
(2012) 09 DEL CK 0152

In the Delhi High Court

Case No : Writ Petition (C) No. 3466 of 1995

Arun Kumar

APPELLANT

Vs

Management of Cable Corum of India

RESPONDENT

Date of Decision : 24-09-2012

Acts Referred:

Industrial Employment (Standing Orders) Act, 1946 — Section 10

Citation : (2012) 135 FLR 987 : (2012) LLR 1176

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Dinesh Agnani, with Mr. Gaurav Bahl, Ms. Reena and Mr. Archit Vasudevan, for the Appellant; Sanjoy Ghosh and Mr. B.L. Wali, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Ms. Justice Mukta Gupta

1. By the present petition the Petitioner challenges the award dated 6th December, 1994 whereby the learned Tribunal upheld the termination of the services of the Petitioner by the management as legal and justified and held that he was not entitled to any relief. The facts in nutshell are that the Petitioner claims that he was employed in the Sales Department of M/s. Siemens India Limited in 1964 and continued working there till 1984. In the year 1984 the Petitioner joined the Respondent company at Bangalore office as a "Resident Representative" in view of a tripartite agreement between the workmen, M/s. Siemens India Ltd. and the Respondent No. 1. On 1st December, 1984 the Petitioner was transferred as Sales Assistant to Delhi. On 3rd June, 1986 the Petitioner was charge-sheeted for refusal to attend letters given to him on 26th May, 1986 and a show cause notice was issued to the Petitioner on the ground that he refused to attend the letters given to him which was denied by way of a reply. Ultimately a charge-sheet was issued by the Respondent No. 1 on 22nd June, 1986 which was served on the Petitioner on 1st July, 1986. The charges against the Petitioner were that on 26th May, 1986 Shri H.L. Gupta handed over

to him the papers listed in appendix I for processing which the Petitioner returned without taking any action thereon and refused to do the necessary processing. Further, when a show cause notice was issued to him which was sought to be served, he refused to accept the letter. Further on 2nd, 3rd and 10th June, 1986 Shri H.L. Gupta again gave him papers listed at appendix II, III & IV respectively which were also returned by the Petitioner without taking any action and refusing to process the same. Similarly, the Petitioner returned the papers handed over on 11th June, 1986 by Shri H.S. Sidhu and on 12th, 13th and 16th June by Shri V.K. Chaudhary and refused to take action thereon. In the meantime the Petitioner was suspended during the pendency of the enquiry. The enquiry officer held that the conduct of the Petitioner was not willful and he cannot be held to be guilty of misconduct. In any case even if the conduct was willful the Petitioner cannot be held guilty by virtue of Clause 18 of the Model Standing Orders (MOS). Since the management failed to observe the statutory duty as envisaged under Clause 18 of the MOS, the conduct of the Petitioner did not constitute misconduct. On the basis of the enquiry report which held that the misconduct of the Petitioner on two counts was proved, the disciplinary authority terminated the services of the Petitioner vide order dated 13th November, 1988. Aggrieved by the same, the Petitioner raised an industrial dispute on which following terms of reference were sent to the learned Tribunal "whether the termination of services of Shri Arun Kumar is illegal and/or unjustified, and if so, to what relief is he entitled and what directions are necessary in this respect?". On the said dispute after receiving the claim and the written statement, the learned Tribunal took the evidence of both the parties and came to the conclusion that the action of the Respondent No. 1 in terminating the services of the Petitioner was legal and justified.

2. Learned counsel for the Petitioner contends that though the enquiry officer held that no charges were proved against the Petitioner, the management without any show cause notice and without any personal hearing terminated his services which order was ex-facie illegal and non-est in law. Despite the fact that in the impugned award the learned Tribunal came to the conclusion that no hearing was afforded to the Petitioner, however still the order of dismissal was upheld. Reliance is placed on D.K. Yadav Vs. J.M.A. Industries Ltd., to contend that termination of services involves civil consequences and thus the proceedings are required to be effected in accordance with just, fair and reasonable procedure and an order which deprives the person of the right to live which includes right to means of livelihood should be just, fair and reasonable. A just, fair and reasonable action is essential in-built of natural justice. The learned Tribunal erroneously held that the decision in the case of D.K. Yadav (supra) was not applicable to the facts of the present case. Further, the issue whether the enquiry was fair and proper or illegal was not framed. The management never challenged the enquiry report. The Petitioner relied upon the enquiry report and thus the findings of the learned Tribunal are wholly erroneous. The Petitioner worked with the management for nearly 22 years and even if it was to be held

that the Petitioner misconducted, the punishment awarded was highly disproportionate. Reliance is placed on Ram Kishan Vs. Union of India and others, and U.P. State Road Transport Corporation and Others Vs. Mahesh Kumar Mishra and Others, . Reliance is also placed on Neeta Kaplish Vs. Presiding Officer, Labour Court and Another, to contend that the management is required to prove the misconduct and a fair opportunity has to be given to both the parties. Though opportunity was given to the Respondent but no opportunity was given to the Petitioner to disprove the misconduct. Further, the record pertaining to the enquiry was not fresh evidence or material on record and hence the same could not be looked into.

