

(2000) 11 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 33984 of 1998

Govindaraju

APPELLANT

Vs

The Divisional Controller, Karnataka State Road Transport
Corporation and Another

RESPONDENT

Date of Decision : 02-11-2000

Acts Referred:

Citation : (2000) 4 KCCR 2876

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Sudheendranath, for N. Shankaranarayana Bhat, for the Appellant;
V. Mukunda Menon, for Respondent 1, for the Respondent

Judgement

C

M.F. Saldanha, J.—The Petitioner who was a driver with the Karnataka State Road Transport Corporation, hereinafter referred to as the Corporation, has presented this challenge to an order passed by the Labour Court at Mysore dated 23rd July, 1998 whereby the Court has upheld an order of dismissal passed against the Petitioner. The Corporation had charge sheeted the Petitioner under three heads which are reproduced below:

i) That, on 29.5.1991 at about 19.45 hours, you had driven vehicle No. MEF 7866 from the City depot premises unauthorisedly without specific authority of the City Depot authorities.

ii) That, as per procedure, you are required to make entries in the security gate for having removed the vehicle outside the depot premises for schedule duties. But you had driven the vehicle recklessly without gate entries despite the security guard Sri Venkatesh had signalled you to stop the vehicle at the security gate. Thus you have violated the procedure of gate entries with an ulterior motive.

iii) That, on taking the vehicle outside the depot premises, you had caused grievous injuries to Sri Doralingam, Driver, City Depot, Sri Nagendra Swamy, Conductor, City Depot and Sri Sadashiva, Conductor, City Depot who succumbed to the injury near the City Depot gate and thereafter abandoned the vehicle and ran away from the scene with an ill motive to hush up the ghastly incident.

An enquiry was held and at the conclusion of the disciplinary proceedings, the corporation passed an order of dismissal against the Petitioner, the principal reason being that he had in a fit of temper taken out one of the Corporation's buses from the depot and that he had driven the bus out of the depot in violation of the relevant requirements relating to the making of entries and the like and that he was also driving so rashly and negligently that it resulted in the death of a conductor and injuries to two other employees of the Corporation. The Petitioner was held guilty in so far as the charges were proved and the order of dismissal followed. This order was challenged before the Labour Court and it is relevant to point out that on the first issue of whether the enquiry held was valid or not by order dated 6.5.1997 the learned Presiding Officer held that the enquiry was vitiated. It is of some relevance to point out that the solitary ground on which the conclusion was arrived at was that the imputations of charge had not been served on the employee. I need to point out at this stage that the corporation's regulations had prescribed an elaborate procedure in consonance with the rules of natural justice with regard to the conduct of disciplinary proceedings and Regulation 23(3) in terms specifically prescribes that the imputations of misconduct along with the list of witnesses etc. must be served on the employee. Admittedly, this had not been done and the Labour Court took the view that the enquiry was vitiated on this ground.

2. Thereafter, the proceeding continued and both the parties led evidence before the Labour Court. The Court evaluated the evidence that was produced before it and recorded the finding that the charges were serious, that the charges were held to have been established and that consequently, the order of dismissal was fully justified. It is against this finding that the present petition has been presented.

3. At the hearing of the petition, the Petitioner's learned Counsel Sri Sudheendranath submitted that his principal challenge to the validity of the two orders is based on a flagrant breach of the principles of natural justice in so far as according to him the non-service of the imputations of charge is a grave procedural breach which results in a situation whereby delinquent employee does not have notice or complete details or what precisely are the allegations, the details thereof and the material which the management proposes to use in order to substantiate those charges. It is his submission that apart from the general principles of the rules of natural justice which strictly apply to the conduct of disciplinary proceedings that where the Corporation's regulations make it explicit that such a procedure has to follow, that if there is a breach thereof, that the enquiry gets vitiated and it is his submission that if the enquiry was vitiated then

