

Ganga Ram Plaintiff/Applicant

Union of India through General Manager,
North Eastern Railway, Gorakhpur. Opposite Party

Hon. Ajay Johri, A.M.

(By Hon. Justice K. Nath, V.C.)

2

plaintiff-applicant's case was not proved and accordingly dismissed the suit on 26.3.1982.

3. We have gone through the record and have heard the learned counsel for both the parties.

4. The first point urged is that the institution of the enquiry itself was discriminatory and therefore illegal inasmuch as five persons had been proceeded against including one T.R. Anand^{and} while the General Manager directed the enquiry to be instituted against T.R. Anand for minor penalty, proceeding against the applicant and others were taken for imposing major penalty. The learned counsel says that action of the General Manager is arbitrary and places reliance upon the decision of Ramana Davaram Shetty Vs. International Airport Authority of India and Others 1979 SC 1628. There is absolutely nothing in common between that decision and the present case. The extent of punishment or the sweep of the enquiry which may be held against the particular delinquent Government servant must depend upon the individual role. It is not shown that the applicant's role was similar to that of T.R. Anand. There is no force, therefore, in this point.

5. The second point urged by the learned counsel for the applicant is that the Inquiry Officer cross-examined the applicant. The learned counsel refers to the cases of Ballu Singh Vs. Union of India ATR 1986 CAT 195 and Prem Babu Vs. Union of India ATR 1987 CAT 13

M

which relied upon Ballu Singh's case. These decisions indicate that if the delinquent Government servant did not examine himself, his cross examination by the Inquiry Officer vitiates the proceedings. There ^{can} be no quarrel with that proposition of law; but the learned counsel for the opposite party has pointed out that the plaintiff-applicant did not raise any such points in the proceedings of the Suit and that he was not cross examined at all. It is urged by the learned counsel that he was only questioned on the facts of the case which had appeared in the evidence against him.

6. We have carefully gone through the plaint and we find that the plaintiff-applicant has not alleged that he had been cross-examined. The contention on this point in the memo of appeal, simply is that the Inquiry Officer forced the plaintiff-applicant to give a statement although a criminal case was pending against him and thereby Article 20 of the Constitution of India was violated. There is nothing to show that the applicant was cross-examined. The submission has therefore no force.

7. The third point urged by the plaintiff-applicant is that he was not furnished with a copy of the enquiry report. The finding of the learned Munsif based on Exb. Ka-32 and Ka-33 is that the copy of the enquiry report was sent to the plaintiff-applicant and therefore he could not complain that he had not been furnished with such copy. Exb. Ka-32

2

133
u

is a memorandum recorded by the disciplinary authority on the report of the Inquiry Officer that he agreed with the findings of the Inquiry Officer who had held the charges to be proved. A copy of the enquiry report was enclosed with the memorandum and the entire set consisting of 78 sheets was sent by registered post to the plaintiff-applicant. Exb. K-33 is another copy of the same memorandum. The Lower Court therefore correctly held that the copy of the enquiry report was furnished to the plaintiff-applicant.

8. The fourth and last point raised by the learned counsel for the applicant is that he had not been furnished with copies of certain documents. Exb. 34 is the copy of the application dated 12.7.71 of the plaintiff-applicant stating that he was in need of documents mentioned in his earlier application dated 12.6.71 in order to submit his statement of defence. Exb. 35 is the letter dated 27.7.71 of the competent authority in reply to the plaintiff-applicant's letter dated 12.6.71. It mentions that the documents referred to at Sl.Nos. 8 to 20 of the chargesheet were available with the officer and it could be perused by the applicant any time during office hours, but the documents referred to at Sl. Nos 2 to 10 of the applicant's letter dated 12.6.71 are not concerned with the chargesheet and therefore there was no question of making them available. Exb. 33 is an application dated 4.9.71 of the plaintiff-applicant wherein he referred to his earlier applications dated 12.6.71 Exb.37 and Exb.35 dated 27.7.71 and mentioned that he wanted certified copies of the statements referred to at Sl.Nos.8 to 20 of the

