

(1996) 06 BOM CK 0082

Bombay High Court

Case No: Writ Petition No. 1262 of 1993

Chattu Jathan

APPELLANT

Vs

Bombay Dock Labour Board and
Others

RESPONDENT

Date of Decision: June 12, 1996

Acts Referred:

- Bombay Dock Workers (Regulation of Employment) Scheme, 1956 - Regulation 44

Citation: (1996) 4 BomCR 658 : (1997) 2 LLJ 1146 : (1996) 2 MhLj 530

Hon'ble Judges: V.P. Tipnis, J; F.I Rebello, J

Bench: Division Bench

Advocate: J.P. Cama, for the Appellant; P. Ramaswamy, instructed by Mulla and Mulla, R.E. Master and K.J. Gandhi, for the Respondent

Judgement

F.I. REBELLO, J.

The petitioner is an employee of the first Respondent. The petitioner is also a Member of the Bombay Transport and Dock Workers Union. 5 On April 26, 1991, the petitioner approached the Board office and met one Mr. M. B. Shinde in the matter of a call letter pertaining to allotment of accommodation to the petitioner. It is the case of the petitioner that Mr. Shinde ore 10 off the call letter. The Petitioner thereafter collected pieces of paper which were tom and went to Yellow Gate Police Station and lodged complaint against MY. Shinde about threats given by Mr. Shinde to the petitioner and the rude behaviour of Mr. Shinde.

2. It is the contention of the petitioner that therefore, he was shocked to - receive a memo dated April 29, 199 I, on May 2, 1991 whereby 20 the petitioner was suspended pending enquiry under Clause 44(3) of the Bombay Dock Workers (Regulation of Employment) Scheme, 1956. By the said memo, petitioner was also called upon to submit his explanation within 3 25 days of receipt of the order, why severe disciplinary action should not be taken against him, and if he failed to submit

his explanation within the stipulated time, the same will be considered as an aggravating circumstance against the petitioner's case that he replied to the said memo by his representation dated May 4, 1991. Petitioner states that thereafter, on July 17, 1991, the petitioner was served with a notice of inquiry, informing him that the joint inquiry would be held against the petitioner and two others viz. one Shri Ramshiromani Soni and another Shri Narottam R. Jaiswal. Pursuant to the said inquiry and on examination of the witnesses, the Enquiry Officer by his report dated May 28, 1992, held that there was no evidence against the petitioner to indicate that the petitioner had participated in the melee. to

3. Petitioner also placed on record the correspondence to indicate that he was representing against the suspension but however, no action was taken in the matter. Petitioner thereafter received a communication dated May 27, 1993 signed by the Deputy Chairman of the first respondent referring to the petitioner's letter dated February 22, 1993. It is pointed out that by letter dated February 22, 1993, the petitioner had requested the Chairman of the first Respondent to revoke his suspension. By the letter -of May 27, 1993, the petitioner was informed that the petitioner was allowed to resume duty with immediate effect without prejudice to Board's right to retold the enquiry in the incident of assault, riotous and/or disorderly, unruly behaviour in the premises of the Board at 1.00 p.m. on April 26, 1991. In the said letter, it was also set out that the period of suspension would be decided after the result of the enquiry proposed to 30 be initiated against the petitioner. The letter dated May 27, 1993, was received by the petitioner at 3.15 p.m. on June 15, 1993.

4. It is the further case of the petitioner that he was surprised to receive on June 16, 1993 another memo which was issued by the Deputy Chairman of the first Respondent Board. By the said memo the petitioner was informed that it was proposed to take action against him under Clause 44 of the Bombay Dock Workers (Regulation of Employment) Scheme, 1956. The statement of amputation annexed to the memo set out that on April 26, 1991, at about 12.45 m., the petitioner managed to collect a mob of workers and managed to have incident of riotous or disorderly behaviour by assaulting the staff of the first Respondent and thereby violated the provision of Clause 16(7) and (10), of the Standing Order of the Bombay Dock Workers" (Regulation of Employment) Scheme, 1.5 1956.

5. The petitioner aggrieved by this memo has preferred this petition seeking a Mind's against the first Respondent to withdraw the 20 said memo dated June 16, 1993.

6. Counsel for the petitioner contends that issuance of the second memo dated June 16, 1993, is without jurisdiction inasmuch as after 25 an enquiry was conducted against the petitioner, pursuant to the memo dated April 29, 1991 and after the petitioner having been exonerated of the charges, the Disciplinary Authority had no right to issue the second memo. In this respect, 3(Counsel for the petitioner has

drawn attention to the fact that the incident is the same and the memo in respect of which the second enquiry is sought to be initiated is in respect of the same incident. Our attention has been invited to the 35 Ruling in *Suryabhan Baburao Patil v. The State of Maharashtra and ors.*, reported in 1989(1) C.L.R. 395 and the Judgment of the Apex Court in the *State of Assam and Another v. J. N. Roy Biswas*, reported in 1976 XI LLJ 17.

