

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3341 of 2014

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Sujeet Kumar, Son of Late Durga Prasad, Ex-A.S.M., E.C. Railway, Garpura under Samastipur Division, Resident of Doctors Toli, Mokama, District- Patna

.... Petitioner

Versus

1. The Union of India through the General Manager, E.C. Railway, Hazipur
2. The General Manager (Personnel), N.E. Railway, Gorakhpur
3. The Divisional Railway Manager, E.C. Railway, Samastipur
4. The Sr. Divisional Operating Manager, E.C. Railway, Samastipur
5. The Addl. Divisional Railway Manager, E.C. Railway, Samastipur
6. The Sr. Divisional Personnel Officer, E.C. Railway, Samastipur
7. The Sr. D.F.M., E.C. Railway, Samastipur
8. Chairman, Railway Recruitment Board, Gorakhpur

.... Respondents

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Appearance :

For the Petitioner : Mr. Munna Prasad Dixit, Advocate.
Mr. Sanjay Kumar Chaubey, Advocate.
Mr. Shailendra Kumar, Advocate.
For the Respondents : Mr. Anil Kumar Sinha, Advocate.
Mr. Ankit Katriar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 09-03-2016

The challenge in the present writ petition is to an order passed by the Central Administrative Tribunal, Patna Bench, Patna on 31st October, 2013 in O.A. No. 482 of 2008, whereby an Original Application filed by the petitioner against an order of removal from service remained unsuccessful.

2. The petitioner joined as Assistant Station Master, Garpura on 04.02.2002. He was served with a major penalty charge memo dated 21st January, 2004 that on 18th of July, 1999 at Daya Nand Kanya Inter College, Gorakhpur Centre another person appeared in the written examination in his place and the petitioner obtained the appointment order by a false personation. The stand of the petitioner was that he personally appeared in the written examination but he has been framed since

he is a member of Scheduled Caste. He also challenged the manner of conduct of disciplinary proceedings and that the relevant documents were not supplied to him and the Inquiry Officer was acting prejudicially and that even though the Invigilator has deposed in his favour and that Mr. P. Venugopal, who has submitted the Expert Report, has not been examined, still his report was accepted and the order terminating the services of the petitioner was passed.

3. In reply, the stand of the employer was that on receipt of complaint, the matter was enquired and the petitioner was found to have resorted to malpractices by resorting to impersonation. The report of Handwriting Expert after the examination of the answer sheets it could be known that the handwriting found in the answer-sheet did not tally with his admitted handwriting. It was a clear case of impersonation and thus, disciplinary proceeding was initiated. The very entry of the petitioner in the Railway service was based on forgery, cheating and false representation. It was also pleaded that ample opportunities were given to inspect the original documents and all relevant documents were also supplied. The invigilator could not identify the petitioner during inquiry after six years of the examination which put a question mark on her credibility, vision and memory. The order of removal was based on a scientific report of Government handwriting examiner of the questioned documents and there is hardly any material to differ with the views of the Handwriting Expert.

4. The appeal filed by the petitioner was dismissed on 25th of July, 2008, still aggrieved; the petitioner filed an Original Application before the Central Administrative Tribunal, Patna Bench, Patna which has been dismissed by an order impugned in the present writ petition.

5. Learned counsel for the petitioner has raised the following four arguments :



(i) that Sri P. Venugopal Rao, Government Examiner of Questioned Documents (hereinafter referred to as “GEQD”) has not been produced for the purpose of cross examination by the petitioner. Therefore, such report cannot be made basis of returning a finding against the petitioner. In this connection, reliance is placed on the case of M/s. Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and others (1971) 2 SCC 617, State of Maharashtra Vs. Sukhdev Singh and another (1992) 3 SCC 700, Shashi Kumar Banerjee and others Vs. Subodh Kumar Banerjee A.I.R. 1964 Supreme Court 529, Union of India Vs. H.C. Goel A.I.R. 1964 Supreme Court 364 and D.K. Yadav Vs. J.M.A. Industries Ltd. (1993) 3 SCC 259.

