

(2010) 04 MAD CK 0174

In the Madras High Court

Case No : Writ Petition No's. 2203 to 2206, 24663 to 24666 of 2005 and W.P. M.P. No. 2452 of 2005

C. Thirunavukkarasu, A. Krishnan, A. David Sandosh and K. Guruswamy APPELLANT

Vs

The General Manager (Administration), The Metropolitan Transport Corporation (Chennai) Ltd. RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2, 25, 2A

Citation : (2010) 04 MAD CK 0174

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : R. Rajaram, for the Appellant; V.R. Kamalanathan, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—As the facts leading to all the writ petitions and the impugned order passed being the same, they are disposed of by this

common order. The eight writ petitions are filed by four petitioners. W.P. Nos. 24663 to 24666 of 2005 have been filed challenging the order of

punishment of stoppage of three increments for a period of three years while the other four writ petitions, W.P. Nos. 2203 to 2206 of 2005 have

been filed challenging the order of recovery passed by the respondents.

2. The brief facts of the case is that when the petitioners were working as security guards, a special audit team of the respondent, the Metropolitan

Transport Corporation Ltd., (hereinafter referred to as the "Transport Corporation") caused audit of the High Speed Diesel Oil (hereinafter

referred to as "HSD Oil") accounts of the Tondiarpet Depot-I for the period December, 1999 to 30th Sept., 2001. The audit reports revealed lot

of discrepancies in maintaining various registers in the depot and in view of shortage of oil to an extent of 45465 litres and as the loss caused to the

Transport Corporation being valued at Rs. 8.30 Lakhs and in view of the fact that during the said audit period, Mr. Thirunavukkarasu, security

supervisor was on duty, he was held responsible for the shortage of oil and loss sustained by the respondent Transport Corporation along with the

other petitioners, who were working as security guards, on the ground that the security supervisor should check up the invoice of diesel load and

the quantity of unloaded diesel and the entries made in the diesel oil registers maintained in the security wing should be compared with the registers

maintained by the stores in the depot and in case any difference is found in between the depot store register and the security wing register, the

same has to be informed to the higher officials immediately. But the petitioners have not followed the guidelines issued by the respondent Transport

Corporation. Therefore, the petitioners, who were functioning as security staff at the relevant point of time were charge sheeted and the following

charges were framed against them and they were asked to submit their explanation:

(i) He has failed to see that the entries with regard to receipt of Diesel Oil through lorries on several days from 12/99 to 09/01 in the respective

Register were not correctly recorded while he was working in Tondiarpet Depot-I and signed the same and thereby causing shortage of 45,465

litres of Diesel Oil and loss sustained to the tune of Rs. 8.30 lakhs which is a serious misconduct under Clause 25 (xiv) of the Certified Standing

Order.

(ii) He has failed to check up the time at which the Diesel Oil arrived in lorries for unloading and not entered in the Security Register and also not

followed the rules before decantation of Diesel Oil and held responsible for shortage of Diesel Oil is also a serious misconduct under Clause 25

(xxxvii) of the Certified Standing Order.

(iii) Due to carelessness and negligence in his duty on various days which caused shortage of 45,465 litres of HSD Oil and sustained loss to the

tune of Rs. 8.30 lakhs to the respondent Corporation which constitutes

misconduct under Clause 25 (xlii) of the Certified Standing Order.

3. After receipt of the charge memo, the petitioners submitted their explanation denying the charges. Having not satisfied with the explanation

offered by the petitioners, the respondent initiated enquiry by appointing an enquiry officer to enquire into the charges. Accordingly, enquiry was

conducted in a fair and proper manner following the principles of natural justice. After completion of the enquiry proceedings, report was submitted

holding charges 1 and 2 were proved against the petitioners, but charge No. 3 was held not proved. Thereafter, the petitioners were issued with a

second show cause notice dated 19th Nov., 2004, proposing to recover a sum of Rs. 59,286/= from each of the petitioners from their salary for

causing loss to the Transport Corporation to the tune of Rs. 8.30 lakhs due to the shortage of 45465 litres of HSD Oil and called for their

explanations therefore. On receipt of further explanation, the respondent Corporation elaborately examined the same and finding that the

misconduct committed by the petitioners were serious in nature, however, on considering their cases sympathetically, the respondent Transport

Corporation modified the proposed recovery of Rs. 59,286/= by reducing it to 50% only and, imposed a recovery of Rs. 29,643/= to be

recovered from each of the petitioner. As the charge levelled against the petitioners stood proved, a punishment of stoppage of 3 increments for

three years has also been imposed on the petitioners. Aggrieved by the said order, the present writ petitions have been filed under Article 226.

