

(2007) 02 DEL CK 0184

In the Delhi High Court

Case No : WP (C) No. 3432 of 2000

Haryana State and General Manager, Haryana Roadways

APPELLANT

Vs

Presiding Officer and Another and Shri Dayanand

RESPONDENT

Date of Decision : 07-02-2007

Acts Referred:

Citation : (2007) 138 DLT 171 : (2007) 2 LLJ 921

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Yashpal Singh, for the Appellant; S.N. Sharma, for the Respondent

Final Decision : Disposed Off

Judgement

Kailash Gambhir, J.—Feeling aggrieved with the impugned award the petitioner Management has filed the present writ petition. The main grievance of the petitioner in the present writ petition is that the petitioner was not given any opportunity to lead evidence on merits after the domestic enquiry was held as vitiated. The brief facts of the case germane to the controversy raised are that the Secretary (Labour) Delhi Administration, referred the dispute for its adjudication to the Tribunal as per the following terms:

Whether dismissal of Shri Daya Nand from service is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?

2. On the pleadings of the parties the issues were framed as under:

1. Whether the domestic enquiry held by the management is fair and proper?
2. As in terms of reference.

3. The Issue Number (1) was treated as a preliminary issue and both the parties led their respective evidence before the Tribunal. The management petitioner had examined Sh. J.P. Sharma, Enquiry Officer while the respondent workman

examined himself and filed an affidavit in evidence. At that very stage, the petitioner management had filed an application that they may be permitted to lead evidence on merits of the charge in the event of the enquiry held to be invalid or defective in any way. The Tribunal after having gone through the report of the enquiry officer and the evidence adduced by the respective parties came to the conclusion that there was serious violation of principles of natural justice as the delinquent officer/workman was not provided with any defense representative as well as he was not supplied copy of the report on the basis of which charges were framed against him. The Tribunal did not feel satisfied with the Memorandum dated 21.9.84 in which it was mentioned that the delinquent official could have access to the official record if he so wished and held that such a course would not satisfy the principles of natural justice.

4. The Tribunal, Therefore, held that the enquiry proceedings and the enquiry report had been vitiated and consequently passed the award holding the termination of the respondent/workman as illegal, unjustified and consequently held that the workman is entitled to reinstatement with full back wages.

5. Counsel for the petitioner says that although the petitioner management moved an application for adducing evidence just at the stage after the arguments on the preliminary issue but still the Tribunal declined the request of the petitioner management. Counsel for the petitioner further contends that the order of the Tribunal is perverse as on the one hand the Tribunal has observed that no request has been made by the petitioner management either in the written statement or by moving any specific application during the course of proceedings to adduce evidence in support of the charges while on the other hand has also held that petitioner management has moved an application to adduce evidence after hearing the arguments. Counsel for the petitioner says that the said contradiction in the impugned order itself shows complete non-application of mind on the part of the Tribunal. In support of his arguments counsel for the petitioner management has relied upon the decision of the Supreme Court in the case of Neeta Kaplish v. Presiding Officer, Labour Court and Anr. Respondents. In the said judgment the Supreme Court has referred the judgment in the case of Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, wherein the Supreme Court has broadly laid down the prepositions under which the Tribunal can permit the employer management to adduce evidence. The Supreme Court held as under:

...Where no enquiry was conducted by an employer or the enquiry itself was found to be defective, the employer shall have to be given a chance to adduce evidence before the Tribunal for justifying his action provided the employer asks for the permission of the Tribunal to adduce fresh evidence to justify its action. Such request has to be made "while the proceedings are pending" and not after the proceedings had come to an end. The following prepositions were laid down:

(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that

may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance to consider whether the enquiry proceedings conducted by the management are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits no long survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However, elaborate and cumbersome the procedure may be under such circumstances, it is open to the Tribunal to deal with, in the first instance, as a preliminary issue, the validity of the domestic enquiry. If its finding on the preliminary issue is in favor of the management, then no additional evidence need be cited by the management. But if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to

the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference u/s 10 or by way of an application u/s 33 of the Act.

6. These principles were adopted in the *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, which was decided after the introduction of Section 11-A in the Act. The Court observed:

In our considered opinion it will be most unnatural and unpractical to expect a party to take a definite stand when a decision of jurisdictional fact has first to be reached by the Labour Court prior to embarking upon an enquiry to decide the dispute on its merits. The reference involves determination of the larger issue of discharge or dismissal and not merely whether a correct procedure had been followed by the management before passing the order of dismissal.

7. The Court further observed:

We are, Therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication, the Labour Court should first decide as preliminary issue; whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties, that question must be decided as a preliminary issue. On that decision being pronounced, it will for the management to decide whether it will adduce any evidence before the Labour Court if it

chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue.

This decision makes it clear that the "stage" at which the employer has to ask for an opportunity to adduce evidence for justifying its action is the stage when the Tribunal finally comes to the conclusion that domestic enquiry was invalid.

8. On the other hand counsel for the respondent has contended that the application was moved by the petitioner after the hearing of the arguments and Therefore, the Tribunal rightly did not call upon the petitioner management to adduce the evidence. Counsel for the respondent has further contended that the management petitioner had already produced the enquiry officer Mr. J.P. Sharma in support of its case and the management petitioner could not have led any better evidence than that of him.

9. I do not find any force in the contention of the counsel for the respondent. Moreover, the Supreme Court in the judgment referred above has already clarified the "stage" at which an employer management can ask for an opportunity to adduce evidence so as to justify its action. The supreme Court has held that such an application can be moved after the Tribunal finally comes to the conclusion that the domestic enquiry was vitiated.

10. In the present case the petitioner moved an application just after the arguments were heard on the preliminary issue and, Therefore, going by the said decision of the Supreme Court, the Tribunal ought to have granted opportunity to the petitioner management to adduce evidence after the Tribunal found that the domestic enquiry was illegal and invalid.

11. The impugned order dated 20.5.99 is set aside and the matter is remanded back to the Tribunal with the directions that petitioner management be given opportunity to lead evidence as prayed by it in the application and after hearing both the parties on merits the matter be decided expeditiously in accordance with law.

12. The parties are directed to appear before the Tribunal on 19.2.2007.

13. With these directions, writ petition is disposed of. Parties are left to bear their own cost.

14. Rule is made absolute.