(ii) that though in the report of the Inquiry Officer discussion was that the charge of impersonation does not stand proved still the Inquiry Officer has concluded as charge proved, which is contradictory to the discussion. Therefore, such Inquiry Report cannot be made basis of disciplinary action against the petitioner.

(iii) that personal hearing was not granted by the appellate authority while dismissing the appeal. In this connection, reference was made to the case of Ram Chander Vs. Union of India and others (1986) 3 SCC 103.

(iv) that the petitioner was approved for appointment to the post of Assistant Station Master by the General Manager whereas he has been removed from service by a Senior Divisional Operating Manager. Therefore, he has been removed from service by an authority lower in rank than the appointing authority.

6. We have heard Learned Counsel for the parties and find no merit in the writ application. The facts of the present case may be noticed first.

7. The allegation against the petitioner is that in the written test held on 18th of July, 1999 he caused somebody else to impersonate him. In response to the show-cause notice, the petitioner submitted an explanation on 13th October, 2003 that he has signed on the Roll Call Sheet and on signature-sheet. He gave 30 signatures in



Hindi and in English on different sheets. The question answer-sheet No. 77549, Roll Call Sheet containing his signatures was sent to GEQD, Calcutta. The examiner has reported vide his report dated 10th November, 2003 that the signatures on the answer-sheets and the Roll Call Sheet do not tally. On the basis of such allegation, a charge-sheet was served upon the petitioner in the year 2004. An Inquiry Officer was appointed to conduct the inquiry into the allegations levelled against the petitioner. During course of inquiry, Sri Rao was summoned as a witness but he could not appear as the rail pass on two opportunities was delivered on 21st March, 2005 and on 11th of July, 2005 though the inquiry was fixed on 23rd March, 2005 and 14th July, 2005 respectively.

8. Since the witness could not make himself present, the departmental evidence was closed. It is thereafter, the petitioner examined Smt. Renu Srivastava, Invigilator at the Centre where he is said to have appeared for examination. She deposed that the candidates are permitted to appear in the examination after verification of the photographs. The Inquiry Officer concluded in view of the findings recorded in Para 6.01 and 6.02 and discussion in Para 6.03 that the charges stand proved against the petitioner though, it observed that the documents sent for examination by the GEQD were not attested by the Gazetted Officer before sending the same to the GEQD. When the matter was placed before the Disciplinary Authority, the officer observed that the finding of the Inquiry Officer questioning the report of Sri P. Venugopal Rao is not correct. It was observed that such examiner is from an independent organization under the Home Ministry of Government of India and its report is authentic. Therefore, even in the absence of the witness for the purposes of cross-examination, the report cannot be disputed. It was also observed that the finding of the Inquiry Officer that in the absence of witness for the purposes of cross-examination is not tenable. Such observation, which is in the nature of disagreement

with the Inquiry Report, was sent to the petitioner on 27th March, 2008 and order of penalty of removal imposed upon the petitioner. The detailed speaking order was also appended with such order.

9. The report of the Handwriting Expert is admissible *per se* even in criminal trial as per Section 293 of the Cr.P.C. The petitioner has not summoned any expert to rebut the report of the GEQD. The Inquiry Officer closed the evidence even though the sufficient time was not given to the witness to appear in the inquiry proceedings.

10. The reliance of the petitioner on the judgment in Bareilly Electricity Supply Co. Ltd. (supra) is misconceived. In Bareilly Electricity Supply Co. Ltd. case, the question raised was of bonus payable, which was referred to the Industrial Tribunal. In the said case, the balance-sheet and profit and loss account was produced by the Company in evidence. The Court held that in Labour matters the issues have to be established and proved and that the balance-sheet and the profit and loss account are not proved by mere production.

11. In fact, the Supreme Court quoted from another judgment reported as Union of India Vs. T.R. Varma A.I.R. 1957 S.C.882 which was a case of disciplinary proceedings where one of the witnesses was not permitted to be cross-examined.

The Court in T.R. Varma's case (Supra) observed as under:-

"Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by Tribunals, even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of Law.

Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the

opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.

If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed. Vide the recent decision of this Court in New Prakash Transport Co. v. New Suwarna Transport Co., 1957 SCR 98: (s) A I R 1957 S C 232)(c) where this question is discussed.”

