
(2001) 12 CAL CK 0040
In the Calcutta High Court
Case No : C.O. No. 13176 (W) of 1984

Bennet, Coleman and Co. Ltd.

APPELLANT

Vs

The Third Industrial Tribunal and Others

RESPONDENT

Date of Decision : 24-12-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2), 323(A)
Industrial Disputes Act, 1947 — Section 11A

Citation : (2002) 1 CALLT 159 : (2002) 93 FLR 991

Hon'ble Judges : Mahemmad Habeeb Shams Ansari, J

Bench : Single Bench

Advocate : C.L. Ganguli, B.R. Dutta, B. Majumdar, G.K. Das, Kishore Mukherjee, Subrajit Basu and Sanjay Auddy, for the Appellant;

Final Decision : Dismissed

Judgement

M.H.S. Ansari, J.—The instant writ application is filed assailing the Award dated July 17, 1984 being annexure "R" passed by the learned. Third Industrial Tribunal on a reference made to it by the Government of West Bengal in the labour Department by order No. 496-IR/IR/IOL-7/79 dated November 12, 1980.

2. By the said order dated November 12, 1980, the issue referred for the decision of the Ltd. Tribunal was as under;

"1. Is the dismissal of Sri R. Padmanabhan, a working Journalist, justified? To what relief, if any is he entitled?"

3. A few background facts leading to the said reference need to be stated.

4. A show cause notice was issued by the management to the respondent as to why the disciplinary proceedings should not be initiated against the respondent No. 3, a workman who had been working as a Sub-Editor.

5. After considering the reply to the show cause notice, a charge sheet was issued containing the following charges;

"Firstly: On the night of July 23, 1987 he shouted at and misbehaved with Mr. Sahai, News Editor when the latter gave him instructions about his work in his capacity as head of his Department.

Secondly: The news item "New DAVP AD POLICY" was not taken by him in the paper defying the news Editor's instruction that the item shall be carried.

Thirdly: The UNI story on the U.S Impounding of Indian garments was not carried by company's daily although he was personally instructed by the News Editor to carry the item in view of its importance.

Fourthly: He wrote certain marks about the News Editor in the night Chief Sub's diary "quoted in the show Cause Notice."

6. The enquiry officer submitted his report to the disciplinary authority. In so far as the first charge is concerned, the enquiry officer held that the company could not establish that the Sub Editor shouted or misbehaved with the news Editor.

7. Regarding the second charge, the enquiry officer concluded that it was one of the items, the news Editor spotted and asked the Sub Editor to carry the same in the next day's paper, without specifically holding the Sub Editor guilty of the said charge.

8. Regarding charges No.3 and 4, the enquiry officer concluded that the same were established against the Sub Editor.

9. The disciplinary authority, based upon the report of the enquiry officer by his order dated November 1.7.1979 passed an order of dismissal on the grounds that the management has lost confidence and agreeing with the findings of the enquiry "that most of the charges leveled" had been sufficiently proved.

10. The State in exercise of the powers conferred by Section 10 of the Industrial Disputes Act, 1947 read with Section 3 of the Working Journalist and Newspaper Employee's (Conditions of Service) and Miscellaneous Provisions Act, 1955 referred the aforesaid issue to the Third Industrial Tribunal for its decision.

11. By its Award, impugned in the instant writ application. Learned Third Industrial Tribunal set aside the order of dismissal and directed reinstatement of the concerned journalist (respondent No.3 herein) with full wages.

12. In coming to the said conclusion, the Learned Third Industrial Tribunal differed from the conclusions of the enquiry officer on the charges, which were held, proved in the domestic enquiry.

13. The findings arrived at by the Learned Tribunal to the extent relevant for the purpose of the enquiry on hand is concerned, are as under;

"1) The enquiry officer did not consider the evidence of the above two Sub-Editor in their proper perspective. He observed:-"The views of the two Chief Sub-Editors regarding the importance or otherwise of a particular news item have no relevant to the enquiry because they were called as witnesses by Mr.

