

Union of India (Uoi) Vs. Phunoo

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Court : Allahabad

Decided On : Mar-18-2004

Reported in : 2004(2)AWC1860

Judge : Tarun Agarwala, J.

Acts : Railway Servants (Discipline and Appeal) Rules, 1968 - Rules 9, 10, 12 and 17

Appeal No. : Second Appeal No. 616 of 1981

Appellant : Union of India (Uoi)

Respondent : Phunoo

Advocate for Def. : H.N. Singh, Adv.

Advocate for Pet/Ap. : Lal Ji Sinha, C.S.C.

Disposition : Appeal dismissed

Judgement :

Tarun Agarwala, J.

1. The plaintiff was working as a Khalasi in Bridge workshop in North Eastern Railway, Gorakhpur. It is alleged that on 23.4.1975, he assaulted the bridge inspector while on duty. On the basis of the complaint filed by the bridge inspector

a charge-sheet dated 21.5.1975 was served upon the plaintiff proposing to take action under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The said charge-sheet was not accompanied by any documents nor was accompanied by any list of witnesses. Pursuant to the said charge-sheet an enquiry was initiated in which the plaintiff participated and thereafter on the basis of the enquiry report the disciplinary authority passed an order of dismissal dated 19.12.1977. The plaintiff filed an appeal which was also dismissed. Thereafter, the plaintiff filed a suit praying that the order of dismissal was void, as the same was contrary to the Rules, against Article 311 of the Constitution of India and was also violative of the principles of natural justice. The plaintiff further prayed that he should be treated to be in service with all consequential benefits.

2. The trial court after framing the necessary issues dismissed the suit with costs holding that the enquiry was held in accordance with the rules and in accordance with the principles of natural Justice and that the dismissal order is legal and is not contrary to law.

3. Aggrieved by the dismissal of the suit the plaintiff filed an appeal before the first appellate court, which was allowed and the suit was decreed with costs holding that the dismissal order dated 19.12.1977 dismissing the plaintiff from service is arbitrary, illegal and void. The appellate court held that the charge-sheet was not accompanied by a list of witnesses, which was fatal and was violative of the mandatory provisions contained in Rule 9 (6) (ii) (b) of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the Rules). The appellate court further found that the contravention of the mandatory provisions of the aforesaid rules vitiates the entire departmental enquiry. The appellate court further found that the names of the witnesses were disclosed by the complainant in his statement during the enquiry proceedings and the names of the witnesses were not disclosed by the disciplinary authority. Based on the statement of the complainant, the witnesses were examined and even though the plaintiff was given an opportunity to cross-examine the witnesses, the appellate court found that no reasonable opportunity was given to him and that the plaintiff was taken by surprise and had no time, to prepare himself except to formally cross-examine the witnesses. The appellate court further held that the denial of opportunity of hearing

prejudiced the plaintiff, which vitiated the entire proceedings before the enquiry officer. The appellate court further found that the complainant himself was the Presenting Officer in the enquiry proceedings and did not disclose the name of the witnesses except at the last moment when he made his deposition and therefore, came to a conclusion that the enquiry officer did not conduct the enquiry impartially and acted under the influence of the Presenting Officer. In view of the findings given by the appellate court, the suit of the plaintiff was decreed.

4. The defendant has now filed the present second appeal. At the time of the admission of the appeal, the following substantial questions of law was formulated ;

(1) Whether non-supply of list of witnesses along with the charge-sheet will vitiate the enquiry when in fact, such a list was supplied earlier and the witnesses mentioned therein were actually cross-examined by the charged employee?

(2) Whether the failure to supply copies of the first information report and the inquiry report, which were not relied upon at all by the disciplinary authority to the charged employee, will vitiate the enquiry?

(3) Whether mere -presence of the complainant during the course of enquiry proceedings before the Inquiry Officer will vitiate it?

5. Heard Sri Lal Ji Sinha, the learned counsel for the appellant and Sri H. N. Singh, the learned counsel for the plaintiff-respondent.

