LETTERS PATENT APPEAL

Before D. Falshaw, C.J., and Tek Chand, J.

RAILWAY BOARD AND ANOTHER,—*Appellants.*

versus

NIRANJAN SINGH,—*Respondent.*

Letters Patent Appeal No. 38-D of 1962.

1963

Jan., 14th

Constitution of India (1950)—Art. 19—Instructions by Railway to its officers not to allow meetings or demonstrations by railway employees inside Railway premises—Whether unconstitutional—Order of removal from service on grounds some of which are held to be bad—Whether liable to be set aside—Art. 226—Petition for writ under—Interference in matters of fact—Whether can be made by High Court.

Held, that any employer of labour can prohibit Union meetings on his own premises, and this applies just as much to Government in its capacity as an employer as to any private individual. To prohibit meetings or demonstrations in factory premises is not an infringment of any fundamental right since nobody has a fundamental right to hold meetings of any kind on private property. In this case, the ban is not by any means absolute. All that the railway authorities have absolutely forbidden is the holding of meetings in actual places of work such as workshops, stores depots and office compounds. Meetings can still be held on open ground even though belonging to the railway authorities with permission. No restriction is placed on meetings outside railway premises, which are naturally outside the scope of the instructions. The instructions issued by the Railway prohibiting meetings and demonstrations by the employees inside the railway premises do not infringe the provisions of Article 19 of the Constitution and are, therefore, not unconstitutional.

Held, that where an order such as an order of detention or removal from service is based on a number of grounds, and one or more of these grounds disappear, it becomes difficult to uphold the order when it is not clear to what extent it was based on the ground found to be bad.

Held, that generally it is not open to the High Court under Article 226 of the Constitution to go into disputed matters of fact and it is certainly not open to the High Court, when a Court of Inquiry of competent jurisdiction has held a charge to be proved, to come to the conclusion that in fact the charge is not proved. But the High Court will be justified in entering into questions of fact where non-interference on general principles will result in injustice to the party aggrieved.

Appeal under Clause X of the Letters Patent of this Hon'ble Court against the judgment of Hon'ble Mr. Justice Shamsher Bahadur, dated 19th March, 1962 in C.W. 77-D of 1959, deciding the Writ petition in favour of the petitioner (Now respondent) and also allowing the costs of the petition.

R. S. NARULA AND R. S. SANDHU, ADVOCATES, for the Appellant.

S. C. AGGARWAL, R. K. AGGARWAL AND ANIL KUMAR, ADVOCATES, for the Respondent.

JUDGMENT

FALSHAW, C.J.—This appeal has been filed by the Railway Board and the General Manager of the Northern Railway aganist the order of a Single Judge accepting a petition filed by the respondent Niranjan Singh, under Article 226 of the Constitution and setting aside an order of the General Manger removing Narinjan Singh from service which was upheld by the Railway Board in appeal. Falshaw, C.J.

There seems to be no doubt about the fact that Narinjan Singh, a permanent servant of the Northern Railway of several years' service, was prominently engaged in trade union activities and on the 7th of November, 1956, he was served with a charge sheet alleging serious misconduct. The first charge was that he was instrumental in forcing the shutting down at about 8.15 a.m. on the 31st of May, 1956 of the 2500 e.f.m. air compressor in the East Compressor House adjacent to the Blacksmith shop causing thereby disruption in the

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working of the C. & W. Shops, Alambagh, Lucknow. The second charge was that on five occasions, which are listed, he had contravened the orders issued under the General Manager's letter, dated the 19th of June, 1956, by participating and addressing meetings held outside the Main Time Office of the C. & W. Shops on the mornings of the 23rd and 25th of June and the 24th, 25th and 27th of July, 1956. Three officers of the Railway, Mr. T. C. Chadda, President, and Mr. N. V. Murthy and Mr. M. P. Bahadur, were appointed to hold the enquiry and as a result of the proceedings held on three dates in January, 1957 they drew up and submitted their findings for the consideration of the General Manager to the effect that they did not consider the first charge relating to the shutting down of the air compressor to be established beyond all reasonable doubt, but that Narinjan Singh had contravened the order by participating and addressing the meetings regarding which he was charged.

On the 26th of March, 1957, Mr. M. K. Kaul, General Manager, recorded an order (annexure 'C' to the writ pettion) to the effect that he had read through the enquiry proceedings and he agreed with the view of some officer described as the D.C.M. (P) who apparently recorded a note in the meantime that the evidence was incomplete. He, therefore, sent the case back to the Enquiry Committee for further consideration after recording the evidence of some more witnesses and also further examining an Electrical Chargeman whose examination appeared to be incomplete.

