(1993) 06 CAL CK 0036

Calcutta High Court

Case No: F.M.A.T. No. 1625 of 1986 and F.M.A. No. 654 of 1988

C.D. Singh alias Chandra Dip Singh		APPELLANT
	Vs	
Union of India and Others		RESPONDENT

Date of Decision: June 29, 1993

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: 98 CWN 309

Hon'ble Judges: Prabir Kumar Majumadar, J; Baboo Lal Jain, J

Bench: Division Bench

Advocate: Ashok De, Dipankar Dutta and Sandip Ghosh, for the Appellant;N.C. Chowdhury, for the Respondent

Final Decision: Allowed

Judgement

Prabir Kumar Majumdar, J.

This appeal is directed against the judgment and order dated 2nd May, 1989 passed by learned single Judge of this Court. This appeal arises out of a Civil Rule No. 12002(W) of 1980 in a proceeding under Article 226 of the Constitution. The appellant was an Assistant Security Officer, South Eastern Railway, Waltair Division. The duty of the appellant as such Assistant Security Officer was to prevent theft of railway property in between up distant signal and down distant signal and to guard stacks of goods which would remain to the station in the area, being Ranital Station.

2. In January 1979 the appellant was on duty at Ranital Station from 18.00 hours to 06.00 hours along with another collage Shri B. Behara. At about 00-30 hours on 21st January, 1979 a down train reached Ranital Station and halted there till about 1-30 a.m. when the train reached the Hijli Station, it was found that theft side door of one of the wagons containing about 40 bundle of match boxes was tampered.

3. The enquiry was initiated by one of the Sub-Inspectors of Railway Protection Force into the said incident and after enquiry, he submitted a report involving the appellant for such incident but exonerating the other Security Officer the said Shri B. Behara. A F.I.R. was lodged by the said Sub-Inspector who held the enquiry and a Criminal case was initiated against the appellant and some others. Pending disposal of the said Criminal case, the appellant was placed under suspension but the said suspension order was subsequently withdrawn. The Criminal case, however ended in acquittal of the appellant and others.

4. During the pendency of the criminal proceedings, a charge sheet was framed against the appellant, the charges being gross neglect of duty while the appellant was on duty at Ranital Station on 21st January, 1979. It was alleged that the appellant failed to prevent or detect the victimisation of Wagon No. ER 12377 which resulted in theft of huge number of safety materials. It was further alleged that the appellant was in league with the miscreants who had committed the said crime.

5. Disciplinary proceeding was initiated against the appellant. In the said disciplinary proceeding the appellant was found guilty of the charges and the Enquiring Officer recommended appellant''s removal from service.

6. The appellant challenged the findings of the Enquiring Officer in the disciplinary proceeding by filing a writ application before the Court of first instance.

7. In the Court of first instance, the appellant challenged the said disciplinary proceedings, on, inter alia, the grounds that the entire proceedings of natural justice and the Enquiring Officer in arriving at his findings mostly or solely relied on hearsay statement or on the basis of alleged confession made by the alleged miscreants. The appellant also challenged this proceeding stating that the appellant did not have any opportunity to cross-examine the witnesses whose evidence was sought to be relied on by the Enquiring Officer.

8. The learned trial judge dismissed the writ application of the appellant holding, inter alia, that it was prima facie established during the enquiry that while the petitioner was on duty at Ranital Station the theft took place and it must have occurred due to the negligence of the appellant. The learned trial judge also found that the finding arrived at by the Enquiring Officer on the basis of the evidence adduced before him was not perverse. The learned trial judge also held that even during the pendency of the criminal case or subsequent acquittal in the said proceedings, it was open to the Government to proceed against the appellant departmentally on the same charge.

9. On the second charge against the appellant, namely, that he was in league with miscreants who had committed the said crime, the learned judge held that the only evidence what was available to the Enquiring Officer was the confessional statement of one of the accused but the writ petitioner was not given any opportunity of cross-examining the said person who made the said confessional statement.

According to the learned judge, the truth or otherwise of the confessional statement could not be tested by the appellant though he was found guilty of the charge on such ex-parte statement.

