
(2006) 11 DEL CK 0090
In the Delhi High Court
Case No : Writ Petition (C) No. 1905 of 1997

Dinesh Singh

APPELLANT

Vs

Air India and Others

RESPONDENT

Date of Decision : 09-11-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2009) 93 DRJ 31

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Alok Singh, for the Appellant; Raj Birbal Shruti Mahendru and Ratna Dwivedi, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has challenged the validity of judgment dated 1.2.1995 of National Industrial Tribunal at Bombay.

2. The brief facts relevant for the purpose of deciding this writ petition are that the petitioner was working as a Junior Operator with Respondent No. 1. On 7th October, 1989 he was on tractor duty in the Make-up area and was to attend the Saudia Flight which was scheduled to arrive at 6.00 p.m. One Mr. M.L. Kumar, Apron Supervisor of the same flight was also on duty. The petitioner's tractor dashed against a chain of Container Dollies, which were parked there. Mr. Kumar reprimanded him for his careless driving and petitioner entered into heated argument with him. Subsequently, petitioner entered into the office of shift clerk and misbehaved with Mr. Kumar. He was suspected to be under the influence of alcohol. The management of respondent Air India served following charge-sheet on the petitioner:

This is further to our letter No. GSD/DEL/06-01/1613 dated 13th October, 1989 placing you under suspension pending enquiry.

2. On 7th October, 1989, you reported in the II shift and was allocated tractor

duty on Arrival Flight SV-348/347-ETC 1800 hrs on Bay No. 42. It has been reported that, while driving tractor on the bay, the said tractor dashed against the chain of container dollies parked due to your erratic driving. When Mr. M.L.Kumar, Apron Supervisor reprimanded you for your careless driving, you entered into an argument with him.

3. Subsequently, at about 2110 hrs, you entered the office of Shift Clerk and misbehaved with Mr. M.L.Kumar, who was also present there. This incident was witnessed by M/s Didar Singh, Sr. Apron Supervisor, Tirathbabu & Vijay Gaba, Shift Clerks. It was suspected that you were under the influence of alcohol. The Security was, Therefore, summoned to deal with the situation. However, you left the place of work without permission and did not report till the end of the shift.

4. The above acts on your part constitute mis-conduct under the Air-India Employees' Service Regulations. You are, Therefore, charged with the following:

(i) Act subversive of discipline and good behavior

(ii) Absence from the appointed place of work without permission

5. You are hereby called upon to submit your Explanation to the above charges, in writing, within four days from the receipt of this letter. If no written Explanation is received within the stipulated period, it will be presumed that you have no Explanation to offer and we will proceed further in the matter of disciplinary action.

6. In case you wish to be heard in person, you may inform us, accordingly.

3. Petitioner denied the charges. The respondent No. 1 constituted an Enquiry Committee comprising of Mr. N.S. Shetgeri and Mr. M.L. Bhoumik and asked the committee to enquire into the incident and give its report. The Enquiry Committee after considering the entire evidence led by both the parties came to the conclusion that the petitioner was guilty of charges of leaving the appointed place of work during working hours without permission as well as of the charges of acts subversive of discipline as contained in the charge-sheet. The disciplinary authority after considering the enquiry report and the past conduct of the petitioner imposed a penalty of dismissal from service. An application u/s 33(2) (b) was made to the National Industrial Tribunal for approval of the action of the dismissal. The Tribunal considered the entire proceedings of Enquiry Committee and came to the conclusion that the enquiry was conducted in accordance with principles of natural justice and the punishment imposed was not disproportionate to the charges proved against the delinquent and allowed the application u/s 33(2)(b).

4. Challenging the order of the Tribunal, the petitioner preferred this writ petition on the grounds that the Industrial Tribunal failed to appreciate that the conclusions and findings arrived at by the enquiry Committee were not supported by the evidence led before the Enquiry Committee, rather the conclusions were contrary to the record. One, Mr. Didar Singh, who was alleged to be eye witness

