
(2008) 01 GUJ CK 0019

In the Gujarat High Court

Case No : special civil application No. 1588 of 2004

Gujarat State Road Transport Corporation

APPELLANT

Vs

Fakir Mohammad J. Sama

RESPONDENT

Date of Decision : 09-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2008) 01 GUJ CK 0019

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Ashish M. Dagli, for the Appellant; I.S. Supehia, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

H.K. Rathod, J.—Heard learned advocate Mr. Ashish M. Dagli appearing on behalf of petitioner "Corporation and learned advocate Mr. I.S. Supehia appearing on behalf respondent" workman.

2. In the present petition, petitioner "Corporation has challenged the order passed by Industrial Tribunal in Approval Application No. 337 of 2003 dated 17th November 2003.

3. Learned advocate Mr. Dagli submitted that when workman was working as conductor in Hajipur to Bhuj Mela express bus, two passengers were found without tickets. The conductor has not issued tickets to the passengers, but, issued tickets for to those passengers for luggage and duplicate memo was found from the conductor. He submitted that competent authority has imposed punishment of stoppage of one increment with cumulative effect by order dated 20th October 2001. He submitted that this punishment is not adequate, therefore, reviewing authority has reviewed punishment and enhanced the same and passed dismissal order against respondent workman, against which, approval application was filed by Corporation. He also submitted that reviewing

authority has power to enhance the punishment. That view has been taken by the Division Bench of this Court in Reference No. 1 of 2007, therefore, Tribunal has rejected the approval application only on the ground, therefore, award is required to be set aside.

4. Learned advocate Mr. Supehia submitted that punishment which was imposed by competent authority is enhanced by reviewing authority, but, reviewing authority has not given any finding to the workman that how the competent authority is wrong in passing the aforesaid punishment order. He also submitted that it is the duty of reviewing authority to pass reasoned order while reviewing the punishment, but, no detail reasons have been given while enhancing the punishment of the respondent workman. He further submitted that review show cause notice issued by reviewing authority only on the ground that why the past record should not have to be taken into account and why the punishment is not enhanced by calling explanation from the workman. He further submitted that detailed explanation was given by workman on 27th February 2002 pointing out that appeal is pending before the same authority against the punishment imposed by competent authority and competent authority has also imposed punishment illegally, because, no finding is given by competent authority. Whatever the charge levied against the workman except one charge of misbehaviour, the respondent workman was exonerated by competent authority from all rest of the charges levied against him. Therefore, looking to the gravity of misconduct / misbehaviour, punishment of stoppage of one increment imposed by competent authority is just and proper. He further submitted that reporter was examined before the competent authority who has admitted certain facts in favour of workman which has also not taken into account by reviewing authority. He also submitted that during the pendency of appeal, the decision of review is also illegal. The respondent workman rendered 31 years of service with Corporation and charge in respect to which respondent workman was exonerated, the reviewing authority has dismissed the workman in respect to all the charges levied against him including the charge, for which, he was exonerated by competent authority, even though, no disagreement finding was given by competent authority to the respondent workman. Therefore, according to him, reviewing authority has illegally exercised the powers and procedure which has been followed is contrary to the principle of natural justice.

5. I have considered the submissions made by both the learned advocates appearing on behalf of respective parties and I have also perused the order passed by Industrial Tribunal, Ahmedabad. Considering the entire facts and circumstances of the case as well as contentions raised by respective parties, the only question is that once the competent authority has exonerated the respondent workman in respect to all the charges levied against him by Corporation except the charge of misbehaviour, then, reviewing authority has imposed punishment of dismissal in respect to considering all the charges found to be proved without giving disagreement finding to the respondent workman, which, itself, is illegally. The Tribunal has rightly appreciated the entire evidence

on record and legality and validity was not challenged by workman, but, finding was challenged by workman before the Tribunal. The Tribunal, no doubt, has come to conclusion that reviewing authority has no power to enhance the punishment, but, in decision, the Tribunal has also considered the merits of the matter that procedure, which has been followed by reviewing authority, is not in accordance with the principles of natural justice.

6. The Tribunal has also considered that once the earlier punishment is over and not set aside, then, question is enhancement does not arise. The Tribunal has also considered that while passing the dismissal order, the reply which has been given by the respondent workman, has been considered or not, for that, also, no detail reason is given by reviewing authority. The past record which has been considered by reviewing authority being an additional evidence which was not taken into account by competent authority while imposing the punishment. Therefore, according to my opinion, Tribunal has rightly decided the matter and rejected the approval application as, prima facie, Corporation was not able to justified the dismissal while considering the finding given by competent authority, therefore, approval is rejected.