4. Learned Counsel appearing for the petitioners placed three major arguments while assailing the impugned orders. Firstly, it was submitted that

the enquiry officer submitted his findings holding that charge Nos. 1 and 2 were proved and charge No. 3 was held not proved. On that basis, the

petitioners were given punishment of stoppage of three increments for a period of three years from their basic pay. Apart from the said punishment,

the petitioners were also asked to make good the loss of Rs. 8.30 lakhs proportionately and as a result, the petitioners were directed to pay Rs.

29,643/= and an order was also issued directing to deduct the above said amount from their salary in instalments. This approach adopted by the

respondents imposing the punishment of stoppage of increments for three years from the basic pay along with imposing another punishment of

recovery of Rs. 29,643/= so as to make good the loss suffered by the Transport Corporation is nothing but double jeopardy. Secondly, the

petitioners were found guilty of dereliction of duty in not maintaining the diesel oil registers. The said diesel oil registers was not an official register, it

was only a personal record and when the diesel oil register not being an official record, the petitioners cannot be held responsible for not

maintaining the official record. Thirdly, when the enquiry officer found the petitioners guilty of the charge of not maintaining the records properly

and holding the petitioners guilty of all the charges under Clause 25 (xxxiii) of the Certified Standing Orders, the charge made against the

petitioners by the enquiry officer cannot be legally sustainable for the simple reason that Clause 25 (xxxiii) of the Certified Standing Orders only

speaks about the tampering of the official records of the Transport Corporation, which clearly goes to show that the records must be official

records of the Transport Corporation to bring the charge under Clause 25 (xxxiii) of the Certified Standing Orders. When the diesel oil register is

not an official record, the application of Clause 25 (xxxiii) of the Certified Standing Orders cannot be legally made applicable against the petitioners

and, therefore, the charge made against the petitioners is unwarranted. It was further contended that the petitioners having been punished by way

of imposition of stoppage of three increments, as against that order though the petitioners can raise a dispute u/s 25(k) of the Industrial Disputes

Act, an aggrieved individual has no right to raise any dispute without the support of the workers union, since the workers union alone has got a

right to raise a dispute u/s 2(k), and the dispute presently raised by the petitioners is not falling u/s 2A of the Industrial Disputes Act, since disputes

relating to dismissal, discharge, retrenchment or otherwise termination of service of individual workmen alone has to be raised by the workmen u/s

2A of the Act. In view of the above legal position, since the case of the petitioners fall u/s 2(k) of the ID Act, the petitioners having no support

from the workers union, has filed the present writ petition challenging the imposition of punishment and recovery order passed by the respondents.

On that basis it was submitted that the present writ petitions is always maintainable.

5. In reply, learned Counsel appearing for the respondents submits that the present writ petitions are not maintainable as there is an alternative

remedy available before the Labour Court. It is further contended that the petitioners, at the relevant period from December, 1999 to 30th Sept.,

2001, were working as security staff in the respondent Transport Corporation at Tondiarpet Depot-I. While so, a special audit team of the

respondent Transport Corporation audited the Tondiarpet Depot-I for the period December, 1999 to 30th Sept., 2001, the audit reports reveal

that there were lot of discrepancies and there was shortage of HSD Oil to an extent of 45465 litres and the monetary loss was assessed at Rs.

8.30 Lakhs. Therefore, the security staff working at the Tondiarpet Depot during the relevant point of time were held responsible for the shortage

of HSD Oil and for the loss sustained by the Transport Corporation. Since the security supervisor is duty bound to check up the diesel load and

the quantity of unloaded diesel and the entries made in the diesel oil register at the security wing has to be compared with the depot stores register

and in case of any difference, the same has to be immediately brought to the notice of the higher officials, which was not done by the security

supervisor. The petitioners were charge sheeted for dereliction of duty as well as for causing loss to the Transport Corporation due to the shortage

of HSD Oil. The explanations submitted by the petitioners not being satisfactory, after affording reasonable opportunity, the enquiry officer held

charge Nos. 1 and 2 as proved and charge No. 3 was held not proved. Further show cause notice was issued to the petitioners on 19th Nov.,

2004, proposing recovery of an amount of Rs. 59,286/= each from their salary in instalment for causing monetary loss to the Transport

Corporation to the tune of Rs. 8.30 Lakhs due to the shortage of 45465 litres of HSD Oil. After carefully examining the explanations submitted by

the petitioners, as the misconduct committed by the petitioners were serious in nature, however, on sympathetic consideration, the Transport

Corporation modified the proposed recovery of Rs. 59,286/= to 50% of the amount. It was therefore submitted that the case of the petitioners

were properly considered and only on the basis of the findings of the enquiry officer holding the petitioners guilty of the charges, the above

punishment and recovery of the amount was ordered and, therefore, it was submitted that no interference is called for with the orders passed by

the respondent.

