

11

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, : CUTTACK

ORIGINAL APPLICATION NO: 56 OF 1989.

Date of decision : July 27, 1990.

P. Yarrayya : Applicant

Versus

Union of India & others : Respondents

For the applicant : Mr. Pradipta Mohanty,
Advocate

For the Respondents : Mr. B. Pal, Sr. Standing
Counsel (Railways).

C O R A M

THE HON'BLE MR. B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
 2. To be referred to the Reporters or not ? *yes*.
 3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.
-

J U D G M E N T

N.SENGUPTA, MEMBER (J). The applicant was working as a Driver Grade 'C' under the South Eastern Railway and was stationed at Khurda Road. On 10.1.1981 he reported sick and obtained a medical certificate from a registered private medical Practitioner in support of his application for casual leave. On 11.1.1981 he was removed from service without an enquiry by the Divisional Railway Manager, South Eastern Railway, Khurda Road. The Railway Administration passed that order saying that the applicant and some others resorted to an illegal strike and he and his companions threatened another railway servant who was loyal to the Administration with assaults if he (that railway servant) did not join the strike. After that the applicant moved the Calcutta High Court in its writ jurisdiction. In that writ the Hon'ble Calcutta High Court relying on the decision of Satyaveer Singh's case directed the appellate authority i.e. the Additional General Manager, South Eastern Railway Garden Reach to dispose of the appeal preferred by the applicant keeping in view the observations of the Hon'ble Supreme Court in that i.e. Satyaveer Singh's case. After that, it is alleged by the applicant, that the appellate authority without affording any opportunity to the applicant to be heard, confirmed the order of removal. Against that order the applicant approached this Tribunal in O.A. No.40 of 1987. This Tribunal by its judgment dated 26.11.1987 set

*Mem Engh
27.7.90*

aside the appellate order and remitted back the case to the appellate authority to dispose of the appeal within three months from the date of receipt of a copy of that judgment of this Tribunal. Besides the applicant some others also approached this Tribunal and their cases were also remitted back, on behalf of the Railway Authorities an application was made to have one common appellate authority for all the cases and accordingly the Additional General Manager, South Eastern Railway was made the common appellate authority. After remitting of the appeal, an enquiry was ordered to be made. During the course of such enquiry, the applicant petitioned before the appellate authority to supply him a copy of the Memorandum of charge but it was maintained that the notice of removal would serve the purpose and no fresh charge was necessary. During the course of enquiry an application was made for calling for certain documents, some of which were produced and with regard to other reply was given which is annexure-8 to the application. In Annexure-8 the presenting officer stated that some documents which were not relevant could not be supplied. An enquiry report was submitted by the Enquiry Officer, Shri P.C.Mishra, Deputy C.O. Supdt., S.E.Railway, Garden Reach, Calcutta and the appellate authority disposed of the appeal and confirmed the order of removal passed by the disciplinary authority. This appellate order is now

Enq-
28/7

under challenge.

2. In the removal notice it was alleged that the applicant reported sick without any valid medical certificate and he along with others threatened R.Appalaswamy Driver 'B' Grade Loco Shed, Khurda Road at the latter's residence with assaults if he did not join the strike. A criminal case was instituted in the Court of the S.D.J.M. Bhubaneswar and that case ended in acquittal of the accused persons therein including the present applicant. The applicant's grievance is that the procedure laid down in Rule 9 of the Railway Servants(Discipline and Appeal) Rules, 1968 was not followed, he was not given a copy of the enquiry report, that after his acquittal in the criminal case, it was not open to the appellate authority to come to a conclusion that he (the applicant) threatened R.Appalaswamy and finally that the finding of the enquiry officer and consequently, the appellate authority is based on no evidence.

3. The case of the Railway Administration is that the enquiry to be held at the appellate stage was not to be strictly according to the procedure laid down under Rule 9 of the Railway Servants(Discipline and Appeal) Rules, 1968 but what was required was to follow substantially the procedure laid down as envisaged under the rule. Therefore, there can be no question of supply of copy of the enquiry report to the applicant. It is also their case that it is not open to this Tribunal to act as an appellate forum of the appellate authority and make discussion of

the evidence, its jurisdiction is to be confined to see if

Handwritten signature
27/7

really there has been any violation of rules. The Railway Administration's case further is that according to the Rules, the certificate from a private medical practitioner is not a valid medical certificate and therefore the absence of the applicant from duty was not legal and as such could entail his removal from service.