7. Mr. Ramaswamy, appearing on behalf of the Respondent Nos. 1 and 2 contends that the second memo is not a fresh enquiry. It is pointed out to us that perusal of the memo would show 45 that the charges in respect of the first memo and charges in respect of the second memo are distinct and different. It is, therefore, contended that the first Respondent has the authority in such a case to go ahead with the enquiry in respect of the said memo.

8. Regulation 44 is the relevant regulation pertaining to disciplinary action in respect of the employees of the first Respondent under the Bombay Dock Workers (Regulation of Employment) Scheme, 1956. Regulation 44(5) indicates the kind of punishments that can be imposed on an employee for misconduct. Regulation 44(5) sets out that on receipt of the written report from the Labour Officer under subclause (4) or from the employers or any other person that a registered dock worker in the reserve pool has failed to comply with any of the provisions of the scheme or has committed an act of indiscipline or misconduct or has consistently failed to produce the standard or datum output or has been inefficient in any other manner, the Deputy Chairman may make or cause to be made such further investigation as he may deem fit, and thereafter take any of the steps as 9 indicated in sub-clause (5) of Regulation 44. Consideration of the said regulation therefore, indicates that the power to impose punishment for misconduct as set out in sub-clause (5) of Regulation 44 is in the Deputy Chairman after 5 investigation either on a written report of the U. hour Officer under sub-clauses (4) of Regulation 44 or from the employers or any other person.

9. In the present case, a complaint was received from one Shri Shinde and another about assault on them on April 26, 199 1. It is pursuant to this complaint that an enquiry and/ or investigation was conducted against the petitioner by the Enquiry Officer who submitted his report. The power of the Deputy Chairman to conduct an enquiry was thus based on this complaint in respect of which he ordered an investigation and the report was furnished to him 3 whereby the Enquiry Officer held that the charges against the petitioner were not proved. The Disciplinary Authority in such a situation could have either accepted the findings of the Enquiry Officer or could have disagreed with 5 the findings, in the event of the Disciplinary ith the findings of trinity could have to show cause. In that case, no such action has been taken instead the Disciplinary Authority has sought to initiate a separate disciplinary proceeding 148 against the petitioner. In the case of *Suryabhan Baburao Patil* (supra) to which one of us (Tipnis, J.) was a party, it has been held as

under :

"It is well settled that the report of an Enquiry Officer is merely recommendatory and is not binding on the Disciplinary Authority. Instead of recording a contrary conclusion the Disciplinary Authority found .p n out a novel method and cancelled the appointment of Enquiry Officer and appointed a fresh Enquiry Officer and directed a de novo enquiry. This was clearly impermissible. It is not open to order fresh enquiry only to fill up the lacuna noted in the first enquiry. 15 In case the Disciplinary Authority felt that the report of Bhonsale was not correct because inferences drawn were not accurate, then nothing prevented the Disciplinary Authority from recording a finding contrary 20 to the Enquiry Officer, but it is obvious that the disciplinary authority realised that the material on record was not enough to hold that the charges against the delinquent were proved and therefore a fresh enquiry was 25 ordered. Fresh enquiry was not permitted by the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964. By ordering a fresh enquiry very valuable right of the delinquent were taken 30 away by the Disciplinary Authority, and therefore such fresh enquiry cannot be treated as valid."

In the case of State of Assam and Anr.. Ic v. J. N. Roy Biswas, (supra) the Apex Court served as under :

"No rule of double jeopardy bars but absence of power under a rule inhibits a second 40 inquiry by the Disciplinary Authority after the delinquent had once been absolved.

Once a disciplinary case has closed and the official reinstated, presumably on full exoneration, a chagrined Government cannot restart the exercise in the absence of specific power to review or revise, vested by rules in some authority. The basics of the rule of law cannot be breached without legal provision or other vitiating factors invalidating the earlier enquiry". 0

10. Perusal of Regulation would show that once an enquiry is concluded, the Disciplinary Authority or the Authorities under the Scheme have no power to review and/ or to hold a fresh enquiry in respect of the same incident. From the ratio of the two decisions, it is patently clear that such a power must be specifically conferred on the Disciplinary Authority to enable the Disciplinary Authority to start or issue a fresh charge sheet in respect of the same incident for the same charges or lesser charges. We have perused the second memo. The second memo is in respect of the same incident and merely because different Standing Orders are quoted in respect of the second memo, does not mean that the Disciplinary Authority would be clothed with the power to hold a fresh enquiry as in sum and substance,, the charges are the same. 0

For the aforesaid reason, memo dated June 16, 1993, (Exhibit-1) and the disciplinary proceedings initiated pursuant to the same are hereby quashed and set aside. The

Respondents 5 are further directed to pay to the petitioner all wages and consequential benefits that he maybe entitled to in law during the period of suspension from May 2, 1991 till June 15, 1993. The benefits so computed to be paid to the petitioner 0 within 4 weeks from today. Rule made absolute in the aforesaid terms. Petitioner shall get his costs from the Respondent No. 1.