7. The Tribunal has given cogent reason in support of its conclusion and looking to the facts on record, otherwise, also, the procedure which has been followed by reviewing authority is contrary to the principles of natural justice. Therefore, prima facie, dismissal is not justified and in absence of approval cannot be granted which has been rightly rejected by Tribunal, for that, Tribunal has not committed any error which requires interference by this Court under Article 227 of the Constitution of India.

8. The respondent workman raised various contentions against review proceedings including no power to enhance the punishment. The question of enhancement of punishment is decided by the Division Bench of this Court in Reference No. 1 of 2007. Therefore, rest of the contentions of the respondent raised before the Court/Tribunal is examined by this Court as matter is old and avoid decision on technical ground. There are basic error in review proceedings which is considered by this Court.

9. Therefore, the submissions made by learned advocate Mr. Ashish M. Dagli cannot be accepted, hence, rejected.

10. The law on the subject has been examined in identical situation where the inquiry officer exonerated the delinquent and disciplinary authority is not agree with such finding then, finding of disagreement must have to be communicated to the concerned delinquent. The reasons for disagreement provided for the first time with the order of punishment which has been held to be violative of principles of natural justice and settled canons of law.

11. In this case also, the punishment imposed by competent authority for which reviewing authority is not agree and the reviewing authority wanted to enhance the punishment during the pendency of appeal filed by workman. The decision of

review cannot be taken during the pendency of appeal. When the reviewing authority is not agree with punishment imposed by the competent authority and the reviewing authority is deferring with the decision of competent authority then the reviewing authority should have to give reasons that how the competent authority is wrong in imposing the punishment to the workman. No such reasons are given by reviewing authority. Along with the review show cause notice, no finding is given by reviewing authority to the workman. The punishment imposed by the competent authority is found inadequate but on what basis and without disclosing the reason, explanation was called for from the workman. After reply of the review show cause notice and personal hearing of the workman, no further finding was given and straightway, punishment was enhanced by the reviewing authority. Even the reviewing authority has not given reason along with the punishment order. Therefore, the order passed by reviewing authority is basically contrary to the principles of natural justice and also settled law laid down by the Apex Court. The view taken by the Division Bench of the Bombay High Court in case of Food Corporation of India Employees Association, West Zone and Anr. v. Food Corporation of India and Ors. reported in 2007 III LLJ 385. Relevant observations made in Para.9 which are quoted as under:

9. The learned Counsel appearing for the petitioners has relied upon the judgments of the Supreme Court in the cases (i) Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and (ii) Yoginath D. Bagde Vs. State of Maharashtra and Another, in support of his contention that the entire departmental proceedings would stand vitiated on this ground. In the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra,

16. In Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., the question arose whether after the 42nd Amendment of the Constitution, when the enquiry officer was other than a disciplinary authority, was the delinquent employee entitled to a copy of the enquiry report of the enquiry officer before the disciplinary authority takes decision on the question of guilt of the delinquent. It was sought to be contended that in that case that as the right to show cause against the penalty proposed to be levied had been taken away by the 42nd Amendment, therefore, there was no necessity to give to the delinquent a copy of the enquiry report before the disciplinary authority took the final decision as to whether to impose a penalty or not. Explaining the effect of the 42nd Amendment the Constitution Bench observed that:

All that has happened after the Fortysecond Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

The Court explained that the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusion on the basis of the evidence, the enquiry officer's report and the delinquent employee's

reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. It is the second right which was taken away by the 42nd Amendment but the right of the charged officer to receive the report of the enquiry officer was an essential part of the first stage itself. This was expressed by the Court in the following words:

The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer from an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry. It is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute an additional material before disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the inquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.

17. These observations are clearly in tune with the observations in State of Assam and Another Vs. Bimal Kumar Pandit, quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. It if enquiry officer had given an adverse

finding, as per Karunakar (supra) case, the first stage require an opportunity to be given to an employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its finding. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiry officer holds the charges to be proved, then that report has to be given to the delinquent officer, who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but if the disciplinary authority proposes to defer with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority.

18. Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stands concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose penalty and not the enquiry officer. Where the disciplinary authority itself holds an inquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority defers from the view of the enquiry officer and proposed to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charge officer succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority defers with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar (supra).

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority or any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the

favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

20. The aforesaid conclusion which we have arrived at is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, . While agreeing with the decision in Ram Kishan Vs. Union of India and others, we are of the opinion that the contrary view expressed in State Bank of India v. S. S. Koshal and M.C. Saxena (State of Rajasthan Vs. M.C. Saxena, cases do not lay down the correct law.