6. Heard the learned Counsel appearing on either side and perused the materials placed on record.

7. At the very outset, let me deal with the maintainability of the writ petition filed under Article 226 of the Constitution, without resorting to the

labour court by raising industrial dispute u/s 2A of the Act. There are two ways of raising industrial disputes. An industrial dispute falling u/s 2A of

the ID Act, wherein Section 2A deals with disputes arising out of dismissal, discharge, retrenchment or otherwise termination of service. If an

individual workman is dismissed or discharged from the service of the employer, the individual workman is entitled to raise his dispute u/s 2A of the

Act. If it is any other dispute other than dismissal, discharge, retrenchment or termination, then the aggrieved workman has no right to raise any

dispute unless his dispute is supported by the workers union because workers alone has got rights to raise industrial dispute u/s 2A of the Act.

Therefore, the present petitioners, whose dispute are not arising out of dismissal, discharge, retrenchment or termination of service, are solely

depending on the support of the union. Unless and until the the union supports the cause of the individual dispute, they cannot have any remedy

before the Labour Court. Therefore, in that view of the matter, the petitioners having been imposed with the punishment of stoppage of three

increments for a period of three years from the basic pay not being supported by the workers union for the purpose of raising industrial dispute u/s

2(k) of the Act, is entitled to file the present writ petition challenging the correctness of stoppage of three increments for a period of three years

from the basic pay. In the event of non-espousal of their dispute by their union, if the petitioners are denied the right to approach this Court under

Article 226, they will be left without any remedy.

8. Three charges were levelled against the petitioners, as they were working as security guards at the Tondiarpet Depot-I at the relevant time when

the special audit team audited the accounts. The special audit team noticed several discrepancies in the HSD Oil accounts pertaining to the period

December, 1999 to 30th Sept., 2001. During the said period there was shortage of 45465 litres of HSD Oil, thereby the financial loss caused to

the Transport Corporation was assessed at Rs. 8.30 lakhs. Since the petitioners were working as security staff at the relevant point of time, they

were charge sheeted. The first charge levelled against the petitioners is that they failed to correctly record the entries about the receipt of diesel oil

through lorries on several days from December, 1999 to 30th Sept., 2001 in the respective registers. This being a serious misconduct under

Clause 25(k) of the Certified Standing Order, the petitioners were asked to submit their explanations. The 2nd charge levelled against the

petitioners is that they failed to check up the time at which the diesel arrived in the lorries for unloading and it was alleged that the security staff

have not entered the time in the security register and also not followed the rules before decantation of the diesel oil. Therefore, they were held

responsible for the shortage of diesel oil, as it was a serious misconduct under Clause 25(k) of the Certified Standing Order. The third charge

indicates that due to careless and negligence, there was a shortage of 45465 litres of HSD Oil and, therefore, the Transport Corporation suffered

monetary loss to the tune of Rs. 8.30 lakhs. Since, causing the said loss constituted serious misconduct under Clause (xiii) of the Certified Standing

Order, all the petitioners were asked to submit their explanation. After receipt of the explanation and not being satisfied with the explanation,

enquiry was ordered. The enquiry officer, after affording adequate opportunities, held charge Nos. 1 and 2 as found proved and charge No. 3 was

held not proved. Yet again, a second show cause notice dated 19th Nov., 2004, was given to the petitioners proposing recovery of a sum of Rs.

59,286/= from their salary towards the shortage of 45465 litres of HSD Oil thereby causing a monetary loss of Rs. 8.30 lakhs. Since the

misconduct committed by the petitioners were already found proved, however, considering the case of the petitioners sympathetically, the

Transport Corporation has modified the proposed recovery of Rs. 59,286/= to 50% and, therefore, a sum of Rs. 29,643/= was ordered to be

recovered from each of the petitioners. Aggrieved by the said order, the petitioners, without resorting to the Labour Court by raising an industrial

dispute, straightaway filed the present writ petitions under Article 226.

Learned Counsel for the petitioners advanced detailed arguments assailing the impugned orders of punishment and recovery and attempted to

make a case in favour of the petitioners by relying upon a circular dated 29th Jan., 1983. As per the said circular, the security staff were directed

to maintain only 8 registers, which are given hereunder:

1. General Diary
2. Transport In-Gate Register
3. Transport Out-Gate Register
4. Guard Relief Register
5. Incoming Store Register
6. Outgoing Store Register
7. Local Purchase Register
8. Key Register.

In all the 8 registers, no discrepancies or overwriting or missing of any objects have been found. While so, it was submitted that the diesel oil register being not an official record, the enquiry officer has erroneously held that the petitioners are responsible for not maintaining the diesel oil register, as the diesel oil tank register is maintained by the store keeper. Therefore, the security staff cannot be made responsible if there is any discrepancy in the said register maintained by the store keeper.

