
(1991) 01 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 3492 of 1984

Antony Philip D'souza

APPELLANT

Vs

Air India and others

RESPONDENT

Date of Decision : 18-01-1991

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 33

Citation : (1991) 62 FLR 999 : (1992) 2 LLJ 507

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

1. This is a petition under Article 227 of the Constitution of India impugning an order dated May 23, 1984 made by the National Industrial Tribunal, Bombay, in Approval Application No. NTB-4 of 1981.

2. The facts leading to the present petition may be summarized as under :-

The petitioner was working in the service of the 1st respondent, which is the country's international airline, at Air India Building, Nariman Point, Bombay 400 021. He was in charge of ticketing. On November 2, 1979 the petitioner was served with a charge-sheet alleging misconducts of (i) dishonesty in connection with the business of the Corporation and (ii) breach of Service Rules applicable to the establishment. It was alleged against the petitioner that during the period February 16, 1979 to March 28th 1979, he was duty at the counter in the Booking Office of the 1st respondent at Nariman Point an was specifically positioned at the Gulf against Counter in the normal shift. It was alleged against him that during this period he had issued a ticket to one Suresh Kumar on February 16, 1979, to one Fatima Bai on February 29, 1979 and on March 28, 1979 to one Solanki Harji and one J. Patel. It was further alleged that, though the petitioner was at the material time, working only in what is known as "the Gulf Counter", he had, without authority of his Superior Officer, issued the concerned tickets which pertained only to what is known in the 1st respondent's

office as "the Agents Counter". The further allegation was that in the sales records pertaining to Suresh Kumar and Fatima Bai, although the tickets were issued against the travel agents' voucher, the petitioner had intentionally written in the "Sponsor" column "PAX" and in the "Contact" column "ADD", suggesting thereby that the passengers had come directly to the airlines and were not sponsored by any travel agent and further that they could be contacted at their addresses. So far as the tickets issued to Solanki Harji and J. Patel are concerned, the allegation was that although these tickets had also been issued against the travel agents' vouchers, the petitioner had, in the sales record, intentionally left blank the columns pertaining to "Sponsor" and "Address". It was, therefore alleged that though the petitioner was working in the Gulf Counter and as such had no connection with the Agents Counter, he had issued the concerned tickets in favour of the passengers without authority and had thereby diverted to the travel agent the business which would have otherwise come to the 1st respondent.

The petitioner gave a detailed written explanation dated November 23, 1979. In his explanation, the petitioner did not dispute the particulars alleged against him as found in the sales record/documents but seriously disputed the inferences sought to be drawn therefrom. He pointed out that he had taken all action well within his duty limitations or "on orders as and when situation demands" or out of his own right to assist and attend to passengers waiting to be attended to when he was positioned at the Gulf Counter. The crux of his case was that the staff in the sales office of the airlines work as a team and assist each other when they find that there is less workload in one sales counter and heavy workload leading to backlog of passengers at other counters. It is important to note that, having indicated this, the petitioner pointed out that the duty officers do not allot work to the traffic assistants their counters depending upon the pressure of work. The petitioner denied that there was any dishonest intention on his part or that he had acted so as to divert the business which was coming to the 1st respondent to any sales agent.

Being dissatisfied with the explanation tendered by the petitioner, the 1st respondent held an inquiry into the charges alleged against him. The inquiry was conducted by a Committee of Inquiry. Before the Inquiry Committee, although several witness were examined, the evidence of most of them turned out to be irrelevant. For instance, S. A. Lagali, Sr. Vigilance Officer, just appeared at the inquiry and produced the tickets in issue. He also produced certain other tickets which were alleged to have been issued by the petitioner, though they formed no part of the charge, nor was the petitioner's explanation with regard to them ever called for. Thereafter, there was the evidence of Miss Pinto, who was the then Manager-Reservations and Ticket Officer. The evidence of Miss. Pinto was of a general nature and perhaps intended to prove the practice in the establishment. Then, there was the evidence of three other witnesses, K. V. H. Nair, Bharatan and Khosla. The evidence of these witnesses was on an incident which was neither alleged in the charge-sheet, nor had been considered relevant even by

the Inquiry Committee. Thereafter the petitioner was subjected to lengthy cross-examination by the Inquiry Committee which runs into about 16 typed pages. At the end of this evidence, the Inquiry Committee came to the finding that both charges with regard to dishonesty in connection with the business of the Corporation and breach of Service Rules applicable to the establishment were established.