Padmanabhan although both of them were not present at the time of the incident, to depose about the working and the practices followed by the editorial department." This clearly shows that the enquiry officer ignored the defence that was set up by the said journalist. On the night of July 23, 1978, R. Padmanavan was entrusted with the responsibility of bringing out next day's paper, it is his stand that he enjoys a large measure of freedom and there was scope for discussion regarding items to be carried in the next day's paper between him and the news Editor. He was called upon to exercise his professional judgment as a Journalist and in the interest of the paper without being hindered by any advice contrary to his own judgment. It was not the stand of Mr. Sahai that although space was available at page 1 or 4 that the UNI story or D.A.V.P. Ad-policy was not carried in the paper. The evidence reveals that the UNI story had already appeared in the Economic Times, Calcutta and if the said story appeared again, it would have been nothing but repetition of an early news item to the utter disgust of the readers of ET. No blame, therefore, can be fastened on Mr. Padmanavan if he exercised his professional judgment by not incorporating the UNI story of U.S. Impounding of Indian garments at U.S Port in the following day's paper in the absence of any written instruction from the news Editor. Regarding D.A.V.P. Ad-Policy one Chief Sub-Editor noted that it did not have any news portion of its own as it did not lay down anything on policy matter, but was simply clarifying what had appeared previously. It, therefore, must be said that Mr. Padmanavan did not defy the news Editor, but only exercised his own Judgment in the interest of the E.T catering to the needs of the business community.

2) The last allegation is that he made certain remarks against the News Editor in the diary. The diary is made for noting the reasons for delayed appearance of the paper in the morning. The Journalist has stated that because of his long discussion with the news Editor he lost his concentration it does not appear that he showed his note to any of his colleagues to the embarrassment of the news Editor. The paper, in fact, appeared late on the following morning. I do not think that by making the said note, the Journalist concerned went out of his way.

3) it appears from Section 14 of the Working Journalists Act, 1955, that the Industrial Employment (Standing Orders) Act, 1946 applies to every newspaper establishment. In the instant case, the Company did not fall back upon any standing orders of its own. It is, therefore, clear that the Model Standing Order applies according to Rule 28(C) of the Model Standing Order, the employer has to give an opportunity to the workman concerned for making representation on the penalty proposed. In the instant case, no such opportunity was given."

14. Mr. C.L. Ganguli, Learned senior advocate appearing along with Mr. B. R. Dutta, Mr. B. Majumdar, Mr. G. K. Das, Mr. Kishore Mukherjee, Mr. Subrajit Basu and Mr. Sanjoy Auddy, learned advocates for the petitioner relied upon the order of the Learned Tribunal bearing No. 53 dated May 19, 1983, being the order on the preliminary issue as to the validity of the domestic enquiry wherein the learned Tribunal held as under;

".....The enquiry proceeding shows that full opportunity was given to the workman to participate in the enquiry. I, therefore, hold that there is nothing on record to show that the enquiry was conducted in any unfair manner. Following, however, the decision of the Supreme Court in 1973 Lab. IC 851 (Firestone Tyre & Co. v. Its Workmen), There should be a further hearing to re-appraise the evidence on record and on the quantum of punishment u/s 11A of the Industrial Disputes Act"

15. Mr. Ganguli, learned senior Advocate contended that in view of the aforesaid conclusion, it was not open to the Learned Tribunal to pass the impugned Award. It is in effect review of his own orders and in gross misconception of its powers, jurisdiction and authority. The learned Tribunal, has no jurisdiction, it was submitted, to re-appreciate the evidence or to differ with the conclusions arrived at by the enquiry officer in the domestic enquiry after having held that the same was conducted fairly and upholding the same. It was strenuously urged that the Tribunal misconstrued the true scope power and ambit of Section 11A of the I.D. of 1947 by exercising jurisdiction not vested by law. The learned Tribunal, it was urged has passed the Award impugned in the instant writ application by illegal exercise of powers, jurisdiction and discretion and thereby wrongly interfered with the findings of the enquiry officer by differing with the conclusions arrived at in the enquiry report but being unable to hold that any of the conclusions of the enquiry officer was not based on evidence on record.