of the assault on Mr. M.L.Kumar denied any such incident and rather stated that the petitioner was taking dinner in the canteen at about 2115 hrs. There was no evidence that the petitioner was under the influence of alcohol rather the evidence is contrary to this fact and pharmacist in dispensary, who had examined the petitioner testified that the petitioner was not under the influence of alcohol. The findings of Enquiry Committee were arbitrary and discriminatory. there were names of other two employees involved in the incident but only the petitioner was singled out to be punished and other employees were let off. The other ground taken is that the enquiry report was contrary to the provisions of the Industrial Employment Standing Order Central Rules, since the enquiry was not completed within a period of three months. The enquiry commenced on 5th March, 1990 and completed on 10th December, 1990 and so it took about nine months in completion of the enquiry instead of three months and report should be rejected on this ground. The petitioner also took a plea that he was not given the report of Enquiry Committee before issuing dismissal order. It is also alleged that the petitioner was not given one month's salary along with the dismissal order. The petitioner submitted that the conclusion arrived at by the Enquiry Committee about his leaving the place of duty on the basis of disappearance of "punch card" was conjecturous. The petitioner was very much present on duty. The petitioner was victimized by the Respondent Nos. 4 & 5 deliberately and Enquiry Committee acted malafidely. It did not approach the issue with open mind and acted in a biased manner against the petitioner. The Enquiry Committee ignored the evidence which was in favor of the petitioner.

5. The Counsel for petitioner argued that the order of the Tribunal should be set aside because it was perverse and contrary to the settled legal positions. The petitioner relied upon Housing Urban Development Authority and another Vs. Kewal Krishan Goel and others, wherein the Supreme Court held that the findings of Enquiry Committee are said to be perverse if they are not supported by evidence on record or the findings recorded at domestic trial are such to which no reasonable person would have reached. The Supreme Court observed that if the findings are perverse, it would be open to the High Court as well as Supreme Court to interfere in the matter. Although the Court cannot sit in appeal over the findings recorded by the Disciplinary Authority or Enquiry Officer in a departmental enquiry, but it does not mean that in no circumstances can the Court interfere.

6. There is no quarrel with the proposition of law laid down in this judgment. This Court has to consider if the findings of the Enquiry Committee as confirmed by the Tribunal are perverse or not. The other case relied upon by the Petitioner is Union of India (UOI) Vs. H.C. Goel, wherein Supreme Court observed that it cannot be held that, if the malafides are not alleged, the bonafides are assumed in favor of the appellant or the conclusions on a question of fact cannot be successfully challenged even if it is manifest that there was no evidence to support it. However, Supreme Court in the same judgment held that in exercising its jurisdiction under Article 226, the High Court cannot consider the question

about the sufficiency or adequacy of evidence in support of a particular conclusion. It is a matter which is within the competence of the authority which dealt with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent. Supreme Court also observed that it may be that the technical rules which govern criminal trials in Court may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocents are not punished, applies as much to regular criminal trials as to the disciplinary enquiries held under the statutory rules.

7. The next judgment relied upon by the petitioner is *Kuldeep Singh v. The Commissioner of Police and Ors.* JT 1998(8) SC 603 wherein the Supreme Court held that where the findings of the enquiry officer are perverse, the High Courts and Supreme Court can interfere. The other judgments relied upon by the petitioner are *Union of India v. K.A. Kittu and Ors.* 2001 (1) SSC 65 wherein Supreme Court held that an enquiry officer was duty bound to consider the entire evidence of all the witnesses examined by the accused. In *Sher Bahadur v. Union of India and Ors.* 2002 SSC 1028 Supreme Court held that expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence which is neither relevant in a broad sense nor establishes any nexus between the misconduct and the charged officer, is no evidence at all.

8. The Counsel for the petitioner argued that the petitioner was having injury on his forehead received at the hands of Mr. M.L.Kumar because he had pushed him. The evidence of doctor also showed that the petitioner had received injury at his forehead and he had visited the medical clinic of Air India at the airport. It is submitted that the Tribunal ignored the fact that the enquiry officer had not taken into account the evidence of doctor as well as the circumstances showing that the petitioner was not involved in any physical assault with Mr. M.L.Kumar. It is further argued that Mr. Tirath Babu and Mr. Vijay Gaba, the alleged eye witnesses of the incident were not examined and their non-examination itself was sufficient to discard the evidence of Mr. Kumar. They were cited as independent witnesses while Mr. M.L.Kumar was an interested in witnesses.

9. It is submitted by the counsel for petitioner that the enquiry report was perverse, the enquiry officer had not taken into account the entire evidence adduced and had arrived at a conclusion which a no reasonable man would have arrived at.

