

(2019) 07 DEL CK 0376

In the Delhi High Court

Case No : Civil Writ Petition No. 426, 475 Of 2019, Civil Miscellaneous
Application No. 1942, 2119 Of 2019

Air India Ltd

APPELLANT

Vs

Sanjay Kaura

RESPONDENT

Date of Decision : 03-07-2019

Acts Referred:

Citation : (2019) 07 DEL CK 0376

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Lalit Bhasin, Ratna Dwivedi Dhingra, Ajay Pratap Singh, Inder Jit Singh

Final Decision : Disposed Off

Judgement

1. The petitioner has challenged the orders dated 10th August, 2018 whereby the learned Industrial Tribunal held that the inquiry conducted by the petitioner was violative of principles of natural justice. Learned Industrial Tribunal directed the petitioner to produce evidence on merits on the charges mentioned in the charge sheet.

2. Mr. Lalit Bhasin, learned counsel for the petitioner submits that the respondents indulged in serious misconduct of criminal nature. The charges against the respondent in W.P.(C) 426/2019 are reproduced hereunder:-

"That during the year 1999 you were working as Sr.Accounts Asst. at Bill Passing Section, IGI Airport, at IGI Airport, Palam, New Delhi.

That while functioning as Sr. Accounts Asst., you (Sanjay Kaura), S/Shri P.K. Barthwal, Sr. Accounts Asst., Sukhbir Singh Sangwan, Sr. Traffic Asst., F.G. Runda, Sr. Traffic Asst., D.K. Kharbanda, a travel agent and Brijesh Kumar Gautam, Contractual Book binder with IAL made a plan in the year 1999 to take out the stock of CVDs unauthorisedly from IAL CVDs Store and thereafter make illegal money by getting the ticket cancelled and refunded from the various IAL

stations.

That you and Shr. D.K. Kharbanda, travel agent received the bundle of 100 blank manual IAL double sector tickets bearing numbers 058-2200208701 to 058-2200208800, which was taken out unauthorisedly by Shri P.K. Barthwal during last week of September, 1999 from CVD store Palam by dodging the staff on duty.

That you and Shri D.K. Kharbanda, travel agent approached Shri F.G. Runda, Sr. Traffic Asst, IAL posted at Safdarjung Booking Office and requested F.G. Runda to validate 100 stolen tickets bearing Sr. No.058-2200208701 to 058-2200208800 by putting the impression of Bradma ticket validator of Safdarjung Airport booking office. During the night hours passengers rarely visit booking office, accordingly F.G. Runda agreed to validate the tickets during night duty after assurance of a share in the refund amount. In the intervening night of 10/11.10.199, You and Shri D.K. Kharbanda reached Safdarjung Booking Office in the mid night when F.G. Runda was on duty. By avoiding the attention of the other IAL Staff on duty, F.G. Runda took out unauthorisedly the said bradma ticket validator machine out side booking office and all the hundred tickets were embossed by putting its impression. Thereafter the machine was put back at the same place {from where you had taken it} by F.G. Runda.

That you and Shri D.K. Kharbanda requested Shri Arun Kumar Rao @ Baboo to write two tickets bearing Numbers 058-2200208701 and 058-2200208702 as per your directions, Which were accordingly written by Shri Arun Kumar Rao @ Baboo. Other tickets were also got prepared by Shri D.K. Kharbanda with the help of one Parvin Bakshi thereafter Shri D.K. Kharbanda along with Shri Pravin Bakshi visited booking office at Guwahati, Calcutta, Chennai, and Bangalore, from where refunds were obtained and in case of any problem manual tickets were got re-routed in order to obtain refund on the re-routed tickets.

That after obtaining refunds on some of the stolen tickets from various IAL stations outside Delhi, Shri D.K. Kharbanda met you and S/Shri P.K. Barthwal (sic), F.G. Runda, Sukhbir Singh Sangwan, Brijesh Kumar Gautam at Delhi, where amount obtained through refunds on unauthorised tickets/ and re-routed tickets were distributed among you and the above said persons. Further Programme to obtain refund was also chalked out.

