
(2013) 01 DEL CK 0258

In the Delhi High Court

Case No : Writ Petition (C) No. 4144 of 1993

Anand Singh

APPELLANT

Vs

Deepa Sharma and Others

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Citation : (2013) 138 FLR 273 : (2013) LLR 605

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Vinay Sabharwal, for the Appellant; Murari Kumar, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Ms. Mukta Gupta, J.—By the present petition the Petitioner impugns the award dated 5th February, 1993 whereby it was held that the enquiry was not vitiated and thus there was no illegality in the termination of the Petitioner. It was further held that in view of the serious misconduct of the Petitioner, the punishment awarded to him was appropriate. Learned counsel for the Petitioner contends that the Trial Court did not give any finding on the enquiry but went ahead straightway on the merits of the case, which was impermissible. In the alternative, even if the enquiry was held to be not vitiated, the learned Trial Court was bound to take further evidence on the quantum of punishment before deciding the reference. It is further urged that cross-examination of the management witness was never conducted. In view thereof, the evidence of management witness and the enquiry report could not have been looked into. There was no evidence before the learned Trial Court and hence the impugned award is vitiated. Reliance is placed on Delhi Transport Corporation Vs. Ram Kumar and another, and General Employees Union Vs. Ambassador Sky Chef and Another, .

2. Learned counsel for the Respondent contends that the management witness was not even cross-examined during the enquiry and when the second

opportunity was granted to the Petitioner before the learned Trial Court, the same was also not availed of and hence no benefit from the same can be taken by the Petitioner. The misconduct of the Petitioner was grave and an appropriate enquiry was conducted which enquiry report and evidence was duly examined by the learned Trial Court and it came to the conclusion that the enquiry was not vitiated. There was no need for adducing fresh evidence to determine the quantum of punishment as the misconduct of the Petitioner was very serious in nature. Hence the petition be dismissed.

3. I have heard learned counsel for the parties. Ironically in this writ petition rule was issued in the year 1993, however no notice was sent to Respondent No. 3. An application for early hearing was filed by the Petitioner on which notice was issued to the Respondents, however notice to Respondent No. 3 could not be served till 24th November, 2003. Directions were given to the Petitioner to file fresh address of Respondent No. 3 so that notice could be issued to it. However the Petitioner took its own time and process fee was not filed despite opportunities and Respondent No. 3 could be served only for 10th September, 2007 for the first time when learned counsel for the Respondent No. 3 entered appearance. In the meantime the Petitioner passed away and the son of the Petitioner filed an application for impleadment. After entering appearance no counter affidavit was filed by Respondent No. 3. On 17th November, 2011 Trial Court Record was summoned. However, a report has been received that the Trial Court Record has been destroyed. The parties were thus directed to file the necessary documents. However, learned counsels for the Petitioner and Respondent No. 3 state that they have no further material available with them. This is a writ petition of the year 1993 and cannot be kept pending any further. Thus, I have proceeded to hear the writ petition on the basis of material available on the paper book.

4. According to the Petitioner the facts leading to filing of the present petition are that the Petitioner was appointed as a driver on 28th August, 1972 with Respondent No. 3. On 11th January, 1981 the Petitioner met with an accident and a charge-sheet was issued to him on 10th July, 1981 allegedly for overstaying. Finally his services were terminated on 15th February, 1982. However, the case of the management was that on 9th February, 1981 the Petitioner was drunk while on duty, drove the vehicle under the influence of liquor and also indulged in misbehavior with the superior i.e. Commercial Director. The workman submitted his application stating that he was on medical leave on 9th February, 1981. Thereafter the management noticed the mistake and it stated that inadvertently instead of 9th January, 1981 the date of 9th February, 1981 was mentioned. Charge-sheet was issued to the Petitioner and after a full-fledged enquiry, his services were terminated. The Petitioner raised an industrial dispute on which the following terms of reference were sent for adjudication:

Whether the dismissal of service of Shri Anand Singh is illegally and/or

unjustified, and if so, to what relief is he entitled and what directions are necessary in this respect?

5. The claim of the Petitioner was that he had an unblemished service record and he was on medical leave from 11th January, 1981 to 2nd June, 1981 as he had met with an accident on 11th January, 1981. When he went to join the duties on 3rd June, 1981 he was not allowed to join the same. In the interregnum, on 24th April, 1981 he received a letter alleging over-stay of sanctioned leave and on 10th July, 1981 he received a charge-sheet alleging that on 9th January, 1981 the Petitioner was drunk while on duty, drove vehicle under influence of liquor and indulged in disorderly behavior with the superior. The management was pre-determined and the enquiry was a sham. The charges were clearly after-thought, imaginary and unsubstantiated. The enquiry officer was an interested party and did not conduct an independent and impartial enquiry. No show cause notice was issued before the final punishment, nor was the copy of the complaints on which the charge was based nor the copy of the findings were given to the Petitioner. It was further alleged that the punishment of termination from service was harsh and disproportionate and the same was not issued by the competent authority.