10. The learned trial judge, however, dismissed the writ application of the appellant holding that if the offence was actually committed at Ranital Station or yard, it must either have been due to the negligence or active connivance of the petitioner and learned judge found that the first charge having been established against him and the charge being very serious, the proposed punishment, namely, dismissal from service could not be said to be disproportionately harsh.

11. The appellant writ petitioner being aggrieved by the judgment and order of the learned trial judge has preferred this appeal.

12. The main attack on behalf of the appellant is that the entire proceeding was held in violation of principles of natural justice. It has been contended by the Learned Counsel on behalf of the appellant that there were two persons on duty at the time of alleged incident, the appellant himself and the said B. Behara, the other security officer. The Learned Counsel for the appellant submits that it was not established formally as to whether the theft occurred on the side of the wagons where the appellant was on duty. It is also submitted on behalf of the appellant that the other Security Officer being Behara who was also on duty along with the appellant was not examined by the Enquiring Officer although the Enquiring Officer relied on the evidence of said Behara given in another proceeding. According to the Learned Counsel for the appellant, it was not established before the Enquiring Officer whether the appellant was negligent in discharging his duty or the alleged occurrence was not due to the negligence of the said Behara who was also on duty at the same time.

13. The Learned Counsel for the appellant has referred to several decisions of Supreme Court as also the other Courts. It appears from the finding of the Enquiring Officer being annexure ''A'' to the writ application that the charges against the appellant was as follows :''

Charge : Gross neglect of duty in that:

i) On 21.1.79 while he was on duty at Ranital Station yard he failed to prevent or detect the victimisation of wagon No. ER 12377 Ex so to SHM attached to trains D/522 when, the same arrived at RNPL at 00.30 hrs and detained there for about 1.30 minutes which resulted in theft of huge nos. of safety matches and

ii) Serious misconduct in that during enquiry, it revealed that he was in league with the miscreants who had committed the said crime.

14. It was alleged that appellant C.D. Singh along with the other security Officer the said B. Behara was detailed at Ranital Station Yard to perform duly for prevention of Railway Crime. On 21st January, 1979 when the train no. D/522 arrived at 00.30 hrs.

and stopped at Ranital till 1.30 hrs. and during that period wagon no. ER-12377 containing 1200 cartons of safety matches attached to said train was victimised and theft of 14 cartons took place there as ascertained from the message dated 31st January, 1979 of OC PT SHM. Subsequently, during the raid and search conducted by the Railway Protection Force in the vicinity of Ranital Station at RMN 8 cartons and 220 dozens of loose safety matches were recovered with arrest of 3 outside Criminals and on interrogation of those Criminals the connivance of the appellant with the said Criminals came to light. Hence, the appellant had been charged with gross neglect of duty for failing to prevent or detect the victimisation of the subject wagon and also with the charge of serious misconduct in that he was in league with the miscreants who had committed the crime.

15. It appears from the said statement of allegation that during the raid and search it was found that the three accused committed theft of the cartons with the connivance of the appellant. The appellant was charged with gross neglect of duty for failing to prevent or detect the victimisation of the subject wagon and also that he was on duty on the left side of wagon when the miscreants who had committed the crime. While discussing the evidence of D.D. Lanka, the Sub-Inspector who held the initial enquiry, the Enquiry Officer found that the accused Sanatan Hate confessed before said D. Lanka and G.R.P. Staff that the accused along with his associates had committed the theft of safety matches from the said wagon on 21st January, 1979. In discussing the evidence of the other prosecution witnesses, the Enquiring Officer noted that during interrogation, such accused Sanatan Hate confessed his guilt. While discussing the evidence of other prosecution witnesses, the Enquiry Officer summarised evidence of other prosecution witnesses. The Enquiry Officer summarised evidence by stating that the three accused committing the crime were arrested with recovery of safety matches. The Enquiry Officer thus came to a conclusion that the said wagon was victimised and the appellant failed to prevent such victimisation.

