

(2007) 03 DEL CK 0178

In the Delhi High Court

Case No : Writ Petition (C) No. 1686 of 2007

Baljeet Singh

APPELLANT

Vs

D.T.C.

RESPONDENT

Date of Decision : 05-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Penal Code, 1860 (IPC) — Section 354

Citation : (2007) 03 DEL CK 0178

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : L.K. Singh, for the Appellant; Avnish Ahlawat, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—With the consent of the parties, the matter is taken up for final hearing and disposal at the admission stage itself.

2. This writ petition has been filed by the petitioner praying inter alias for setting aside the impugned orders dated 25th January, 2005 and 4th August, 2006 and also the impugned award dated 22nd November, 2006 passed by the Presiding Officer, Labour Court (hereinafter referred to as 'the Labour Court') in ID No. 72/06/96.

3. A brief reference to the relevant facts is necessary before proceeding with the matter. The petitioner got employed with the respondent/DTC as a Conductor in the year 1982. On 13th December, 1991, a lady was standing on the central verge opposite Wazirpur Depot I, to reach the bus stop for boarding a bus for Pitampura. It was alleged that a person, who was later identified as conductor Baljeet Singh, came from the opposite side and hit her front private parts. He also uttered some unprintable words in Haryanavi and tried to embrace the girl. This girl being a Judo Expert, could not control herself and gave him a few blows

and kicks. The conductor ran towards Wazirpur Depot and entered the depot. The girl chased him with cries of 'Pakro Pakro'. The conductor entered into the depot canteen where she caught hold of him and beat him. DTC staff intervened and the conductor escaped from the site. She further decided to report the matter to the police and went to Sarsavati Vihar Police Station from where one SI, Jugti Ram, accompanied her to the DTC Depot, but the culprit was not found. She came back to the police station Along with the SI and her statement was recorded vide DD No. 22A dated 13th December, 1991.

4. Pursuant to the aforesaid complaint received by the respondent from the lady regarding the fact that the petitioner had indulged in obscene activities and the misconduct of eve teasing and had misbehaved with her, the petitioner was served with a charge sheet on 8th January, 1992. As the reply to the said charge sheet was not found to be satisfactory, an inquiry was conducted against the petitioner. During the pendency of the inquiry proceedings, the petitioner remained suspended. It is alleged by the petitioner that the inquiry conducted against him was in violation of the principles of natural justice and that the findings of the Inquiry Officer were perverse. On 11th June, 1993 a notice to show cause was issued against him for removal from the service of the respondent. The petitioner challenged the aforesaid show cause notice by filing a writ petition in this Court being CWP No. 3020/1993 which was dismissed vide order dated 4th May, 1994. The petitioner was further granted four weeks" time to file a reply to the show cause notice. Pursuant to the reply, vide order dated 3rd February, 1995, the petitioner was awarded the punishment of removal from service of the respondent. Against the said order passed by the Disciplinary Authority, the petitioner preferred an appeal to the Chairman of the respondent on which no action was taken. Simultaneously, the petitioner also filed a claim before the Conciliation Officer, pursuant to which the matter was referred to the Labour Court with the following terms of reference:

Whether the removal of Sh.Baljeet from service is illegal and/or unjustified and, if so, to what relief is he entitled and what directions are necessary in this respect?

5. After pleadings were completed in the matter, a preliminary issue regarding fairness of inquiry was framed and the parties were directed to adduce evidence on the said issue. Evidence was adduced by both the parties and vide order dated 25th January, 2005, the Labour Court arrived at the conclusion that the inquiry was held in accordance with law and that the Inquiry Officer had rightly arrived at the conclusion that he did, against the petitioner. Therefore, the said preliminary issue was decided against the petitioner and in favor of the respondent.