That you along with Sukhbir Singh Sangwan and Shri D.K. Kharbanda reached Mumbai on 16.11.1999 by flight/IC-165 in the morning. At the IAL booking office, Santacruz Airport, Mumbai IAL ticket number, 058-2200208762 incidentally prepared in the name of S. Kaura, and you presented the said ticket and refund of Rs.13,640/- was obtained. Shri Sukhbir Singh Sangwan and Shri D.K. Kharbanda also obtained refunds by submitting tickets prepared in their names.

That from Santacruz Airport, Mumbai you along with Shri Sukhbir Singh Sangwan and Shri D.K. Kharbanda visited IAL city booking office, Mumbai and

presented IAL ticket Number 058-2200208739 to 058-2200208748 belonging to the lot of 100 tickets unauthorisedly taken out. After getting these tickets cancelled fresh re-routed tickets bearing numbers 058-2251821777 to 058-2251821786 were obtained.

That from Mumbai, you along with Shri Sukhbir Singh Sangwan and Shri D.K. Kharbanda reached Pune in the late evening on 16.11.1999 and stayed in Hotel Shrimaan, Pune. Next day i.e., on 17.11.1999, all three of you visited IAL booking office Pune from where refunds on ticket number 058-2200208788 to 058-2200208791 belonging to the lot of 100 tickets unauthorisedly taken out was obtained.

That you along with Shri Sukhbir Singh Sangwan and Shri D.K. Kharbanda visited Goa from where refund on ticket number 058-2200208792, 058-2200208793, and 058-2200208768 were obtained in the two instalments.

That you received six IAL tickets bearing numbers 058-2250960195, 058-2250960197, 058-2250960199, 058-2250960200, 058-2250960203, and 058-2250960205 connected with the lot of 100 tickets taken out unauthorisedly, from Shri Sukhbir Singh Sangwan, which were issued from IAL booking office, Pune and obtained refund from Safdarjung Booking Office with the help of your friend Shri Sanjay Verma.

That you also got refunded 2 IAL tickets bearing number 058-2251191177 and 058-2251191178 through Shri Brijesh Kumar Gautam. These tickets were presented at IAL booking office, Malhotra Building, New Delhi and refund was managed by Shri J.P. Rathi, Sr. Traffic Asst. who also happens to be close friend of you.

That when matter came to the knowledge of IAL authorities, an enquiry was taken up, with a view to shield yourself, with the help of Sukhbir Singh Sangwan and other certain employees of IAL, after finding suitable opportunity got replaced/Destroyed relevant refund vouchers (RF-9) pertaining to IAL, Mumbai.

That from the period June-1999 onwards you have failed to maintain absolute integrity and devotion to duty and therefore you are hereby charged as under:-

That you dishonestly accepted blank IAL manual double sector tickets of the series 058-220-0208701 to 058-220-0208800 taken out by Sh. P.K. Barthwal unauthorisedly from the stock of IAL, got validated said tickets unauthorisedly by using the BRADMA validator machine of IAL, Safdarjung Booking Office with the help of F.G. Runda, Sr. Traffic Assistant and Devender Kumar Kharbanda @ David, a travel agent in the intervening night of 10/11.10.99.

That you unauthorisedly thereafter got said tickets prepared with the help of Arun Kumar Rao @ Baboo and D.K. Kharbanda etc. and deputed D.K. Kharbanda to obtain refund on the said tickets from various IAL booking offices.

That you visited (IAL Booking Offices at Mumbai, Pune and Goa etc. along with

Sh. Sukhbir Singh Sangwan, Sr. Traffic Assistant, IAL New Delhi and D.K. Kharbanda, a travel agent in the second fortnight of November, 99 and obtained and managed refund unauthorisedly on the tickets connected to the lot of 100 tickets unauthorisedly taken out by Sh. P.K. Barthwal from the stock of IAL.

That you unauthorisedly accepted six IAL tickets connected to said lot, gave to his friend Sh. Sanjay Verma and got refund obtained from Safdarjung Booking Office with the help of Sh. F.G. Runda.

That you unauthorisedly got refund on two IAL tickets related to the lot of 100 tickets through Brijesh Kumar Gautam from IAL Booking Office, Malhotra Building, New Delhi which was got released by requesting Sh. J.P. Rathi who was posted as Sr. Traffic Assistant there.