6. The Respondents in their written statements admitted that the Petitioner met with an accident and remained on leave from 11th January, 1981 to 2nd June, 1981. When he joined back on duty he was referred to a doctor in view of the fact that he had availed long leave and the accident has caused an injury on his legs. Further the leave had no concern with the charge sheet issued to the Petitioner which related to the misconduct of the Petitioner on 9th January, 1981. The charge-sheet could not be served on the Petitioner as he remained on leave from 11th January, 1981 to 2nd June, 1981. The Petitioner was given full opportunity to defend himself and participate in the proceedings. The charge-sheet was issued and the enquiry officer was appointed by the competent authority. The enquiry officer was not an interested party and the Petitioner was allowed to bring a co-worker as per the standing orders. On the basis of pleadings the following issues were framed:

Whether a valid and proper enquiry was held against the workman before termination? If so to what effect.

7. A perusal of the award shows that the issue of enquiry was not dealt with as a preliminary issue but was dealt with on merits. The management examined one witness and has proved on record the enquiry report, however, the Petitioner did not produce any evidence. Though the Respondent/management did not examine the enquiry officer, however it examined Shri B.N. Sehgal personal supervisor of the management, as the enquiry officer had left the services and settled in USA. The learned Trial Court considered the various facets of the enquiry proceedings i.e. whether the principles of natural justice were followed, whether there has been want of good faith, whether there is victimization or unfair labour practice and whether on the material available the findings of the enquiry officer's were baseless or perverse. It was held that the Petitioner was given full opportunity to

cross-examine Shri Manjit Singh the Commercial Director, however he did not put any question nor cross-examined other witnesses. It was held that the Petitioner was guilty of the charges of being drunk while on duty and of driving vehicle under the influence of liquor. The learned Trial Court held that since the jurisdiction of the Trial Court was limited to see whether the conclusion arrived at by the enquiry officer was after following the principles of natural justice and it could not substitute its reasoning as an Appellate Court. It held that the findings showed that the charge of misbehavior against the workman remained unproved and only the charge that the Petitioner had consumed liquor while on duty and drove vehicle under the influence of liquor was proved. Learned Trial Court finally held that the enquiry was not vitiated and there was no illegality in the punishment.

8. The Petitioner has placed on record the testimony of MW1 Shri B.N. Sehgal recorded in ID No. 409/83 before the Trial Court. This witness has exhibited the charge-sheet and has also stated that he was acquainted with the signatures of Mr. A.K. Seth, Mr. Rankesh Kumar and Mr. Anand Singh workmen and could identify them. He also tendered the certified standing orders as Ex. MW1/8. However, what is material is that the cross-examination of this witness was deferred on 20th April, 1987. In the writ petition the Petitioner has reproduced the order sheets and the same show that subsequently without the cross-examination of the management witness the management was proceeded ex-parte. In view of the fact that no opportunity was given to the Petitioner to cross-examine MW1, his evidence cannot be looked into. This was the sole evidence before the learned Trial Court as this witness exhibited all the documents. Even in the present petition no counter affidavit has been filed and nothing has been placed on record to discharge the burden on the Respondents. In view of the fact that the Petitioner was not awarded the right to cross-examine MW1, in my view a material illegality has accrued and the evidence adduced by the Respondent No. 3 before the learned Trial Court cannot be looked into. The learned Trial Court erroneously based its judgment on the basis that the enquiry proceedings were proved on record by the management witness. Although the learned Trial Court noted that the Petitioner did not cross-examine the Commercial officer in the enquiry proceedings, however it failed to note that no cross-examination of MW1 was permitted before it.

9. Be that as it may, even if the management has not been able to prove the enquiry proceedings before the Trial Court, it would be akin to a case where no enquiry was conducted. In this regard the initial burden was on the Petitioner to prove that the termination was illegal. In the present case there is nothing on record to show that the Petitioner had discharged the said burden. As per the learned Trial Court, no evidence has been led by the workman. Further the copies of the order sheets of the learned Trial Court filed by the Petitioner also show that the Petitioner did not even examine himself before the learned Trial Court. Since there is no material on record to show that the Petitioner examined himself and discharged the initial burden that the termination was illegal, I am of the

considered view that no relief can be granted to the Petitioner. Petition is dismissed.