6. Thereafter, the petitioner filed an application under Order 47 read with Section 114 of the Code of Civil Procedure, for reviewing/setting aside the order dated 25th January, 2005 along with an application u/s 5 of the Limitation Act for condensation of delay of one and a half years in filing the said application. Vide

order dated 4th August, 2006, the said application was rejected as being without any substance. The application for condensation of delay was also dismissed on the ground that no sufficient cause had been shown to condone the delay. The matter proceeded further before the Labour Court on the issue referred to in the terms of reference made earlier, and after examining the entire case on merits, it was held that the punishment of removal from service awarded to the petitioner was legal, justified and proportionate and that the misconduct proved against the petitioner was of serious nature and there was neither any want of good faith, victimisation or unfair labour practice on the part of the respondent so as to justify the Labour Court's interference with the quantum of punishment.

7. Aggrieved by the aforementioned award and the orders as referred to hereinabove, the petitioner has preferred the present writ petition.

8. Counsel for the petitioner argued that the impugned award is based on mis-appreciation of facts, for the reason that there was sufficient evidence on the record to establish that it was a case of mistaken identity and the basis on which the Inquiry Officer gave adverse observations against the petitioner, was contrary to the testimony of two material witnesses who failed to identify the petitioner as the person who had committed the aforesaid misconduct. It is further stated that the Labour Court had completely overlooked the fact that the petitioner was exonerated in the criminal case filed against him on the basis of an FIR lodged against him. The Labour Court failed to appreciate that the respondent ought to have produced the most important witness, namely, the lady who had made the allegations against the petitioner but who was never summoned or produced by the respondent to establish even a semblance of case against the petitioner. It is submitted that once the statements of the witnesses were recorded and they were cross-examined, the Inquiry Officer had no business to put further questions to the witnesses and elicit information from them, which fact was also overlooked by the Labour Court while passing the impugned award. Lastly, it is argued that the observations of the Inquiry Officer to the effect that the medical certificate produced by the petitioner for the period from 10th December to 16th December, 1991 was of no help to the petitioner, is patently erroneous and there was no reason whatsoever to disbelieve the genuineness of the said certificate which formed one of the basis for making adverse observations against the petitioner in the Inquiry Report and which observations were also accepted in the impugned award without any application of mind.

9. On the other hand, counsel for the respondent who appears on advance notice in this matter, submits that the award is cogent and valid and that it does not suffer from any perversity, arbitrariness or infirmity for this Court to interfere in the same by invoking its powers of judicial review. Attention of this Court is drawn to the pleadings before the Labour Court and particularly to the para 3 of the reply filed by the respondent to the statement of claim filed by the petitioner, which it is stated, is in contradistinction to para 3 of the rejoinder filed by the petitioner to the said written statement. It is submitted that the petitioner failed

to deny any of the allegations made against him in para 3 of the reply, which leads to the inevitable conclusion that the petitioner was guilty of eve teasing and misconduct. It is further stated that a bare perusal of the evidence of the material witnesses clearly establishes that it was not a case of mistaken identity or misunderstanding as sought to be claimed by the petitioner, but a clear case where charges as leveled against the petitioner were duly established in the course of the inquiry proceedings, which were upheld in the order dated 25th January, 2005 passed by the Labour Court.

10. I have been taken through the records, including the pleadings of the parties before the Labour Court, the evidence adduced by both the parties as also the impugned orders and the impugned award.

11. A survey of the case law on the issue of the scope of interference in a domestic enquiry and applicability of the strict and sophisticated rules of evidence to the domestic enquiry clearly establishes that once a domestic tribunal based on the evidence arrives at a particular conclusion, normally it is not open to the Appellate Tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. Thus if an enquiry held is consistent with the rules and in accordance with the principles of natural justice and the misconduct is proved, then the Tribunal has no power to substitute its own discretion for that of the said disciplinary authority, unless it is mala fide, arbitrary or the findings are quite perverse. If an enquiry is properly conducted, then the departmental authorities are held to be the sole judges of the facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be argued upon or disputed before the Tribunal. The following judgments rendered by the Supreme Court fortify the aforesaid conclusion:

- (i) Martin Burn Ltd. Vs. R.N. Banerjee,
- (ii) State of Orissa Vs. Bidyabhushan Mohapatra,
- (iii) State of Andhra Pradesh Vs. Sree Rama Rao,
- (iv) State Bank of India and Others Vs. Samarendra Kishore Endow and Another,
- (v) The Regional Manager, Rajasthan State Road Transport Corporation Vs. Sohan Lal etc.,
- (vi) Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate,
- (vii) Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane,
- (viii) Employers, Mgmt., M. Colliery, BCCL Ltd. Vs. Bihar Colliery Kamgar Union through Workmen,
- (ix) V. Ramana Vs. A.P.S.R.T.C. and Others,
- (x) Hombe Gowda Edn. Trust and Another Vs. State of Karnataka and Others,

(xi) L.K. Verma Vs. H.M.T. Ltd. and Another,

12. This Court proposes to test the facts of the present case and the procedure adopted in the departmental proceedings on the touchstone of the aforesaid guiding principles as laid down by the Supreme Court. Admittedly, the principles of natural justice were adhered to in the course of the departmental enquiry. The petitioner was granted an opportunity of hearing. He was also permitted to adduce evidence in support of his case. Thus there is no procedural irregularity or violation of principles of natural justice in the present case. In so far as the adverse observations made by the Inquiry Officer against the petitioner on the basis of the testimony of two material witnesses and the grievance that the Inquiry Officer ought not to have put further questions to the said witnesses once their statements were recorded and they were duly cross-examined is concerned, it is relevant to note that there is no bar on the Inquiry Officer from putting questions to the witnesses himself so as to reach to the root of the matter and satisfy himself in all respects. The conclusion arrived at by the Inquiry Officer on the basis of the evidence adduced by the witnesses in question, is also neither erroneous nor perverse or irrational. The Labour Court rightly held that the evidence of the two witnesses in question was clinching with regard to the identity of the petitioner as the person who was thrashed by the lady whom the petitioner was stated to have eve teased and misbehaved. It is also observed in the impugned order dated 25th January, 2005 that the evidence of the said witnesses inspired confidence and clearly established the identity of the petitioner as a person who committed the misconduct as his identity was established on the spot by the DTC staff and persons in the canteen.

13. The claim of the petitioner that the Labour Court failed to appreciate that the petitioner was exonerated in the criminal case filed against him, does not take his case any further as the scope of disciplinary proceedings and the scope of criminal proceedings in a court of criminal law is quite distinctive, exclusive and independent of each other. Moreover, the standard of proof required in the criminal proceedings and departmental proceedings is also not the same. Reliance is placed on the following judgments:

(i) B.C. Chaturvedi Vs. Union of India and others,

(ii) State of Rajasthan Vs. B.K. Meena and others,

(iii) Lalit Popli Vs. Canara Bank and Others,

(iv) Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others,

(v) Chairman-cum-M.D., T.N.C.S. Corpn. Ltd. and Others Vs. K. Meerabai,

14. It will be relevant to notice the following observations made by the Supreme Court in the case of Lalit Popli (supra):

Para 16: It is fairly well settled that the approach and objective in criminal

proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. [See State of Rajasthan Vs. B.K. Meena and others, In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of 'proof beyond doubt' has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an Appellate Authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an Appellate Authority.

18. In B.C. Chaturvedi Vs. Union of India and others, the scope of judicial review as indicated by stating that review by the court is of decision-making process and where the findings of the disciplinary authority are based on some evidence, the court or the tribunal cannot reappraise the evidence and substitute its own findings.

19. As observed in R.S. Saini Vs. State of Punjab and Others, the scope of interference is rather limited and has to be exercised within the circumscribed limits.

15. The plea of the petitioner to the effect that the respondent ought to have produced the most important witness, namely, the lady who had made allegations against the petitioner, is completely misconceived. Merely because the said lady was not summoned in the witness box or her statement was not recorded in the domestic enquiry, is no ground to hold that the domestic enquiry was erroneous or that there was no evidence on record to establish the misconduct of the petitioner. There was sufficient evidence available in the domestic proceedings for the Inquiry Officer to arrive at the conclusion that he did. Hence there is no question of the petitioner insisting on the absence of the evidence of the lady as a basis to reject the findings of the Inquiry Officer and the findings of the Labour Court as contained in the impugned order dated 25th January, 2005. This Court is fortified in this opinion by the following judgments:

- (i) State of Haryana and Another Vs. Rattan Singh,
- (ii) DTC v. N.L. Kakkar 110 (2004) DLT 493.
- (iii) Divisional Controller, KSRTC (NWKRTC) Vs. A.T. Mane,

16. In Rattan Singh (supra), the Supreme Court held as under:

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 evidence - not in the sense of the technical rules governing court proceedings but in a fair common-sense 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.

