

Union Of India & Ors vs M. B. Patnaik & Ors on 11 February, 1981

Equivalent citations: 1981 AIR 858, 1981 SCR (2) 817, AIR 1981 SUPREME COURT 858, 1981 LAB. I. C. 313, (1981) 42 FACLR 252, 42 FACLR 252, 1981 UJ (SC) 204, 1981 UJ (SC) 234, 1981 SCC (L&S) 296, (1981) 1 LABLJ 453, (1981) 2 LAB LN 1, 1981 (2) SCC 159, (1981) 1 SERVLR 377, (1981) SERVLJ 400, (1981) 51 CUT LT 568, (1982) 95 MAD LW 8

Author: A. Varadarajan

Bench: A. Varadarajan, Syed Murtaza Fazalali

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
M. B. PATNAIK & ORS.

DATE OF JUDGMENT11/02/1981

BENCH:
VARADARAJAN, A. (J)
BENCH:
VARADARAJAN, A. (J)
FAZALALI, SYED MURTAZA

CITATION:
1981 AIR 858 1981 SCR (2) 817
1981 SCC (2) 159 1981 SCALE (1)297

ACT:

Disciplinary Proceedings in a service matter-Order of reversion quashed by the High Court on a technical ground-Propriety of the second enquiry on merits-Whether it is necessary that the enquiry which had been held in part by more than one enquiry officers should be continued by the same enquiry officers until the end-Original enquiry officers ceased to hold their respective offices by reason of their promotion to higher posts-Whether the second enquiry done by them while holding the higher promotional posts are bad and without authority of law.

HEADNOTE:

Allowing the appeals by special leave, the Court,

^

HELD: (1) When an earlier order of reversion was quashed on a technical ground, a second enquiry on merits could be held and it is open to the disciplinary authority to continue the proceedings in accordance with law. The order of reinstatement pursuant thereto is not a bar to the second enquiry.

[820 F-G]

Superintendent (Tech. I), Central Excise I.D.D. Jabalpur and Ors. v. Pratap Rai, [1978] 3 S.C.R. 729; Anand Narain Shukla v. State of Madhya Pradesh, A.I.R. 1979 S.C. 1923, followed.

(2) It is not at all necessary that the enquiry which had been held in part by more than one enquiry officers should be continued by the same enquiry officers until the end. The post which the members of the Inquiry Committee held originally might have been ceased to exist at a later stage, or one or more of the members of the Inquiry Committee may no longer be available either on account of retirement or due to any other cause. For that reason, it could not be held that the enquiry could not be continued at all. Therefore, there could be no valid objection to the supplementary enquiry being continued by the very two individuals, in the instant case even after they had ceased to hold their respective offices which they held at the time of the original enquiry.

[823 G-H, 824 A-B]

General Manager, Eastern Railway and another v. Jwala Prasad Singh, [1970] 1 SCC 103, applied.

[Having regard to the long lapse of time, the offence having been alleged to have been committed in or about 1955, the Court held that the fresh enquiry need not be held, and accepted the equitable offer of the Union Railways and directed payment of Rs. 12,000/- to each of the respondent employees.]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2119- 2121 of 1979.

Appeals by special leave from the Judgment and Order dated 10-1-1979 of the Orissa High Court in O.J.C. Nos. 1261/76, 833/77 and 834/77.

AND Civil Appeal No. 389 of 1981.

Appeal by Special Leave from the Judgment and Order dated 10-1-1979 of the Orissa High Court in O.J.C. No. 832/77.

M. M. Abdul Khadar, P. A. Francis, Gurumurthy and R. N. Poddar for the Appellants.

Amlan Ghosh for the Respondents.