Consequent upon the finding of guilt recorded against the petitioner, the petitioner was removed from service by an order dated February 27, 1981. At the relevant time, a Preference, No. NTB-1 of 1980, was pending adjudication before the 2nd respondent. The reference pertained to the dispute between the 1st respondent and its workmen, and the petitioner was a workman concerned in the said Reference. The 1st respondent, therefore, made an Application, No. NTB-4 of 1981, before the 2nd respondent u/s 33(2)(b) of the Industrial Disputes Act, 1947, for approval of the order passed against the petitioner. The Petitioner, who was the respondent in the Application, appeared and contested the matter. Although the petitioner had raised number of points with regard to the contravention of the principles of natural justice at the inquiry, he appears to have restricted his contention only to two at the time of arguments.

The first contention raised by the petitioner before the 2nd respondent tribunal was that there was enormous delay between the date of the alleged incident and the date on which he had received the charge-sheet and, hence, there was prejudice caused to him. Secondly, it was contended that the findings recorded by the Inquiry Committee were wholly perverse and such as could not have been arrived at any reasonable person on the basis of the evidence on record. The 2nd respondent, by the impugned order dated May 23, 1984, held firstly that the mere fact of delay did not vitiate the charge-sheet and that it was also a case where prejudice has been demonstrated thereby. Secondly, on the question of perversity of the findings, the 2nd respondent rejected the contention and took the view that the conclusion arrived at by the Inquiry Committee was not perverse and could have been arrived at by any reasonable person on the basis of the evidence before him. In this view of the matter, he granted approval to the action taken against the petitioner by the impugned order. The petitioner as mentioned before, has impugned the said order of the 2nd respondent-National Industrial Tribunal.

3. On behalf of the petitioner, Mr. Singhvi, learned Counsel stated, at the outset, that, out of the two points raised before the 2nd respondent-tribunal, he would be pressing only the latter one, viz., that the conclusions of the Inquiry before the Inquiry Committee were perverse. Mr. Singhvi contends that, even taking the evidence before the Inquiry Committee at its highest, no reasonable man could have come to the conclusion that the evidence before the Inquiry Officer could plausibly lead to the conclusion that the petitioner was guilty of dishonesty in connection with the business of the 1st respondent Corporation or that he was guilty of breach of any rules of discipline.

4. Mr. Bharucha, learned Counsel for the 1st respondent-Corporation, straightway conceded that the second part of the charge could not be treated as a separate charge and, if at all, must be deemed to be subsumed in the first part of the charge. In other words, his contention was that because the petitioner was guilty of dishonesty in connection with the business of the establishment, he must also be held guilty of breach of rules of discipline. He conceded fairly that there was no specific rule of discipline, of which the petitioner can be said to have been guilty of breach.

5. In order to examine the contention whether the findings recorded by the Inquiry Committee were perverse or not, both the learned Counsel have taken me through the entire evidence on record and also through the findings recorded by the Inquiry Committee. I have also carefully read the impugned order of the National Industrial Tribunal, which has been vehemently and seriously criticized by the petitioner's Counsel.

6. From the material on record, it appears that four tickets were issued by the petitioner on the different dates as suggested. All the tickets were issued against vouchers issued by a particular travel agent, viz., Ambassador Travels. The practice appears to be that simultaneously with the issuing of the tickets or soon thereafter, the Traffic Assistant issuing the ticket is required to maintain a sales record. This sales record is a printed proforma document which has to be filled up by the Traffic Assistant issuing the ticket. Two columns in this documents are relevant. There is a column styled "Sponsor". The information in this column is intended to enable the 1st respondent-Corporation to ascertain as through which travel agent the passenger had come. The evidence on record shows that if the ticket is issued by a travel agent then in the "Sponsor" column either the name or the I.A. T.A. Code Number of the travel agent is to be indicated. There is another column styled "Contact". This is intended to carry the contact address of the passenger. From the evidence on record, it appears that if the travel agent has sponsored a passenger, then, normally, the address of the sales agent is shown in the "Contact" column. It is further seen from the evidence on record that the case of the ticket issued to Suresh Kumar and Fatima Bai, the sales record did indicate the I.A.T.A. Code Number of Ambassador Travels. In the "Sponsor" column the word "ADD" was written by the petitioner while in the "Contact" column the word "ADD" was written. The word "PAX" is a short form used in airline circles to mean passenger. The evidence of Miss Pinto indicates that if the word "PAX" is denoted in the "Sponsor" column, it would mean that the passenger had directly approached airlines. The evidence on record also shows that whenever a direct passenger-called a "walk-in" passenger-comes to the Sales Office, he is directed to the P.R.O. Counter. The P.R.O. then registers his name in a register and directs him to approach in a particular sales counter. It would, thus, appear that on the disputed issue as to whether a passenger was a director or "walk-in" passenger or whether he had been referred by the travel agent, the P. R.O. Register is the best piece of evidence. Curiously, neither was the P.R.O. examined in this case, nor was the P.R. O. Register produced. Turning

to the last two tickets issued to Solanki and Patel, it appears that the sales record did bear the I.A.T.A. Code Number of Ambassador Travels while the "Sponsor" column and the "Contact" column were blank.