6. Learned counsel for the appellant submitted that merely because the list of witnesses was not supplied with the charge-sheet will not vitiate the enquiry proceedings. Further, the list of witnesses was supplied to the plaintiff three days before the witnesses were actually examined and therefore, sufficient opportunity was given to the plaintiff before the witnesses were actually examined and the rules of natural Justice was followed. The appellant further stated that the plaintiff cross-examined the witnesses and therefore, no prejudice was caused to him. The learned counsel for the appellant further submitted that in the absence of any prejudice being caused to the plaintiff the enquiry proceedings would not be

vitiated. The learned counsel for the appellant submitted that the failure to supply the copy of the first information report will also not vitiate the enquiry proceedings as the said document was not relied upon by the enquiry officer. The learned counsel for the appellant further submitted that the mere presence of the complainant during the course of the enquiry proceedings will not vitiate the enquiry.

7. In support of his submission, the learned counsel for the appellant has placed reliance upon a judgment of the Supreme Court in the case of K. L. Sindhey v. State of Mysore. AIR 1976 SC 1080, in which it was held that the enquiry proceedings cannot be vitiated if a reasonable opportunity is given to the delinquent person. It was submitted that since the plaintiff was given an opportunity to cross-examine the witnesses, therefore, a reasonable opportunity was given to the plaintiff, as contemplated under Article 311 of the Constitution of India.

8. The learned counsel for the appellant further relied upon a case of the Supreme Court in R.C. Sharma v. Union of India and Ors., AIR 1976 SC 2037, in which it has been held that the delinquent officer must prove the prejudice caused to him,

9. There is no quarrel with the proposition of law laid down by the Supreme Court in the aforesaid cases. However, I find that the Judgment relied upon by the learned counsel for the appellant are not applicable to the present facts of the case and are totally distinguishable. The arguments raised by the learned counsel for the appellant has no force and are liable to be rejected.

10. On the other hand the learned counsel for the opposite party has relied upon a judgment of this Hon'ble Court in Union of India v. Ramesh Chand Gupta, 1992 (Suppl) AWC 550, in which it was held that non-observance of the principles of fair play as contemplated in Sub-rule (11), (14) and (15) of Rule 9 of the Railway Servant (Discipline and Appeal) Rules, 1968, being mandatory in nature vitiates the entire enquiry proceedings. The Court further held that the non-observance of the principles of natural justice by itself causes prejudice.

11. In order to decide the controversy, it is necessary to place Rules 9(6), (7), (10), (12) and (17) of the Rules of 1968 which are quoted hereunder :

'9 (6). Where it is proposed to hold an inquiry against a railway servant under this rule and Rule 10, the disciplinary authority shall draw up or cause to be drawn up :

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge ;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each articles of charge which shall contain :

(a) a statement of a all relevant facts including any admission or confession made by the railway servant ;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(7) The disciplinary authority shall deliver or cause to be delivered to the railway servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the railway servant to submit a written statement of his defence within ten days or such further time as the disciplinary authority may allow.

(10) The disciplinary authority shall, where it is not the inquiry authority, forward to the inquiring authority :

(i) a copy of the articles ofcharge and the statementof the imputations ofmisconduct ormisbehaviour ;

(ii) a copy of the written statement of defence, if any, submitted by the railway servant ; .

(iii) a copy of the statement of witnesses, if any, referred to in Sub-rule (6) ;

(iv) evidence proving the delivery of the documents referred to in Sub-rule (6) to the railway servant ;

(v) a copy of the order appointing the Presenting Officer if any ; and

(vi) a copy of the list of witnesses, if any, furnished by the railway servant.

(12) The inquiring authority shall, if the railway servant fails to appear within the specified time or refuses or omits to plead, require the 'Presenting Officer', if any, to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days after recording an order that the railway servant may for the purpose of preparing his defence give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of any documents, which are in possession of Railway Administration but not mentioned in the list referred to in Sub-rule (6).

(17) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the 'Presenting Officer', if any, and may be cross-examined by or on behalf of the railway servant. The 'Presenting Officer', if any, shall be entitled to re-examine the witnesses on any points on which they have been cross-examined but not any new matter without the leave of the inquiring authority. The inquiring authority may also put such question to the witnesses as it thinks fit'

12. From a perusal of the aforesaid rules it is clear that when an enquiry is proposed to be held, the disciplinary authority is required to frame a charge-sheet which shall contain a statement of all relevant facts and is accompanied by a list of document and a list of witnesses by which the charges are proposed to be sustained. The charge-sheet along with list of document and list of witnesses are required to be delivered to the railway servant. On the receipt of the aforesaid documents the railway servant is required to submit a written statement and if the disciplinary authority is not satisfied with his explanation he shall hold the enquiry himself or otherwise appoint an Enquiry Officer and forward the charge-sheet, the

list of documents, the list of witnesses, the written statement of defence and the copy of the statement of witnesses, if any, to the Inquiry Officer. Under Clause (17) of Rule 9 of the oral and documentary evidence on which the articles of charges are proposed to be proved shall be produced and the witnesses shall be examined by the Presenting Officer and cross-examined by the railway servant.