The Judgment of the Court was delivered by VARADARAJAN, J.-These appeals by special leave have been filed against two judgments of a Division Bench of the Orissa High Court (C. A. No. 389 of 1981) arising out of the judgment in Original Jurisdiction Case No. 832 of 1977 and C. As. Nos. 2119-2121 of 1979 arising out of Original Jurisdiction Cases Nos. 1261 of 1976 and 833 and 834 of 1977 respectively. P. N. L. Das, the respondent in C.A. No. 389 of 1981 was appointed as a Booking Clerk in the South Eastern Railway in 1955 and had been duly confirmed at that post. M. B. Patnaik, the respondent in C. A. No. 2119 of 1979, was working as a confirmed Commercial Clerk at Khurda Road in the South Eastern Railway, having been appointed in January-February 1964. D. Sahu and S. C. Mitra, the respondents in C.As. Nos. 2120 and 2121 of 1979 respectively were working as confirmed Booking Clerks in the South Eastern Railway at about the same time. A departmental enquiry was initiated against these four respondents and three others, namely, Ch. N. Murty, B. S. N. Rao and B. Papa Rao in 1964 on the basis of a report of the Travelling Inspector of Accounts, and two charges were framed against them. The second charge was not pressed, and we are, therefore, concerned only with the disciplinary proceeding relating to the first charge, which led to the removal of all the seven persons from service. The first charge framed against these six persons was this :-

"On 20th May, 1959, 47 third-class express tickets had been issued from Khurda Road to Howrah for a total fare of Rs. 497.73 and these were accounted short on the plea of over-issue of these tickets on 12-5-59. The record at Howrah Station indicated that the tickets were actually sold on 20-5-59 and not on 12-5-59. The result was the fare amounting to Rs. 497.73 had been misappropriated on 20th December, 1959 by tampering with the figure relating to 12-5-59 in the cash book. The record foils of foreign express fare tickets issued on 12-5-59 were fraudulently cancelled and the sum of Rs. 493.53 already accounted in the cash book against those two foreign express tickets was erased, and to balance the sum a fictitious sale of 47 tickets had been entered in the cash book."

Several points had been raised in the Writ Petition (Original Jurisdiction Case) No. 832 of 1977. But when that case was taken up the learned counsel for the petitioner P. N. L. Das confined his arguments only to two points, namely that though the Evidence Act does not strictly apply, suspicion and conjecture cannot form the basis of any conclusion in any departmental enquiry and (2) reasonable opportunity of defending himself had not been given to the petitioner P. N. L. Das. The disciplinary authority and punishing authority, namely, the General Manager, constituted an Enquiry Committee consisting of the Assistant Commercial Superintendent, Khurda Road and the Assistant Accounts Officer, Garden Reach, namely, Shri K. Julhe and Shri B. B. Chatterjee. In the midst of the enquiry Shri K. Julhe was transferred and thereafter his successor in office Shri B. K. Patnaik and Shri B. B. Chatterjee, the Assistant Accounts Officers, Garden Reach continued the enquiry. The Enquiry Officers found the appellants in these appeals guilty of the charge. The punishing authority, the General Manager, on the representation of the respondents in C. As. Nos. 2119-2121 of 1979, directed a supplementary enquiry to be held. Notice of the supplementary

enquiry was given in April 1967. At that time Shri B. K. Patnaik, who succeeded Shri K. Julhe as the Assistant Commercial Superintendent, Khurda Road as stated above, had been promoted as a Divisional Commercial Superintendent and was posted at Kharagpur while Shri B. B. Chatterjee, who was Assistant Accounts Officer, Garden Reach, had been promoted as the Divisional Accounts Officer and had been posted at Adra. These very persons issued the notice for continuing the enquiry after the General Manager directed the supplementary enquiry. It is at this stage that P. N. L. Das, the appellant in C. A. No. 389 of 1981 challenged in O. J. C. No. 579 of 1971 the jurisdiction of the Enquiry Board. In that Writ Petition, Misra and Panda, JJ. of the Orissa High Court while negating several other contentions raised on behalf of P. N. L. Das, directed that the supplementary enquiry pending against P. N. L. Das shall be continued by the officers holding the post of Assistant Commercial Superintendent, Khurda Road and the Assistant Accounts Officer, Garden Reach and not by Shri B. K. Patnaik who had been promoted as the Divisional Commercial Superintendent and was posted at Kharagpur and ceased to be Assistant Commercial Superintendent, Khurda Road and by Shri B. B. Chatterjee who had been promoted as the Divisional Accounts Officer and posted at Adra and ceased to be the Assistant Accounts Officer, Garden Reach.

