

(2011) 06 CAL CK 0028

Calcutta High Court

Case No: W.P.C.T. No. 127 of 2011

Surendra Nath Kairi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: June 14, 2011

Citation: (2011) 3 CHN 550

Hon'ble Judges: Prabhat Kumar Dey, J; Ashim Kumar Banerjee, J

Bench: Division Bench

Advocate: Subhendu Mukherjee and Namita Basu, for the Appellant; Swapan Banerjee and Bikash Kr. Roy for the Union of India, for the Respondent

Final Decision: Dismissed

Judgement

Ashim Kumar Banerjee, J.

The petitioner joined as a "points man" in Railways and posted at Santipur Station on February 14, 1981. He worked on various duty shifts having variable time schedule. He was promoted as "lever man" on August 6, 1981. He started residing at the Railway Quarter allotted to him and stayed there from 5th July, 1983 to 9th March, 1988. In 1984 he was injured while on duty. He was subsequently promoted as "Switchman" on November 14, 1986 and as a "Goods Guard" on February 13, 1997. In 1999 he was proceeded with departmentally on a charge of gross misconduct. It had come to the knowledge of the Railways while working for the Railways, he also served as an "Assistant Teacher" at Kantadanga North Janata Arya Vidyalaya (Junior High School), a school near to his residence. However, his place of posting was 58 km. away as contended by Mr. Mukherjee appearing for the petitioner. Railway Authority conducted a preliminary enquiry to find out the veracity of the complaint. After being satisfied, the Railway proceeded against him departmentally after affording him adequate opportunity to defend himself in the said proceeding. The Headmaster, Secretary and three teachers of the said school deposed before the Enquiry Officer. According to them, the petitioner worked as a "teacher" in the concerned school for the period 1981-86. He resigned in 1986.

According to the Enquiry Officer, possibly he could manage two employments because of his variable time schedule to work as a "points man" and/or "lever man". The enquiry further revealed that up to 1986 he enjoyed the salary from both the organisations. 1986 onwards up till the period 1994 salary was withdrawn to the extent of Rs. 2.13 lakhs from the State exchequer surreptitiously, although according to the teachers during the said period the petitioner did not work. It is not clear whether he was also a part of the conspiracy to withdraw the said amount from the State exchequer. Significant to note, when the irregularities surfaced someone deposited the said amount in the State exchequer. It is also not clear whether the petitioner had any hand in it. Fact remains, his service as a "teacher" during the period 1981-86 was proved to the hilt through the evidence of the Headmaster, Secretary and teachers of the said School. The finding of the Enquiry Officer appearing at page "27" of the petition is quoted below:

3.3. It is not clear to the enquiry how the delinquent managed to work to both the units one at Kantadanga School and other with Rlys at Naihati for the same period of time (1981 to 86). But it has been substantiated that the delinquent for Rly. Salaries as well as Salary from the said Institution and P.W. No. 1, 2, 3, 4 and 7 being Teachers, Secretary of the school identified the C.O. in person during the enquiry held on 28/10/02 and 22/11/02 and the Secretary of the School being PW. No. 7 stated that the C.O. was closely known to him and the C.O. was residing near to the School at Kantadanga North Janata Arya Vidyalaya during the materials period of time. From the circumstantial evidence submitted by PW-7 (Secretary of School also councillor of Municipal Corpn. Bhatpara) that Sri S.N. Kairi lived with his family at Kankinara near to the said School where he worked as Astt. Teacher from 1981 to 86 and had drawn salaried the said period to 1986 (C.O. resigned in 1986 as Teacher. Circumstantial evidences further revealed that during the said period of time from 1981 to 86 Sri S.N. Kairi was reported to have worked elsewhere may be with the Rlys, performing night shift duties while Sri Koiri was performing day, shift duty at the said School. When the school "remained closed" during 90 days leave period of School, C.O. might have performed railway job in day time. In this way C.O. managed both the job and had drawn salaries from the institutions for 81 to 86 of the exhibits.

2. The Enquiry Officer held him guilty of the charges. The Disciplinary Authority agreed with the finding of the Enquiry Officer and dismissed him from service. On July 18, 2003, he made an appeal against the order of dismissal dated July, 7, 2003, but in vein.

3. Being aggrieved he approached the Tribunal. The Tribunal after considering the rival contentions held that the Enquiry Officer, the Disciplinary Authority and the Appellate Authority had followed the procedures of giving opportunity to the delinquent to defend himself. The Tribunal was satisfied with the procedure followed by the Authorities and did not find any mala fide. The Tribunal also

observed that the allegation that the petitioner was targeted and victimised, was not clear. The Tribunal dismissed the application holding it merit less. Hence, this application.

4. Mr. Mukherjee, learned Counsel appearing for the petitioner raised the following issues:

- i) The copy of the preliminary enquiry report was not given to the delinquent;
- ii) The Enquiry Officer relied on the evidence of P.W. 7, Secretary of the School who was also a councillor of local municipality having a particular political faith opposite to that of the petitioner. He was biased in making allegation as against the petitioner. So his evidence was motivated;
- iii) It was physically not possible for someone to commute between two places of work having a distance of 58 km. This would itself belie the charges brought against the petitioner;
- iv) The petitioner was given promotion from time to time after considering his track record. Once he was given promotion, his past conduct, if any, had been wiped out and the charges brought against him was stale in nature and not tenable;
- v) Assuming the petitioner served the School while working for the Railways, he did it for social good. Unless and until it was proved that he did it for illegal gain, he could not be proceeded with departmentally;
- vi) The State did not make any complain as against the petitioner either for illegal receipt of salary or for serving the School at the same time while working as a Railway staff. No joint enquiry was held by the State and the Railways to find out the veracity of the complaint;
- vii) The facts involved herein would deserve a de novo proceeding to be had as the entire process was vitiated by illegality and malice.