The Enquiry Committee held a further session on the 18th of April, 1957, at which more evidence was taken, and by their report (annexure 'D' to the writ petition), dated the 22nd of April, 1957,

they recorded their conclusion that having once again considered and assessed the evidence for and against Niranjan Singh, they did not find any material which would warrant modification of their original findings.

By his order, dated the 25th of May, 1957, the General Manager, after discussing at length the two reports of the Enquiry Committee, expressed the opinion that the first charge was also established against Narinjan Singh and ordered the issue of a notice to him to show-cause why he should not be removed from service in respect of the findings on both the charges. After Narinjan Singh's reply to the show-cause notice had been considered the order was passed on the 20th of August, 1957, removing him from service. The dismissal of his appeal by the Railway Board was conveyed to him in a letter, dated the 12th of February, 1958.

In accepting Narinjan Singh's writ petition and setting aside the orders removing him from service the learned Single Judge has found in the petitoner's favour on both the charges against him, holding that the finding of the General Manager against him on the first charge violated the principles of natural justice, and that the instructions which the petitioner was alleged to have contravened by addressing meetings in railway premises without permission of the authorities were themselves a contravention of Article 19 of the Constitution.

The learned counsel for the appellants has contended that the learned Single Judge has greatly erred by interfering with a finding of fact in respect of the first charge. It is argued, and not without some justification, that it is not open to

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this Court under Article 226 of he Constitution to go into disputed matters of fact, and that it is certainly not open to this Court, when a Court of Inquiry of competent jurisdiction has held a charge to be proved, to come to the conclusion that in fact the charge is not proved.

While I am in general agreement with this argument I can only say, after considering the record of the proceedings in this case, that if ever interference in a matter of fact of this kind by this Court was justified, this is such a case. The substance of the first charge is that on the date in question a mob of about 250 workers was led by Narinjan Singh, to a place where the air-compressor was working and compelled its closing down.

Three officers were appointed to conduct what might be called the fact-finding part of the enquiry, though apparently the final decision rested with the General Manager. From the original report of these officers after they had heard the evidence it appears that out of all the witnesses produced only two, Suberati, a compressor driver, and Rameshwer, a *Khalasi,* deposed that they had seen Narinjan Singh at the head of the mob, or even having seen him at all in the compressor house, and, as the inquiry officer have observed, Suberati and Rameshwar oddly enough were unable to give the name of any other single member of the mob beside Narinjan Singh and there were other persons whose opportunities for observing what happened were just as good as those of Suberati and Rameshwar. On the other hand it appears that several witnesses appeared on behalf of Narinjan Singh and said that he was addressing a crowd in the park near the saw mill at the time when the mob entered the compressor house. In

these circumstances the Members of the Court of Inquiry came to the conclusion that the charge was not established beyond reasonable doubt, and it is clear from their order that the witnesses who were examined or re-examined at the subsequent session after the case had been sent back to them added nothing in respect of establishing the case against Narinjan Singh.

In his order, dated the 25th of May, 1957, by which he ordered the issue of a show-cause notice, the General Manager has in fact written a judgment as if he was sitting as a Court of Appeal over the findings of the Court of Inquiry, but his order reads more like a speech by a prosecuting counsel than by a Court more or less in the position of passing an order of conviction on an appeal from an acquittal. The reason for his holding the charge to be fully proved against Narinjan Singh is really summed up in one passage in which he found that Narinjan Singh was guilty of playing a very prominent part in the two hours' token strike on the day in question and concluded with the words—

> "In these circumstances it is incredible that a crowd which approached the compressor house to secure the shut down of the compressor so that the entire activity in the workshop might be paralysed would be minus Narinjan Singh."

This certainly gives the impression that the General Manager was convinced of the guilt of Narinjan Singh and was prepared to hold the case against him proved regardless of the weight of the evidence produced at he Court of Inquiry which had failed to convince the three officers appointed to hold that enquiry. This at least shows a total lack of the necessary judicial approach.

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In the circumstances I am of the opinion that although this Court should be very chary of entering into questions of fact of this kind, this is a case in which it would certainly have involved injustice if the learned Single Judge had refused to interfere on general principles.