12. The effect of non-application of mind and non-reasoned order passed by the administrative authority which has been discussed by the Apex Court in case of Cyril Lasrado (dead) by Lrs. and Others Vs. Juliana Maria Lasrado and Another, Relevant Para.11 and 12 are quoted as under:

11 Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.

12. Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union observed : (All ER p.1154h) "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Cabtree it was observed : "Failure to give seasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker tot he controversy in question and the decision or conclusion arrived at." Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

13. In view of the law as discussed above, the Tribunal has rightly examined the matter on merits and is perfectly justified while exercising the power u/s 33(2) (b) of the I.D. Act,1947 to set aside the punishment order. Therefore, the Tribunal has not committed any error while granting the relief in favour of

respondent workman. Learned advocate Mr. Dagli is not able to point out any infirmity in the order. This Court is having very limited jurisdiction to interfere with award while exercising the power under Article 227 of the Constitution of India. The view taken by the Delhi High Court in case of Sushila Sharma v. Pawan Sharma reported in 2007 II LLJ 865. Relevant observations are made in Para.11 and 12 which are quoted as under:

11. The settled position of law in respect of interference by the writ courts under Article 226 of the Constitution of India in matters of this nature is that a writ court exercises its powers of judicial review well within certain parameters. A series of judgments have been rendered by the Supreme Court in this context, as mentioned below:

(i) Sadhu Ram v. Delhi Transport Corporation Learned AGP Mrs.Pathak requests for some time. Therefore, matter is adjourned to 3.12.2007. Ad-interim relief granted earlier to continue till then. 1984 Learned advocate Mr...has filed leave note / sick note. Therefore, matter is adjourned to 24.7.2007. 1967.

(ii) Harbans Lal Vs. Jagmohan Saran,

(iii) Calcutta Port Shramik Union Vs. Calcutta River Transport Association and Others,

(iv) Ramniklal N. Bhutta and another Vs. State of Maharashtra and others,

(v) Indian Overseas Bank v. I.O.B.Staff Canteen Workers Union and Anr.

(vi) Master Marine Services Pvt. Ltd. Vs. Metcalfe and Hodgkinson Pvt. Ltd. and Another,

12. All the above judgments, if read collectively, clearly indicate that the High Courts should not interfere with the awards of the Industrial Tribunal or the Labour Court on mere technicalities. Interference is permissible only if the order of the Subordinate Court suffers from an error of jurisdiction, breach of principles of natural justice or is vitiated by a manifest or apparent error of law. Reappraisal of evidence without sufficient reason in law to arrive at a finding of fact contrary to those arrived at by the Subordinate Court is not the intent of exercising judicial review. It is only in cases where overwhelming public interest requires interference and cases of the nature where there is an error of jurisdiction or law as referred to hereinabove, should the court interfere, particularly in view of the fact that the object of enacting Industrial Disputes Act and of making a provision therein to refer disputes to tribunals for settlement, is to bring about industrial peace and in all such cases, an attempt should be made by the courts in exercise of their powers of judicial review, to sustain as far as possible, the awards made by the Industrial Tribunals and Labour Courts, instead of picking holes in the awards on rival points and frustrating the entire adjudication process.

14. Recently, in Special Civil Application No. 888 of 2004 filed by GSRTC v.

Maganbhai L. Makwana, decided by this Court on 14.12.2007 and in Special Civil Application No. 1648 of 2004 decided on 24.12.2007, similar question was examined by this Court after considering the following decisions and after considering the decisions, said petition was dismissed by this Court. 2005 II CLR 449 Cal in case of Babban Ram v. UCO Bank and Ors. 2006 AIR SCW 2177 S. Goparam Vs. The Inspector General, Central Industrial Security Force, The Deputy Inspector General, Central Industrial Security Force and The Commandant, CISF Unit, NLC, in case of S. Goparam v. Inspector General Central Industrial Security Force, South West Sector Mumbai and Ors. 2006 SCC LS 1835, in case of Lav Nigam v. Chairman & MD ITI Ltd. and Anr. 2006 AIR SCW 6277 in case of Mathura Prasad v. Union of India and Ors. 2007 I CLR 880 in case of Suresh C. Shah v. Food Corporation of India 2005 (9) GHJ 659 in case of Canara Bank and Others Vs. Swapan Kumar Pani and Another, in case of State Bank of India and Others Vs. K.P. Narayanan Kutty, in case of State Bank of India and Ors. v. K.P. Narayanan Kutty.

15. Therefore, considering the law as discussed by this Court in the aforesaid petition and also in view of the facts of the present case, there is no substance in the present petition. Accordingly, present petition stands dismissed. Notice stands discharged. Interim relief, if any, stands vacated.