16. Reliance was placed by the learned counsel for the petitioner upon the Judgment of the Supreme Court in Union of India Vs. K.A. Kittu And Others, .

17. Mr. Ganguli, learned senior advocate for the petitioner further contended that the interference with the order of the disciplinary authority by the Award impugned in the instant case on the ground of absence of opportunity to the workman concerned for making representation on the penalty proposed without furnishing of copy of enquiry report is wholly unsustainable and contrary to the well settled legal position.

18. In so far as the last contention, as above, of Mr Ganguli is concerned non-furnishing of enquiry report, it is now well settled, does not invalidate dismissal order unless prejudice is shown to have been caused to the delinquent employee.

19. After the 42nd Amendment to the Constitution, it may be recalled a controversy arose as to whether when the enquiry officer is other than the disciplinary authority, the employee is entitled to a copy of the findings recorded by him before the disciplinary authority applied its mind to the findings and evidence recorded or whether the employee is entitled to a copy of the findings of the enquiry officer only when the disciplinary authority had arrived at its conclusion and proposed the penalty. For an authoritative pronouncement, the matter was placed for consideration before a Three Judge bench in the case of Union of India and others Vs. Mohd. Ramzan Khan, . It was held in that case that a delinquent employee is entitled to be furnished with a copy of the enquiry

report for offering him a reasonable opportunity as required under Article 311(2) of the Constitution and in compliance of principles of natural justice, and in case no such report was furnished, the order was fit to be quashed. It was, however, directed that the judgment shall be prospective.

20. Thereafter, as it was found that there was a conflict in the decision of the Supreme Court in the case of Kailash Chander Asthana Vs. State of U.P. and Others, and Union of India and others Vs. Mohd. Ramzan Khan, case, the matter was referred to the Constitution Bench in the case of Managing Director of E.C.I.L. v. B. Karunakcar AIR 1994 SC 1050:1994 Lab. IC 762 which formulated seven (7) questions for consideration. However for the purpose of enquiry on hand, it would suffice to refer to three (3) questions enumerated in the said judgment which are as under:

"(i) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it ?

xxx xxx xxx (v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases ?

(vi) From what date the law requiring furnishing of the report, should be become into operation ?

21. The question No. (1) was answered by the Constitution Bench as follows;

"Since the denial of the report of the enquiry officer is a denial of reasonable opportunity and a breach of the principles of natural Justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject."

22. The question No. (v) was answered by the Constitution Bench in paragraphs 30 and 31 of the judgment. In brief, it was held therein as under;

"..... When the employee is dismissed or removed from service and the Inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him.....Whether in fact, prejudice has been caused to the employee or not on account of the denial to him on the report, has to be considered on the facts and circumstances of each case.

.....If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside

the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Court should avoid resorting to short cuts..... It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

23. With respect to question No. (vi), it was held that the law requiring furnishing of report should come into operation from November 20, 1990. It was further held that the only exception to this was where the service rules with regard to the disciplinary proceedings themselves made it obligatory to supply a copy of the report to employee.

24. In the instant case, the learned Tribunal has observed that according to Rule 28(c) of the Model Standing Order, such notice was required to be give.

25. According to the decisions of the Supreme Court in Mohd, Ramjan Khan's case (supra) as approved by the Constitution Bench in the case of ECIL, denial of enquiry report would amount of denial of equal opportunity and is a breach of principles of natural justice. Both the said decisions were dealing with a case where there was no requirement under the rules to furnish copy of the enquiry report to the delinquent and the decision in the ECIL's case is silent on the question as to what would be the effect of non-furnishing of a copy of the enquiry report in cases where it is required to be furnished under the statutory rules.