10. It is argued by the counsel for respondent that the Industrial Tribunal had examined all questions raised by the petitioner in this writ petition and answered all the issues and questions against the petitioner. It is stated that this Court cannot re-appreciate the evidence and arrive at different conclusions from the

one arrived at by the enquiry officer on the basis of the evidence and confirmed by the Tribunal. This Court cannot sit in appeal over the enquiry report. It is further submitted that it is not a case of "no evidence" or lack of evidence but Mr. M.L.Kumar, who was injured, was examined and he had supported the version given in the charge-sheet. Not only Mr. M.L.Kumar but other witnesses examined by the management had also supported the case of the management and deposed about the conduct of the petitioner.

11. The respondent has relied upon *Cholan Roadways Limited Vs. G. Thirugnanasambandam*, *The Lord Krishna Textile Mills Vs. Its Workmen*, *State of Haryana v. Rattan Singh* AIR 1977 2 SSC 491, *J.D. Jain v. Management of State Bank of India* and Anr. 1982 (1) SSC 143, *Ajit Kumar Nag Vs. General Manager (P.J.)*, *Indian Oil Corporation Ltd., Haldia and Others*, *Lalip Popli v. Canara Bank* 2003 (3) SSC 583, *State of Rajasthan v. B.K. Meena* 1996 (6) SSC 417.

12. It is undisputed fact that the respondent management had made an application u/s 33(2)(b) of the Industrial Dispute Act seeking approval of its action. The jurisdiction of Industrial Tribunal u/s 33(2)(b) is limited. The scope of proceedings u/s 33(2)(b) while granting approval is only to examine the findings of the enquiry officer on the evidence adduced in the domestic enquiry to ascertain whether a prima facie case was made out on the charges leveled or if the findings are perverse. The Tribunal while granting approval does not act as a Court of appeal, re-appreciating the evidence for itself. Nor the Tribunal can go into the question whether the evidence was sufficient or not and whether the witnesses were rightly believed or disbelieved. The credibility of the witnesses, the sufficiency of evidence etc. are the areas in which neither the Tribunal nor the Writ Court can enter into. In *The Lord Krishna Textile Mills Vs. Its Workmen*, Supreme Court observed as under:

The jurisdiction conferred on the Tribunal u/s 33(2)(b) was a limited one. Where a proper enquiry had been held and no victimization or unfair labour practice had been resorted to, the Tribunal in granting permission had only to satisfy itself that there was a prima facie case against the employee and not to consider the propriety or adequacy of the proposed action.

In the above case, the Tribunal had observed that the evidence adduced was not adequate and it had not been properly discussed. The Tribunal found defects in the charge-sheet and observed that charge-sheet should have been more specifically clear and evidence should have been more satisfactory. Supreme Court set aside the award of the Tribunal and held that Tribunal assumed jurisdiction which was not vested in it by law and its refusal to accord approval to the action of the Appellant was patently erroneous in law.

13. In *State of Haryana and Anr. v. Ratan Singh* AIR 1977 (2) SSC 491 Supreme Court observed that in a domestic enquiry the strict and sophisticated rules of evidence under Indian Evidence Act may not apply. The materials which are

logical probative for a prudent mind are admissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. Viewed from this, the sufficiency of evidence in proof of the findings of a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the Court to look into the case because it amounts to an error of law apparent on the record.

14. In view of the law laid down by the Supreme Court, I find that the Tribunal had rightly come to the conclusion that enquiry was held in accordance with the principles of natural justice and the findings arrived at by the enquiry officer were not perverse. A perusal of the enquiry report would show that the enquiry officer had considered the entire evidence, weighed it and after weighing it came to the conclusion that the petitioner was guilty of misconduct. Neither the Tribunal nor this Court can act as a Court of Appeal and re-appreciate the evidence and consider whether the witnesses were rightly held to be credible or not, whether the evidence was sufficient to arrive at a conclusion or not and whether the enquiry officer rightly disbelieved some of the witnesses and believed others. It is not alleged by the petitioner that the evidence produced by the petitioner was not recorded. The petitioner's argument is that the evidence was not properly appreciated and the conclusion was not based on the entire evidence. A perusal of enquiry belies this argument of the petitioner. All evidence adduced before the enquiry officer has been discussed and the conclusion arrived at by the enquiry officer is the one which could have been arrived at by a prudent man. It is not a case of "no evidence", it is a case where there were two versions given, one given by the petitioner and another by the complaint. The enquiry officer believed the version, which was more probable and more logical. The arguments of the petitioner that the Tribunal went wrong in allowing the application u/s 33(2)(b) and thereby granting approval to the dismissal of the petitioner is baseless.

15. I find no force in the writ petition. The writ petition is hereby dismissed. No orders as to costs.