Judge."

19. We have considered the aforesaid findings recorded by the Courts below in the light of the evidence on record. Admittedly, all the charges except Charge No. 2 are in respect of various incidents occurred on the same date i.e. on 24.11.1979. Charge No. 2 related to the incidents dated 12.11.1979, 16.11.1979 and 21.11.1979 which had been in close proximity of subsequent incidents occurred on 24.11.1979. The Enquiry Officer while dealing with Charge No. 1 held that respondent employee did not travel in second class compartment as admittedly there was no reservation for him in that class. The Enquiry Officer failed to examine the issue further as to whether in such a fact situation, the respondent was entitled to travel in first class. Thus, on Charge No. 1, enquiry was not complete. Thus, no finding could be recorded holding the respondent guilty of misconduct on this count.

20. On 2nd Charge, explanation furnished by the respondent that it was not possible for him to disburse the pay and allowances in the absence of a Gazetted Officer as it was more than Rs.500/-, was worth acceptance in the light of circulars issued by the Railway itself. Therefore, refusal to disburse the pay allowances by the delinquent could not be termed as misconduct.

21. Charge No. 3 was in respect of playing cards with RPF Raksaks during disbursement of pay and allowances. The delinquent was found playing cards during the course of journey but there had been no actual disbursement of any pay and allowances to anyone at the relevant time. Therefore, the Enquiry Officer has not considered the issue in correct perspective.

22. Charge No. 4 & 5 have partly been found proved by the learned Single Judge to the extent that he refused to accept the `control message'/'memo'. But for that also, major punishment could not be imposed.

23. Charge No. 6 was basically based on hearsay statement and it is difficult to assume as to whether enquiry could be held on such a vague charge. The Charge No. 6 does not reveal as who was the person who had been asked by the respondent to pay 1% commission for payment of pay allowances. It is an admitted position that if a charge of corruption is proved, no punishment other that dismissal can be awarded.

24. In Municipal Committee, Bahadurgarh v. Krishnan Bihari & Ors., AIR 1996 SC 1249, this Court held as under:

"In a case of such nature - indeed, in cases involving corruption - there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed

to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant."

25. Similar view has been reiterated by this Court in Ruston & Hornsby (I) Ltd. v. T.B. Kadam, AIR 1975 SC 2025; U.P. State Road Transport Corporation v. Basudeo Chaudhary & Anr., (1997) 11 SCC 370; Janatha Bazar South Kanara Central Cooperative Wholesale Stores Ltd. & Ors. v. Secreatry, Sahakari Noukarar Sangha & Ors. (2000) 7 SCC 517; Karnataka State Road Transport Corporation v. B.S. Hullikatty, AIR 2001 SC 930;

Regional Manager, R.S.R.T.C. v. Ghanshyam Sharma, (2002) 10 SCC 330; Divisional Controller N.E.K.R.T.C. v. H. Amaresh, AIR 2006 SC 2730; and U.P.S.R.T.C. v. Vinod Kumar, (2008) 1 SCC 115 wherein it has been held that the punishment should always be proportionate to gravity of the misconduct. However, in a case of corruption, the only punishment is dismissal from service Therefore, the charge of corruption must always be dealt with keeping in mind that it has both civil and criminal consequences.

26. In Surath Chandra Chakravarty v. The State of West Bengal, AIR 1971 SC 752, this Court held that it is not permissible to hold an enquiry on a vague charge as the same does not give a clear picture to the delinquent to make an effective defence because he may not be aware as what is the allegation against him and what kind of defence he can put in rebuttal thereof. This Court observed as under :

"The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has to be stated. This rule embodies a principle which is one of the specific contents of a reasonable or and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him."

(Emphasis added)

27. In a case where the charge-sheet is accompanied with the statement of facts and the allegation may not be specific in charge- sheet but may be crystal clear from the statement of charges, in such a situation as both constitute the same document, it may not be held that as the charge was not specific, definite and clear, the enquiry stood vitiated. (Vide State of Andhra Pradesh & Ors. vs. S. Sree Rama Rao, AIR 1963 SC 1723). Thus, where a delinquent is served a charge-sheet without

giving specific and definite charge and no statement of allegation is served along with the charge-sheet, the enquiry stands vitiated as having been conducted in violation of the principles of natural justice.

28. In Sawai Singh v. State of Rajasthan, AIR 1986 SC 995, this Court held that even in a domestic enquiry, the charge must be clear, definite and specific as it would be difficult for any delinquent to meet the vague charges. Evidence adduced should not be perfunctory even if the delinquent does not take the defence or make a protest against that the charges are vague, that does not save the enquiry from being vitiated for the reason that there must be fair-play in action, particularly, in respect of an order involving adverse or penal consequences.

29. In view of the above, law can be summarized that an enquiry is to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjunctures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct.

30. In fact, initiation of the enquiry against the respondent appears to be the outcome of anguish of superior officers as there had been agitation by the Railway staff demanding the payment of pay and allowances and they detained the train illegally and there has been too much hue and cry for several hours on the Railway Station. The Enquiry Officer has taken into consideration the non- existing material and failed to consider the relevant material and finding of all facts recorded by him cannot be sustained in the eyes of law.

31. There could be no case of substantial misdemeanour against the respondent on either of the aforesaid charges except Charge No. 6 on which major penalty could be imposed. Charge No. 6 is totally vague and no enquiry could be conducted against the respondent on such a charge. It was basically a case of no evidence on any charge except Charge Nos. 4 & 5.

32. In fact, it was a simple case where the respondent employee failed to prove to be a tactful person or possessing a high standard administrative capability or firmness or a man of possessing quality of leadership. It might be a case of his indecisiveness or lack of presence of mind. It cannot be held that any of the aforesaid charges except Charge No. 6, may warrant imposition of major punishment of removal. Thus, no interference is required in the matter.

33. The Division Bench, after considering the fact that already 20 years has lapsed and judgment of the learned Single Judge has not be complied with, considered it better to close the chapter awarding him 50% of the back wages and granted all consequential benefits including the retiral benefits.

34. Today, the situation has become worst. About three decades have elapsed; the respondent has not been paid his pay since the date of his suspension i.e. 29.11.1980, facing the disciplinary proceedings and litigation, he reached the age of superannuation long back. Thus, it is in the interest of justice that his mental agony and harassment should come to an end.

35. Therefore, we dispose of the appeal directing the present appellant to pay 50% of the pay and allowances without interest till the respondent reached the age of superannuation and arrears of retiral benefits with 9% interest to the respondent-employee within a period of three months from today.