26. This question has been considered by the Supreme Court in State of U.P. v. Harendra Aram and Anr., reported in 2001 AIR SC 2029 and the Court declared as under;

"22. Thus, from a conspectus of the aforesaid decisions and different provisions of law noticed, we hold that provision in Rule 55-A of the rules for furnishing copy of enquiry report is procedural one and of a mandatory character, but even then a delinquent has to show that he has been prejudiced by its non-observance and consequently the law laid down by the Constitution Bench in the case of ECIL, to the effect that an order passed in a disciplinary proceeding cannot ipso facto be quashed merely because a copy of the enquiry report has not been furnished to the delinquent officer, but he is obliged to show that by non-furnishing of such a report he has been prejudiced, would apply even to cases where there is requirement of furnishing copy of enquiry report under the statutory provisions and/or service rules."

27. Applying the aforesaid ratio to the case on hand, it has to be seen whether by non-furnishing of the enquiry report, the delinquent has suffered any prejudice. The learned Tribunal has not arrived at any such finding nor was any such grievance as regards prejudice either pleaded or established before the Tribunal. I am, therefore, of the opinion that the aforesaid circumstance of non-furnishing of the enquiry officer's report to the delinquent by the Disciplinary Authority can have no bearing upon the validity of the order passed by the

disciplinary authority.

28. As regards the contention of Mr. Ganguli, learned senior Advocate with respect to the powers of the Industrial Tribunal, I am of the view that the contentions urged by Mr. Ganguli are misconceived. The aforesaid contention of Mr. Ganguli overlooks the fact that the order impugned in the case en hand is one passed by the Tribunal constituted under the Industrial Disputes Act whereby power has been conferred upon it u/s 11A of the Act. There is a marked distinction between the powers and Jurisdiction exercised by a Labour Court/ Tribunal constituted under the Industrial Disputes Act and the power and Jurisdiction exercised by a Tribunal (State/Central Administrative Tribunal) constituted in pursuance of Article 323A of the Constitution of India.

29. In so far as the powers of a Tribunal constituted under Article 323A (Central/ State Administrative Tribunal) is concerned, they are akin to the powers exercised by a Writ Court in exercise of its jurisdiction under Article 226 of the Constitution of India viz., that of judicial review. Reference need only be made to the judgment of the Supreme Court in *State of Tamil Nadu and another Vs. S. Subramaniam*, . Therein, the Supreme Court was dealing with the powers of Central Administrative Tribunal constituted under the Central Administrative Tribunals Act. Apposite in this context is a passage from the said judgment, which is extracted hereunder;

"The only question is : Whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323A and invested the same in the Tribunal by Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to re-appreciate the evidence and would come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C.

Chaturvedi Vs. Union of India and others, , State of T.N. Vs. T.V. Venugopalan, , Union of India (UOI) and Others Vs. Upendra Singh, , Government of Tamil Nadu and another Vs. A. Rajapandian, and B.C. Chaturvedi v. Union of India"

30. However, in so far as the scope of interference by a Labour Court/Tribunal constituted under the Industrial Disputes Act is concerned, the position in law has considerably changed after the insertion of Section 11A by Act 45 of 1971 w.e.f. December 15, 1971. Prior to insertion of Section 11A, where a proper domestic enquiry has been held before the passing of the order of punishment, the Labour Court/Tribunal had no power to interfere with its findings on the misconduct recorded in the domestic enquiry, unless it was vitiated by one or other infirmities pointed out in Indian Iron and Steel Com. Ltd. v. Their Workmen, reported in AIR 1958 SC 130.