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.

17. In Divisional Controller, KSRTC (NWKRTC) (supra), it is held as below:

Para 9: From the above it is clear that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of State of Haryana and Another Vs. Rattan Singh, is not a condition precedent. We may herein note that the judgment of this Court in State of Haryana v. Rattan Singh has since been followed by this Court in Devendra Swamy Vs. Karnataka State Road Transport Corpn.,

18. In view of the entire material placed on record in the course of the domestic proceedings, the findings of the Inquiry Officer cannot be faulted and the Labour Court was right in holding that the medical certificate produced by the petitioner was unreliable and was rightly disbelieved by the Inquiry Officer. Lastly, the claim of the petitioner that it was a case of mistaken identity and that in fact he was not the only person by the said name working in the depot in question and that

there were some other persons by the same name working as conductors in the said depot on the date of incident, is taken note of only to be rejected in the light of the aforesaid discussion and the fact that the identity of the petitioner was clearly established.

19. This Court can also not overlook the pleadings of the parties on the said issue. Para 3 of the statement of claim filed by the petitioner, the corresponding para of the written statement of the respondent and the rejoinder of the petitioner as contained in the pleadings on the records, are reproduced hereinbelow:

STATEMENT OF CLAIM

Para 3: That the Workman was unfortunately charge sheeted on the basis of a complaint of a lady due to some mis-understanding and mis-identification because on that day when the Complaint was filed, the workman was on leave (medically) from 10-12-1991 to 16-12-1991.

WRITTEN STATEMENT/REPLY TO THE CLAIM

Para 3: The workman was placed under suspension with effect from 20/12/1991 and later on charge sheeted on 08/10/1992 for the following reasons; that the workman, Shri Baljit Singh, molested a young girl namely Miss Daizy Aggarwal daughter of Shri R.D.Aggarwal, outside the depot premises, at Ring Road at about 21.00 hours on 13/12/1991. Miss Daizy an expert in Judo objected to it. On this, the conductor, Shri Baljit Singh ran and entered Wazirpur Depot-I. She followed him and caught hold of him in the canteen of the Depot. She beat him badly and the staff who gathered there rescued the workman from her. The workman was however handed over to the security staff posted at the Depot gate. The security staff let him off. Later on, this news was also published in some leading newspapers of India with the result that the image of the corporation was tarnished. The police have registered a case u/s 354 IPC vide FIR No. 463/91 on 18/12/1991, after ascertaining the identity of the culprit/workman. However this is correct that the conductor was absent from duty from 10/12/1991 to 16/12/1991 but his version that he had not come to the Depot on that date of the incident is not acceptable, since the employees often come to the depot on their rest day/leave days. to save himself from 10/12/1991 to 16/12/1991 issued by medical officer I/C Allopathic Dispensary, Bawana, Delhi, which contains no importance.

REPLY ON MERITS

Para 3: That para 3 of the WS is wrong and denied and it is submitted here that the workman never come to the depot on the day of incident, he was on leave from 10.2.1991 till 16.12.1991 and in the findings of the enquiry, the charges were not established as even a single witness did not identity him as accused and in the false case u/s 354 IPC in FIR No. 463/1991 he was acquitted of the charges.

20. A bare perusal of the aforesaid pleadings clearly establishes that the petitioner did not deny the averments as contained in para 3 of the written statement of the respondent. The same only strengthens the case of the respondent against the petitioner. It is also well settled law that this Court ought not to sit in appeal over the impugned award and the scope of judicial review is limited to correction of error of law or procedure leading to patent injustice or violation of principles of natural justice; nor can this Court reappreciate the evidence and substitute the findings of the disciplinary authority or the Labour Court with its own findings

21. In view of the aforementioned facts and circumstances, it is held that there is no merit in this petition, which is dismissed accordingly.