12. Therefore, the judgment in Bareilly Electricity Supply Co. Ltd. decides a question which is different and not applicable to the facts of the present case.

13. The three Judge Bench in State of Haryana V. Rattan Singh (1977)2 SCC 491 the Court held as follows:-

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The ‘residuum’ rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence- not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will

accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

5. Reliance was placed, as earlier stated, on the non-compliance with the departmental instruction that statements of passengers should be recorded by inspectors. These are instructions of prudence, not rules that bind or vitiate in the violation. In this case, the Inspector tried to get the statements but the passengers declined, the psychology of the latter in such circumstances being understandable, although may not be approved. We cannot hold that merely because statements of passengers were not recorded the order that followed was invalid. Likewise, the re-evaluation of the evidence on the strength of co-conductor's testimony is a matter not for the court but for the Administrative Tribunal. In conclusion, we do not think the courts below were right in overturning the finding of the domestic tribunal." (Emphasis supplied)

14. In Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and others (1991) 2 SCC 716 the two Judge Bench of the Supreme Court held as follows:-

"37. It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in



straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred, as much as is practical, as if they had been actually observed. In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt 'but' the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries."

15. In another judgment reported as Cholan Roadways Ltd. v. G. Thirugnanasambandam, (2005) 3 SCC 241, the Supreme Court held that "It is now a well-settled principle of law that the principles of the Evidence Act have no application in a domestic enquiry".

16. Still further, as laid down in Rattan Singh's case and other judgments referred to above, the rules of Evidence Act are not applicable in the domestic inquiry and that even hearsay evidence can be relevant in domestic enquiry. The report of the expert could not be brushed aside only for the reason that it is not attested by the Gazetted Officer when petitioner himself has admitted his signatures on the sample signature-sheets. The report of the expert of the GEQD has not been rebutted in any reasonable manner. The statement of the Invigilator Smt. Renu Shrivastava produced by the petitioner was recorded after six years of the examination. No person can

possibly recollect that the petitioner was the same candidate who appeared in the said examination six years earlier.

17. The judgment in Sukhdeo Singh's case is a judgment in the criminal trial and the rule of evidence in a criminal trial is of proof beyond all reasonable doubt whereas in a domestic inquiry it is preponderance of probability. Therefore, the said judgment is of no assistance to the argument raised.

18. The Shashi Kumar Banerjee's case relates to a question of Will in a Civil Suit. The questions which are relevant for deciding the civil suit are not applicable to the departmental proceedings. D.K. Yadav's case pertains to an inquiry under the Industrial Disputes Act. The inquiry before a Tribunal constituted under the aforesaid Act are quasi judicial in nature and governed by the provisions of the Evidence Act. H.C. Goel's case was a case where the very foundation of the departmental proceeding was offering of the bribe which was found be untenable. The said judgment laid down a law which is in no way applicable to the facts of the present case.

19. Apart from the said fact, the appreciation of evidence falls within the exclusive domain of the departmental authorities. The inquiry proceedings have been conducted after giving opportunity of hearing to the petitioner and by complying with the principles of natural justice. The judicial review either by the Central Administrative Tribunal or by this Court in the writ petition is not directed against the findings recorded by the Inquiry Officer as a court of appeal. It is confined to decision making process. Reference may be made to the three Judge Bench judgment in Chairman-cum-managing director, Coal India Ltd. and another Vs. Mukul Kumar Choudhuri and others (2009) 15 SCC 620, where the court held as under:-

"13. It has been time and again said that it is not open to the High Court to examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions and that power of judicial review is not directed against the decision but is confined to the decision-making process. In a case

such as the present one where the delinquent admitted the charges, no scope is left to differ with the conclusions arrived at by the inquiry officer about the proof of charges. In the absence of any procedural illegality or irregularity in conduct of the departmental enquiry, it has to be held that the charges against the delinquent stood proved and warranted no interference.”

20. There is no illegality or irregularity in the decision making process adopted by the domestic tribunal. The reliance of the petitioner on the circular of the Railway Board dated 13th of February, 1967 is only a guideline and as held in Rattan Singh's case, cannot bind or vitiate the proceedings.

