

ORISSA HIGH COURT

P.N.L.Das

Vs

Union of India

Original Jur. Case No. 579 of 1971

(R.N. Misra and K.B. Panda, JJ.)

20.09.1972

JUDGMENT

R.N. Misra, J.

1. The Petitioner was appointed as a Booking clerk by the South Eastern Railway in 1955. Two years thereafter he was confirmed in service. A departmental proceeding was started against him along with seven others on the allegation that they had colluded together to defraud the Railway in issue of excess fare tickets and blank paper tickets. The Divisional Commercial Superintendent the disciplinary authority of the Petitioner. appointed an Inquiry Committee consisting of the Assistant Commercial Superintendent, Khurda Road and the Assistant Accounts Officer, Garden Reach. In 1964, the inquiry started. Sri Section K. Julhe, the then Assistant Commercial Superintendent was transferred. Therefore, his successor Sri B.K. Patnaik and Sri B.B. Chatterje, the Assistant Accounts officer, continued the proceeding. The Petitioner made several allegations against the Inquiring Officers. However, ultimately the report of inquiry was furnished finding the Petitioner as also the other delinquent guilty of the charge. The Petitioner's disciplinary authority was the Divisional Commercial Superintendent while the General Manager was the disciplinary authority in regard to the remaining delinquents. The disciplinary authority of the Petitioner issued a second notice calling upon the Petitioner to show cause why he may not be dismissed from service. The General Manager on the representations of the other delinquents directed a supplementary inquiry into the proceeding and consequently the Divisional Commercial Superintendent also directed similar opportunities to be given to the Petitioner and a supplementary inquiry to be held. In April, 1967, notice of the supplementary inquiry was given. By then Sri B.K. Patnaik had been promoted as the Divisional Commercial Superintendent and was posted at Kharagpur while Sri B.B. Chatterji had been promoted to the post of Divisional Accounts Officer and was posted at Adra. Some of the other delinquents, we are told at the Bar filed a suit for injunction and other reliefs against the proceeding which, as is stated at the Bar, has in the mean time been dismissed. The Petitioner contends that the inquiry by these two officers is unauthorized and they bore grudge and ill will against the Petitioner, and as such, the supplementary inquiry should not be conducted by them. It is further contended that the Inquiry Committee was to consist of the Assistant Commercial Superintendent of Khurda Road and the Assistant Accounts Officer, Garden Reach. As such, Sri Patnaik and Sri Chatterji who have now

ceased to hold such office are not entitled to continue the inquiry. We have been asked in this writ petition to quash the notice issued by those two officers to carry on the supplementary inquiry and to issue a writ of mandamus to them not to proceed in the matter.

2. A detailed counter affidavit has been filed by the opposite party No. 2 the Divisional Commercial Superintendent and two separate affidavits have been given by Sri Patnaik and Sri Chatterji opposite parties 3 and 4 respectively denying the allegations of bias and ill-will.

3. After hearing counsel, we are satisfied that no good foundation has been laid for the plea of mala fides, bias or prejudice of the opposite parties 3 and 4. Mr. Mohanty for the Petitioner also conceded that on the materials on record, it may be difficult for him to persuade us to hold in favour of the Petitioner in regard to such allegations.

4. The Inquiry Committee as constituted was to consist of the Assistant Commercial Superintendent of Khurda Road and the Assistant Accounts Officer at Garden Reach. Admittedly the opposite parties 3 and 4 who held those posts at the time when the Committee was constituted have ceased to hold such offices. The venue of inquiry is Khurda Road. These two officers have now been posted at places far away from Khurda Road. The inquiry is a very old one. In the circumstances, we really do not see any basis as to why the inquiry should be continued by these two officers.

5. Mr. Pals explanation seems to be plausible. Some High Courts have taken the view that if the personnel of the inquiry Committee would change in the midst of the inquiry, the delinquent is likely to be prejudiced unless the proceeding starts de novo. The position is now set at rest by a decision of their Lordships of the Supreme Court in the case of *General Manager Eastern Railway and Anr. v. Jawala Prosad Singh*¹ It has been indicated thus by their Lordships:

"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 ran way 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 enquiry 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 that 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

¹1970 (1) S.C.C. 1031

cannot record their findings separately, but it is their duty to record findings on each of the charges together with the reasons there for. 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 charge. Whatever may be the impression 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 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*², 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 a member of the Committee cannot possibly affect the decision of the Disciplinary Authority. In lit 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.

After the law has been so indicated, there is really no basis as to why the inquiry should be continued by opposite parties 3 and 4, more so when they have ceased to hold the offices with reference to which the Inquiry Committee had been constituted. In view of the aforesaid decision of the Supreme Court, Mr. Pals stand loses force.

6. In the circumstances stated above, we would while negating several other contentions of the Petitioner raised in the writ application, direct the supplementary inquiry which is pending against the Petitioner shall be conducted by the officers holding the posts of Assistant Commercial Superintendent, Khurda Road and the Assistant Accounts Officer, Garden Reach. The proceeding has become very old. We would, therefore, direct that the same should be concluded in accordance with law at an early date. We make no order as to costs.

K.B. Panda, J.

7. I, agree.

Order accordingly.

² AIR. 196. S.C. 364