9. This argument of the petitioners cannot be accepted for their own admission made in the written submissions filed before this Court on 29th

March, 2010. The case of the petitioners in their written submissions is that though the diesel oil register is not an official register, it was admitted

by the petitioners in their written submissions that it was a record maintained by the security staff for their personal reference and for their personal

use. It was further admitted by them that it was true that there was correction and overwriting, etc., in the diesel oil register and since it was a

record for their personal reference, there were several corrections, overwritings, etc. Therefore, the enquiry officer found the petitioners guilty of

not maintaining the records properly and, thus, further held them guilty of the charges under Clause 25(k) of the Certified Standing Orders, cannot

be found fault with. The Transport Corporation, though by circular dated 29th Nov., 1983, has mentioned only 8 registers to be maintained by the

security staff, subsequently, diesel oil register was also directed to be maintained by the security staff. This has been accepted by the petitioners

stating that though it is not an official register, this has been maintained by the security staff for their personal reference and their personal use.

When they are maintaining the register for their personal reference and personal use and when the special audit team of the Transport Corporation

audited the Tondiarpet Depot-I, they have taken into account all registers, which are part of the circular dated 29th Jan., 1983, as well as the

diesel oil register, which were maintained by the security staff. If the diesel oil register had not been an official record, the special audit team would

not have verified the diesel oil register and the fact that the diesel oil register was verified by the special audit team would itself go to show that the

said register was an official record. That apart, when the petitioners themselves have admitted indisputably that the diesel oil register was also

maintained by them and further admitted that it was containing several corrections and overwriting, etc., there is nothing wrong for the enquiry

officer to consider the same, which is definitely an official record, to hold that charge Nos. 1 and 2 were found proved against the petitioners.

10. Further, the punishment imposed on the petitioners was not only for not maintaining the diesel oil register alone, but the other charges were also

proved against the petitioner and the enquiry officer held charge Nos. 1 and 2 as proved against the petitioner and the disciplinary authority also,

by issuing a 2nd show cause notice, though indicated as to why the amount of Rs. 59,286/= should not be recovered from the petitioners for the

shortage of 45465 litres of HSD Oil, thereby causing a monetary loss of Rs. 8.30 lakhs to the Transport Corporation, but taking a sympathetic

view, the petitioners were directed to pay only 50% of the proposed amount, which was arrived at Rs. 29,643/=. Therefore, the order of recovery

made from the petitioners in an effort to make good the loss suffered by the Transport Corporation cannot be found fault with.

In respect of the other arguments advanced by the learned Counsel for the petitioners that the respondents having imposed a punishment of

stoppage of 3 increments for three years for the proved charges have once again ordered to recover the amount of Rs. 29,643/= cannot also stand

to reason for the simple reason that it is their admitted case that they themselves had not maintained the registers properly and the security staff,

who are bound to maintain the records without any overwriting and corrections have admittedly carried out several corrections in the register,

which is a serious misconduct under Clause 25(k) of the Certified Standing Order. Therefore, the respondents, while imposing the punishment of

stoppage of 3 increments for three years from the basic pay have also ordered to recover the loss of Rs. 8.30 lakhs caused due to the shortage of

45465 litres of HSD Oil. The imposition of punishment of stoppage of three increments for three years from the basic pay and the order to recover

Rs. 29,643/= from each petitioner cannot be termed as double jeopardy for the simple reason that the stoppage of three increments for three years

from the basic pay has been imposed as punishment for the charges levelled against the petitioners, while the order to recover Rs. 29,643/= cannot

be termed as punishment as the same was ordered for the purpose of recovering the monetary loss caused to the Transport Corporation due to the

shortage of 45465 litres of HSD Oil. Therefore, punishment being only the stoppage of three increments for three years and the other being only

recovery towards the loss caused, the above cannot be termed to be double jeopardy.

11. Further, it is settled law that disciplinary proceedings initiated by the disciplinary authority are quasi judicial in character. Admittedly, the

petitioners had no grievance to the method adopted by the enquiry officer in conducting the domestic enquiry. Therefore, the High Court has right

to reassess the factual materials once again as it is not an appellate court. The Apex Court had held in *Kuldip Singh v. The Commissioner of Police*

JT 1998 (8) SC 603 that the power of judicial review available to the High Court under the Constitution cannot ordinarily interfere with the findings

of fact. Normally the High Court would not interfere with the findings of fact recorded in the domestic enquiry, but if the findings of guilt is based on

no evidence, it would be a perverse finding and would be amenable to judicial scrutiny. Admittedly, in the present case, it is relevant to mention

that it is not the case of the petitioner that domestic enquiry was in violation of principles of natural justice or not based on any evidence.

12. In view of the discussion made above, this Court is of the considered view that no case is made out by the petitioners to interfere with the

impugned order passed by the respondents. Accordingly, there being no merit, all the writ petitions are dismissed. There shall be no order as to

costs.