it was incompetent for the Court irrespective of the material produced before it, to record an order of dismissal. The argument is a slightly involved one but to my mind very intelligently presented because what the learned Counsel has submitted on a point of law is that he is not raising a technical plea but an issue of substantial importance to the conduct of such proceedings wherein a serious breach of procedure takes place and even at the second stage where there was effectively another enquiry before the Labour Court that the Corporation still did not comply with the requirement of Regulation 23(3). I refer to this aspect of the argument because I shall presently deal with the reply on behalf of the Corporation but what the learned Counsel has submitted is that the order of punishment is required under the scheme of the law to emanate in the disciplinary proceedings and that in a given case after the Labour Court has reviewed or reinvestigated the case that it would still be open to that Court to confirm that finding may be for different reasons or on the basis of superior reasoning or because of better evidence which the parties may have produced. The converse argument advanced by him is that if the enquiry is held to be vitiated on a serious ground of procedural non-compliance and if this lacuna is not rectified then it is his submission that the Labour Court would not be justified in putting its stamp of approval or imprimatur to the adverse order which was recorded in a proceeding that is held to be legally defective. Apparently what the learned Counsel is alluding to submit is that if the body and substratum of the enquiry has gone that it is not open to the Labour Court to still uphold the remnants or the head of that finding on the basis of new material that has come out in the second stage of the proceedings. It is principally on this ground that he has attacked the validity of the order and I have not heard the two learned Counsel on the merits because in my considered view, since this ground will have to be upheld it would not be fair for this Court to comment with regard to the merits of the case since it may still be open to the Corporation to hold a fresh enquiry.

4. Mr. Menon, learned Counsel for the Corporation has vehemently submitted that it is almost routine for the Labour Court to record the preliminary finding that the enquiry was not fair or that the enquiry was bad and to thereafter rehear the case on merits and it is his submission that in a case such as the present one where both the parties have led the entirety of the evidence that it is the material that was before the Labour Court that is required to be looked into. Alluding to the decision of the Supreme Court in the Firestone case reported in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, , the learned Counsel submitted that invariably pieces of evidence etc. are incomplete or get left out and that in the interest of justice the Supreme Court has held that it is permissible when the proceeding is reagitated before a judicial authority for fresh or additional evidence to be led in the interest of a fair decision. His basic submission was two fold, the first being that where the charges have been served on the employee that it is as clear as day light to him as to what precisely are the allegations or imputations and

secondly that when the enquiry is held that he is more than aware of what is the oral or documentary evidence which the Corporation is marshaling against him to prove the charges. Mr. Menon submitted that while it is true that the imputation of allegations or charges is required to be served on the employee, that the non-service may not cause any prejudice to an employee in a given case and he was at pains to demonstrate that if the lapse is only technical or procedural which has not resulted in substantial prejudice or injustice that this can be treated as a curable infirmity. Essentially, he submitted that the corporation has produced evidence before the Labour Court as also before the Enquiry Officer which has proved the charges to the hilt on facts and he submitted that once this has been done, that since the Petitioner has virtually no defence on merits, that he is seeking to take shelter on technicalities. Effectively, what was contended was that in a case of the present type where both the parties have led complete evidence before the Labour Court that the Petitioner was not in any way disadvantaged and that consequently, the ground of procedural non-compliance is not sufficient to vitiate the finding of the Labour Court.

5. The Petitioner's learned Counsel draw my attention to a Division Bench judgment of this Court in the case of Karnataka State Road Transport Corporation v. K. Srinivas Writ Appeal No. 1205 of 1981 decided on 13.8.1982 wherein the Division Bench had inter alia confirmed an order of the Single Judge of this Court holding that the non-service of the statement of imputations does vitiate the enquiry. On that occasion, the party had approached the High Court directly and this Court set aside the punishment order on this ground. In the present instance, the first aspect that needs to be gone into is as to whether the Corporation can at all be condoned or justified in a situation where it commits a breach of its own regulations relating to disciplinary proceedings. To my mind, the answer is an affirmative no in so far as these regulations which embody the principles of natural justice are required to be strictly complied with and I do not share the view that if they are breached or ignored that the Corporation can be allowed to get away with it. In a given situation, it may be possible to undertake damage control measures or remedy or rectify the situation as for instance could have been done in this case even after the preliminary order was passed by the Labour Court but if this is not done, then to my mind, the enquiry would be totally and completely vitiated.