I do not, however, agree with him regarding the instructions which he has held to contravene Article 19 of the Constitution. The instructions are contained in letter (R.I), dated the 19th of June, 1956, from the head office of the Northern Railway to all Divisional Superintendents, Works Managers and Heads of Departments. It reads—

> "It has been brought to notice that in a number of cases railway employees have held meetings inside Railway premises such as inside workshops, inside stores depots and within office compounds. It may be pointed out that this practice is extremely objectionable and has to be stopped forthwith. All staff may be warned that if anyone of them is found organising or attending a meeting inside Railway premises or at places of work, he will render himself to severe disciplinary action, as such action on his part will amount to misconduct arising out of violation of administrative instructions. Meetings of workers can be held on open grounds *away from places of work* with the permission of the Railway authorities concerned if such open grounds fall within Railway boundary.
>
> You are to note these instructions very carefully and to ensure their strict compliance in future."

The learned Single Judge has held that these instructions are unconstitutional on the strength of the decision of the Supreme Court in *Kameshwar Prasad and others* v. *State of Bihar and another* (1), and two American cases. In the Supreme Court decision rule 4-A of the Bihar Government Servants' Conduct Rules of 1956, which was held to infringe Article 19(1)(a) and (b) of the Constitution, reads "No Government Servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service." This decision has nothing whatever to do with the scene of any demonstration or meeting. I do not think there can be any doubt that any employer of labour can prohibit Union meetings on his own premises, and this applies just as much to Government in its capacity as an employer as to any private individual. To prohibit meetings or demonstrations in factory premises is not an infringement of any fundamental right since nobody has a fundamental right to hold meetings of any kind on private property. In this case the ban is not by any means absolute. All that the railway authorities have absolutely forbidden is the holding of meetings in actual places of work such as workshops, store depots and office compounds. Meetings can still be held on open ground even though belonging to the railway authorities with permission. No restriction is placed on meetings outside railway premises, which are naturally outside the scope of the instructions.

The learned Single Judge has met the argument of the learned counsel for the Railway authorities on the question of meeting on private property by citing two American decisions, *Grace Marsh* v. *State of Alabama*, (2), and *A. R. Tucker*

(1) A.I.R. 1962 S.C. 1166.
(2) (1945) 326 U.S.S.C.R. page 504.

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v. *State of Texas* (3), in the same volume. Both of these cases are the decisions of the Supreme Court of the United States, and in both cases the appellants had been convicted for distributing same kind of religious propaganda literature in residential areas. In one case the town had been built by a private company for housing its employees, and was being managed by the company, and in the other case the residential estate had been built and was managed by the Federal Public Housing Authority for people employed in some of the Federal projects. The ratio decendie of the Court is similar in both cases, namely, that the company or the Federal Public Housing Authority, as the case may be, stands in its relation with the public residing in those areas as if it were a Municipal Corporation, and, therefore, it cannot abridge the fundamental rights of freedom of the press and religion in these areas. Obviously a purely residential area even when privately owned is on a different footing from a place of work, and I do not consider that these decisions have any bearing on the right of the railway authorities to prohibit or restrict meetings in its own premises. Of course the restriction might be unconstitutional if an attempt was made to apply it to a purely residential area owned by the railway, but a question of that kind will have to be decided when it arises. I am thus of the opinion that the learned Single Judge was wrong in holding that the instructions, the violation of which forms the subject of the second charge, infringed the provisions of Article 19 of the Constitution.

The learned counsel for the railway authorities has argued that if we are upholding the second charge against the petitioner, we ought not to set aside the order for his removal from service

(3) (1945) 326 U.S.S.C.R. page 517.

even if we agree with the learned Single Judge regarding the first charge. I do not, however, consider that this argument can be accepted. It is by now a generally recognised principle that where an order such as an order of detention or removal from service is based on a number of grounds, and one or more of these grounds disappear, it becomes difficult to uphold the order when it is not clear to what extent it was based on the ground found to be bad. There does not appear to be much doubt in the present case that in fact if the General Manager had been content to accept the findings of the Inquiring Officers regarding the second charge the punishment would not have been very severe, and certainly would not have been removal from service. It seems permissible to draw this conclusion from the facts, since it is obvious that the General Manager was anxious to get rid of Niranjan Singh, and so, if he had thought that removal from service was a punishment which could be inflicted on proof of the second charge above, he would have issued a show cause notice then and there. As it is, he obviously considered the first charge to be more serious of the two and the one on proof of which removal from service could be suitably awarded as punishment. It seems quite clear that it was on this account that he sent the case back to the Inquiring Officers for further enquiry in the hope that they would find the first charge established. In these circumstances I do not consider that it is possible to uphold the order of removal from service simply on the basis of the second charge. The result is that I would dismiss the appeal, but leave the parties to bear their own costs.

TEK CHAND, J.—I agree. Tek Chand, J.

B. R.T.