Broja Ballav Ghose Vs. Union of India (Uoi)

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Court : Kolkata

Decided On : Apr-09-1985

Reported in : (1987)ILLJ331Cal

Judge : Anil Kumar Sen and ;Sudhir Ranjan Roy, JJ.

Appellant : Broja Ballav Ghose

Respondent : Union of India (Uoi)

Judgement :

Anil Kumar Sen, J.

1. This appeal from the appellate decree is at the instance of the plaintiff. The plaintiff was a Railway servant and he instituted Title Suit No. 50/67 for a declaration that an order of his removal from service and the appellate order therefrom being void and not binding upon the plaintiff, he continues to remain in service and for a decreefor arrears of salary. Such a suit failed in the two courts below and the judgment and decree dated January 15, 1973, passed by the learned Additional District Judge, 11th Court, Alipore, in Title Appeal No. 1014/70 are the subject matter of challenge in this second appeal.

2. The undisputed facts may be set out very briefly:

The appellant was appointed by the ex-Bengal and Assam Railway in the year 1944. After the partition, he opted for service in India. Such option was exercised in the year 1947, He was transferred to Eastern Railway and in 1950 he was posted as a ticket collector at Bongaon and therefrom he was transferred to Sealdah. In the yeat 1961 he was called upon by the authorities to submit a declaration of his assets and such a declaration being made, it now appears that there was a vigilance enquiry with regard to his assets. As a result of such enquiry, ultimately he was served with a charge-sheet dated 29th August 1962. Chargesheet was issued by the Divisional Personnel Officer, Sealdah, and is to be found at page 14 of the plaint. The first charge was that he was found to be possessed of assets more than the known source of his income to the extent of Rs. 16,745.90. The charge-sheet indicates how it was so calculated. So far as the assets are concerned, its value was assessed on seven items and the total valuation was made at Rs. 21,840.00. Admittedly, these included two immovable properties valued in total Rs. 15,763.00 which stand in the name of the appellant's mother as set out in Clauses (a), (b) and (d) of the allegations in support of the first charge. His total income was calculated at Rs. 25,697.62 and his probable family expenses were calculated at Rs. 20,602.90 leaving a balance asset of Rs. 5,094.62 so that, according to the charge-sheet, acquisition of property valued in total Rs. 21,840.00 was made out of assets beyond the known source of his income to

the extent of Rs. 16,745.90. This was the first charge. The second charge was rather vague. It was to the effect that the appellant contravened Rule 15(1) of the Railway Service Conduct Rules 1956 by acquiring the three immovable properties referred to in the first charge.

3. Along with the charge-sheet the appellant was served with allegations in support thereof and he was also informed that the prosecuting authorities proposed to examine 14 witnesses to prove the charges against the appellant.

4. The charges were denied by the appellant in the explanation furnished and there was a disciplinary enquiry held by the Assistant Personnel Officer. At such enquiry only three out of the proposed fourteen witnesses were examined and the enquiring authority submitted a report on November, 19, 1963, finding 1 the appellant guilty of the first charge and a part of the second charge. On the basis of such finding the appellant was ultimately removed from service by an order dated: February, 17, 1964, and a departmental appeal preferred by 1 the appellant was dismissed on July 9, '1964. That led the appellant to file the present suit op, May, 1967.

5. The principal issue that was agitated in, the two courts below is as to whether the appellant was validly removed from service as a result of a departmental proceeding held in accordance with the rules and in due compliance with the principles of natural justice. Though this issue had, been concurrently decided against the appellant in the two courts below, it had been rightly contended before us by Mir. Chakraborty appearing in aid of the appellant that such findings are based on complete oversight of the materials on record. The point thus raised by Mr. Chakraborty has been contested by Mr. Sanyal who is appearing for the Railway Administration. This has led us to reconsider the issue in this second appeal.

6. We propose to deal with the two charges separately and the findings recorded thereon by the enquiring authority at the disciplinary enquiry. Coming to consider the first charge we cannot but take note of an abnormal feature which appears on the first charge. As we have indicated hereinbefore, admittedly the appellant had been in the whole time employment of the Railway Administration from 1944 until 1964, that is, nearly for 20 years and on the view of the authorities framing the charge, the appellant as a bona fide railway servant could not have a saving out of the surplus derived from his salary after meeting his expenses which could enable him to acquire an asset valued at more than Rs. 5094/- If this be the view of the authorities, we are inclined to believe that the authorities want the railway servants to be dishonest. Be that as it may, our decision will not be based upon this absurd aspect of the calculation wholly made on surmises except so far as the salary income is concerned. We shall assume that the total income of the appellant could not have exceeded Rs. 25,697.62. But the real point at issue is could the authorities take all the assets referred to in the charge-sheet as assets of the appellant? We have pointed out hereinbefore that amongst the assets there are two which stand in the name of the appellant's mother the total value whereof is Rs. 15,763.00. If these two properties do not really belong to the appellant, then we are sure the authorities would not have proceeded against the appellant on any charge of holding any asset disproportionate to the known source of his income. It had been established at the enquiry that the appellant comes of a family who migrated from East Pakistan now Bangladesh. The appellant is one amongst the four sons some of whom including the mother migrated to India after the partition. One is not supposed to presume that all these persons, who migrated, did so as beggars bringing no assets with them not even ornaments