7. It is undisputed that the tickets were actually issued on Agents Voucher; that the agent was Ambassador Travels; and that their I.A.T.A. Code Number was shown on all the four tickets concerned in the charge-sheet. Looking at the sales record, it would appear that two sales records pertaining to Suresh Kumar and Fatima Bai contained entries in the "Sponsor" column, Suggesting that the passengers were "walk-in" passengers, and showed in the "Contact" column the word "ADD", suggesting addresses of the passengers. From this evidence on record, the Inquiry Committee straight way came to the conclusion that the petitioner had diverted business of the 1st respondent to the travel agent concerned and was cheating the 1st respondent for the reason the he was friendly with Miss Dastoor of Ambassador Travels and was thereby guilty of dishonesty in connection with the business of the establishment.

8. What is interesting is that the 2nd respondent-tribunal, without going into the details of the evidence, has taken the view that the evidence on record could probably lead a reasonable person to the conclusion which the Inquiry Committee has recorded. If this was so, then certainly the National Industrial Tribunal, not being an Appellate Court over the findings recorded by the Inquiry Committee, would have to accept them and, consequently, the petitioner's case must fail. However, in my judgment, after having scrutinised the evidence on record it would be impossible for any reasonable man to conclude from the material indicated hereinabove :

(a) that the petitioner had diverted business which was coming to the Ambassador Travels; and

(b) that the petitioner had done something dishonest in connection with his employers' business.

9. To my mind, it appears that the evidence on record is woefully lacking in pointing to the guilt of the petitioner as a probable conclusion. Two pieces of evidence, both of which were clinchers, are absent. The P.R.O. Register would have put the matter beyond the pale of controversy as to whether the passengers concerned were "Walk-in" passengers or passengers sponsored by the travel agent. Evidence of any duty officer showing that there was no rush of passengers or that the petitioner had not been authorised to issue tickets pertaining to the Agents Counter would have put the matter beyond doubt. I specifically put it to Mr. Bharucha that the sales document did contain both entries pertaining to the travel agent (i.e. his I.A.T.A. Code Number and the words "PAX" and "ADD" in the "Sponsor" and "Contract" columns, respectively) and in the absence of the third piece of evidence showing the truth or falsity of one set of entries, how was it possible for any reasonable person to arrive at the conclusion that the passengers were "walk-in" passengers who had been handed

over to the travel agent ? His only answer was that on the set of evidence in the absence of the third piece of evidence, it was not possible to eliminate either possibility, but the Inquiry Committee having taken the view that the evidence on record "possibly" indicates the guilt of the petitioner, this view cannot be held to be perverse.

10. The contention of Mr. Bharucha is unsound and has to be rejected. In my judgment in the instant case, the Inquiry Committee has merely indulged in an exercise of speculation and conjecture. Upon evidence which was wholly ambiguous and janus-faced, without any clinching factor to show the probability, the Inquiry Committee has recorded a finding of guilt against the petitioner. In my view, the Inquiry Committee's findings are perverse and such as could not have been arrived at by any reasonable person on the basis of the evidence on record. The tribunal has glossed over this contention of the petitioner without serious application of mind, and to that extent, failed to exercise or irregularly exercised the jurisdiction vested in it under the provisions of Section 33(2)(b) of the Industrial Disputes Act, 1947.

11. In the result, I quash and set aside the impugned judgment of the 2nd respondent Tribunal dated May 23, 1984. Since, in my judgment, the conclusion recorded by the Inquiry Committee is a perverse one, the inquiry is vitiated and approval of the action taken against the petitioner could not have been granted u/s 33(2)(b) of the Industrial Disputes Act, 1947. Consequently, the application for approval made by the 1st respondent must fail. Application No. NTB-4 of 1981 in Reference No. NTB-1 of 1980 is therefore, dismissed and approval of action prayed for therein is refused.

12. Rule is, accordingly, made absolute. However, there shall be no order as to costs.