That you unauthorisedly with the intention to conceal the gross misconduct committed by you got relevant refund vouchers (RF-9) destroyed and replaced from the record of Central Revenue Account (CRA), New Delhi when enquiry into the matter was taken up by the IAL and tried to scuttle the same.

That you, acted in a manner, dangerous and detrimental to the IAL which ultimately contributed and led to the loss of Rs.6,67,390/- to IAL. Thus you committed gross misconduct.

Your above acts, if proved, would amount to breach of Standing order 1 and misconduct within the meaning of Clause 16(4), 16(16), 16(43) of the Standing Orders (Regulations) concerning Discipline & Appeals, as applicable to you, which read as under:

Standing Order 1: Every employee of the company shall at all times maintain absolute integrity and devotion to duty and conduct himself in a manner conducive to the best interests, credit and prestige of the Company.

Clause 16(4) : Theft, fraud and dishonestly, in connection with business or property of the company.

Clause 16(16) : Wilful damage to any property of the Company.

Clause 16(43) : Abetment of or attempt at abetment of any of the above misconducts."

(Emphasis Supplied)

3. Similar charges were framed against the respondent in W.P.(C) 475/2019 which is Annexure 'C' to the writ petition.

4. Mr. Lalit Bhasin, learned counsel for the petitioner submits that these are clear cases of loss of confidence by the petitioner in the respondents and no inquiry was required to be conducted by the petitioner for the first instance as per the principles laid down by this Court in State Bank of Travancore v. Prem Singh, 2019 SCC OnLine Del 8258 in which this Court held that the employee can be terminated without inquiry in the case of loss of confidence. This Court further

held that even if the inquiry was held to be bad, the employee is not entitled to reinstatement but only compensation.

5. Learned counsel for the petitioner submits that both these cases are squarely covered by the principles laid down by this Court in *State Bank of Travancore* (supra) and, therefore, even if the inquiry is held to be vitiated, the respondents are not entitled to reinstatement but only compensation. It is submitted that this submission is without prejudice to the petitioner's case that there has been no violation of principles of the natural justice. It is further submitted that the learned Industrial Tribunal be directed to hear the matter afresh in terms of the principles laid down by this Court in *State Bank of Travancore* (supra).

6. Learned counsel for the respondents submit that the respondents shall restrict their claim to compensation only before the Industrial Tribunal in view of the principles laid down by this Court in *State Bank of Travancore* (supra). It is further submitted that the petitioner paid about Rs.11,00,000/-to the legal representatives of similarly situated charge-sheeted person and the respondents claim parity with respect to the compensation paid to the legal representatives of the similarly situated person.

7. The law with respect to the loss of confidence is well-settled that the reinstatement cannot be ordered when an employee acts in a manner by which the management loses confidence in him. In case of loss of confidence, only compensation can be awarded. Reference be made to the recent judgment of this Court in *State Bank of Travancore* (supra) in which this Court, after considering *M/s Francis Klein & Co. Pvt. Ltd. v. The Workmen*, AIR 1971 SC 2414, *Air India Corporation v. V.A. Rebellow*, AIR 1972 SC 1343, *Anil Kumar Chakaborty v. M/s Saraswatipur Tea Company Limited*, AIR 1982 SC 1062, *Chandu Lal v. Management of M/s Pan American World Airways Inc.*, (1985) 2 SCC 727, *O. P. Bhandari v. Indian Tourism Development Corp. Ltd.*, (1986) 4 SCC 337, *Workmen v. Bharat Fritz Werner (P) Ltd.* (1990) 3 SCC 565, *A.K. Dass v. National Fed. of Coop. Sugar Factories Ltd.* 1994 SCC Supl. (2) 520, *Punjab Dairy Development Corporation Ltd. v. Kala Singh*, (1997) 6 SCC 159, *Sudhir Vishnu Panwalkar v. Bank of India*, (1997) 6 SCC 271, *Kanhaiyalal Agrawal v. Factory Manager, Gwalior Sugar Co. Ltd.*, AIR 2001 SC 3645, *Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane*, (2005) 3 SCC 254, *Bharat Heavy Electricals Ltd. v. M. Chandrasekhar Reddy*, AIR 2005 SC 2769, *T.N.C.S. Co. Ltd. v. K. Meerabai*, (2006) 2 SCC 255, *State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya*, (2011) 4 SCC 584, *Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal*, (2012) 1 SCC 442, *On-Dot Couriers & Cargo Ltd. v. Anand Singh Rawat*, (2009) 165 DLT 89, *All India Institute of Medical Sciences v. O.P. Chauhan*, 2007 LLR 435 (Del HC), *Abheraj Jaswal v. M/s Godrej Boyce Manufacturing*, 2011 SCC OnLine Del 3301, *Johnson and Johnson Ltd. v. Gajendra Singh Rawat*, (2016) 233 DLT 388, *Lancers Convent Senior Secondary v. Jai Prakash*, 2018 SCC OnLine Del 7763, *Sindhu Education Society v. Kacharu Jairam Khobragade* (1995) ILLJ 451 Bom, *Sanjiv Kumar Mahapatra v. A.L.*