In W. Ps. (O.J.C.) Nos. 1261/76 and 833 and 834/77 Misra and Mohanty, JJ of the Orissa High Court found that by the time the decision in the said O. J. C. No. 579 of 1971 was rendered by Misra and Panda, JJ on 20-9-72, the enquiry against the respondents in C.As. Nos. 2119-2121 of 1979 had been disposed of and the disciplinary authority had taken into account the material collected in the supplementary enquiry and found the respondents in these three appeals guilty, in consequence of which these respondents were removed from service by the punishing authority. Writ Petitions (O.J.C.) Nos. 1271/76 and 833 and 834/77 were filed for challenging the removal of the respondents in C. As. Nos. 2119-2121 of 1979 from service. Misra and Mohanty, JJ held in these three Writ Petitions in their judgment dated 10-1-79 that in view of what has been stated in the decision in Writ Petition (O.J.C.) No. 579 of 1971 (P. N. L. Das v. Union of India & Ors. the supplementary enquiry made by Shri B. K. Patnaik who had ceased to be the Assistant Commercial Superintendent, Khurda Road and Shri B. B. Chatterjee who had ceased to be the Assistant Accounts Officer, Garden Reach, must be held to be without authority of law, and having regard to the fact that the case of the railway administration was not that the material gathered in the supplementary enquiry had not been used by the enquiry officers and the disciplinary authority, the finding of guilt and the imposition of punishment on the basis of that finding could not be sustained. Accordingly, the learned judges allowed these Writ Petitions (O.J.C.) Nos. 1261/76 and 833 and 834/77 and quashed the order made in the disciplinary proceedings and directed that each of the three petitioners before them, namely, the respondents in C. As. Nos. 2119-2121 of 1979 shall be deemed to be continuing in service and would be entitled to appropriate service benefits on that footing.

Mr. Pal, who appeared for the Railway Administration before Misra and Mohanty, JJ in these three Writ Petitions requested the learned judges to indicate that it is open to the disciplinary authority to continue the proceeding in accordance with law. We are of the opinion that the learned court was perfectly justified in doing so. This Court has held in *Anand Narain Shukla v. State of Madhya Pradesh* that when the earlier order of reversion was quashed on a technical ground, a second enquiry on merits could be held and that the order of reinstatement pursuant to the quashing of the earlier order on a technical ground is not a bar, and this Court negated the contention that after

the earlier order of reversion was quashed by the High Court and the govern-

ment servant was reinstated, no second enquiry on the very same charge could be held and no second order of reversion could be legally and validly made. A similar view has been taken by this Court in Superintendent (Tech. 1), Central Excise I.D.D. Jabalpur and Ors. v. Partap Rai in which it has been held that where an order passed in appeal vacates the order of the First Tribunal on purely technical grounds and expressly states that it was being passed without prejudice, which means that it was not an order on merits of the case, such an order does not debar fresh adjudicatory proceedings which may be justified under the law and that when an order is struck down as invalid being in violation of the principles of natural justice, there is no final decision of the case and all that is done is that the inherent defect is removed out the proceedings are not terminated. But Misra and Mohanty, JJ declined to consider favourably the request of the learned counsel for the Railway Administration before them namely, that they should indicate that it is open to the disciplinary authority to continue the proceeding in accordance with law on the ground that 15 years had elapsed since the charges were framed and the petitioners before the namely, the respondents in C. As. Nos. 2119-2121 of 1979, had been suffering on account of being subjected to disciplinary proceedings for such a long time and that it would be a mockery of justice if after the lapse of so many years the enquiry should commence again on the same charges.

