
(1987) 02 DEL CK 0052

In the Delhi High Court

Case No : Civil Writ Appeal No. 1665 of 1985

B.D. Tripathi

APPELLANT

Vs

Indian Airlines Corporation

RESPONDENT

Date of Decision : 27-02-1987

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1987) 32 DLT 14 : (1987) LabIC 1886

Hon'ble Judges : Mahinder Narain, J

Bench : Single Bench

Advocate : M.N. Krishnamani, V. Shekhar, R.K. Singh, Lalit Bhasin, Rakesh Sawhney and Nina Gupta, for the Appellant;

Judgement

Mohinder Narain, J.

(1) The petitioner who was working as an Accounts Assistant in the Indian Airlines Corporation, decided to go to Colombo. With that intent, he purchased a ticket through a travel agent M/s. Worldwide Agencies (P) Ltd., New Delhi, on 19th May, 1983. The petitioner being stationed at Delhi, had to make an application for leave to go out of Delhi. He made such an application on 24th May, 1983. This was an application that sought casual leave for 25th May, 1983. By this application the petitioner also sought permission to leave the station. The reason for taking leave mentioned in this application was that the petitioner had some domestic work. He also gave his address during the period of leave as 160, Gagan Vihar Extension, Delhi, which is his residential address.

(2) The fact of the matter is that the petitioner left for Madras on 25th May, 1983 by the Indian Airlines flight in the early hours of the morning. He spent a day in Madras and left Madras for Colombo on 26th May, 1983. The petitioner came back to Delhi on 1st June, 1983, and on 2nd June, 1983 made another application for grant of leave. This application for grant of leave made on 2nd June, 1983 was termed as an application for privileged leave.

(3) The respondent Corporation had sanctioned one day's casual leave application of the petitioner. On discovering that the petitioner had, in fact, gone to Colombo, it took a serious view of the matter and served the charge-sheet dated 3rd August, 1983 on the petitioner. This charge-sheet is part of annexure ". The petitioner, was called upon to put in a written statement in his defense to each of the charges on or before 12th" August, 1983. The written statement was given by the petitioner which is part of annexure "B" collectively, on 13th October, 1983.

(4) Thereafter an enquiry was held against the petitioner. The petitioner examined himself. One Dr. G.K. Aggarwal was examined by the Indian Airlines.

(5) The Enquiry Officer gave his report which is annexed as annexure "C" to the writ petition. The Enquiry Officer found that the petitioner has committed breach of Standing Orders No. 1, 16(4) and 16(5). The said Standing Orders read as under :-

"NO.1. Every employee of the Corporation shall at all times maintain absolute integrity and devotion to duty and conduct himself in a manner conducive to the best interests, credit and prestige of the Corporation. No. 16(4).....dishonesty in connection with business or property of the Corporation. No. 16(5). Absence without leave for more than 8 consecutive days or over-staying the sanctioned leave without sufficient grounds or proper or satisfactory Explanation within a week from the date of termination of leave sanctioned."

(6) Having heard the parties, I am of the view that the petitioner had made up his mind to leave Delhi for Colombo. He was aware that the Indian Airlines was not permitting its employees to go to Colombo on leave. In any case, the Delhi office of the Indian Airlines was not issuing any tickets to its employees from Delhi to Colombo. Being aware of this fact the petitioner purchased the ticket through M/s. Worldwide Agency (P) Ltd. on 19th May, 1983. It is not disputed by the petitioner that the ticket which was purchased on 19th May, 1983, was purchased through M/s. Worldwide Agencies (P) Ltd., a travel agency. It was not a ticket which was issued by the Indian Airlines.

(7) It is also not disputed before me that the petitioner was at the relevant time working as an Accounts Assistant in the Airlines House which is located near a main road called Parliament Street. One of the Indian Airlines Offices which issues tickets, is located in the P.T.I. Building, which abuts on Parliament Street. This office would not be more than 500 yards from the Airlines House. Being an employee of the Indian Airlines, the petitioner could easily have got the ticket for traveling to anywhere in India where Indian Airlines has a service, and was permitting its employees to go to such places. Colombo is out of India, and was not a station which was being permitted to be visited by .the Indian Airlines employees. In my view, the reason why the ticket was purchased from M/s. Worldwide Agencies (P) Ltd. was to get over the problem of non-issue of ticket to Colombo, Sri Lanka, by the Indian Airlines.

