

## **(1977) 2 Supreme Court Cases 491 : 1977 Supreme Court Cases (L&S) 298**

(BEFORE V.R. KRISHNA IYER, R.S. SARKARIA AND JASWANT SINGH, JJ.)

STATE OF HARYANA AND ANOTHER . . Appellants;

*Versus*

RATTAN SINGH . . Respondent.

Civil Appeal No. 922 of 1976, decided on March 22, 1977

**Government Servants — Departmental Enquiry — Not bound by strict rules of Evidence Act, but by fair play and natural justice — Only total absence but not sufficiency of evidence before tribunal is ground for interference by Court**

**Evidence Act, 1872 (1 of 1872) — Rules of, do not apply to domestic enquiries or before Administrative Tribunals**

The respondent was a conductor of a bus of the State Transport Undertaking. The bus was stopped and the inspector of the Flying Squad discovered that some passengers were not issued tickets though they paid fares. A domestic enquiry was held and the respondent's services were terminated. He filed a suit and the trial court held that the domestic enquiry was a nullity because the ticketless travellers were not examined at the domestic enquiry, their statements were not recorded by the inspector as per departmental instructions, and the co-conductor's evidence in favour of the respondent showed that the respondent was not guilty. The decree of the trial court was confirmed by the appellate court and the High Court.

Allowing the appeal

*Held :*

In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though 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 Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no



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evidence — not in the sense of the technical rules governing Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny by court, while absence of any evidence in support of the finding is an error of law apparent on the record and the court can interfere with the finding.

(Para 4)

In the present case, the evidence of the Inspector is some evidence which has relevance to the charge and the courts below had misdirected themselves in insisting on the evidence of the ticketless passengers. Also, merely because their statements were not recorded, the order for termination cannot be invalid. In fact, the inspector tried to get their statements but the passengers declined. Further, it was not for the court but for the tribunal to assess the evidence of the co-conductor.

(Para 5)

[While confirming the order of termination, the court however directed payment of all that is due to him under industrial law as an employee whose services are terminated without penal consequences.]

(Para 6)

Appeal allowed

S-M/3542/SL

The Judgment of the Court was delivered by

**V.R. KRISHNA IYER, J.**— Shree Pal Singh has vigorously advocated the case of the respondent and we have listened to him patiently so that his studious preparation may not go unheeded. Even so, we are inclined to allow the appeal in the circumstances of the case. We may make it clear, right at the beginning, that the law that is applicable is not in dispute but the facts and circumstances of cases may differ when the application of law is called for.

**2.** In the present case, we may set out briefly the necessary facts. The Haryana Roadways is a State Transport Undertaking and the respondent before us is a member of the running staff, a conductor, whose job is to collect fares from passengers and issue tickets to them. Probably because conductors were collecting fares but not issuing tickets a system of flying squads was in operation in the Haryana State for the purpose of checking the proper collection of fares by conductors. The respondent before us, while on duty on bus (HRA-1262) on its trip from Palwal to Khodulpat, was the conductor whose vehicle was overtaken by the flying squad. The squad stopped the bus and its inspector discovered that four passengers had alighted at Bamini Kheda without tickets and that 11 passengers travelling in the bus also did not have tickets although they claimed to have paid the fares. A report followed, a charge-sheet ensued, a domestic inquiry was held, guilt established and simple termination of services effected. The respondent hastened to the civil court for a declaration that the order of termination in the disciplinary enquiry was a nullity and he must therefore be given a declaration of continuance in service. The trial court, on the evidence, was taken in by this plea and the appellate court also affirmed it. The High Court dismissed the second appeal in limine. The State has come by special leave with this appeal.

**3.** The principal ground on which the courts below have declared the termination bad is that none of the 11 passengers have been examined at the domestic enquiry. Secondly, it has been mentioned that there is



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a departmental instruction that checking inspectors should record the statements of passengers, which was not done in this case. The explanation of the State, as borne out by the record, is that the inspector of the flying squad had said that they had paid the fares but they declined to give such written statements. The third ground which weighed with the courts was, perhaps, that the co-conductor in the bus had supported with this evidence, the guiltlessness of the respondent.

**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, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiates 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 con-



clusion, we do not think the courts below were right in overturning the finding of the domestic tribunal.

**6.** No actual punishment in the sense of dismissal or removal was inflicted and counsel for the State read out the order finally passed. The order merely states that the services were terminated and the State's counsel agrees that there was no dismissal or removal or punitive punishment as seen from the order. All that we guess is, taking the words used in the order, the authorities probably had regard to the overall circumstances including the long years of service (10 years) and the comparatively young age of the delinquent at the time of termination of service (26) and relented in the matter of final termination by simply telling him off from service without inflicting any of the punishments. This lies within the power of the employer and it is not for us to say that the State should have punished him in a particular manner. Therefore, while confirming the order passed by the State and setting aside the decree of the courts below we hold that the consequences of a simple termination must follow. We, therefore, direct, while allowing the appeal, that the State shall pay the respondent all that is due to him under the industrial law as an employee when his services are terminated without penal consequences — apart from the salary for the period he has worked after the recent reinstatement. Counsel for the appellants has agreed that this direction will be carried out as the State is bound to. With these observations, we allow the appeal but the parties will bear their costs throughout.

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