

(2010) 12 RAJ CK 0058

In the Rajasthan High Court

Case No : Civil Writ Petition No. 15615 of 2010

Chief Manager, Rajasthan State Road Transport Corporation	APPELLANT
Vs	
Sukhvver Singh (since deceased) through his Legal Heirs and Another	RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2011) 130 FLR 311 : (2012) 1 LLJ 165 : (2011) LLR 680 : (2011) 2 RLW 1152

Hon'ble Judges : Prem Shanker Asopa, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prem Shanker Asopa, J.—Heard learned Counsel for the parties.

2. By this writ petition, the Petitioner Management of the Rajasthan State

Road Transport Corporation (RSRTC) has challenged the impugned order dated 1.4.2009 (Annex.6) passed by the Industrial Tribunal, Jaipur in Case Misc.1T. 161/1998 whereby the enquiry has been held to be unfair and further, the charge sought to be proved by the Petitioner Management before the Industrial Tribunal was not allowed on account of the death of the Respondent Workman during the pendency of the case before the Industrial Tribunal and consequently, the approval application u/s 33(2)(b) of the Industrial Disputes Act, 1947 (in short the Act of 1947") was rejected.

3. The facts, in brief of the case, are that while working as Driver in the RSRTC, a charge sheet No. 6657 dated 4.12.1996 was served upon the Respondent Workman with the allegations that on 16.9.1996 at 6.30 Hrs. his duty was on Route No. 210-D but the Petitioner remained absent without intimation and permission which caused loss of revenue to the Management. In addition to the

aforesaid incident mentioned the charge sheet, on other occasions also, the Respondent Workman remained absent without intimation and without getting the leave sanctioned.

4. The Enquiry Officer found the charges proved and after giving an opportunity of personal hearing to the Respondent Workman, vide order No. 384 dated 17.6.1998 the services of the Respondent Workman were terminated and since connected reference was pending before the Industrial Tribunal, therefore, approval application u/s 33(2)(b) of the Act of 1947 was filed.

5. Submission of counsel for the Petitioner Management is that the Industrial Tribunal has wrongly held that the enquiry was unfair as the Respondent Workman was given full opportunity to produce his defence. Further submission of the counsel for the Petitioner Management is that even if the workman died during the pendency of the reference application, then also, the Industrial Tribunal could have allowed the Petitioner Management to prove the charge against the Respondent Workman.

6. Submission of the counsel for the Respondent Workman is that the enquiry was rightly held to be unfair in view of the judgment of this Court in *Rajesh Khanna v. The Rajasthan State Agriculture Marketing Board, Jaipur* (2000(2) WLC 464 : RLW 2002 (2) Raj. 992 wherein it has been held that it is for the Management to lead evidence first and thereafter, on completion of the departmental evidence, give an opportunity to the delinquent for production of evidence. Calling the workman first to produce his defence evidence in respect of the charges levelled against him, rendered the enquiry unfair as the same would result in reasonable denial of opportunity to meet out the evidence produced by the Management in support of the charges. In the particular case, the above procedure has been violated, therefore, the same is violative of the aforesaid part of the principles of natural justice. Counsel for the Respondent Workman has further placed reliance on the Division Bench judgment of this Court in *Smt. Prem Kumari and Ors. v. Central Industrial Tribunal and Ors.* (1995 (7) FLR 244) in which the principle has been laid down that where the delinquent died, then the employer cannot seek to prove charges against the workman.

7. I have gone through record of the writ petition and further considered the aforesaid submissions of counsel for the parties.

8. Before proceeding further, it is necessary to reproduce the relevant portion of the aforesaid judgments cited by counsel for the parties.

