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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

T.A. No. 756/86

(Original Suit No. 418 of 1985
of the court of Munsif I,Jhansi)

Jai Singh Bahadur ... ... Plaintiff-Applicant

versus

Union of India and others ... Defendant-Respondent

Hon. Justice S.Zaheer Hasan, Vice Chairman
Hon. A. Johri, Member (A)

(Delivered by Hon. S.Zaheer Hasan, V.C.)

Suit No. 418 of 1985, pending in the court of Munsif I, Jhansi, has been transferred to this Tribunal under section 29 of the Administrative Tribunals Act, No. 13 of 1985.

The plaintiff Jai Singh Bahadur was working as skilled Grade I wagon repairer in the Central Railway workshop at Jhansi. It is said that on 29.7.1982 he approached Jewan Singh and asked him as to why he was not permitting his card being punched, and in any case Jewan Singh had himself to punch his card. He abused Jewan Singh, and after some altercation assaulted him with fists with the result that his face and nose started bleeding. He was hospitalised. Abdul Rahman, Ram Das, Banerji, Sunder Lal and others witnessed the occurrence.

A written report was given by Jewan Singh on the same date, in which it was also alleged that he was willing to give a statement provided it was kept secret and he was not willing to give his statement in open enquiry because he was afraid of Jai Singh Bahadur, the plaintiff.

On 30.7.1982 the statements of Banerji and Sunder Lal were recorded. Abdul Rahman and Ram Das were also examined. Abdul Rahman stated that he saw the victim bleeding and Sunder Lal and Banerji holding the plaintiff and telling him as to why he had taken the law in his hand. He further stated that he was afraid of the plaintiff and his statement should be kept secret. Ram Das stated that his statement should be kept secret because the plaintiff had held out threats to him. Banerji and Sunder Lal stated that they were not present at that time.

On the same day, i.e., 30.7.1982, the plaintiff was informed that he could appear before the enquiry officer on 31.7.1982 at 2.00 p.m. to face an enquiry. On 31.7.1982 the plaintiff Jai Singh Bahadur appeared and made his statement to the effect that some altercation took place between him and the victim Jewan Singh, and when Jewan Singh assaulted him with an iron rod he pushed him back in self-defence, with the result that he fell down on the

bench, and it may be that he might have received some injuries. After this statement was recorded, Sri A.K.Saxena, Deputy C.M.E. passed an order on the same day dismissing the plaintiff from service with a finding that the witnesses were afraid of the plaintiff and they were not willing to give evidence. So it was not reasonably practicable to hold an enquiry.

Aggrieved by this order the plaintiff went up in appeal, which was dismissed on 1.3.1983. His revision was also dismissed on 9.7.1984. Thereafter he filed the present suit.

Abdul Rahman has stated that he was afraid of the plaintiff, and his statement should be kept a secret. A similar request was made by Ram Das, who also stated that the plaintiff had held out threats to him. Banerji and Sunder Lal stated that they had not seen the occurrence. The complainant himself gave it in writing on the same day that the plaintiff had held out threats to him and he was not willing to give his statement in open enquiry. So on the basis of the evidence led before Sri A.K.Saxena he could come to the conclusion that the witnesses, including the victim, were afraid of the plaintiff and it was not reasonably practicable to hold an enquiry in the usual manner. The plaintiff was himself examined on 31.7.1982. The occurrence had taken place on 29.7.1982.

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Some witnesses were examined on 30.7.1982. According to the plaintiff he acted in self-defence. Nothing has been shown to us to indicate that the plaintiff brought this theory of self-defence to the notice of his officers or moved any application in this connection. So on the basis of the evidence led the disciplinary authority could rightly come to the conclusion that the charge of assaulting Jewan Singh was proved.

It was contended that Sri A.K.Saxena, Deputy C.M.E., took over charge on the same day, i.e., 31.7.1982, and thereafter he joined the Army service. So he was not in a position to give a finding that it was not reasonably practicable to hold an enquiry. It may be repeated that the occurrence took place on 29.7.1982. Some of the witnesses were examined on 30.7.1982. On some of the statements no date is given. But in the finding dated 31.7.1982 reference to the statements of Abdul Rahman and Ram Das was made. So far as the statements of Banerji and Sunder Lal are concerned, they were recorded on 30.7.1982. So the statements recorded on 30.7.1982 were before Sri A.K.Saxena when he took over charge on 31.7.1982. On 30.7.1982 the plaintiff was asked to appear in person on 31.7.1982 at 2.00 p.m. On 31.7.1982 the plaintiff appeared and his statement was recorded, in which he took the plea of self-defence. So on the basis of the material

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referred to above, Sri A.K.Saxena could rightly come to the conclusion that it was not reasonably practicable to hold an enquiry. It may be repeated that not only the witnesses but even the complainant were afraid of giving statement openly, and all of them were afraid of the plaintiff who had held out threats to them in case they gave evidence against him.