R

chargesheet and also some other documents. He added that it could not be sufficient to inspect the documents and that he needed certified copies and bare attestation by the Depot Officer who was party to the case could not be considered authentic. The learned Munsif referred to Exb. K-13, a report dated 12.7.71 of the Senior Clerk mentioning that certain letters with enclosures despatched to the plaintiff-applicant had been returned undelivered by the postal authorities with the remark that 'the addressee had gone to Gorakhpur on duty'. The D.C.O.S. passed an order on 15.11.71 that the authorities could not wait any more for the plaintiff-applicant to come and inspect and since the applicant was not traceable at his residential address, the enquiry proceedings may proceed and ^{be} finalised. The learned Munsif also observed that the plaintiff-applicant had appointed one K.N.Verma ^{as} his defence counsel who took full part during the entire enquiry proceedings. The learned Munsif further observed that in an enquiry relating to railways there is no provision for giving copies and that opportunity to inspect the papers, which was full, was enough and in the circumstances of the case the applicant had full opportunity to make his defence.

7. The learned counsel for the applicant has referred to the case of Kashi Nath Dixita Vs. Union of India, (1986) 3 SCC 229 to show that mere inspection of records was not enough and that copies of the documents should have been furnished. However the learned counsel for the applicant made no effort

2

to meet the view recorded by the learned Munsif that is enquiries relating to railways, there is no provision for giving copies and that full opportunity for inspection having been given, the applicant cannot make any grievance.

8. The case of K.N.Dixita Vs. Union of India (supra) related to a senior I.P.S. officer who is governed by a set of rules of enquiry which are entirely different from the corresponding rules governing the railway servants. The procedure applicable to railway servants is to be found in Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. Clause (7) of Rule 9 requires a copy of the Article of charge, the statement of imputations of misconduct and list of documents and witnesses by which each Article of charge is proposed to be sustained. A note appended to the clause mentions that if the copies of the documents have not ~~not~~ been delivered to the delinquent servant alongwith Article of Charge and if he desires to inspect the same for preparation of his defence he may do so within a specified time. That is the position at the stage of filing a written statement of defence.

9. Certain provisions regarding enquiries are contained in Rules 1711 and 1712 of the Railway Establishment Code. Rule 1709 requires framing of charges ~~with~~ the statement of allegations to be communicated to the railway servant who is required to submit his written statement of defence. Rule 1711 provides that for the purposes of preparing

A3
/ 7

his defence a railway servant shall be permitted to inspect and take extracts from such official records as may be specified provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the disciplinary authority the records are not relevant for the purpose or it is against public interest to disclose. The provision for inspection of the records for the purposes of making defence is therefore a special provision in respect of the railway servants.

10. The case of K.N. Dixita (supra) again figured before the Supreme Court in the case of Chandra Tiwari Vs. Union of India (1987) Supplement SCC 518 (1988 SC 117). A consideration of these two decisions would show that if a document, ^{not supplied,} ~~which~~ is not mentioned in the charges, or even if mentioned in the memo of charges but is not relevant to the charges, or if it is not referred to or relied upon by the Inquiry Officer or the punishing authority, for holding the charges proved, no exception can be taken to the validity of the proceedings or of the orders. It was the duty of the plaintiff-applicant, therefore, to show that the documents whose copies he wanted were relevant and had been referred to or relied upon by the Inquiry Officer or the punishing authority in holding the charges as proved ^{that} ~~has~~ not been done. In the circumstances, we are of the opinion that no illegality or infirmity is attached to the enquiry proceedings. No other point ^{is} raised in this case and therefore the

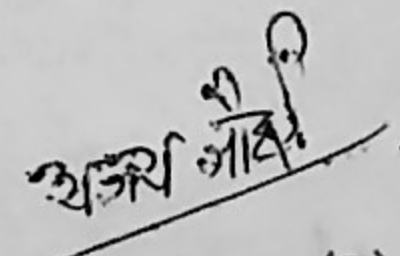
in

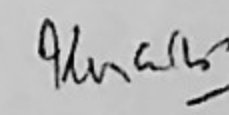
13/8

- 8 -

application/appeal must fail.

11. The application/appeal of the plaintiff-applicant Ganga Ram is dismissed. Parties shall bear their own costs.


Member (A)


Vice Chairman

Dated the 11 May, 1989.

RKM