(8) The Indian Airlines discovered that the petitioner had concealed the fact of his travel to Colombo, and further aggravated it by giving an Explanation to the Indian Airlines that he had gone away to a place called Bala in Rajasthan, for the treatment of his wife who was suffering from hysteria which treatment was to be given by a Tantrik; his further Explanation that as the Tantrik was not found at Bala, he left his wife in the care of his relatives and left Bala by bus to reach Alwar, where from he rode in a truck and reached Delhi at about 3.00 A.M., and thereafter took the flight to Madras. His further Explanation is that he had given a letter to his wife to be posted to the Deputy Operation Manager at Delhi under Postal Certificate. His act of filling what purported to be a copy of that letter bearing notations that he had gone to Bala and from Bala his wife had proceeded to Rama (Bhind) M. P., has been dealt with by the Enquiry Officer who has disbelieved the case as made out by the petitioner, I also, like the Enquiry Officer, find it difficult to believe the Explanation of the petitioner about his visit to Bala, about the wife going to Bhind and the petitioner coming back to Delhi in early hours of the morning of 25th June, 1983 when he took the Indian Airlines flight for Madras.

(9) In a nut shell the case of the Indian Airlines with reference to the three Standing Orders reproduced above, is that there is a loss of confidence in the petitioner inasmuch as he has not only made false statements in the applications for leave that he had filed, but had aggravated it by trying to justify those falsehood by the false Explanations which have been given. It being a case of loss of confidence, the Airlines had terminated the services of the petitioner.

(10) The case of the petitioner is that no false Explanation has been given, and that in any case the punishment that has been imposed, is disproportionate to the nature of the default. In support of the propositions of the petitioner, the cases cited are Bhagat Ram Vs. State of Himachal Pradesh and Others, . Ved Parkash Gupta v. M/s. Delton Cable India (P) Ltd., 1984 (2) SLR 5, Ganpat Raman Lal Dave v. Divisional Superintendent W. Railway Baroda and another, 1984 (2) SLR 680 and Jaswant Singh v. Pepsu Roadways Transport Corporation & others, 1983 (3) SLR 472.

(11) In the case Ved Parkash Gupta v. M/s. Delton Cable India (P) Ltd. (supra), the employee was alleged to have abused the officers of the employers and his services were terminated for such action. The Supreme Court held this dismissal order to be bad. On facts this case has no application to the present case.

(12) In the case Ganpat Raman Lal Dave v. Divisional Superintendent W. Railway Baroda & another (supra), again an employee was suspected to have sold the berth which he had got reserved for himself. He was dismissed, and the Court held the dismissal to be disproportionate. The case before me is not a case of suspicion, but of certainty of having made incorrect statements in the applications, and having persisted in justifying his action on the basis of further statements which are difficult to believe.

(13) 1983 (3) SLR 472 (Jaswant Singh v. Jepsu Road-ways Transport Corporation & others) is the case of a driver who had been drinking on duty. The Supreme Court had substituted the punishment passed by the Labour Court by its own order, directing reinstatement of the employee, but directed withholding of three increments. The case before me has no parallel with that case.

(14) What has to be determined here is whether the principle that has been laid down by the Supreme Court in Bhagat Ram Vs. State of Himachal Pradesh and Others, is applicable to the instant case.

(14) In Bhagat Ram's case the charge against the employer was that he was negligent in performing his duties inasmuch as he permitted illegal felling of trees. The Court in the facts and circumstances of that case came to the conclusion that no reasonable opportunity had been given to the employee to defend himself, and for that reason the enquiry and the consequential order of removal from service were vitiated. After so holding, the Court invited the counsel for the respondent State to address submissions as to what purpose would be served by holding a fresh enquiry. "More so looking to the fact that there is a very minor infraction of duty leading to a trivial charge of negligence in performance of duty which has caused no loss of the Government". The Court farther observed that. "it is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution".

(16) Mr. Krishnamani appearing for the petitioner, contends that the punishment of dismissal from service is not commensurate with the gravity of the misconduct, and that it is disproportionate to the gravity of the misconduct, and, Therefore, the punishment violates Article 14 of the Constitution.