worthy enough to furnish the consideration for acquiring a property valued at Rs. 15,763.00. There is no law that a property standing in the name of the mother of a public servant shall be presumed to be acquired by public servant be name of his mother as appears to be the foundation of not only the charge sheet but also the finding recorded by the enquiring officer. The specific case of the appellant at the enquiry was that this was his mother's asset. The only competent witness examined at the enquiry was the Vigilance Inspector who upon his own evidence was wholly incompetent to speak about the real ownership of this property. He candidly admitted in cross-examination that his idea that these two properties really belonged to the appellant and not to his mother was bused upon his information derived from three persons who were proposed to be examined at the enquiry but were not actually examined. They were Baidyanath Neogi, S.K. Roy and Jagannath Mitra. We have indicated hereinbefore, of the fourteen witnesses proposed to be examined none but three were examined. The other two witnesses in their evidence do not support the acquisition of the aforesaid two properties by the appellant benami his mother. This question, therefore, arises as to whether this ostensible finding of the Enquiring Officer is a valid finding on which a removal can rest. It is, however, now well settled that in conducting disciplinary enquiries, the authorities are required to comply with the principles of natural justice apart from the Rules. In our o1 pinion, there was a fundamental breach of such a principle when real witnesses who could have either proved or disproved the charge were held back from the enquiry though proposed to be examined and the Vigilance Inspector was made to lead evidence not on his own but on his information alleged to have been derived from those persons. This, in our opinion, is a clear case of breach' of the principles of natural justice because had the prosecution been fair enough to examine those witnesses it could have been well established on cross-examination that either they do not support the charge or the charge is falsified by the evidence obtained on cross-examination from those witnesses. Having denied the said opportunity to the appellant the enquiring authorities had certainly acted in gross violation of the principles of natural justice. Therefore, the first and the major charge on which the appellant has been removed from service is clearly unsustainable on our findings as above. The finding of the two courts below in this regard is clearly based on non-consideration of the aspects thus pointed out by us in this judgment.

7. We now proceed to consider the second charge which was rather a minor charge so far as 'the appellant is concerned. Three properties were acquired, two in the name of the mother and those were in the years 1953 and 1955 and another plot of land was purchased on July 12. 1961 by the appellant for a consideration of Rs. 4500/-. The charge framed against the appellant is that in acquiring these three properties he violated Rule 15(1) of the Railway Services (Conduct) Rules 1956. The enquiring authority has rightly pointed out that no such charge could be framed with regard to the two properties acquired in the years 1953 and 1955 when the relevant rule had not come into force and as such could have no application whatsoever. She has further found the appellant guilty of breach of the said rule for acquisition of a plot of land on July 12, 1961. Before we deal with this property it will be useful to refer to the relevant Rule. The relevant Rule reads as follows:

15. Movable, Immovable and valuable property-(1) No Railway servant shall, except with the previous knowledge of the Government, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise, either in his own name or m the name of any member of his family.

Provided that any such transaction conducted otherwise than through a regular or reputed dealer shall require the previous sanction of the Government.