16. It would thus appear that the said three accused were not examined, the appellant was not given any opportunity of examining those accused. He also had no opportunity of testing the veracity of such alleged confessional statement. The said Behara other security officer who was also on duty at the time of occurrence of the alleged crime was not examined by the Enquiry Officer. It also appears that the Enquiry Officer based his finding on some hearsay evidence and also on the statement of some person not called in to give evidence, and the appellant did not any opportunity of examining those persons, whose statement was sought to be relied upon.

17. It also appears that there was no direct evidence as to the involvement of the appellant with the theft. The Enquiry Officer has relied on the evidence of the prosecution witnesses and the main tenor of such evidence is that the said three accused were arrested with recovery of the said safety matches near the Ranital

Station and some witnesses stated that they saw the appellant and the said Behara at Ranital Station.

18. In our opinion, from this evidence no one can come to the conclusion that the appellant had neglected his duties in preventing victimisation of the said wagon at the material time when particularly the other one the said Behara was also on duty at the same place at Ranital Station, one said to be on the left side and other to be on the right side of the wagon. We have already stated above that said Behara was not examined. The said accused persons also were not examined. It. therefore, appears to us that on the basis of such evidence in the nature of hearsay, which is no evidence at all. such finding of the Enquiry Officer holding the appellant guilty of the charges is not sustainable.

19. The learned Judge has observed in the judgement under appeal that it was prima facie established that the petitioner was on duty at Ranital Station when the theft took place. This observation does not seem to be supported by the finding arrived at by the Enquiring Officer. What the Enquiring Officer found is that said accused made a confession about their guilt and they said that it was with the connivance of the appellant the said crime was committed. But evidence was through other witnesses who deposed before the Enquiring Officer. The said accused who made such alleged confessional statement were not produced at the enquiry nor were they examined and further the appellant could not cross-examine those persons making the allegation that the theft was done at the connivance of the appellant. Therefore, it appears to us that the finding of the Enquiring Officer as to the involvement of the appellant was based on no evidence as the evidence was in the nature of hearsay evidence and further the appellant was not given any opportunity of contradicting such statement of the accused persons made before the other authorities. It is observed by the learned trial Judge that in view of the circumstantial evidence it could not be said that the Enquiring Officer''s finding that the theft took place at Ranital Station is based practically on no evidence. We are unable to agree with this observation of the learned trial Judge. We do not, therefore, agree with the observation made by the learned trial Judge as also the conclusion arrived at by the learned trial Judge.

20. At one stage, it has been argued on behalf of the respondent that there was some admission made by the appellant before certain authority at the initial stage of inquiry prior to the enquiry initiated by the Enquiring Officer and by such admission the appellant was alleged to have admitted his guilt. We do not find any reference to such admission in the report of the Enquiring Officer. Even if there is such an admission, the appellant was never confronted with such admission nor was he given any opportunity of dealing'' with such admission alleged to have been made by the appellant at any earlier state.

21. The Learned Counsel has cited a decision of the Supreme Court reported in 1972(1) Labour Law Journal page 1 [Union of India vs Sardar Bahadur). It has been

observed by the Supreme Court that the statements of the witnesses at the criminal trial should not be received in evidence and in that case the statement of witnesses at the criminal proceedings was sought to be relied on although those persons were not produced for cross-examination to the delinquent. It is also observed that the application of principles of natural justice does not imply that what is not evidence can be acted upon. The other decision referred to by the Learned Counsel for the appellant in Sur Enamel Stamping Works Ltd. vs Workmen 1963 (III) Labour Law Journal 367. The Supreme Court has observed that it is now settled by various decisions that if an industrial employee''s services are terminated after a proper domestic enquiry held in accordance with rules of natural justice and the conclusions reached at the enquiry are not perverse, the propriety or the correctness of the conclusion arrived at by the domestic enquiry cannot be gone into by the Court. But an enquiry cannot be said to have been property held unless the employee proceeded against has been informed clearly of the charges levelled against him, the witnesses are examined in the presence of the employee in respect of the charges, the employee is given fair opportunity to cross-examine witnesses. he is given fair opportunity to examine witnesses including himself in his defence and the Enquiring Officer records his findings with reasons in his report.

