
(2014) 04 OHC CK 0042
In the Orissa High Court
Case No : O.J.C. No. 4914 of 1996

Ejaz Alam Siddique

APPELLANT

Vs

Presiding Officer, Industrial Tribunal and Another

RESPONDENT

Date of Decision : 02-04-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33(2)(b)

Citation : (2014) 142 FLR 386 : (2015) 2 ILR 494 : (2014) LabIC 2099 : (2014) 2 LLJ 351 : (2014) 2 LLN 527 : (2014) LLR 757

Hon'ble Judges : B.K. Nayak, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Nayak, J.—This writ application has been filed by the petitioner-workman challenging the order dated 06.12.1995 (Annexure-10) passed by the Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar in I.D. Misc. Case No. 28 of 1992 filed by the employer-opposite party no. 2 u/s 33(2)(b) of the I.D. Act 1947 (in short "the Act") approving the action of the employer in removing the petitioner from service with effect from 15.07.1992. The petitioner was appointed as a Khalasi on 07.11.1986 in the Rourkela Steel Plant under sports quota and was subsequently promoted to L-2 Grade in November, 1989. In order to enable him to attend the practice for International Steel Boxing Championship, his duty hours were relaxed by the employer for the period from 10.08.1990 to 09.09.1990. A Departmental Proceeding was drawn up against him with charges on two counts, namely, one, for abscondence from working spot at about 9.15 A.M. till the end of the shift on 30.08.1990 and, secondly, for theft of a piece of nonferrous casting metal weighing 46 kgs having approximate value of about Rs. 2,760/- in the front dickey of his scooter amounting to contravention of clause-28 (vi) and (ii) of the standing orders. In the domestic enquiry, the Inquiring Officer exonerated the petitioner from the charge of abscondence from duty holding that the petitioner's duty hours was relaxed as he was required to practice in the stadium daily from 6.00 A.M. to 11.00 A.M. in order to participate

in the International Steel Boxing Championship. However, the Inquiring Officer found the other charge of committing theft of a nonferrous casting metal proved. On the basis of such enquiry report, the disciplinary authority passed the order of removal of the petitioner from service. Since the petitioner was a concerned workman in pending I.D. Case No. 25 of 1990, the employer filed application u/s 33 of the I.D. Act before the Industrial Tribunal, Orissa, Bhubaneswar for approval of the removal order and the application was registered as Industrial Misc. Case No. 28 of 1992.

2. The plea of the petitioner-workman before the Industrial Tribunal was that the domestic enquiry was not conducted in accordance with the principles of nature justice; that the charge against him is based on conjecture and surmises; that he was not given opportunity of going through the document relied upon by the management during the enquiry; and that the subject matter of theft has not been proved by any witness to be the property of the employer-company.

3. Rejecting the pleas taken by the workman, the learned Presiding Officer of the Industrial Tribunal came to the conclusion that the report of the Inquiry Officer was wholesome and keeping in the principles of nature justice and fair play at every stage of domestic enquiry and that the disciplinary authority had applied his mind to the enquiry report and the materials and, therefore, the order of removal of the workman from service did not suffer from any infirmity.

4. In assailing the impugned award, the learned Senior Counsel raised the contentions that there was violation of principles of natural justice in conducting the domestic enquiry inasmuch as there was non-supply of list of witnesses and material documents to the petitioner before the initiation of the enquiry, which fact has been admitted by the management witness in his cross-examination and taken note of by the learned Tribunal, but all the same the Tribunal erroneously held that there is no violation of principles of nature justice. It is also submitted that the proceeding is vitiated as Sri R.K. Mohanty, the disciplinary authority was a witness to the alleged seizure of the stolen metal and, therefore, he himself could not have appointed the Inquiry Officer and acted as the disciplinary authority as he was accentuated by bias. It is also submitted that the order of removal of the petitioner passed by the disciplinary authority is without jurisdiction inasmuch as, as per the delegation of disciplinary powers for employees governed by the standing orders Mr. R.K. Mohanty, Chief Superintendent (Mech.) Blast Furnace could not have acted as the disciplinary authority. It is also submitted that the punishment awarded is disproportionate to the charge.

5. The learned counsel appearing for the management-opposite party no. 2 submitted that there is no violation of principles of natural justice and that the petitioner has not been prejudiced for non-supply of list of witnesses and copies of documents to him. It is also submitted by him that merely because the disciplinary authority was a witness to the detection of theft, his acting as the disciplinary authority would not amount to violation of principles of natural

justice. It is also submitted that while exercising the limited power u/s 33(2)(b) of the I.D. Act, the Industrial Tribunal cannot go into the question of proportionality of the quantum of punishment.

6. The scope of the power and jurisdiction, which the Industrial Tribunal exercises u/s 33(2)(b) of the I.D. Act has been elucidated by the Hon'ble apex Court in the case of Lalla Ram Vs. Management of D.C.M. Chemical Works Ltd. and Another, . It has been held therein that the jurisdiction of the Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimize the employee. Regard being had to the position settled by the Supreme Court that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shocking disproportionate punishment; (iv) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction supplied to the authority before which the main industrial dispute is pending for approval of the action taken by him.

If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval to the order of dismissal.

7. It has been contended by the learned Senior Counsel appearing for the petitioner that there was violation of principles of natural justice for non-supply of list of witnesses and copies of documents to the petitioner before the domestic enquiry was conducted and, therefore, the whole proceeding stands vitiated including the ultimate punishment of removal from service. In this connection attention of this Court was drawn to the standing orders of the Rourkela Steel Plant. Rule-30 (ii) of the Standing Order prescribes the procedure for imposition of major penalty. Clause (a) of the said Rule among others requires that copies of all relevant documents in connection with the enquiry shall be supplied to the employee concerned on request. It transpires from the enquiry report of the domestic enquiry committee that different documents including a seizure list with regard to the seizure of the stolen nonferrous casting metal and the statements of different seizure witnesses said to have been recorded at the time of seizure and the statement of the petitioner-workman himself were relied upon by the

one-man enquiry committee. It transpires from the evidence of the management witness examined as witness no. 1 for the applicant before the Industrial Tribunal that to a court question during the course of cross-examination the said witness admitted that list of witness as well as the copies of documents relied upon by the management were not supplied to the workman-petitioner before the domestic enquiry began and it is also admitted by him that the copy of the enquiry report was supplied to the workman after the final order of removal was passed by the disciplinary authority. This piece of oral testimony was considered by the Presiding Officer, Industrial Tribunal, who has held that on going through all the relevant documents relating to the domestic enquiry he was satisfied that the workman has not been prejudiced in any manner due to non-supply of list of the witnesses and the documents.

It is crystal clear from the enquiry report itself that the workman took the plea and deposed during enquiry that after he was intercepted at the traffic gate by the CISF personnel on duty there, he was taken to the "C" Post and that he was forcibly made to sign on some papers, which were blank. With reference to the seizure list itself (M-Ext-1), the workman explained that alleged stolen metal was not seized from his person in presence of the seizure witnesses and that he was made to sit at "C" Post from 11.00 A.M. till 10.00 P.M. and that even though his superior officer Sri R.K. Mohanty and Sri A.K. Panda came to the said Post at 6.00 A.M. he was not allowed to meet them. It also appears that these two Officers have become witnesses to seizure and their statements along with the seizure list have been accepted by the enquiry committee in finding guilt of the workman. Keeping in view the defence of the workman, he should have been supplied with the copy of the seizure list and the statements of seizure witnesses before conducting the enquiry. The Industrial Tribunal, therefore, was not right in observing that non-supply of the documents to the workman did not prejudice his case. It has been held by the Hon'ble apex Court in the case of Union of India (UOI) and Others Vs. S.K. Kapoor, as follows:

5. It is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge-sheeted employee so that he may have a chance to rebut the same.

Having regard to the facts discussed above, it must be held that the petitioner-workman has been prejudiced and the domestic enquiry against him stood vitiated for non-supply of list of the witnesses and material documents.

8. The second limb of argument with regard to the violation of principles of natural justice is that Sri R.K. Mohanty, Superintendent (Mech.) Blast Furnace, who is the disciplinary authority and passed the order of punishment of removal of the petitioner from service was a witness to the alleged seizure of the stolen article. It is very much apparent from the enquiry report itself that Mr. R.K. Mohanty was himself a witness to the alleged seizure of the stolen article and his statement along with the statement of one Mr. A.K. Panda, Manager, Blast

Furnace was recorded and proved on behalf of the management as M-Ext. 2 and the seizure list itself, which was also signed by Mr. R.K. Mohanty as a witness has also been exhibited as M-Ext. 1 and these two exhibits were relied upon by the enquiry committee to find the workman guilty of the misconduct.

9. It has been held by the apex Court in the case of Mohd. Yunus Khan Vs. State of U.P. and Others, as follows:

23. A Constitution Bench of this Court in State of U.P. v. Mohd. Nooh rejected a submission made on behalf of the State that there was nothing wrong with the Presiding Officer of a Tribunal appearing as a witness and deciding the same case, observing as under: (AIR p. 91, para-7).

7..... The two roles could not obviously be played by one and the same person. ... the act of Shri B.N. Bhalla in having his own testimony recorded in the case indubitably evidences a state of mind which clearly discloses considerably bias against the respondent. If it shocks our notions of judicial propriety and fair play, as indeed it does, it was bound to make a deeper impression on the mind of the respondent as to the unreality and futility of the proceedings conducted in this fashion. We find ourselves in agreement with the High Court that the rules of natural justice were completely discarded and all canons of fair play were grievously violated by Shri B.N. Bhalla continuing to preside over the trial. Decision arrived at by such process and order founded on such decision cannot possibly be regarded as valid or binding.

24. A similar view was taken by this Court in Rattan Lal Sharma v. Dr. Hari Ram (Co-education) Higher Secondary School observing that a person cannot be a witness in the enquiry as well as the enquiry officer.

25. The legal maxim *nemo debet esse judex in propria causa* (no man shall be a judge in his own cause) is required to be observed by all judicial and quasi-judicial authorities as non-observance thereof is treated as a violation of the principles of natural justice. (Vide Secy. to Govt., Transport Deptt. V. Munuswamy Mudaliar, Meenglas Tea Estate v. Workman and Mineral Development Ltd. v. State of Bihar.)

26. This Court in A.U. Kureshi v. High Court of Gujarat placed reliance upon the judgment in Ashok Kumar Yadav v. State of Haryana and held that no person should adjudicate a dispute which he or she has dealt with in any capacity. The failure to observe this principle creates an apprehension of bias on the part of the said person. Therefore, law requires that a person should not decide a case wherein he is interested. The question is not whether the person is actually biased but whether the circumstances are such as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision.

27. The existence of an element of bias renders the entire disciplinary proceedings void. Such a defect cannot be cured at the appellate stage even if

the fairness of the appellate authority is beyond dispute. (Vide *S. Parthasarathi v. State of A.P.* and *Tilak Chand Magatram Obhan v. Kamala Prasad Shukla.*)

28. In *Arjun Chaubey v. Union of India* a Constitution Bench of this Court dealt with an identical case wherein an employee serving in the Northern Railway had been dismissed by the Deputy Chief Commercial Superintendent on a charge of misconduct which concerned himself, after considering by himself the explanation given by the employee against the charge and after thinking that the employee was not fit to be retained in service. It was also considered whether in such a case, the Court should deny the relief to the employee, even if the Court comes to the conclusion that the order of punishment stood vitiated on the ground that the employee had been guilty of habitual acts of indiscipline/misconduct. This Court held that the order of dismissal passed against the employee stood vitiated as it was in utter disregard of the principles of natural justice.

The main thrust of the charges against the employee related to his conduct qua the disciplinary authority itself, therefore, it was not open to the disciplinary authority to sit in judgment over the explanation furnished by the employee and decide against the delinquent. No person could not be a judge in his own cause and no witness could certify that his own testimony was true. Anyone who had a personal stake in an enquiry must have kept himself aloof from the enquiry. The Court further held that in such a case it could not be considered that the employee did not deserve any relief from the Court since he was habitually guilty of acts subversive of discipline. The illegality from which the order of dismissal passed by the authority concerned suffered was of a character so grave and fundamental that the alleged habitual misbehaviour of the delinquent employee could not cure or condone it.

29. Thus, the legal position emerges that if a person appears as a witness in disciplinary proceedings, he cannot be an enquiry officer nor can he pass the order of punishment as a disciplinary authority. This rule has been held to be sacred. An apprehension of bias operates as a disqualification for a person to act as adjudicator. No person can be a judge in his own cause and no witness can certify that his own testimony is true. Anyone who has personal interest in the disciplinary proceedings must keep himself away from such proceedings. The violation of the principles of natural justice renders the order null and void.

10. Indisputably, Mr. R.K. Mohanty, the seizure witness, whose statement and the seizure list very much weighed with the enquiry committee to reach the conclusion about guilt of the workman, acted as the disciplinary authority and also himself appointed the one-man enquiry committee to conduct the domestic enquiry against the workman and also ultimately he himself after receipt of the enquiry report passed the order of punishment. In view of the position of law as laid down by the apex Court, it must be held that since Mr. R.K. Mohanty became a witness to the seizure, he should not have acted as the disciplinary authority and passed the punishment order. Therefore, the appointment of the one-man enquiry committee, the enquiry itself and the order of punishment stand vitiated

and became void for violation of principles of natural justice.

11. With regard to the contention that Sri R.K. Mohanty, Chief Superintendent (Mech.) Blast Furnace had no competence to act as disciplinary authority of the petitioner, learned counsel for the petitioner has invited the attention of this Court to Annexure-11, i.e., the Personnel Policy No. 283 regarding delegation of disciplinary powers for employees covered under standing orders of Rourkela Steel Plant dated 08.09.1986. Under the circular the Managing Director of the employer-company has delegated different disciplinary powers to different categories of executives in respect of non-executive employees. As per the said circular Superintendents are delegated with the disciplinary powers for imposing major punishment other than removal or dismissal from service. They have also been empowered to act as appellate authority for minor punishment. The circular further indicates specifically that the powers for removal/dismissal shall continue to be exercised by the appointing authority. As per the appointment order of the petitioner filed as Annexure-2, the Deputy Manager, Personnel (Recruitment) has signed the appointment letter as the appointing authority on behalf of the employer-company.

As has been held by the Hon''ble apex Court in the case of Steel Authority of India, Succesor of Bokaro Steel Limited Vs. Presiding Officers, Labour Court at Bokaro Steel City, Dhanbad, and Another, a person not authorized under the Rules/Standing Orders to act as the disciplinary authority has no competence to find the charge-sheeted employee guilty and impose punishment.

In reply to the contention that Mr. R.K. Mohanty, Chief Superintendent (Mech.) Blast Furnace had no competence or authority to act as disciplinary authority of the petitioner, the learned counsel appearing for the employer-opposite party no. 2 submitted, with reference to paragraph-16 of the counter affidavit, that the plea should be ignored since it was never raised at any stage, not even before the Industrial Tribunal and further that the Chief Superintendent is the appointing authority of the petitioner. But no document showing that the Superintendent is the appointing authority has been filed. On the contrary, the appointment order of the petitioner reveals that the Dy. Manager, Personnel is the appointing authority. The contention of the learned counsel for the opposite party that the plea was not raised before the Industrial Tribunal and as such should not be allowed to be raised in this writ application, is unacceptable in view of the law laid down by Hon''ble apex Court in the case of Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, wherein it has been held as follows:

12..... ... Generally, a point not raised before the Tribunal or administrative authorities may not be allowed to be raised for the first time in the writ proceeding, more so when the interference in the writ jurisdiction which is equitable and discretionary is not of course or must as indicated by this Court in A.M. Allison Vs. B.L. Sen, particularly when the plea sought to be raised for the first time in a writ proceeding requires investigation of facts. But if the plea

though not specifically raised before the subordinate Tribunals or the administrative and quasi-judicial bodies is raised before the High Court in the writ proceeding for the first time and the plea goes to the root of the question and is based on admitted and uncontroverted facts and does not require any further investigation into a question of fact, the High Court is not only justified in entertaining the plea but in the anxiety to do justice which is the paramount consideration of the Court, it is only desirable that a litigant should not be shut out from raising such plea which goes to the root of the lis involved. The aforesaid view has been taken by this Court in a number of decisions and a reference may be made to the decisions in A.S.T. Arunachalam Pillai Vs. Southern Roadways (Private) Ltd., ; The Cantonment Board, Ambala Vs. Pyarelal,

Since the question of competence of Mr. R.K. Mohanty, Chief Superintendent (Mech.) Blast Furnace, who passed the order of punishment of removal as disciplinary authority of the petitioner goes to the very root of the matter, the plea is allowed to be entertained and in view of the discussion made above, it must be held that Mr. R.K. Mohanty, Chief Superintendent (Mech.) Blast Furnace had no competence to act as disciplinary authority of the petitioner and pass the punishment order.

In the light of the foregoing discussions, the writ petition is allowed. The impugned order dated 06.12.1995 (Annexure-10) passed by the Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar in I.D. Misc. Case No. 28 of 1992 and also the punishment order passed by the disciplinary authority under Annexure-9 are quashed. It is directed that the petitioner be deemed to be continuing in service. He shall be reinstated forthwith, but in the facts and circumstances of the case, with 50% of back wages from the date of removal from service till the date of reinstatement. No costs.