Haridas Sarkar Vs Union of India and Others

Court: Calcutta High Court

Date of Decision: May 26, 1969

Citation: 73 CWN 656

Hon'ble Judges: D. Basu, J

Bench: Single Bench

Advocate: A.K. Sen and M. Banerjee, for the Appellant;A.K. Basu and D.N. Bose, for the Respondent

Judgement

D. Basu, J.
On May 22, 1964, there was an accident, namely, the derailment of engine of S-277 Up Diamond Harbour Local train in

Zone No. 4 of the Sealdah South Station Yard, and, after a fact finding inquiry, the charge-sheet at Annexure B to the petition was served upon

the petitioner, who was at that time working as Assistant Station Master ""to supervise"" the operation of the points ""by the pointsman"" in said Zone

No. 4. In the charge, it was stated that the derailment was ""due to the engine wheels taking ''no road'' at the facing and of crossover points, which

was not properly set and clamped and accordingly maintained a gap."" This happened for your gross neglect of duty as you, as in charge of Zone

No. 4 jailed to ensure that the points were properly set and clamped before exchanging private numbers with the Cabin for reception of S-277 Up

* * *

2. There was an inquiry on this charge against the petitioner jointly with the Pointsman concerned, by respondent 4, the Assistant Operating

Superintendent (Safety). The Inquiry Officer, by his report at Annexure J, found the Pointsman as well as the petitioner, guilty of the charges

levelled against them. Agreeing with that report, the Divisional Operating Superintendent (Safety), respondent 3, issued the show cause notice at

Annexure K to the petition, asking the petitioner to show cause why he should not be removed from service. The petitioner''s case is that he could

not submit his explanation to this notice because of the failure of the respondents to comply with the requests made by him in his representations to

supply certain materials (Annexure L).

Eventually, respondent 3 passed the order of removal, dated November 23, 1964, which is at Ann. O.

3. The petitioner''s appeal against this order having been rejected by respondent 2, the Divisional Superintendent of the Eastern Railway by the

order at Annexure Q, on June 28, 1965, the petitioner came to court and obtained this rule on September 28, 1965,

4. I. The appellate order at Annexure Q has been challenged on the ground that it does not comply with the requirements of rule 1731 of the

Railway Establishment Code, Vol. I. The order is more elaborate than is usually found and it has been passed after a hearing. In my opinion, the

appellate order has dealt with the points specified in clauses (a) and (b) of sub-rule (2) of rule 1731. It also dealt with the main plea of the

petitioner that the derailment was caused by broken parts fallen from the engine and not the failure of the petitioner to ensure the proper clamping

of the points. It was urged that the observation of the appellate authority that the petitioner failed not only to tightly clamp the point but also to

padlock it goes in excess of the charge inasmuch as there was no mention of ''padlock'' in the charge. This contention cannot be accepted since

pallock is only a means to clamp the point and its existence in the instant case is admitted by both parties.

5. Nevertheless, the appellate order does not show that the authority had considered the excessiveness or otherwise of the penalty of removal for a

derailment by which not much of injury had been caused. He observed that ""the appellant cannot be exonerated of the charge"" but did not consider

whether the extreme penalty of removal was called for by the circumstances of the case. The appellate order does not, thus, comply with the

requirement of clause (c) of rule 1731 (2) and the appellate authority should be asked to consider this aspect of the case, even if the petitioner fails

on other points.

6. II. One of the points leveled against the proceeding in general was that there was no order for joint inquiry against the petitioner and the

Pointsman, as required by rule 1718. But, as I have held in other cases, rule 1718(1) does not apply to a case where joint enquiry is to be held

against two employees of the Railway belonging to the same Department. Anything indicated to the contrary in the ''subsidiary Instructions'' is of no

effect inasmuch as these Instructions have no statutory force and cannot modify the Rule itself. This point is therefore rejected.

7. III. Another contention is that the inquiry is vitiated because the chemical examination of the broken parts of the engine, which was sought for by

the petitioner, was not done. But the Inquiry Officer has given enough reasons to show that the derailment was caused by a gap left in the points

owing to omission to clamp them properly and that the breaking of parts was an effect and not a cause of the derailment. This is a finding of fact by

an authority better fitted to decide this technical question than the court. If the plea taken by the petitioner was excluded by other facts, it was not

necessary to examine the broken parts.