When the supplementary enquiry, mentioned above, commenced and P.N.L. Das, the respondent in C. A. No. 389 of 1981 was examined, he insisted upon production of certain documents and witnesses but they were not made available here on the plea that the documents were not available and the witnesses who appeared to be ticket collectors, could not be co-related. However, as already stated, he was adjudged guilty of the charge on the footing that he had misappropriated the sale proceeds of express fare tickets. Misra and Mohanty, JJ observed in their judgment in W.P. (O.J.C.) No. 832/77 that there is no positive material worth the name to support the charge and lead to the conclusion that tickets had actually been utilized, that the relevant documents appeared not to have been reserved on account of negligence on the part of the administration and that on the ground that the evidence is not available prejudice cannot be allowed to be caused to the petitioner before them by relying upon suspicion and conjecture as evidence. The learned judges further observed that as things stood it is indeed difficult for them to hold that there is any evidence on record to support the charge. In that view they allowed the Writ Petition and quashed the punishment imposed on P.N.L. Das and held that he continues to be in service and is entitled to all the service benefits admissible to him. These Civil Appeals by special leave have been filed against these judgments of the Orissa High Court.

In the course of hearing of these appeals it was represented to us that C.N. Murthy, B.S.N. Rao and B. Papa Rao have since retired and that all payments have been made to them in full. It was also represented that even P.N.L. Das had been reinstated and all arrears etc. due to him have been paid. Mr. M.M. Abdul Khader, learned counsel appearing for the appellants in all these cases, submitted that the view expressed in P.N.L. Das v. Union of India & Ors. (supra) that the supplementary enquiry directed to be held by the disciplinary authority should be held only by officers holding the post of Assistant Commercial Superintendent, Khurda Road and Assistant Accounts Officer, Garden Reach and not by the officers who had held those posts at the time of the original enquiry and

ceased to hold posts subsequently, is incorrect. The learned counsel submitted that this position would appear from the decision of this Court in General Manager, Eastern Railway and another v. Jwala Prasad Singh referred to in the Judgment of the learned judges of the Orissa High Court itself. The learned judges of the Orissa High Court have extracted the following passage from the judgment of this Court in General Manager, Eastern Railway and another v. Jwala Prasad Singh (supra) in their judgment:-

"In our opinion the above procedure does not leave any scope for the guidance of a member of an Inquiry Committee consisting of more than one person by the impression formed by him about the truthfulness or otherwise of a particular witness examined during the inquiry. From the stage antecedent to the framing of the charges everything is recorded in writing. The allegations on which the charges are based are made known to the railway servant and he is called upon to file his written statement after looking into all the relevant records. The oral evidence of all the witnesses tendered during the enquiry is recorded in writing. Whereas here the oral evidence is recorded in the presence of three persons constituting the Inquiry Committee, any impression created by the demeanour of a particular witness on the mind of any one member cannot affect the conclusion afterwards arrived at jointly by them. It can not be suggested that all the three persons would record their impressions separately about the demeanour of a witness and it is quite possible that a particular witness may appear to one member of the committee to be untruthful without his being considered so by the others. The members of the Inquiry Committee cannot record their findings separately, but it is their duty to record findings on each of the charges together with the reasons therefor. It is to be noted that the duty of the Inquiry Committee ends with the making of the report. The Disciplinary Authority has to consider the record of the inquiry and arrive at its own conclusion on each charge. Whatever may be the impression created by a particular witness on the mind of one member of the Committee, the same is never translated into writing and the Disciplinary Committee merely goes by the written record after giving a personal hearing to the railway servant if he asks for it. Even if the Inquiry Committee makes a report absolving the railway servant of the charges against him, the Disciplinary Authority may, on considering the entire record come to a different conclusion and impose a penalty. This is amply borne out by a judgment of this Court in Union of India v. H.C. Goel (A.I.R. 1964 S.C. 364) where it was said that neither the findings nor the recommendations of the Inquiry Committee are binding on the Government. In such a state of affairs a change in the personnel of the Inquiry Committee after the proceedings are begun and some evidence recorded cannot make any difference to the case of the railway servant. The record will speak for itself and it is the record consisting of the documents and the oral evidence as recorded which must form the basis of the report of the Inquiry Committee. The Committee is not the punishing authority and the personal impression of a member of the Committee cannot possibly affect the decision of the Disciplinary Authority. In a state of affairs like this, we cannot see any reason for holding that any known principle of natural justice is violated when one member of the Committee is substituted by another."