3. Learned counsel for the Respondent contends that in Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, the golden rules of enquiry have been enunciated wherein it has been held that the Tribunal can independently come to the conclusion of misconduct and it is not necessary for it to consider the domestic enquiry. One of the grounds for exoneration by the enquiry officer was that the rules under the Industrial Standing Orders Act, 1946 had not been notified. It is submitted that even if the rules were not notified then the Model Central Rules were to apply. In a given case, the management can even terminate service without holding an enquiry and in such a situation it would be appropriate for the Labour Court to determine the misconduct by receiving evidence before itself and in the present case without going into the aspect of the enquiry received, evidence of the management and the workman was recorded and on basis thereof the Tribunal came to the conclusion that the Petitioner willfully disobeyed the superiors and has misconducted. The Petitioner worked only for a period of two and half years with the Respondent No. 1. There was no tripartite agreement between the Petitioner, Respondent No. 1 and M/s. Siemens India Limited. In the entire claim petition or affidavit it is not pleaded that the Petitioner was unemployed. In fact, he admitted that he had agricultural income, income from rental sources and has visited abroad 5 times after termination. Thus, the Petitioner is not entitled to any relief. Reliance is placed on North East Karnataka Road Transport Corporation Vs. M. Nagangouda, ; Hombe Gowda Edn. Trust and Another Vs. State of Karnataka and Others, ; Gopalakrishna Mills Pvt. Limited Vs. Labour Court and Anr. 1980 1 LLJ 425; M/s. Indian Drugs and Pharmaceuticals Ltd. Vs. State of Jharkhand and Anr. 2004 LLR 1014 ; J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, and The Calcutta Jute Mfg. Co. Ltd. Vs. Calcutta Jute Mfg. Workers" Union, .

4. I have heard learned counsel for the parties. In view of the facts as reproduced above, the issue for consideration is whether on the facts of the case the impugned order passed by the Tribunal is vitiated on account of the fact that the management despite disagreeing with the finding of the enquiry officer dismissed the Petitioner without giving him any opportunity of hearing.

5. In Delhi Cloth and General Mills Co. Vs. Ludh Bud Singh (supra) their Lordships laid down the principles of enquiry.

61. From the above decisions the following principles broadly emerge --

(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more than that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged

misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo moto the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference u/s 10 or by way of an application u/s 33 of the Act.

6. As held in the judgment in *Delhi Cloth and General Mills Co. Vs. Ludh Bud Singh* (supra), in case no inquiry is conducted or if conducted not relied upon, the Tribunal can adduce evidence before it and will be justified in coming to the conclusion regarding the misconduct of the workman.

7. In the present case in the written statement filed by the Respondent reliance is placed on the enquiry proceedings. No preliminary issue has been framed by the learned Tribunal about the validity of the enquiry and hence there is no finding on record whether the enquiry was valid or not. Without proceeding with the validity of an enquiry the learned Tribunal proceeded to decide the issue of termination on the basis of evidence adduced before it. This procedure is permissible in view of the law laid down by the Supreme Court.

8. In *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, it was held:

32. From those decisions, the following principles broadly emerge:

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labor practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognized that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimization.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *The Management of Panitole Tea Estate Vs. The Workmen*, within the judicial decision of a Labour Court or Tribunal.

32-A. The above was the law as laid down by this Court as on December 15, 1971, applicable to all industrial adjudications arising out of orders of dismissal or discharge.

9. Reliance of the Petitioner on the decision in *Neeta Kaplish Vs. Presiding Officer, Labour Court and Another*, is misconceived. In the said decision it was held that the record pertaining to the domestic enquiry was not fresh evidence as those proceedings had already been found by the Labour Court to be defective. In the present case, there is no finding of the learned Tribunal that enquiry proceedings were vitiated or defective. Rather both the sides are relying upon the enquiry proceedings.

10. After discussing the evidence the Tribunal came to the conclusion that the papers from serial number 1 to 87 filed on behalf of the management on 6th March, 1991 were in fact assigned to the Petitioner for processing and the same have been refused by him. The learned Tribunal committed no error in coming to the conclusion that the decision in the case of *D.K. Yadav (supra)* was not applicable to the facts of the present case. In *D.K. Yadav* their Lordships held that in a domestic enquiry principles of natural justice are required to be followed. There can be no dispute to the proposition. In the present case undisputedly while awarding the punishment the management did not follow the principles of natural justice and hence the learned Tribunal did not consider the case of the Petitioner on the basis of enquiry report but on the basis of evidence adduced before itself, it came to the conclusion that the Petitioner misconducted himself in disobeying the superiors and not carrying out the work assigned to him.

11. As regards the proportionality of sentence the learned Trial Court held the deliberate refusal of the Petitioner to process the papers assigned to him and his disobedience to the lawful orders issued to him amounted to acts of insubordination. Such a behavior cannot be conducive to the right work environment in any establishment. Infliction of punishment of termination of the services of the workman in such circumstances was totally justified. I do not find any error in the reasoning of the learned Tribunal on this count. The Division Bench of this Court in *DCM Shriram Consolidated Ltd. Vs. O.P. Gupta and Another*, in a case where the employee refused to perform the duties assigned to him held that the punishment of termination was not shockingly

disproportionate. In Rattan Lal Gupta Vs. Management of Birla Textile Mills & Anr. W.P.(C) 19/2007 decided on 19th January, 2007 it was held that in a case where the workman refused to perform his duties, the management was bound to lose confidence in the workman and looking at the misconduct, deliberate non-working and making of counter allegations, the punishment of termination cannot be said to be disproportionate. There being no infirmity in the impugned award, the petition is dismissed being devoid of merit.