21. In respect of Second argument, suffice to say, that the enquiry officer has returned conclusions against the Petitioner. Some of the discussions are in favour of the petitioner, but the Disciplinary Authority recorded the disagreement and communicated the reasons to the Petitioner. Thus, any observation of the Inquiry Officer is not sufficient to grant any benefit to the Petitioner. We do not find any reason to reject the report of the Inquiry Officer and/or the reasons of disagreement recorded by the Disciplinary Authority, which may warrant interference in the present writ application.

22. In respect of the third argument, we find no merit again. Ram Chander's case (supra) has been found to be not a good law in a later judgment reported as Oriental Bank of Commerce and another Vs. R.K. Uppal (2011) 8 SCC 695. The Supreme Court referred to its earlier judgment in State Bank of Patiala Vs. Mahendra Kumar Singhals's case 1994 Supp (2) SCC 463, Union of India Vs. Jesus Sales Corpn. (1996) 4 SCC 69 and Ganesh Santa Ram Sirur Vs. SBI (2005) 1 SCC 13 to hold that in the absence of specific requirement of the relevant rules there is no right to personal hearing at the appellate stage and the rules of natural justice do not require that in all cases right of audience should be provided at the appellate stage. For ready reference relevant extracts of the said judgment is reproduced hereunder:-

“11. In our opinion, in Ram Chander case, this Court has not laid down as an absolute proposition that in matters of departmental appeal against the punishment order of a disciplinary authority, the appellate authority must invariably afford personal hearing to a delinquent.

21. The Single Judge of the High Court referred to the decisions of this Court in Mahendra Kumar Singhal, Jesus Sales Corpn. and Ganesh Santa Ram Sirur and also the decision of the Full Bench of the Punjab and Haryana High Court in Ram Niwas Bansal. The Single Judge also referred to a few decisions of other High Courts and followed the proposition propounded by this Court in Mahendra Kumar Singhal viz. that in the absence of the specific requirement by the relevant rules, there is no right to a personal hearing at the appellate stage and the rules of natural justice do not require that in all cases a right of audience should be provided at the appellate stage.

24. The appeal provision in Regulation 17 of the 1982 Regulations does not expressly provide for personal hearing to the appellant. Is the right of personal hearing to the appellant implicit in the provision? We think not. In our considered view, in the absence of personal hearing to the appellant, it cannot be said that the very right of appeal is defeated. One situation is, however, different. Where the appellate authority proposes to enhance the penalty, obviously, the appellate authority must issue notice to the delinquent asking him to show cause why penalty that has been awarded to him must not be enhanced and give him personal hearing. It is so because the appellate authority seeks to inflict such punishment for the first time which was not given by the disciplinary/punishing authority. Although there are no positive words in Regulation 17, requiring that the appellant shall be heard before the enhancement of the penalty, the fairness and natural justice require him to be heard.

26. However, personal hearing may not be required where the appellate authority, on consideration of the entire material placed before it, confirms, reduces or sets aside the order appealed against. Regulation 17 of the 1982 Regulations does not require that in all situations personal hearing must be afforded to the delinquent by the appellate authority. The view taken by the Full Bench of Punjab and Haryana High Court in Ram Niwas Bansal is too expansive and wide and cannot be held to be laying down correct law particularly in the light of the judgment of

this Court in Mahendra Kumar Singhal. We answer this question accordingly.”

23. In respect of the last argument, a perusal of the appointment order shows that the appointment letter was issued by Senior Divisional Operating Manager, Samastipur whereas the result of the selection was approved by General Manager. The approval of result by General Manager is an administrative action preceding the appointment. Such approval of appointment will not make the General Manager as the appointing authority since the authority who has appointed the petitioner is the only relevant authority to determine as to which authority appointed an employee. Since he was appointed by Senior Divisional Operating Manager, which is not an authority lower in rank than the authority imposing the punishment, therefore, it cannot be said that the petitioner has been removed by an authority lower in rank than his appointing authority.

24. In view of the said principles of law, we do not find any merit in the writ petition. The same is, thus, dismissed.

(Hemant Gupta, J)

Navaniti Prasad Singh, J I agree.

P.K.P.
A.F.R.

(Navaniti Prasad Singh, J)

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