13. In the present case it is an admitted fact that the list of documents and the list of witnesses was not supplied with the charge-sheet. In spite of demanding a copy of the first information report, the said document was neither produced before the Inquiry Officer nor a copy of the first information report was supplied to the plaintiff. The Presenting Officer while giving his statement as a complainant disclosed the names of six witnesses and thereafter proceeded to examine the said witnesses, the plaintiff was taken aback by surprise. He had no idea that the witnesses would be produced against him and was not prepared for this eventuality. Even though, he cross-examined the witnesses, the said exercise was a mere formality. The procedure adopted was totally arbitrary. Merely because the plaintiff cross-examined the witnesses will not remove the violation of the principles of natural justice nor will remove the prejudice caused to him. The list of witnesses are required to be submitted by the disciplinary authority, but in no case it can be produced by the Presenting Officer. The appellate court has found that the Presenting Officer deliberately did not produce the list of witnesses and only gave the names of the witnesses during his statement when he examined himself as a complainant and thereafter, proceeded to examine the six witnesses. The procedure adopted by the Presenting Officer was clearly in violation of the rules of fair play and natural Justice as embodied in Rules 9, 10, 12 and 17 of the Rules. The principles of natural justice were clearly violated and no reasonable opportunity was given to the plaintiff.

14. Looking from another angle, I find that the complainant himself was the Presenting Officer. He did not disclose the list of witnesses in his initial complaint, as a consequence of which the charge-sheet did not accompany the list of witnesses. The naming of the witnesses and their production and examination at the last moment clearly indicates the bias and arbitrariness in conducting the proceedings by the Presenting Officer.

15. The contention of the learned counsel for the appellant that the list of witnesses was given to the plaintiff three days before the witnesses were actually examined is devoid of any merit and is not proved from the record. Though, this point was not raised before the lower appellate court, the appellant has taken a specific ground in the memo of the second appeal. On this aspect, the Court permitted the learned counsel to show from the record that the plaintiff was supplied the list of witnesses three days before the witnesses were actually examined. The learned counsel for the appellant went through the entire record and failed to prove this fact. Thus, I hold that the names of the witnesses was not supplied to the plaintiff earlier and the witnesses were examined during the course of the enquiry proceedings without giving prior intimation to the plaintiff, which has caused prejudice to him. Further, I find that the complainant himself was the Presenting Officer and the manner in which he examined the witnesses, which were not named in the charge-sheet was clearly violative of the Rules. The Inquiry Officer, therefore, did not impartially conduct the enquiry. The finding of the lower appellate court that the enquiry was conducted by the Inquiry Officer under the influence of the Presenting Officer requires no interference. I may add, that in order to remove any scope of arbitrariness the disciplinary authority should not have appointed the complainant as the Presenting Officer.

16. From the record, I also find that the Inquiry Officer has taken into consideration the first information report to prove the alleged incident of assault. The Inquiry Officer has relied upon a document, which admittedly, was not supplied to the plaintiff and therefore, I hold that the non-supply of a crucial document clearly violated the principles of natural Justice.

17. To sum up in the present case, the principle that Justice should not only be done but should be seen to be done has been violated with impunity. The entire procedure adopted by the appellant in conducting the enquiry was violative of fair play and natural justice as embodied in Rules 9, 10, 12 and 17 of the Rules. The non-observance of natural Justice by itself has caused prejudice to the plaintiff for which no proof is required. The Supreme Court in *S.L. Kapoor v. Jagmohan and Ors.*, AIR 1981 SC 136 at 147, has held :

'In our view the principles of natural Justice know of no exclusionary rule dependent on whether it would have made any difference If natural Justice had been observed. The non-observance of natural Justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural Justice is unnecessary. It will come from a person who has denied Justice that the person who has been denied Justice is not prejudiced.'

18. In view of the aforesaid, I hold that the enquiry proceedings are vitiated on account of non-observance of the principles of natural Justice. Consequently, I find no infirmity in the order passed by the appellate court.

19. The appeal is dismissed with costs.

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