5. In support of his contention, Mr. Mukherjee has relied on the following decisions in the cases of 1) [C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation](#), 2) [The State of Punjab Vs. Dewan Chuni Lal](#), ; 3) [Kashinath Dikshita Vs. Union of India \(UOI\)and Others](#), and 4) reported in 1997 (3) Supreme 147.

6. Mr. Mukherjee lastly prays for quashing of the order of the Tribunal coupled with a direction for de novo proceeding to be had.

7. Opposing the application, Mr. Swapan Kumar Banerjee, learned Counsel appearing for the Railways has drawn our attention to the prayer of the petitioner. According to him, no proper prayer was made for setting aside of the order of the Tribunal and appropriate relief. According to Mr. Banerjee, the allegation was of a serious nature. The Railways acted promptly as and when it had come to its knowledge about such illegality and/or irregularity.

8. On the issue of procedural irregularity, Mr. Banerjee strenuously disputes such contention. He submits that the Enquiry Officer offered inspection of all the documents relied upon by the Prosecution at the outset. The petitioner was absent during enquiry. The teachers of the concerned school identified him and adduced evidence supporting the charges. Hence, the Enquiry Officer did not commit any illegality in holding him guilty of the charges.

9. We have considered the rival contentions.

10. Let us first deal with the submissions of Mr. Mukherjee. The preliminary enquiry was held by the Railways to find out the veracity of the complaint. It was only for the purpose of satisfaction of the Management as to the justification of such complaint so that the delinquent was not unnecessarily bogged down with frivolous charges. It was nothing but an administrative enquiry only to find justification in the complaint and had nothing to do with the regular enquiry. Hence, the copy of the preliminary report if any, need not be given to the delinquent unless and until the same was made basis of the finding of the Enquiry Officer.

11. With regard to the evidence of the P.W. 7, we find that apart from the Secretary, the other teachers as well as the Headmaster deposed as against the delinquent. Even if we ignore the evidence of the Secretary, we would find that the other teachers identified the petitioner as a "teacher" of the concerned school. In course of argument, Mr. Mukherjee on instruction has admitted that the petitioner was a teacher of the school at one point of time. He tries to contend that the school was an unapproved school at that point of time which got subsequent approval and during such approval the petitioner's service was also regularised. However, the petitioner never acted as an approved teacher in the concerned school after he was engaged by the Railways. Hence it is proved that the petitioner was a teacher of the concerned school. Onus was upon him to show when he parted with Company. Not a single scrap of document was tendered in evidence by the petitioner to show that he had shaved relationship with the concerned school prior to his engagement by the Railways.

12. Mr. Mukherjee has relied on an unreported decision in the case of Nripendra Nath Sarkar vs. Central Bank of India & Ors., C.O. 10234(W) of 1996 wherein a learned Single Judge of this Court observed as follows:

.... It is now well-settled that in a disciplinary enquiry also it is for the disciplinary authority to prove the charge against a delinquent by producing material and evidence and it is not for the delinquent to disprove a charge....

13. The onus is a variable constant. It shifts considering the factual matrix. In a civil litigation, the onus shifts when the plaintiff or the petitioner, as the case may be, discharges his or her onus showing justification of the complaint alleged by him or her and it is up to the respondent to rebut the proof so advanced by the plaintiff or the petitioner as the case may be. In a criminal proceeding however, the

prosecution has to prove to the hilt that the accused was responsible for the crime to warrant conviction. In a departmental proceeding, it depends upon preponderance of probability. However, in all these three cases it is settled law that if something is within the special knowledge of the delinquent or the respondent as the case may be, he would have to unfold such narrative once the onus is discharged by the petitioner or the prosecution as the case may be. In the instant case, the prosecution proved at the enquiry that the petitioner was a teacher in the concerned school and acted as such during the period 1981-86, the period admittedly when the petitioner was a Railway staff. Hence it was the duty of the petitioner to dispel such proof by unfolding the narrative, if any, and offer explanation as to under what circumstance and when he parted with the company of the school and that too, prior to his engagement as a Railway staff. Unfortunately, the petitioner never tried to venture the same as we find from the enquiry report.

14. Mr. Mukherjee has heavily relied on the decision in the case of L. Chandra Kumar vs. Union of India & Ors. (supra). Paragraphs "72" and "73" have been relied upon. The Apex Court therein observed that the Tribunals were competent to hear matters where the vires of the statutory provisions were questioned. Their function is only supplementary and will be subject to scrutiny before a Division Bench of the High Court. Citing the said decision, Mr. Mukherjee submits that it was the duty of the Tribunal to act as a Court of the first instance as a fact finding body to find out whether the proceeding was conducted in the manner it ought to have been. Since he has demonstrated that the Tribunal acted in a slipshod manner and erroneously overlooked the fact that the enquiry was conducted without following the norms required therefore, it is the duty of the High Court to scrutinise the said judgment and if satisfied, to remand the matter back to the Tribunal or to the Authority with a direction to start the proceeding de novo.

15. We are unable to appreciate such contention. From the facts narrated above, we are convinced that the enquiry was conducted in a right manner. The finding of the Enquiry Officer is accurate. The Tribunal declined to interfere. In such circumstances, we do not find any further scope to interfere. It is true that nothing came out in evidence that the petitioner was responsible for withdrawal and deposit of the money referred to above, very fact that he had worked in the school for the period 1981-86 proved to the hilt, would deserve punishment. The Disciplinary Authority imposed the same. It does not deserve any interference.

16. The application thus fails and hereby dismissed.

17. There will be no order as to costs.

18. Urgent Photostat copy of the judgment, if applied for, be given to the parties on usual undertaking.

Prabhat Kumar Dey, J.

19. I agree.