4. On behalf of the applicant it has been very strenuously urged that the framing of a charge is an essential stage in the inquiry and as no charge was framed, the entire process was vitiated. It is true that without a charge there can be no enquiry, the charge forms the foundation of a disciplinary proceeding. It was the view of the Appellate Authority, and the same has been urged at the hearing on behalf of the Respondents, that the allegations on which the applicant was removed from service were mentioned in the removal notice and the applicant was informed that those were the allegations to be enquired into. In the removal notice in fact 2 grounds were mentioned namely that the applicant with others resorted to an illegal strike by reporting sick without a valid medical certificate and secondly that he intimidated R. Appalaswamy. The formal charge could not have contained anything more about the facts except that a line might have been added stating that by such acts the applicant violated a particular service rule. In these circumstances, we are not able to agree with the learned counsel for the applicant that any prejudice was caused to him by not

Ben Euph
27 250

framing a fresh charge before the enquiry into the allegations at the appellate stage. A Court or Tribunal does not take serious notice of irregularities unless some prejudice is caused and in that view we would repel the contention of the learned Counsel for the applicant that not framing a formal charge before commencing the enquiry was fatal, we would add that we have our reservations about the proposition propounded by Mr. Pal that in no case of an enquiry at the appellate stage a fresh charge-sheet would be required.

5. The next contention that has been advanced on behalf of the applicant is that admittedly there was a criminal case on the allegation of the applicant having intimidated R. Appalaswamy and that criminal case ended in acquittal where learned Sub-Divisional Judicial Magistrate, Bhubaneswar held that there was no evidence to prove that there was really any intimidation by the accused persons before him, the present applicant was an accused in that case, in the face of such an acquittal by a competent court of law, enquiry with regard to the self-same matter cannot proceed. Mr. Pal, learned Senior Standing Counsel for the Railway Administration has contended that the result of a criminal case would not necessarily determine the fate of a disciplinary proceeding. The argument of the learned counsel for the applicant, though not so specifically stated by him, is really based on the doctrine of law which is known as issue estoppel. Such a question arose in different High Courts. Some of the

High Courts have held that if a person is acquitted in a criminal case on the self-same charge, it would not be proper or competent to find him guilty of the same charge in a departmental proceeding. It is worthwhile to refer to some of the decisions. In the case of Srirama Versus Superintendent of Police, Kolar reported in 1967 SLR 153, it was held that a criminal proceeding and a disciplinary proceeding could be commenced and continued but so long as the prosecution had not ended in an acquittal. That is a short judgment and in paragraph 4 learned judge observed:

" What constitutes an impediment to a disciplinary proceeding is an acquittal in a criminal prosecution in respect of the same charge".

In the case of Rajendra Kumar Pal Versus Union of India reported in 1976 (2) S.L.R. 295, by a Single Judge of the Calcutta High Court, it was held;

" Where charge-sheet issued against an applicant rests on the same allegations as charges in the criminal proceeding, a disciplinary proceeding would not be permissible.".

To us it appears the law laid down by the learned Judge in that case cannot be accepted in its entirety because it has now been settled that mere pendency of a criminal case would not bar initiation of a disciplinary proceeding, however, it is relevant only to the extent that this case lends some support to the contention of the learned counsel for the applicant. The Bombay High Court in the case of Bhaurao Dagadu Thakur Versus The State of Maharashtra, reported in

Handwritten signature and date: 27/2/80

:8:

1972 SLR 699, opined that a domestic Tribunal such as the dismissing authority in a disciplinary proceeding does not violate any rule of law or any other principle of law when it chooses to ignore the findings of the criminal court and decides to act on the evidence laid before it and ultimately comes to the conclusion that the charged officer is not fit to be retained in service inspite of his acquittal by the Criminal Court. Before that Division Bench of the Bombay High Court some cases decided by the Mysore and Madhya Pradesh High Courts had been placed and Their Lordships of the Bombay High Court differed from the view expressed by Mysore High Court. They also referred to a decision of the Madras High Court reported in AIR 1965 Madras 373 (Krishnamurthy Vs. Chief Engineer, Southern Railway) and they differed from the views expressed by the Madras High Court in that case. The Judgment of the Madras High Court was delivered by His Lordship Rajamannar, C.J. The question that was before the Madras High Court was whether enquiries in a criminal Court for an offence and before a Transport Tribunal under the Motor Vehicles Act for the alleged infringement could continue even after in one case a final order was passed. High Lordship the Hon'ble Chief Justice of the Madras High Court answered the question innegative saying:

" It would indeed be a strange predicament when in respect of the same offence, he should be punished by one Tribunal on the footing that he was guilty of the offence and that he should be honourably acquitted by another Tribunal of the very same offence."

