

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.24840/2019

THE HON'BLE HIGH COURT AT CALCUTTA

PETITIONER(S)

VERSUS

MINTU MALICK & ANR.

RESPONDENT(S)

O R D E R

We find no grounds to interfere with the impugned judgment and order passed by the High Court except to the extent that costs of Rs.1,00,000/- (Rupees one lakh only) has been awarded to the respondent officer. The said costs are set aside.

The Respondent No. 1, a Railway Magistrate, entitled to the use of an official car, was constrained to avail suburban local train services operated by the Eastern Railways on 5th May, 2007 so that he was not late for Court, as his official car had not reported for duty within time.

To his chagrin, the local train was 15 to 20 minutes late. Waiting at the station for a train can be both tedious and boring. The Magistrate got drawn into a conversation with commuters waiting at the station. He heard that the train was always late on account of unscheduled halts after departure from the previous station, somewhere midway, to offload goods carried in the train illegally.

In his idealistic exuberance as Railway Magistrate he felt he could not shut his eyes to unlawful activities within his jurisdiction, by a group of Railway employees, in connivance with each other, and thus sprang into action. He assumed the role of a righteous 'Don Quixote' zealously fighting perceived wrong, and in the process he stirred up a hornets' nest, which led to his suspension, disciplinary proceedings and an order of compulsory retirement, which has, in our considered opinion, very rightly been set aside by the Division Bench of Calcutta High Court.

The Railway Magistrate was accused of travelling in the Motorman's cabin on more occasions than one, though it seems incredible that an officer entitled to an official car should opt to habitually travel by local train. In any case, there is no evidence of his travel in a Motorman's cabin except on the solitary occasion on 5th May, 2007.

The Magistrate's explanation for boarding the Motorman's cabin was that, he did so to make enquiries into the alleged illegal carriage of goods in the local suburban train and consequential delay in running of the train, due to unscheduled halts on the route, to offload those goods. The Magistrate apparently perceived his action to be within the legitimate scope and ambit of the powers of a Railway Magistrate, *inter alia*, under Section 190 (1)(c) of the Criminal Procedure Code, to take cognizance of any offence, upon information received from any persons other than a Police Officer, or upon his own knowledge of commission of such offence.

It is not necessary for us to examine the scope of the powers of a Magistrate under Section 190(1) of the Code of Criminal Procedure. The

question is whether the Magistrate's understanding of his powers as Railway Magistrate under Section 190(1)(c) read with the relevant provisions of the Indian Railways Act was so absurd as to warrant his removal from service.

The report of the preliminary enquiry makes it apparent that what triggered off the woes of this Magistrate was, agitation by a section of Railway employees, irked by the detention of one of their peers, resulting in disruption of train services for a few hours.

The Magistrate had requested the police to secure the presence of the Motorman and the Guard in Court for questioning. Neither the Motorman nor the Guard, nor any other person on the train in question was arrested. Nor is there any evidence of the Magistrate ordering the arrest of any of them. However, some railway employees started agitating, and one of the railway employees was later detained for his misbehaviour in court. The filthy abusive language that this railway employee allegedly used in Open Court against the Magistrate is not repeated.

The High Court sprung into action against the Judicial Officer and suspended him immediately, within a day or two. The Respondent was suspended on the following grounds:-

- (i) Travelling in the Motorman's cabin from Lake Gardens to Sealdah Railway Station on 5th May 2007 and travelling in similar fashion in the past without having valid pass to enter the Motorman's cabin.
- (ii) Requiring reasons for the late running of trains and obtaining a report on late running of the trains from the Motorman and the Guard of the local train concerned.
- (iii) Demonstration of the railway employees after the Driver and the

Guard were taken first to Thana and thereafter to the Court pursuant to verbal order of the Magistrate.

(iv) Enquiry by the Registrar (Vigilance & Protocol) which *prima facie* established that there had been violent demonstration by the Railway employees resulting in total disruption of train services because of the unauthorized activities on the part of the Magistrate.

(v) The manner in which the Magistrate had travelled in the Motorman's cabin without valid authority and pass and the way he had called for a report about the late running of the trains despite having no such authority, resulting in demonstration by the railway employees and disruption of train services in the Sealdah Division till 3.45 p.m. on 5th May, 2007 seemingly amounted to gross mis-conduct and misbehaviour unbecoming of a Judicial Officer.

