

(1996) 10 BOM CK 0048

In the Bombay High Court

Case No : Appeal No. 450 of 1995 in Writ Petition No. 3669 of 1991 and Appeal No. 451 of 1995

Barrister Prasad

APPELLANT

Vs

Bharat Petroleum Corporation Ltd. and Another

RESPONDENT

Date of Decision : 10-10-1996

Acts Referred:

Citation : (1997) 75 FLR 343 : (1998) 3 LLJ 913

Hon'ble Judges : D.G. Deshpande, J; B.P. Saraf, J

Bench : Division Bench

Advocate : Anand Grover, instructed by Firdaus Moosa, for the Appellant; P.K. Rele and Piyush Shah, for the Respondent

Final Decision : Dismissed

Judgement

D.P. Saraf and D.G. Deshpande, JJ.—These two appeals arise out of common order passed by the Learned Judge on September 29, 1994. This common order was given by the Learned Single Judge in two Writ Petitions, one of which was filed by the Employer-Bharat Petroleum Corporation Ltd., vide Writ Petition No. 3613 of 1991, and the other petition was filed by Barrister Prasad, the employee, vide Writ Petition No. 3669 of 1991.

2. Both the above mentioned Writ Petitions came to be filed before the Learned Single Judge, in the background of following circumstances :

The Barrister Prasad, hereinafter called the employee, was employed by B.P.C.L. (Bharat Petroleum Corporation Ltd.) hereinafter called as the Employer, as a security watchman in their installation in Bombay. The employee was Ex. Military-man. He was employed on November 13, 1980. He was on night duty (night duty-3rd shift), on June 8, 1981. The Dy. Manager, Operations, Sewree, issued a charge-sheet against him, dated August 20, 1981, alleging that on the material night he was found sleeping while on duty on two occasions, firstly at 1.30 a.m. by operations officer Shri Alurkar, and again around at 4.30 a.m. by Havildar Mr.

Pilankar. The charge that was levelled against the employee was that he committed an act of misconduct subversive of discipline. This chargesheet was issued after obtaining an explanation from the employee dated June 10, 1989, in which the employee allegedly admitted that it was true that he was found sleeping on two occasions, but, requested the authority to take lenient view on the ground that he was running temperature at the material time and had given prior intimation thereof to the Havildar. The employer appointed an Enquiry Officer for holding the enquiry, during which the employee pleaded not guilty to the charge. Witnesses were examined in enquiry and thereafter on the basis of findings of the Enquiry Officer, the employee was ordered to be dismissed from service by order dated April 6, 1982. The employee thereafter raised the dispute regarding dismissal, and the same was referred by the Central Government to the Central Government Industrial Tribunal No. 1 at Bombay. The Tribunal, however, negated all the contentions regarding the fairness and propriety of the disciplinary proceedings and held that the proceedings were not bad or were not vitiated for any reasons.

3. Being aggrieved by the Award Part I, employee filed Writ Petition No. 3609/1990 before this Court, but the same was rejected, after granting liberty to the parties to raise all their contentions at the time of final Award. The Tribunal passed Award Part II on May 1, 1991 and came to the conclusion that an act of the workman/employee was the misconduct under the Standing Order 26(1) and not merely a minor misdemeanour under the Standing Order 28(k).

4. Ultimately the Tribunal upheld the finding of the disciplinary authority that the workman had committed an act subversive of discipline. On the aspect of punishment, the Tribunal, however, found that the order of dismissal was wrong and unjustified and ordered that the workman/employee be reinstated and given 50% of the back-wages. Being aggrieved by this order, the Corporation filed Petition before this Court. All the petitions were decided by common order of Mr. Justice Tipnis on September 29, 1994, and these two appeals have been filed against the said order.

5. We heard the learned Counsel for the employee Mr. Anand Grover, and the learned Counsel for the Corporation at length. Admittedly, the job of employee as a watchman was a responsible job requiring continuous alertness on the part of the employee. He was to look after the safety of the installation of the Corporation where highly inflammable material like petrol was stored. If a watchman during the night hours fell asleep disregarding the responsibilities, then, the same could have disastrous effect on the safety and security of the installation. There cannot be any doubt about this, and therefore in the background of this case, the question is whether the Tribunal was justified in taking the lenient view in the matter. The Single Judge has rightly come to the conclusion that there were no circumstances in the case to justify taking lenient view. The perusal of the Tribunal's order shows that the Tribunal accepted the explanation of the employee that he was unwell on the night concerned, and that

Mr. Pilankar found that the employee was alert at 2.00 A.M. This second finding of the Tribunal is not based on evidence. There is nothing in the evidence of Mr. Pilankar that at 2.00 a.m. the employee was found alert. To the contrary, there is an evidence that at 4.00 a.m the employee was again found sleeping and he did not even wake-up when his stick was removed.

6. Similarly, the explanation given by the employee after two days of the incident, that he was unwell on the night concerned, is in fact, an after-thought because the same was not given by the employee when he gave his first statement.

7. The finding of the learned Single Judge that the conduct of the employee, namely, sleeping on duty at night when he was supposed to guard a very vital installation, was unpardonable, cannot be said to be improper or unjust or harsh in the circumstances of the case. It was undoubtedly therefore a gross misconduct and not a misdemeanour. Similarly, the finding of the learned Single Judge that the Tribunal did not exercise its discretion judicially, is well founded because once the Tribunal came to the conclusion that the employee was guilty of gross misconduct, then, the Tribunal should not have taken a lenient view.

8. Considering the above, we do not find any reasons to interfere with the order of the learned Single Judge. There are no infirmities in the said order. Both the appeals are therefore devoid of any merits and are liable to be dismissed. Hence, the following order:

ORDER

Both the appeals are dismissed. No costs.