Alaspurkar, 2003 (1) ALLMR 534, National Institute of Mental Health & Neuro Sciences v. Sri G. Suggappa, W.P. No.66/2013, Torrent Power Ltd. v. Chelabhai Nathabhai Luhar 2018 SCC OnLine Guj 3580 , summarised the principles as under:-

"Summary of Principles

31. When an employee acts in a manner by which the management loses confidence in him, his reinstatement cannot be ordered because it would neither be desirable nor expedient to continue the employee in service. It may also be detrimental to the discipline or security of the establishment. In case of loss of confidence, only compensation can be awarded.

32. The plea of 'loss of confidence' by the employer has to be bonafide. Loss of confidence cannot be subjective. It has to rest on some objective facts, which would induce a reasonable apprehension in the mind of the management regarding the trustworthiness of the employee and the power has to be exercised by the employer objectively in good faith, which means honestly with due care and prudence. Otherwise, a valuable right of reinstatement to which an employee is ordinarily entitled to, on a finding that he is not guilty of any misconduct, will be irretrievably lost to the employee.

33. The bonafide opinion formed by the employer about the suitability of his employee for the job assigned to him, even though erroneous, is final and not subject to review by the industrial adjudication.

34. In case of misconduct resulting in loss of confidence, the employer is not bound to hold any inquiry to visit the employee with penal action even if such reason happens to be misconduct of the employee. The employer, in its discretion, may invoke the power to discharge simpliciter for loss of confidence while dispensing with inquiry into the conduct of the workman. The departmental inquiry in such a case is not necessary.

35. The reinstatement of an employee terminated for loss of confidence cannot be ordered even if the inquiry held by the employer has been held to be bad.

36. The reinstatement of an employee terminated for loss of confidence for involvement in a criminal case cannot be directed even if the employee is able to secure a acquittal or discharge in the criminal case.

37. The reinstatement has not been considered desirable in cases where there have been strained relationship between employer and employee. The reinstatement is also denied when an employee has been found to be guilty of subversive or prejudicial activities. The Courts have also denied reinstatement in cases where long time has lapsed or where the industry itself has become sick."

(Emphasis Supplied)

8. In view of the submissions made by both the parties, these matters are remanded back to the Industrial Tribunal for hearing the matter afresh in terms

of the principles laid down by this Court in State Bank of Travancore (supra). The Industrial Tribunal shall withhold the recording of the petitioner's evidence till the fresh order is passed in terms of these directions.

9. Needless to say that if any party is aggrieved by the fresh order of the Industrial Tribunal, it shall have appropriate legal remedies in accordance with law.

10. Learned counsels for the parties submit that the next date of hearing before the Industrial Tribunal is 21st August, 2019.

11. The learned Industrial Tribunal shall endeavour to hear and decide the matter in terms of the orders of this Court within three months from 21st August, 2019.

12. Both the writ petitions are disposed of in the above terms. Pending applications are disposed of.

13. Copy of this judgment be given dasti to learned counsels for the parties under signature of Court Master.