While differing from these observations, the Bombay High Court

Handwritten signature
27/7

opined that as the standard of proof in a criminal case is much stricter than that of a disciplinary proceeding, an acquittal in a criminal case would not ^{be} an enquiry into the self-same allegation in a disciplinary proceeding. The Bombay High Court referred to well known judicial principle that no person is to be vexed twice over the same matter and it opined that the principle has to be limited only to cases before courts and its application cannot be extended to cover the Departmental Proceedings. We feel that the dictum laid down by the Bombay High Court is little too wide in its sweep, in our considered opinion proper principle would be that if allegations before the criminal court were same as those in the departmental proceedings and if the criminal Court acquits the accused not giving benefit of doubt but records an acquittal on merits saying that there is no evidence, it would really be improper and unjust to make an accused face a departmental proceeding for the self-same allegation. We would agree with Their Lordships of the Bombay High Court that a mere acquittal by the Criminal Court would not be sufficient to say that a departmental proceeding for the selfsame allegations cannot proceed, the real test would be how the criminal court came to acquit that is, whether it was a case of no evidence before it. We opine so, because to hold otherwise would amount to give a handle to the Department to plug the loopholes in its evidence adduced before the criminal court. In the instant case, as has been stated above, the criminal court held that there was no evidence to find the accused persons in that case guilty of having intimidated R. Appalaswamy. In the view we take

Handwritten signature
28/7/90

we would agree with the learned counsel for the applicant that so far the second charge of intimidation R.Appalaswamy was concerned, it was not open to the Department to make that allegation of intimidation a foundation for the order of dismissal at the appellate stage.

6. It may next be examined even assuming that it was permissible to enquire into the allegation of intimidation even after acquittal, whether there was evidence before the enquiry officer to find that the applicant intimidated R.Appalaswamy. It is admitted that by the date of enquiry, at the appellate stage R.Appalaswamy was dead. Therefore, his statement could not be obtained. In such circumstances, it is permissible to have what is known as secondary evidence. There must be some evidence to show that infact there was intimidation. The only person who, it may be said, referred to this aspect of the case was Manikyal Rao. In answer to question No.5 the said witness stated that he received a copy of the complaint lodged by R.Appalaswamy addressed to the Officer-in-charge, Jatni Police-Station, he was conspicuously silent about having any knowledge or information about the alleged intimidation by the applicant. While answering question No.2 put by the Enquiring Officer with regard to whether did he hear or see any act of insubordination indulged by the applicant after reporting sick, he answered that he did not witness any thing of that sort. These two answers by

Enquiry
27/7

the witness could mean that he had no knowledge or information about the intimidation. The only other witness examined by the Department was with regard to pdsting of notice of removal in the Notice Board. In such circumstances it can safely be said that there was no evidence worth the name with regard to intimidation by the applicant.

7. It may next be considered whether could it be said that there was any material whatsoever before the learned enquiry officer or the appellate authority to come to a conclusion that the applicant reported sick witho t a valid medical certificate. It is true that this Tribunal is not to act as an appellate forum but that is not to say that it cannot examine if there is absence of material to hold a person guilty of a charge. The first charge against the applicant, as stated in the removal notice was on 10.1.1981 at about 10.30 AM Shri P.Yarrayya, Fireman I, Loco Shed, Khurda Road submitted sick report without any valid medical sick certificate. A notice was displayed on 10.1.1981 warning that such sick reports would be treated as abstaining from duty without any valid authority which was affecting train services adversely. Such action on the part of P.Yarrayya amounts to wilful absention from duty and deliberate act of direliction of duty. Thus despite the notice and warning Shri Yarrayya continued to abstain from duty along with his colleagues

Shri Yarrayya
22/7

W

thereby occasioned cessation of work which amounts to illegal strike". In this regard, the finding of the enquiry officer is to be found at page 81 of the brief. There, the enquiry officer stated that the applicant was staying in a private house near Loco Colony, Khurda Road, he reported sick on 10.1.1981. In his defence statement he simply mentioned that he submitted medical certificate and marked sick in the mustorroll, that ^{was} on 10.1.1981. The enquiring officer further observed that there was a well-equipped Railway Hospital at Khurda Road, it was expected that he should have reported to the Railway doctor immediately and would have indicated the genuineness of his sickness. This observation would go to show that the enquiry officer, and also the appellate authority, ^{misdirected} ~~misdirected~~ themselves because the charge was not that the applicant was not really ill but the applicant absented from duty without valid medical certificate. The allegation in the charge was no evidence and unless evidence in support of a charge was led, no finding could be reached. However, the fact remains that the applicant was marked sick in the muster roll. None of the two witnesses examined by the department could speak anything about the medical certificate submitted by the applicant. There was absolutely no material to find whether the certificate submitted by the applicant was false or not. The medical certificate submitted by the

27/2/80

applicant was not stated by the department to be a document to prove charge no.1. This being the position, it is not necessary on our part to refer to different circulars relating to medical certificates, suffice it to say that from the Railway Establishment Code Vol.1 of 1985 it would appear that in some contingencies a certificate from a private medical practitioner could be acted upon.

8. To sum up, there was absolutely no evidence in respect of either of two charges and as such there is no difficulty in quashing the order of removal which is based on

no evidence. We order accordingly. He be reinstated immediately. The intervening period be treated as "leave without pay".

B. Sarangi 27-7-90
.....
Vice-Chairman

Member (Judicial) 27-7-90
.....
Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
July 27, 1990/S. Sarangi.