22. In the instant case we find, as are have stated above that the alleged negligence of the appellant was inferred from the statements made by some persons before other authorities, not produced as witnesses at the enquiry. This, in our opinion, cannot be an evidence of negligence on the part of the appellant. From the statements made by some persons before some other authorities or from the reports or other evidence used in other proceedings, not being tested in the present enquiry, no one can be held guilty of negligence. Moreso, such finding is nothing but a perverse finding.

23. Another case cited by the appellant is Nand Kishore Prasad Vs. State of Bihar and Others, It is observed that the disciplinary proceedings before a domestic tribunal are of a quasi judicial character therefore, the minimum requirement of the rules of the natural justice is that the tribunal should arrive at its conclusion on the basis on some evidence i.e., the evidential material which with some degree of definiteness point to the guilt of the delinquent in respect of charge against him. Such suspicion cannot be allowed to take the place of proof even in domestic enquiries. In the instant case we do not see any material with some degree of definiteness pointing to the guilt of the delinquent i.e., the appellant. The Enquiring Officer merely proceeded on some circumstantial evidence, that is, some theft had been committed by the said accused at the material time and such theft occurred due to the negligence of the appellant. But there was also another person on duty at the same place of the material time. He was not called upon to depose before the Enquiring Officer. Nor were those accused persons called to. depose. Therefore, it appears that the Enquiring Officer bases his finding on some circumstantial evidence, that is, some theft had been committed by the said accused at the

material time and such theft occurred due to the negligence of the appellant. But there was also another person on duty at the same place of the material time. He was not called upon to depose before the Enquiring Officer. Nor were those accused persons called to dispose. Therefore, it appears that the Enquiring Officer based his finding on some circumstances which might lead to the case of negligence but there is no definiteness in it. It may also be mentioned in this connection that all the accused were acquitted at the criminal trial and therefore, even the very offence of theft had not been established in such criminal trial. It, therefore, appears to us that the entire conclusion of the Enquiring Officer was based on some hypothetical premises.

24. We have indicated above that there is no evidence showing any corelation between the theft alleged to have been committed and the negligence of the appellant as alleged. It is also a fact that even such crime of theft has not been established either in the enquiry proceeding or at the criminal trial. Therefore, there is no corelation between the charges levelled against the appellant and the fact of theft.

25. We have given our anxious thought to the case and we have been unable to find out any material before the Enquiring Officer which had some degree of definiteness to the guilt of the appellant. There had been no material in support of the second charges and the learned trial court has held so. Regarding the first charge we do not see any evidence which could be considered as evidence at all, may not be strictly under the Evidence Act, in support of the conclusion arrived at by the Enquiring Officer. We find it difficult to sustain the report of the Enquiring Officer. We also are not in agreement with the conclusion arrived at by the learned trial Judge. It appears that this is a case of deprivation of a man of his livelihood. It is not that there should be evidence strictly according to the Evidence Act, but there must be some material which would definitely support the finding of the guilt of the delinquent. We are unable to find even such material to support the consolations arrived at by the Enquiring Officer.

26. In the circumstances, we set aside the judgment and order dated 22nd May, 1986.

27. The appellant is entitled to succeed on the writ application. The writ application is allowed. There will be a writ in the nature of Mandamus cancelling the Memo No. RPF/R-44/20-79/7087 dated 7.4.79, the enquiry proceedings and report and the Memo No. DA/R-44-20/79/10548 dated 2.6.80 and the removal order, if any, of the appellant. The appellant should be treated to be in continuous service and he is entitled to all arrears of salary and emoluments as if there has been no enquiry proceeding against the appellant and no removal order had been passed.

28. This appeal is allowed. In the facts and circumstances of the case, there will be no order as to the cost.

Plain copy of the operative portion of this judgment duly countersigned by the Assistant Registrar (Court) of this Bench, be given to the learned Advocates of both the sides.

Baboolal Jain, J.

I agree.