31. The law as regards the power of the Tribunal prior to insertion of Section 11A was as declared by the Supreme Court in The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, and as regards the power to order reinstatement or payment of compensation, the powers were as declared in The Management of Panitole Tea Estate Vs. The Workmen, . That was the law as laid down by the Supreme Court prior to December 15, 1971. Suffice it here to extract a passage from a recent judgment of the Supreme Court in State Bank of India v. Tarun Kr. Banerjee and Ors., 2000 AIR SCW 3397, wherein it has been clearly declared as under;

"4 Prior to the insertion of Section 11A where a proper domestic enquiry had been held before the passing of the order of punishment, the Tribunal had no power to interfere with its findings on the misconduct recorded in the domestic enquiry unless it was vitiated by one or other infirmities pointed out in Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, case. The conduct of the disciplinary proceedings and imposition of the punishment were all considered to be managerial functions with which the Tribunal had no power to interfere unless the findings were perverse or the punishment was so harsh as to lead to an inference of victimization or unfair labour practice. Now, the position is different. In the course of adjudication proceedings if the Tribunal is satisfied that the order of discharge or dismissal was not justified, it can reappraise the evidence adduced in the domestic enquiry and satisfy itself whether the evidence relied upon by the employer establishes the misconduct alleged against the workman....."

32. Thus, it cannot be disputed that by virtue of Section 11A of the Industrial Disputes Act, 1947, the Tribunal constituted under the I.D. Act is empowered to reappraise the evidence in the domestic enquiry and satisfy itself whether the evidence relied upon by the employer establishes the misconduct alleged against the workman.

33. The contentions urged by Mr. Ganguli, learned senior Advocate for the petitioner as to the power of the Industrial Tribunal to reappraise the evidence or

differ with the findings arrived at by the enquiry officer are squarely answered by the judgment of the Supreme Court in SBI v. Tarun Kr. Banerjee, cited supra.

34. As to the scope ambit and power of a Writ Court in exercise of its powers under Article 226 of the Constitution with respect to the orders of inferior Tribunal under challenge before it, as already noticed supra, it is now too well settled that in exercise of such power against the finding of inferior Tribunal, a Writ Court would be justified in interfering with only if it comes to the conclusion that either the order of the tribunal is contrary to some provisions of law; or the order of the Tribunal is based upon no evidence on record to substantiate the same or is based upon certain inadmissible evidence or the Tribunal does not allow certain admissible evidence to be laid in; or the conclusion of the Tribunal is such which no reasonable man would arrive at.

35. Judged in the light of the above it cannot be said that the order of the learned Third Industrial Tribunal impugned in the instant writ application, suffers from any such legal infirmity nor can it be said that there is an error apparent on the face of record warranting interference with the impugned award by this Court.

36. Adverting now to the judgments relied upon by Mr. Ganguli, learned senior Advocate, it must be stated here that the judgment of the Supreme Court in K. A. Kittu 2001 99 FLR 244 arose out of a judgment of the Central Administrative Tribunal. The same is accordingly distinguishable on the facts of the instant case.

37. As regards the Judgment of a learned single of the A. P. High Court in Depot Manager, Depot Manager, APSRTC, Asifabad Depot, Adilabad Vs. G. Badaiah and another, is concerned, it must be stated that though the matter is one with respect to Section 11A of the Industrial Disputes Act but in that case the Court was dealing with the interference by the Labour Court/ Tribunal u/s 11A of the Act, despite having held that the charges levelled against the employee therein were proved. Such is not the case on hand.

38. For the reasons aforestated, the instant writ application is liable to be and is accordingly dismissed.

39. It must be stated here that when the matter was moved before this Court on September 25. 1984. an interim order staying the operation of the Award till disposal of the writ application was passed.

40. For the aforesaid reasons, the interim order has to be vacated and is accordingly so directed. Consequently, petitioner is granted 30 days" time from date hereof to implement the impugned Award. If respondent No. 3 has in the meanwhile, superannuated he shall be paid all monetary benefits to which he would have been entitled to had he been reinstated in terms of the impugned Award upto the date of his retirement as also to the retrial benefits if applicable or payable shall be paid in accordance with law.

41. As none has appeared on behalf of any of the respondents, there shall, however, be no order as to costs.

42. Let urgent xerox certified copy of this judgment and order be furnished to the appearing parties, if applied for, on priority basis.