(17) Mr. Lalit Bhasin in response, relies upon two judgments of the Supreme Court reported as Channabasappa Basappa Happali Vs. The State of Mysore, , wherein the Supreme Court observed in connection with persons who had imagined that they would be granted extension of leave that, "because persons in the police force must be clear about extension of leave before they absent themselves from duty. Indeed this is true of every one of the services, unless of course there are circumstances in which a person is unable to rejoin service, as for example when he is desperately ill or is otherwise reasonably prevented from attending to his duties. That is not the case here. The petitioner took upon himself the decision as to whether leave could be extended or not, and acted upon it." The Supreme Court in the facts and circumstances of the case, as the petitioner had taken upon himself the decision that his leave would be extended, remained absent, confirmed the dismissal of the petitioner.

(18) The case reported as The Binny Limited v. Their Workmen, (1974) SCC 152, was again a case of a person who applied for leave on the ground that he wanted to go to his native place to settle a land dispute. As a matter of fact, he did not

go there. In fact, he participated in the activities of some other Union with which his employer had no concern. The Supreme Court observed as follows :-

"THE management having learnt of Ramachandran having joined the hunger strike and finding that he had obtained special leave of absence under a false pretext, wrote to him on June 15, 1956, informing him that the leave which had been granted to him. was being cancelled. He was directed to return to duty at once and not later than June, 16. That letter was duly received by him on June, 15. Ramachandran however, continued his hunger strike until June 20, and did not join duty."

(19) The Supreme Court faulted the reasoning of the Labour Court in finding that there was no loss of confidence. It was observed, "it has further been pointed out that the Labour Court after having found that Ramachandran had obtained leave on a false pretext fell into a serious error in saying that no question, of the management losing confidence in him arose. It was quite clear that on his own admission he had acted in a manner by which the management could possibly have no confidence in him for the future".

(20) The judgments of the Supreme Court cited above, clearly establish that the management is justified in asserting loss of confidence when an employee absents himself without any leave ; or makes applications for leave on false pretext.

(21) I do not agree with the proposition as formulated by Mr. Krishnamani that, as the two judgments of the Supreme Court cited above, pre-date the judgment in the case Bhagat Ram v. State of Himachal Pradesh & others (supra), are Therefore, no. more good law.

(22) In view of Bhagat Ram's case, in case before the Court, one of the points of enquiry has to be whether punishment is commensurate with the gravity of the misconduct. The judgment of the Supreme Court in the case the Binny Limited v. Their Workman (supra) is given by a bench of three Judges, and the judgment in the case Bhagat Ram v. State of Himachal Pradesh & others (supra) is by a bench of two Judges of the Supreme Court, and could not possibly over-rule what has been stated by the Court in that case. (See Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.,). In the case Ved Parkash Gupta v. M/s. Delton Cable India (P) Ltd. (supra), three Judges of the Supreme Court have said that before Article 14 of the Constitution can be applied to cases of employer and employees with reference to the punishment to be awarded for misconduct, the punishment awarded must be "shockingly disproportionate". The Supreme Court observed at page 11 that, "We are, Therefore, of the opinion that the punishment awarded to the appellant is shockingly disproportionate regard being had to the charge framed against him."

(23) In the facts and circumstances of the case, I do not think that the punishment imposed is shockingly disproportionate. It is apparent that the Indian Airlines Corporation have lost confidence in the petitioner.

(24) There is yet another fact which strengthens the plea of punishment being not shockingly disproportionate. By a show-cause notice, annexure "D" to the petition, dated 15th October, 1984, the Director (Finance) of the Indian Airlines had notified the intention of the Corporation to punish the petitioner by removing him from services, and he was required to show cause against the punishment proposed by 25th October, 1984, as to why the proposed punishment should not be imposed upon him, and in case of his failure to furnish reply, it was stated that it will be presumed that he had no reply to give against the proposed punishment and further action would be taken in the matter as per rules. Admittedly, no cause was shown against the punishment as perhaps none could. The services of the petitioner were terminated by the order dated 14th September, 1984. In these circumstances, there is no shockingly disproportionate between the charges and the punishment.

(25) In my view, false Explanations have been given by the petitioner. He persisted in seeking to justify his false Explanations of which a serious view was taken by the Indian Airlines Corporation. The relief which is given in petition under Article 226 of the Constitution is discretionary relief, and the instant case is not a fit case for exercise of discretion in favor of the petitioner.

(26) Mr. Lalit Bhasin did not press the preliminary objection

regarding the existence of alternative remedy being a bar, to entertain the writ.

(27) In view of what is stated above, this writ petition is dismissed. No order as to costs.