6. There is a deeper reason for this in so far as prejudice that is pleaded does not have to be amplified and demonstrated in any elaborate terms; where an employee is faced with a charge sheet which could result in his dismissal from service as in the present case, or other serious forms of punishment, this charge sheet is analogous to a charge where an accused is confronted in a criminal trial. By way of analogy, I need to amplify that it is well settled law in criminal jurisprudence that where an accused is charged, the charge sheet must set out not only the details of the charge but must be accompanied by sufficient material from which the accused had specific notice as to what exactly is the evidence that is going to be led against him in the trial to establish the charge. The

parallel position obtains in disciplinary proceedings where an employee is given only the heads of charge but in order to plan his defence, to my mind, it is very necessary that the statement of imputations and other materials prescribed in the regulations must be made available. The defence in any sort of proceeding is not something that takes shape as the proceeding goes on but the person who is at the receiving end or the person defending, be it a lay person or a lawyer, must necessarily know as to what the overall case is and not the brief skeleton as emerges from the charge, in order to be able to plan the strategy. For example, the evidence is required to be tested through cross-examination and it is necessary for the person conducting the defence to know as to who are the other witnesses and what is the nature of the evidence that they propose to tender. To my mind therefore, the defence taken up by learned Counsel Mr. Menon when he submitted that the Petitioner must demonstrate that real prejudice is untenable for the simple reason that where the Corporation abdicates its own duties, breaches its regulations and disregards the rules of natural justice, it is not for the other side to demonstrate as to what is the prejudice, because prejudice itself is writ large. Secondly, the learned Counsel Mr. Menon on behalf of the Corporation submitted that if the Petitioner felt he was prejudiced either during the enquiry or before the Labour Court that it was incumbent upon him to call upon the Corporation to produce the material that had not been given to him or that this should be produced. I am afraid, that this is an over simplification of the situation. It is the Corporation which has decided to prosecute and it is for the Corporation to do its duty on its own and totally unaided by the employee. To my mind, if the Corporation's law officer decided to disregard the regulations and to proceed in the wrong direction, to bypass the law, it is not for employee to give these people legal advice as to what their duty is. In the circumstances, this argument is of no avail.

7. On the facts of the present case, the preliminary challenge presented to the order passed by the Labour Court which in terms confirms the order of the disciplinary authority will have to succeed. To my mind, having held that the enquiry was vitiated even if the Labour Court was satisfied that there was material to prove the charges, it was not competent for the Labour Court to have confirmed the order of punishment in an enquiry that was held to be vitiated and this again, is a ground on which the order would have to fail. At the very highest, if the Court was satisfied that on facts there was adequate material against the employee, the Court could have left the option open to the Corporation to rectify the error and hold a *denovo* enquiry if the Corporation wanted to do so. Short of that, to have confirmed the order passed in a still-born enquiry was downright wrong in law. It would be highly desirable for the Corporation to take cognizance of the observations of this Court and to either ensure that its officers who conduct the enquiries draft proper charges and conduct the enquiries in consonance with the provisions of law as this Court has found in not a few instances that errors of this type are being committed. The consequences are serious to the Corporation because if the order in question is set aside by the

Court, the necessary consequence is one of reinstatement of the employee.

8. Having carefully applied my mind to the facts of the present case, I am of the view that the order of the Labour Court which in terms confirms the order of the Corporation will have to be quashed and set aside. There are several options open to this Court. One of them is to direct that a fresh enquiry in consonance with the provisions of law should be held but in my considered view, that would not be the right course of action. The reason for it is because the enquiry has been vitiated on a ground of procedural non-compliance which is not a mere technicality but constitutes breach of the provisions of the rules of natural justice. This procedure that the law prescribes is very elementary and even if the Corporation had erred on the first occasion it had ample opportunity to take corrective action when the Court recorded the preliminary finding that the enquiry is vitiated. Not having done so and having persisted with the wrong procedures to my mind, it would be unfair to visit the consequences on the employee. Having regard to this position as a necessary consequence the only order which this Court is required to pass is that since the impugned orders are quashed that the Corporation will have to reinstate the employee with immediate effect.

9. Normally, when an order of reinstatement is passed the question of back wages has also got to be gone into. On the state of the record, since the proceedings have been quashed on a ground of procedural non-compliance, the option is open to the Corporation to hold a fresh enquiry if it so desires and if the Corporation exercises that option which they have to do within a period of thirty days from today, if the management does not take any decision or if the decision is that no fresh enquiry will be held then the Petitioner would be entitled to reinstatement with 30% backwages.