In framing the charge the disciplinary authority did not specify the fact1 constituting the breach but the charge framed as that the appellant contravened Rule 15(1) of the Railway Services (Conduct) Rules 1956 in acquiring the said plot of land on July 12, 1961. In our opinion framing of the charge is materially defective because acquisition of the property by itself does not constitute contravention of Rule 15(1) of the said Rules as appears to be the charge. To be fair to the railway administration we have read this charge in the light of the allegations in support thereof. When we refer to the allegations the relevant allegation is 'Shri Ghose did not obtain previous permission of his departmental authority for acquiring the aforesaid immovable properties as he was required to do under Rule 15(1) of the Railway Services (Conduct) Rules 1956'. Now what is the finding of the enquiring authority. The finding is to record the words of the enquiring authority herself, 'While entering into the transaction as specified in this item he neither obtained any prior permission of the Government nor did he send any prior intimation to the Government. By doing this he has contravened the provisions of Rule 15(1) of the Railway Services (Conduct) Rules 1956'. It is very unfortunate that neither the disciplinary authority framing the charge nor the enquiring authority was really clear about the charge actually framed against the appellant as is required in order to bring home a charge of violation of Rule 15(1) of the above Rules. We have quoted the Rule hereinbefore only to show that the Rule does not require any permission of the Government for the purpose of acquisition. What is required is only to put the Government to the knowledge of such acquisition. Now neither in the charge as framed nor in the allegation in support of the charge there is any allegation that the appellant acquired the property without the previous knowledge of the Government. The charge was framed upon a misconception that the appellant was required to obtain previous permission and since no such permission was obtained he had violated Rule 15(1) of the Rules. This was based on misconception as we have pointed out hereinbefore because that was not the requirement of the Rule. The enquiring authority was not sure what was actually the charge against the appellant. She was not so sure only because there was no appropriate charge against the appellant. She wanted to cover it up by putting two alternatives namely that it was so acquired neither on previous permission nor on any previous intimation but she failed to take note of the fact that the appellant was never charged of having acquired the property without any prior intimation. A finding which is dehors the charge is clearly unsustainable and no penalty can rest upon such a finding. This being the position, neither of the two charges framed against the appellant can be sustained on their merits. So far as the first charge is concerned, it must fail upon a finding that the disciplinary authority proceeded upon an erroneous presumption that the property standing in the name of the appellant's mother must be presumed to be the appellant's acquisition and the enquiring authority recorded a finding in that regard upon a clear breach of the principles of natural justice pointed out hereinbefore. So far as the second charge is concerned, that too fails on its merits because in its major part the enquiring authority absolved the appellant and in support of the minor part she was proceeding on a basis which is not a part of the charge itself.

8. In the result, this appeal succeeds and the order of removal and the appellate order there from are declared to be void and not binding upon the appellant for reasons given by us hereinbefore and the appellant is, therefore, entitled to a declaration that he continues to remain in service, from the date of his removal

namely February 17, 1964.

9. Next we should consider the second prayer made in the plaint, namely a decree for arrears of salary. Our attention has been drawn to Rule 1706(4) of the Railway Establishment Code which provides that where a penalty of dismissal, removal or compulsory retirement from service imposed upon a railway servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him then in that event the railway servant shall be deemed to have been placed under suspension from the date of removal. Under this Rule restoration of suspension is not automatic as in the case of Rule 1706(3). It is conditional upon the disciplinary authority deciding to proceed further with the disciplinary enquiry. Now in the present case there is difficulty for the disciplinary authority to proceed afresh because by this time the appellant having attained the age of superannuation must be deemed to have retired from the railway service. We are quite conscious of the other Rule, namely 2046(j) of the Railway Establishment Code Volume II which provides that where a disciplinary enquiry is pending the authorities may direct the railway servant to continue in service without permitting him to retire so that the disciplinary enquiry can be completed, but even this Rule, in our opinion can have no application here because it contemplates a positive order by the appropriate authority directing the delinquent to continue in service deferring his retirement before the retirement takes its effect. Such a contingency cannot be fulfilled in this case because the appellant has already retired on attainment of the age of superannuation. The net result, therefore, is that there is no further scope for the disciplinary authority to proceed' any further with the disciplinary enquiry so for as the appellant is concerned. In assessment of the salary our attention has been drawn by Mr. Sanyal to Rule 2044. Since, however, on our finding recorded hereinbefore the charges have failed on their merits there is no scope for deducting any part of the salary due to the appellant. We, therefore, also decree the plaintiffs claim for arrears of salary and pass a preliminary decree in that regard directing the learned Subordinate Judge now. to take accounts and pass a final decree upon payment of proper court fees on the amount to be decreed adjusting the court-fees already paid.

10. The apeal succeeds and is allowed with costs, hearing fee being assessed at five gold mohurs.

11. It is ordered and decreed that the decree of the court of appeal below be and the same is hereby set aside and in lieu thereof it is declared that the order of removal and the appellate order therefrom are void and not binding upon the appellant.

12. And it is further declared that the appellant continues to remain in service from the date of his removal, namely, February 17, 1964.

13. And it is further ordered and decreed that the plaintiffs claim for arrears of salary is decreed in a preliminary form with a direction to the learned Subordinate Judge now to take accounts and pass a final decree upon payment of proper court-fees on the amount to be decreed adjusting the court-fees already paid.

14. And it is further ordered and decreed that the respondent shall and do pay to the appellant a sum of Rs. 158.50 p. (Rupees one hundred and fifty eight and fifty paise), (as per details at foot), being the amount of costs incurred by the latter in this Court.