8. IV. It was next urged that natural justice was denied by refusing the petitioner''s prayer for examining some witnesses (para. 21 of the petition),

on the ground that ""it was not necessary"". The petitioner''s case is that of these witnesses, the evidence of S. B. Roy, given at the fact-finding

inquiry, was used at the disciplinary inquiry. This latter fact is denied by the respondents in their counter-affidavit and the petitioner has not been

able to substantiate his contention by any materials. Upon a reading of the Report of the Inquiry Officer it does not appear that the evidence of S.

B. Roy at the fact-finding Inquiry was in any way used by the Inquiry Officer in coming to a finding of guilt against the petitioner.

9. As regards other witnesses, the Inquiry Officer held that their evidence was not necessary to determine the charge, namely, negligence in

ensuring that the points were clamped. He had the power to determine the relevancy of witnesses under rule 1712(3) and this Court cannot

interfere with the exercise of that power unless it is perverse.

10. This ground must, therefore, also fail.

V. It has been urged that the ''show cause'' notice at Annexure K is illegal because before issuing it the disciplinary authority did not record his

finding on each charge, as required by rule 1713. I do not, however, think that the Rule has been violated. The authority wrote -

After considering the findings of the departmental inquiry * * * I have arrived at the conclusion that the following charges have been proved against

you and that you are guilty of the same.

11. It is evident that, agreeing with the Inquiry Officer''s report, the authority had come to the finding that the petitioner was guilty of the charges.

Though the plural number was used, there was practically one charge and there was a clear finding as to the petitioner''s guilt. Of course, he has

not given reasons for that finding. But it has been held in various cases that where the disciplinary authority agrees with the findings of the Inquiry

Officer, he need not give fresh reasons (1) State of Madras Vs. A.R. Srinivasan, , and there is nothing in rules 1713, 1715, of the Code to lay

down any contrary rule.

12. It was urged that the authority did not consider the entire ''record'' of the Inquiry but only the ''findings'' of the Inquiry Officer. Of course, the

authority did not say in so many words that he had considered the entire record, but under the rules, the report of the Inquiry Officer is a part of

the record and the entire record is forwarded to the disciplinary authority. There are no sufficient materials to hold that the authority shut his eyes to

the other parts of the record besides the report.

13. The present ground is accordingly rejected.

VI. It was then said that since the order of inquiry was issued on July 14, 1964 (Annexure GI), without considering the petitioner"s explanation to

the charge, dated July 13, 1964 (Annexure G), the order for inquiry and subsequent proceedings are invalid for contravention of rule 1712(1). In

the instant case, however, the petitioner did not submit his defence within time allowed for that purpose (vide Annexure D) and, hence, the

authority proceeded under the second sentence of rule 1712(1). There has, thus, been no contravention of that rule. Further, the object of perusing

the defence at that stage is only for seeing whether any of the charges are admitted, for, if a charge is admitted, no inquiry need obviously be held

on such charge. There is no substance in this contention as well.

14. VII. It was next contended by Mr. Chakravarti that while the Divisional Superintendent was the disciplinary authority and did in fact issue the

impugned order of punishment, the charge-sheet had in fact been issued by a subordinate officer, namely, the Assistant Operating Superintendent.

This is however no longer irregular since the amendment of the definition of "disciplinary authority" in rule 1702, which has relaxed the standard for

the purpose of issuing a charge-sheet under rule 1709 and the like.

15. All the points urged at the hearing having failed, the proceedings up to the appellate stage cannot be quashed. But in view of my finding that the

appellate authority has not considered the point mentioned in clause (c) of rule 1731, the appellate order at Annexure Q to the petition is quashed.

He will pass a fresh order, in accordance with the law, adverting to the excessiveness or otherwise of the punishment of removal as awarded by

the disciplinary authority, having regard to all circumstances relevant to the quantum of punishment in the instant case, such as-

(a) The extent of injury caused by the accident in question;

(b) The fact that the immediate responsibility was of the Pointsman;

(c) The previous service career of the petitioner which might justify his retention in service in some lower post of lesser responsibility, "" with other

penalties which may be called for in view of negligence.

The Rule is made absolute in part, on the above terms and without any costs.