It was next argued that in the order dated 31.7.1982 (J-199) which was served on the plaintiff it was stated that with a view to maintain discipline and orderliness in a workshop employing thousands of workers, offenders of a criminal nature cannot be allowed to go unpunished solely on the ground that normal enquiry procedure as provided by Railway servants (Discipline and Appeal) Rules, 1968, is not capable of being followed or is not practicable, and, therefore, the order was based on extraneous matter and should be quashed, as was done in the case reported in A.T.R. 1986(2) 557 (Om Prakash Pathak v. Union of India).

In the aforesaid case Om Prakash Pathak had assaulted the A.M.E., Gwalior. A criminal case was filed against him, and somehow the police compelled the witnesses to appear in court, but due to fear they did not support their true statement given to the police earlier in the course of investigation, and, therefore, the petitioner was acquitted.

In the case of Om Prakash Pathak the impugned order was set aside on the ground that if a judicial enquiry and trial could be held why not a departmental enquiry. As already stated, the acquittal in the aforesaid case took place because the witnesses did not support the case, and it lent support to the allegations made in that case that the witnesses were afraid of the accused in that case. Another point took into consideration in that case was that the enquiry could be held at any place other than Gwalior, and since no first information report was lodged by any witness regarding the threats held out by the accused, so the theory of intimidation was not acceptable and could not be given face value by that Tribunal.

A case is an authority for what it decides and not of what can be deduced from it. There is no such thing as judicial precedent on facts. On facts no two cases can be similar. In such cases we have simply to see whether it is reasonably possible to hold an enquiry or not, and this finding will naturally be given on the basis of evidence and the circumstances of a particular case. In the aforesaid case of Om Prakash Pathak the learned Judges held that due to certain reasons they could not give face value to the statements recorded by the witnesses

and an enquiry could be held at Gwalior. It cannot be said in the case before us that an enquiry could be held at any other place. In the case before us the plaintiff was holding out threats and intimidating witnesses.

In the case of Satyavir Singh and others v. The Union of India and others (1986(1) All India Services Law Journal, p. 1) in para 59 the following observation was made by the Hon'ble Supreme Court:-

> "It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the enquiry. Illustrative cases would be —
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> (a) where a civil servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so,....."

The finding of the disciplinary authority that it is not reasonably practicable to hold enquiry is not binding on the Court. In examining the relevancy of the reasons given for dispensing with the enquiry, the court will consider the circumstances, which, according to the disciplinary authority, made it come to the conclusion that it was not reasonably practicable to hold an enquiry. If the court finds that the reasons are irrelevant, the order dispensing with the enquiry and the order of penalty following upon it would be void. In considering the relevancy of the reasons given by the disciplinary authority, the court will not sit in judgment over the reasons like a

court of first appeal. The court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable manner would have done. It will judge the matter in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the enquiry should be dispensed with or not in the cool and detached atmosphere of the court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.

Keeping in view the aforesaid observations made in Satyavir Singh's case we find no good ground to interfere with the impugned order.

It was lastly contended that in the impugned order there is a reference to discipline, and, therefore, extraneous circumstances were taken into consideration.

The order J-199 dated 31.7.1982 is an order communicated to the plaintiff. The disciplinary authority has written a very exhaustive order separately, in which a reference has been made to the statements of four witnesses recorded earlier, and on the basis of their statements and the attending circumstances the disciplinary authority could rightly come to the conclusion that the witnesses were terrorised, and it was not practicable to hold an enquiry. In this detailed reasoning it was observed that the order may be served

on the plaintiff, and the aforesaid order J-199 was separately prepared and served on the plaintiff. So to our mind neither justice nor law has suffered.

The application (plaintiss's suit no. 418 of 1985) is dismissed with costs on parties.

Vice Chairman

Member (A)

Dated: January 9th, 1987.

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