10. One of the points that was raised by the learned Advocate was that there has been a considerable lapse of time and that consequently, evidence at this stage may or may not be available to the parties. On the question whether a fresh enquiry should be held or not, if the prima-facie decision is to hold such an enquiry, then the management will inform the Petitioner in writing and hear him on the question of whether a fresh enquiry should be held or not and take a decision thereon. If ultimately a fresh enquiry is required to be held or is held then the question of backwages upto the date of reinstatement will be decided in that enquiry and undoubtedly, the forum before which that proceeding comes up will take into account the fact that the earlier proceedings were quashed by this Court on 2.11.2000.

11. Several issues of importance have been thrown up in this case and it has become incumbent for this Court to lay down certain guidelines with regard to this class of proceedings. In the first instance, this Court finds it disturbing to witness the manner in which the disciplinary proceedings are conducted by the Corporation which leaves much to be desired. The rules and principles governing these proceedings are well defined and very simple and despite that, in case

after case procedural lapses, both major and minor are apparent. If this is due to the negligence of the Corporation's officers, then they will have to be pulled up for it and in my considered view they will have to be held accountable. If there is something deeper that is happening in so far as if there is collusion, then the Corporation will have to take stringent measures to eliminate it. This Court would like to see a true level of professionalism displayed in the framing of the charges and in the adherence of procedure in all departmental enquiries. Apart from the fact that fairness to the employee and to the Corporation requires this, there is another aspect of importance which the corporation will take into account. Where enquiries fail due only to procedural non-compliance or because of their having been unprofessionally conducted, the injustice is compounded because an otherwise guilty employee would be getting the benefit and is handsomely rewarded for the misconduct through an order of backwages and this massive amount of money amounting to about a crore of rupees every year is an avoidable drain on a public Corporation. It would be necessary to sound a note of caution as far as the trial Courts are concerned because in all cases where reinstatements are ordered or where an order of a disciplinary authority is interfered with, the trial Court must be very judicious while ordering the payment of backwages unless such an order is merited, it should not be indiscriminately or mechanically passed for the full or a proportion of the amount. The Courts must take cognizance of the fact that where an employee has remained unauthorisedly absent or has warranted an order of suspension because of grave misconduct that the Corporation is paying a second set of salary cum benefits to another employee who is required to discharge these duties during that long period of time while the delinquent employee is still getting a fair proportion of the payment without doing any work.

12. With regard to the time factor, this Court considers the length of time taken to hold and complete disciplinary proceedings as being totally unjustified. There should be no difficulty for the Corporation to serve the charge sheet and imputation of charges on the employee within one month of the alleged misconduct and even in the most complicated of cases, the enquiry should be completed preferably within a period of six months thereafter. By dragging on these proceedings, the Corporation is damaging the quality of the evidence but more importantly, delay is a double edged sword in so far as it is equally important for the employee to be cleared of the charges if innocent. The Supreme Court has in Sharif's case held that the guilty must be punished when facts are fresh in the public mind and this is the principle which applies to these proceedings.

13. The present state of affairs is extremely distressing in so far as the conduct of these enquiries by the Corporation is extremely lax. There is absolutely no indication of how many years the enquiry will drag on for and the inept manner in which charges are framed and the enquiries are conducted leaves much to be desired; which is a charitable understatement. Also, in a situation of this type there is the serious danger of the confidence growing that serious acts of

misconduct could go unpunished. The present case is a classic instance where the charge sheet indicates that pursuant to a quarrel with his colleagues, the Petitioner is alleged to have rushed into the depot, jumped into a bus and driven it out at a high speed aiming straight at these three employees, one of whom was killed and two seriously injured. Such an incident requires expert handling which requires that it be dealt with efficiently, effectively and speedily, none of which has happened. This Court desires that the Corporation will take serious note of these observations.

14. The writ petition succeeds to this extent. In the circumstances of the case, there shall be no order as to costs.

15. The office is directed to furnish a copy of this order to the learned Advocates forthwith. The period of thirty days mentioned shall run from the date on which the order is received by the learned Advocates provided they are diligent about collecting the copy as soon as it is ready and provided it is communicated to the Corporation without any undue delay.