(vi) the High Court was *prima facie* satisfied that a Disciplinary Proceeding be initiated against the Magistrate for such misconduct, and that the Magistrate be placed under suspension with immediate effect.

A Memorandum of Charges was duly issued to the Magistrate, by the Registrar General of the High Court, to which he submitted a reply. The crux of his defence was that he had entered the Motorman's cabin to make investigation in exercise of his statutory powers as Magistrate. He denied having entered the Motorman's cabin forcibly. On the other hand it was his case that the Motorman courteously allowed him into the cabin, when he disclosed his identity, and cooperated with him, but made a volte-face when the questions put to the Motorman became uncomfortable.

In his reply the Magistrate also categorically denied having committed any misconduct. He denied having given any verbal instructions to the Police for detention of the Motorman, Guard or any other person of the train, verbally or otherwise.

The Magistrate in his reply vividly narrated the humiliation which he had to go through in open Court when a railway employee who was not even on the train hurled abuses at him in the filthiest language which this Court refrains from repeating for the sake of decorum.

The order of suspension was revoked on 16th December, 2009, that is after about 2^{1/2} years, since the enquiry could not be completed. Almost a year after the revocation of suspension, an Inquiring Authority was appointed on 14th September 2010. Various witnesses were examined and a report was ultimately submitted as late as on 7th January, 2013.

On 7th March, 2013, a copy of the Inquiry Report was furnished to the Magistrate who duly submitted his comments thereto. On 23rd July 2013, the Administrative Committee of the High Court decided to impose punishment of compulsory retirement upon the Magistrate and on 30th July, 2013 the decision of the Administrative Committee was ratified by the Full Court by circulation. The decision of the Full Court was communicated to the Principal Secretary, Judicial Department on 8th August, 2013 for issuance of necessary orders and on 29th August, 2013 the order of punishment was passed.

On 4th September 2013, the Respondent No.1 preferred an appeal under Rule 16 of the West Bengal Judicial Service (Classification, Control and Appeal) Rules, 2007. On receipt of the appeal, the Hon'ble Governor of West Bengal forwarded the Memorandum of Appeal filed by the Respondent No.1 to the same High Court for its opinion. On 15th January 2014, the opinion of the High Court was forwarded to the Hon'ble Governor, who on 22nd January 2014 rejected the appeal, after which the Magistrate approached the High Court on

its judicial side under Article 226 of the Constitution of India.

The Registrar (Vigilance and Protocol) who conducted the preliminary inquiry, on the basis of which action was initiated against the Magistrate as also the Inquiring Authority embarked upon detailed examination of the scope and ambit of the powers of a Railway Magistrate and/or the legality of his action of making an enquiry himself by entering the Motorman's cabin and requisitioning the presence of the Motorman and the Guard in his Court. The Inquiring Authority as also the Registrar (Vigilance and Protocol) misdirected themselves by exceeding the scope of their task of making a factual inquiry, oblivious of the established principle that an error of judgment in itself does not constitute misconduct.

The learned Single Bench appears to have been swayed by the allegations against the Magistrate which were not even substantiated in the Inquiry. There is no evidence that the Magistrate forcibly boarded the Motorman's cabin. There is also no evidence of the Magistrate having given any instructions to the Police to arrest the Motorman or the Guard of the train in question. The demonstration may have been violent or spontaneous as observed by the Single Judge, but was it justified, having regard to the facts proved? The Single Judge missed the real issue which was whether there was any deliberate culpability on the part of the Magistrate.

It appears from the judgment of the Single Judge that the Single Judge was swayed by the fact that the appeal of the petitioner had been rejected. The Single Judge completely overlooked the fact that there was, in effect and substance, no appeal, for an appeal from the decision of the High Court was

rejected on the basis of the opinion of the same High Court.

The learned Single Judge dismissed the writ petition and upheld the order of punishment imposed on the Magistrate observing that his act of unauthorized entry into the Motorman's cabin especially in the background of the fact that he had done the same on previous occasions, his interrogation of the Motorman in the name of the judicial inquiry and subsequent ordering of his detention/arrest (which is incorrect factually), independently and collectively amounted to offences which were patently illegal in nature.

The Learned Single Judge completely overlooked the fact that there was no evidence of any unauthorized entry into the Motorman's cabin on any previous occasion. There was also no evidence that the Magistrate had ordered the detention or arrest of the Motorman. The inquiry reveals that the Motorman and the Guard were never in fact detained or arrested. The detention was of a railway employee who had disrupted court proceedings and abused the Magistrate in open Court using the filthiest language.