Rajesh Khanna v. Rajasthan State Agriculture Marketing Board 2002(2) WLC 464

9. The statutory rule prescribed that the statement shall be recorded in the presence of the delinquent official and he shall have an opportunity to cross examine the witnesses. In my opinion, in the present case the enquiry officer has not conducted the enquiry in accordance with the principles of natural justice except the witness of Bahadur Singh and S.P. Singh, no other witness has been

allowed to be cross examined, nor there is any such note made by the enquiry officer of the proceedings which had been gone through thoroughly. The statement of Mandana, Gupta and Jain have been just placed on record. It is so borne out from the enquiry proceedings. From the totality of the facts and proceedings adopted by the enquiry officer, it cannot be said that the enquiry has been conducted in accordance with the prescribed procedure as provided under the statutory rule. The rules provide that the enquiry officer shall first record the evidence of the prosecution and shall afford an opportunity to the delinquent official to cross examine the witnesses of the prosecution. On the conclusion of the prosecution witness, the delinquent official is to be given an opportunity of producing his defence. In the present case, the enquiry officer even before recording evidence of the prosecution had recorded the statement of delinquent official. There is a force in the submission of the learned Counsel for the Petitioner that except two witnesses Bahadur and S.P. Singh, no opportunity was given to the Petitioner to cross examine the prosecution witness who had been relied upon by the enquiry officer and thus whole of the enquiry proceedings become defective and are to be vitiated for being not having been conducted in accordance with law and in violation of principles of natural justice.

9. The same view has been taken by the Punjab and Haryana High Court in its judgment dated 8.5.1963 in *Associated Cement Co. Ltd. v. The Workmen* (Civil Appeal No. 636/1962) wherein it has been held that "it is necessary to emphasis that in domestic enquiries, the employer should take steps first to lead evidence against the workman charged, give an opportunity to cross-examine the said evidence and then should the workman be asked whether he wants to give any explanation about the evidence led against him.

10. In *Smt. Prem Kumari and Ors. v. Central Industrial Tribunal and Ors.* 1995 (70) FLR 244), while rejecting the argument of counsel for the Life Insurance Corporation of India, the Division Bench of this Court held as under:

Argument of Shri Agrawal is that the charge could be proved even after the death of the concerned workman, by tendering evidence with reference to the contemporaneous record as the charge was only of not giving the prescribed standard of work. We do not agree with this argument for the simple reason that only the deceased workman could confront the employer with the circumstances in which the prescribed standard of Work could not be given and no effective cross-examination on this aspect of the matter could be done by the legal representatives, i.e. the widow of the deceased workman and his sons. Only the deceased workman could confront the witnesses of the employer with such circumstances in which it may not have been possible for him to give the prescribed standard of work. Therefore, to say that the work put in by the concerned employee workman was on record and the requisite standard of work had been prescribed and therefore the charge could be proved even against a dead person without causing any prejudice to him, is wholly misconceived, rather ill-conceived. In such circumstances, we do not find that the Tribunal committed

any illegality in granting the relief of wages and other consequential financial benefits to the legal representatives of the deceased workman on the basis of the Supreme Court decision in *Deshraj Gupta v. Industrial Tribunal, Lucknow* (1990(61) FLR 763 for the period from the date of the termination of the date of the death of the workman. The order passed by the learned single Judge in a writ of certiorari against the Award of the Tribunal does not warrant any interference and, in our considered opinion, the directions given by the Tribunal are just and proper and seek to render substantial Justice between the parties.

11. In my view, the Industrial Tribunal has not committed any error of law in considering the aforesaid judgment and rightly came to the conclusion that the domestic enquiry cannot be held to be just and fair for the reason that the Workman was first called to produce his evidence and further the approval application has also been rightly not allowed on the ground that the delinquent Workman died during the pendency of the proceedings and his legal heirs would not be able to effectively cross examine the witnesses of the to Management.

12. The Industrial Tribunal has neither failed to exercise the jurisdiction nor exceeded its jurisdiction, rather it acted within the parameters of law. No interference is called for in this writ petition under Article 227 of the Constitution of India.

13. This writ petition is dismissed.