It would appear from the above extract that it is not at all necessary that the enquiry which had been held in part by more than one enquiry officers should be continued by the same enquiry officers until the end. The post which the members of the Inquiry Committee held originally might have been ceased to exist at a later stage, or one or more of the members of the Inquiry Committee may no longer be available either on account of retirement or due to any other cause. For that reason, it could not be held that the enquiry could not be continued at all. Therefore, there could be no valid objection to the supplementary enquiry being continued by the very two individuals, even after they had ceased to hold their respective offices which they held at the time of the original enquiry. The plea of malafides raised against the two Inquiry Officers on behalf of P.N.L. Das, the respondent in C.A. No. 389 of 1981 before Misra and Panda JJ, when Writ Petition (O.J.C.) No. 579/71 was heard was rejected by the learned Judges who have observed in their judgment that after hearing the counsel they were satisfied that no good foundation has been laid for the plea of malafides, bias or prejudice by the enquiry officers and it was also conceded by the learned counsel who appeared for P.N.L. Das in that Writ Petition that on the material on records it may be difficult for him to persuade them to hold in favour of the petitioner before them in regard to the plea of mala fides. Therefore, we are clearly of the opinion there could be no bar to B.K. Patnaik and B.B. Chatterjee who were originally the Assistant Commercial Superintendent, Khurda Road and Assistant Accounts Officer, Garden Reach respectively, holding the supplementary enquiry even after they ceased to hold their respective offices by reason of their promotion as Divisional Commercial Superintendent, Kharagpur and Divisional Accounts Officer, Adra sometime before the commencement of the supplementary enquiry. However, we agree with Misra and Mohanty JJ of the Orissa High Court that it would be inequitable for a fresh enquiry being made into the charge framed against the respondents in S. As. Nos. 2119- 2121/79 or to go into the merits of the case against P.N.L. Das the respondent in C.A. No. 389 of 1981, having regard to the long lapse of time, the offences having been stated to have been committed in about 1955. Mr. M.M. Abdul Khader, learned counsel for the appellants in these appeals represented before us that no recovery will be made from S/Shri Ch. R. Murty, B.S.N. Rao and B. Papa Rao who have retired from service and also from P.N.L. Das the respondent in C.A. No. 389 of 1981 who has been reinstated subsequent to the decision of the Orissa High Court in Writ Petition (O.J.C.) No. 832 of 1977. We, accordingly, dismiss these appeals and direct the parties to bear their respective costs. Advocates fee Rs. 1,000/-, one set.

It was also represented before us by Mr. M. M. Abdul Khader that Rs. 22,400/-, Rs. 19,250/- and Rs. 19,250/- would be payable to the respondents in C.A. Nos. 2119- 2121/79 respectively if these appeals had been disposed of against the Railway Administration on merits and that the Administration would, however, pay Rs. 12,000/- to each of these person, namely, M.B. Patnaik, D. Sahu and S.C. Misra. We accept this offer as being beneficial to these three respondents in C.As. Nos. 2119-2121 of 1979 who will be entitled to recover from the Railway Administration a sum of Rs. 12,000/- each up to 22-1-81 on account of arrears of salary etc. payable to them from the date of their suspension.

V.D.K. Appeals allowed.