The learned Single Judge rightly observed that a Court can interfere with an order of compulsory retirement when it fails the test of reasonableness. The question is, whether an order of compulsory retirement can be held to clear the test of reasonableness, when all that is established in the inquiry is that the Magistrate had boarded the Motorman's cabin on one solitary occasion to make an inquiry, may be in excess of the powers conferred upon him. The illegality of the action was discussed at length, but whether there was any dishonest or wrongful intent, culpability or *mala fide* on the part of the Magistrate was totally overlooked. There is no finding against the Magistrate of *mala fides*, any motive

or ill intent.

It is a disturbing trend nowadays that Judicial Officers are made scapegoats and penalized whether by inconvenient transfers or otherwise, whenever there are agitations/ demonstrations against the Judicial Officers whether by Advocates or others, irrespective of the extent of the fault or responsibility of the Judicial Officers concerned. In this case, it is patently clear that action against the Judicial Magistrate had been prompted by the agitation of Railway employees and disruption of services. No one examined whether there was any justification for the disruption of services by the Railway employees for requiring information from two of them or for the detention of a third employee, a rank outsider to the investigation by the Railway Magistrate, for hurling abuses at the Magistrate in open Court and threatening him.

It is well settled that an error of judgment does not *per se* constitute misconduct. If the Railway Magistrate had acted *bona fide* but exercised his powers erroneously based on his perception of the powers of a Judicial Railway Magistrate, he could not have been held to have committed mis-conduct.

The entire enquiry proceedings appear to have been conducted under the West Bengal Judicial Service (Classification, Control and Appeal) Rules, 2007 which, to say the least, immediately needs to be amended. Under Rule 11 of the said Rules, no order imposing any of the penalties specified in Items (i) to (v) of Rule 10 which includes compulsory retirement, is to be made except after an enquiry in the manner provided in the Rules for which the Disciplinary Authority is *inter alia* to draw up, or cause to be drawn up the substance of the imputation of mis-conduct, or misbehaviour, into definite and distinct articles of

charge. Rule 2(c) defines Disciplinary Authority to mean the authority competent under the said rules to impose penalty on a Judicial Officer. The rules are completely silent as to which is the authority competent under the rules to impose penalty on a Judicial Officer. It is doubtful whether the Registrar General was at all the Competent Authority to draw up the charges. It is also not clear if the High Court had examined and approved Memorandum of Charges independently applying its mind. Be that as it may, Rule 16 and particularly 16(3) is patently invalid, for reasons discussed in the judgment of the Division Bench under Appeal.

The High Court is requested to consider recommending amendment of the 2007 Rules, particularly Rule 16 which is *ex facie* invalid, in that, an appeal made to the Governor has to be referred to the High Court for opinion. In other words, the High Court takes a decision and an appeal therefrom must be decided on the basis of the opinion of the same High Court, which is absurd.

With the aforesaid directions, the instant special leave petition is disposed of.

.....J.
[INDIRA BANERJEE]

.....J.
[B.R. GAVAI]

NEW DELHI;
NOVEMBER 15, 2019

Petition(s) for Special Leave to Appeal (C) No(s).24840/2019

(Arising out of impugned final judgment and order dated 04-07-2019 in FMA No. 26/2019 passed by the High Court At Calcutta)

THE HONBLE HIGH COURT AT CALCUTTA Petitioner(s)
VERSUS
MINTU MALICK & ANR. Respondent(s)

(FOR ADMISSION and I.R. and IA No.158680/2019-EXEMPTION FROM FILING
O.T.)

Date : 15-11-2019 This petition was called on for hearing today.
CORAM :

**HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE B.R. GAVAI**

For Petitioner(s) Mr. Jaideep Gupta, Sr. Adv.
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Md. Adil Badr, Adv.
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Md. Aqib Badr, Adv.
Ms. Arundhati Chakraborty, Adv.
Mr. Raunak Parekh, Adv.
Mr. Amit Kumar Srivastava, Adv.
Dr. Vinod Kumar Tewari, AOR

**UPON hearing the counsel the Court made the following
O R D E R**

The instant special leave petition is disposed of in terms of the signed order.

Pending interlocutory applications, if any are disposed of.

(SANJAY KUMAR-II)
COURT MASTER (SH)

(Signed Order is placed on the file)

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR