

(1957) 06 CAL CK 0023
In the Calcutta High Court
Case No : Civil Revision No. 33 of 1957

G.C. Chatterjee and Others

APPELLANT

Vs

Remington Rand (India) Ltd. and Another

RESPONDENT

Date of Decision : 26-06-1957

Acts Referred:

Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 7

Citation : AIR 1958 Cal 31

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : S.K. Acharjya, A.K. Dutt and Nagendra Mohan Saha, for the Appellant; Niren De and Sasanka Bhusan Ghosh for Opposite Party No. 1, for the Respondent

Judgement

Sinha, J.—There are three petitioners in this application. They and 17 other workman were employed in the service department of respondent No. 1. On or about the 1st April, 1955 Mr. A. J. Maynard, Personal Manager of the said company, served notices upon the 20 workmen to the effect that it had been evident for sometime that the company's service department at Mangoe Lane was over-staffed and the company had decided to relieve the position by offering these workmen, who were found surplus, alternative employment in its factory. It was indicated that the workmen will be transferred to the factory with effect from the 4th April, 1955 and thereafter the Rules and Regulations as applicable to the factory staff would be applicable, and salaries will be adjusted accordingly. It was however stated that the gross salary of the staff concerned will remain the same. On the 4th April, 1956 the workmen affected intimated to the management that the work in the factory was quite different from that in the Service Department, and there was no case for retrenchment. In fact it was pointed out that there were more junior employees and in case of pure retrenchment, the 20 workmen concerned could not be singled out for retrenchment. In short, the workmen objected to the transfer, which would result in an alternation of their terms of service. Thereafter a certain incident occurred

on the 5th April, including an alleged assault on Sri Onkar Nath Chadda, the Manager of the Service Department. On the 6th April, 1955 these 20 workmen were discharged from service for acts of misconduct, namely, wilful disobedience of the company's orders, irregular strike, intimidation of the company's loyal workers and mob assault on the Manager. Thereupon an industrial dispute arose between the workmen and the company. By Government order dated 22nd April, 1955 read with two corrigenda dated the 9th May, 1955 and 24th August, 1955 respectively, the disputes between the company and the workmen was referred to the Fifth Industrial Tribunal, West Bengal. The order of reference related to the following disputes :

- "(a) Was the order of transfer of the twenty employees mentioned in the order of reference justifiable and legal?
- (b) Was the conduct of the above employees justifiable and legal?
- (c) Was the dismissal of the twenty employees justifiable?
- (d) What relief are they entitled to?

2. Before the Industrial Tribunal it was, inter alia, argued that the company had standing orders and that the order of transfer was justified by the provisions thereof, particularly, Clause 12-A (3). A copy of these standing orders is annexed to the affidavit-in-opposition filed on behalf of the company, and marked as annexure "A". The heading of the standing orders runs as follows :

"Standing orders for clerical service and supervisory staff employed by Remington Rand of India Limited at its offices and Service Departments throughout India."

Under Clause 2 (f), "employee" means all employees working in the Supervisory and Clerical Staff, Foremen, Mechanics and Subordinate Staff, whose name appears on the Salary statement of the company. Clause 12 relates to acts of misconduct for which the punishment is summary dismissal. One of such acts is wilful insubordination or the instigation thereof or disobedience or the instigation thereof whether alone or in combination with another of any lawful or reasonable order of a superior or person invested with authority by the Management or Manager. Clause 23 of the Standing Orders deals with transfers. Clause 23 (2) lays down that an employee will not be transferred permanently from one Division to another. Sub-clause (3) of Clause 23 lays down that an employee may be transferred permanently from one Establishment to another or from one Department to another within a Division. It was urged before the Tribunal that the action taken by the company was legal and in accordance with the Standing Orders; the Tribunal inter alia came to the conclusion that the Standing Orders could not be invoked as they were meant for clerical service and supervisory staff at the offices of the Service Department and did not extend to Mechanics. This of course is entirely incorrect. The Tribunal misread the heading of the Standing Orders and did not study the contents thereof, otherwise it would have been apparent that Mechanics were expressly Included within the scope of the

Standing Orders.

3. The Tribunal also considered the matter upon the alternative assumption that the Standing Orders extended to Mechanics, and then came to the conclusion that Sub-clause (3) of Clause 12 appeared to be out of place. What he really meant was that on the facts there could be no wilful insubordination if the order itself was not lawful and reasonable. The Tribunal decided in favour of the workmen on the Issues Nos. (a), (b) and (c). With regard to the relief, the Tribunal considered the incident relating to the alleged mob-assault on Sri Chadda, the Manager. In an earlier part of his award the Tribunal considered the evidence and came to the conclusion that there was no sufficient evidence to hold as to who actually was responsible for this assault. In the concluding portion of his award, the Tribunal however held that although there was no satisfactory evidence as to who were responsible for committing the assault, still it was clear to the Tribunal that the Manager was roughly handled and as these employees were there, they could not totally avoid the responsibility of the said incident. I must in passing mention that the Tribunal followed a curious procedure in coming to this conclusion. In the earlier part of the Award it had stated that the three occupants of the car were present in Court but did not come to the box. In the concluding portion it is stated that "from the evidence of the other three occupants of the car, whose ex parte evidence is before me, and also from the evidence of Sri Chaddaha I am satisfied that he was roughly handled. To malhandle the Manager before the office is certainly subversive of discipline. So I cannot totally exonerate them of all the blame". In the result, the Tribunal ordered that all these 20 workmen would be reinstated but as a result of their complicity in the mob-assault incident, they would get half basic wages and half dearness allowance for the period of forced unemployment, with effect from the date of the order of transfer, upto the date they were put back in employment, save and except three of the employees who were to get full wages and dearness allowance. This Award was made on the 18th February, 1950 and was published in the Calcutta Gazette Extraordinary on the 15th March, 1956. From this Award the company preferred an appeal being Appeal No. Cal. 20 of 1956. In the Memorandum of appeal, a point was taken that there were substantial questions of law, inter alia, because the Tribunal failed to appreciate the correct meaning and effect of the Standing Orders and misconstrued the same. With regard to the Standing Orders the Appellate Tribunal found that the original Tribunal was wrong in holding that the Standing Orders did not govern the conditions of service of the workmen concerned. As I have already stated above, the findings of the Tribunal with regard to the Standing Orders are erroneous and the finding of the appellate Tribunal upon this point is correct. The appellate Tribunal held that under the Standing Orders, which did apply in the case of the workmen concerned, it was open to the company to order transfer of the employee from one Establishment to another or from one Department to another within a Division, provided the conditions of service were not altered. The appellate Tribunal further held that on the facts and circumstances the conditions of

service were altered to the prejudice of the workmen and as such the transfer was not justified. In the result, the appellate Tribunal agreed with the findings of the original Tribunal on Issues Nos. (a), (b) and (c). With regard to the relief given, the appellate Tribunal agreed with the findings of the original Tribunal in respect of 17 workmen but with regard to the remaining three who are the petitioners before me, the appellate Tribunal differed with the conclusion of the original Tribunal as to the complicity of these three persons in the alleged incident of assault in the afternoon of 5th April, 1955 and held that the Tribunal was not right in ordering reinstatement of these three persons. Therefore the Award, so far as these three persons were concerned, which had allowed reinstatement and compensation, was set aside, while the Award, so far as the others were concerned, was affirmed. It is against this finding of the appellate Tribunal that this Rule is directed.

4. Mr. Acharyya on behalf of the petitioners made the following points. Firstly he states that u/s 7 of the Industrial Disputes (Appellate Tribunal) Act, an appeal lay only if there was a substantial question of law. He argued that in this case the Appellate Tribunal having agreed with the Award in respect of the Issues of facts, namely, Issues Nos. (a), (b) and (c), or at least on the issues of facts upon which the findings are based, there exists no question of law substantial or otherwise. He referred to my own decision *Bank of India Ltd. Vs. Chairman and Members of the Labour Appellate Tribunal of India and Others*, , and the judgment in appeal against that decision reported in *Pankaj Kumar Ganguly and Others Vs. Bank of India and Others*, . In the *Bank of India* case (A), (Supra), I attempted to lay down the principles which govern the exercise of discretion by an industrial arbitration in the matter of restitution of a dismissed employee, and the jurisdiction of the Appellate Tribunal to interfere with the same. I held that unless the exercise of discretion was arbitrary or capricious, the Appellate Tribunal could not interfere, and there was no question of law involved. In appeal, the learned Chief Justice decided the case on a point which was not at all argued before me, namely, as to whether an application for a Writ of Certiorari lay in such a case. It was held that inasmuch as the Appellate Tribunal had the power to decide whether it had jurisdiction or not and had decided in its favour, a Writ in the nature of Certiorari did not lie.

5. Mr. Acharyya argues that in this particular case the Appellate Tribunal never held that it had jurisdiction or that there was a substantial point of law, although this point was expressly taken in the Memorandum of appeal. It is therefore urged that in this case my decision in *Bank of India* case (A), (supra), applied in full force and therefore the order should be quashed. He next argued that having held in favour of the workmen on Issues Nos. (a), (b) and (c) it is not possible for the Appellate Tribunal to come to a contrary conclusion on Issue No. (d). Lastly it is argued that in any event it is a well-known principle of law that if the original Tribunal which had heard witnesses and seen their demeanour came to a particular conclusion on a question of fact, it was ordinarily not open to the Appellate Tribunal to interfere with or upset the decision.

6. In my opinion, it is quite unnecessary to go into the question as to whether the Bank of India case applies here or whether a Writ of Certiorari lies. In my opinion, the provisions of Section 7 of the Industrial Disputes (Appellate Tribunal) Act have been satisfied. That section requires that for an appeal to lie against an Award, the appeal should involve "any substantial question of law", in other words, it is not as if there should be a substantial question of law with regard to every issue. Mr. De has conceded that if the Award was such that the several issues were absolutely unconnected and separate, it might have been argued that there should be a substantial question of law in respect of each separate issue, so that an appeal may lie with regard to that issue. Here however the issues are connected and therefore as long as there was "any substantial question of law" involved, an appeal would lie and the jurisdiction of the Appellate Tribunal could not be questioned. Question is therefore as to whether in this case there was "any" substantial question of law. Mr. De has argued that the appeal involved the question of interpretation of the Standing Orders and according to him this has been held to be a substantial question of law. As a matter of fact the Labour Appellate Tribunal has itself in several decisions held that the construction or interpretation of the Standing Orders constitutes a substantial question of law. See *Rahat Hossain v. Lipton Ltd.*, Calcutta 1954 Lab AC 90 (Q) and *Pankoj Kumar Ganguly v. Bank of India Ltd.*, Calcutta 1953 Lab A C 578 (D). In my opinion, the argument of Mr. De must be upheld. So far as the company was concerned, it put forward a distinct plea that the transfers and dismissals were justified under the Standing Orders which apply to the workmen concerned. The Original Tribunal held that these Standing Orders did not apply to these workmen, in which the Tribunal made a manifest error, an error which has been corrected by the Appellate Tribunal. On the larger question as to the effect of the provision's thereof, in the background of the facts and circumstances of the present case, the two Tribunals agreed on the point that there being a change in the conditions of service, the Standing Orders were not effective. I do not think that a more serious point with regard to the Standing Orders could be raised than the point as to whether the Standing Orders at all applied to the workmen concerned. This point is of some importance and had to be considered in the appeal and was in fact considered and decided. I agree that the interpretation of Standing Orders is a substantial point of law. In view of this it is impossible to say that the appeal did not involve any substantial question of law. Mr. Acharyya argued that if there was a substantial question of law, it was the duty of the Appellate Tribunal to state that there was a substantial question of law and that it was proceeding to decide it. In my view, this course was not essential. The Appellate Tribunal in its judgment referred to the point raised and stated that the interpretation and applicability of the Standing Orders had been raised, and then proceeded to decide it. I think this is enough, and it must be implied that the Appellate Tribunal considered that there was a substantial question of law involved and this point of law, it proceeded to decide. With regard to the comment that having decided to uphold the issues (a), (b) and (c), it was not possible to differ on the reliefs to be granted under (d). I am unable to

appreciate this argument, whether the Appellate Tribunal had come to the proper conclusion with regard to the charges against the three persons concerned, I need not consider. But having considered the same, I do not think that there was any inconsistency in altering the relief that was to be granted to the workmen.

7. For the reasons aforesaid, I am of the opinion that no grounds have been made out for my interference in this matter and this application must be dismissed. The Rule is discharged. Interim order, if any, is vacated. There will be no order as to costs.