
(2003) 03 AHC CK 0205
In the Allahabad High Court
Case No : C.M.W.P. No. 23284 of 2001

Hindustan Aeronautics Ltd.	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 31-03-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 39, 6H

Citation : (2003) 3 AWC 2032

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Bharti Sapru and Sudhir Agarwal, for the Appellant; Party-In-Person N.K. Shukla, J.P. Pandey, Ashish Mishra, P.C. Jhingan, S.N. Dubey and P.K. Sharma and S.C., for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, J.—By an application dated 6.9.2001 submitted to Joint Registrar (Listing), brought on record, Sri. R. C. Thakur, Respondent No. 3, has requested and is granted permission to withdraw vakalatnamas of counsel appearing for him in the matter, and to permit him to argue in person.

2. Heard Ms. Bharati Sapru for Petitioner and Sri R. C. Thakur, Respondent No. 3 appearing In person.

3. The Petitioners have challenged an award made by Labour Court (I), U.P. Kanpur, dated 22.12.2000, in Adjudication Case No. 19 of 1995 published on 13.4.2001, returning findings in favour of Respondent No. 3, to the effect that his services were illegally and unjustifiably terminated on 1.6.1980, and directing his reinstatement with full back wages till the date of his reinstatement with all service benefits.

4. Hindustan Aeronautics Limited is a Company registered under Indian Companies Act, 1956, with its registered office at 15/1, Cubbon Road, Bangalore. It is engaged in the manufacture, repair, over-hauling and development of

defence equipments and aircraft's. One of its manufacturing unit is situate at Chakeri at Kanpur employing about 2,200 employees. Sri R. C. Thakur, Respondent No. 3 was employed on 1.8.1964 as Group Leader (Instrument). He was confirmed as Highly Skilled Technician on 31.11.1976. It is alleged that on 18.1.1979, he committed gross misconduct in assaulting Sri Harbans Singh, his departmental officer by beating him with paper weight, and bringing him down by pulling his hair. He was charge-sheeted and a domestic inquiry was held in which the charges were proved against him. He was thereafter given a notice giving him opportunity to explain his behaviour and conduct and thereafter his services were terminated with effect from 1.6.1980. The Departmental Appeal was decided against him on 24.10.1980 by the Chief Administrative Manager. In Conciliation Board Case No. 1436 of 1985, the Deputy Labour Commissioner condoned the delay, against which Petitioner filed Writ Petition No. 18791 of 1985. The writ petition was dismissed on 14.4.1988. After failure of the conciliation proceedings, the State Government vide referring order dated 28.4.1989, referred the following industrial dispute to Labour Court (V), U. P., Kanpur:

Kya sewayojkon dwara apne karmchari R. C. Thakur putra Sri G. C. Thakur ko dinank 1.6.1980 se karya se prithak/vanchit kiya jana uchit tatha/athava vaidhanik hai? Yadi nahin to sambandhit karmchari kya hitlabh/upsam pane ka adhikari hai tatha kis annya vivran sahit?

5. The Labour Court (V), Kanpur adjudicating the matter framed a preliminary issue on 17.5.1990 to the effect "whether the domestic inquiry held by employer against concerned workman was proper and complied with the principles of natural justice?" By an order dated 15.1.1993, the labour court held that the domestic inquiry was not proper and did not conform to the principle of natural justice. Aggrieved the Petitioner challenged the order deciding the preliminary issue in its Second Writ Petition No. 6494 of 1993, in which initially the proceedings were stayed on 12.3.1992 and thereafter by a judgment and order dated 18.9.1998, the writ petition was dismissed following the decision in D. P. Maheshwari v. Delhi Administration, AIR 1984 SC 153, observing that the writ petition against the decision of preliminary issue is not justified, and that the Petitioner can challenge the said finding, if necessary, when the final award is challenged. The writ petition was dismissed with cost assessed at Rs. 1,500. The reference was transferred to Labour Court (I), Kanpur. After giving several opportunities to the employers to lead evidence, the labour court proceeded ex parte on 24.3.1999. On an application filed by Petitioner, the labour court vide its order dated 5.5.1999 gave a fresh opportunity to the employers to lead evidence. Summons were obtained for making service on six witnesses by the employers to be served by dasti service. These were, however, sent by post, and were returned with endorsement of insufficient address. On 26.4.1999, the employers made a statement that they did not want to adduce any further evidence. A list of some documents were filed which were accepted on payment of costs. On 15.12.1999, the workman cross-examined Sri B. B. Tripathi, who

was examined as a witness by employer. On 4.3.2000, workman was examined and was cross-examined, and that on 10.3.2000, after twelve years of reference, an application was made by the employers challenging the reference made by the State Government on the ground that the employer's establishment is in control of the Central Government.

6. The labour court took strong exception to the fact that the employers did not take the objection about validity of reference by the State Government on several opportunities. It had not taken objection in the written statement, at the time of framing preliminary issue ; in writ petition filed before the High Court, and even thereafter for about twelve years, when the matter was pending before the labour court, and have taken these objections only at the stage of final hearing. The objections were accordingly rejected. The labour court, thereafter proceeded further from the stage when the preliminary issue regarding the validity of domestic inquiry was held against the employers and found that inspite of several opportunities given, the employers had not produced any witness to justify the termination of service of the workman. It found that the employer has filed only on affidavit of Sri P. C. Tripathi, Deputy Manager (Personnel) deposing that Late Harbans Singh, Deputy Manager had made complaint on the basis of which, charge-sheet was given. He stated in his cross-examination that the report was not filed earlier as it was not available, and was in fact made available on 8.1.1979. On a question put to him, regarding the fact stated at page 36 of the inquiry report, in which it was clearly stated by the Presenting Officer that Harbans Singh had never made any complaint, Sri P. C. Tripathi stated in his cross-examination that he did not take part in the domestic inquiry held against Sri R. C. Thakur (workman), and that the complainant Harbans Singh has not signed the complaint. He also admitted that in the domestic inquiry that Sri Daljeet Singh had stated in cross-examination in the enquiry that Harbans Singh had not made any complaint. In the circumstances, the labour court recorded findings believing the statement of the workman that the complaint was prepared for the purpose of the case, and that it cannot be relied upon, and held that the termination of workman's services on 1.6.1980 were not valid and legal.

7. Ms. Bharti Sapru began her submission by stating that the reference made by the State Government was without jurisdiction, as Hindustan Aeronautics Limited is a Central Government undertaking and that the Central Government is the appropriate authority to refer the dispute u/s 2(k) of the Central Industrial Disputes Act, 1947. She has relied upon a judgment of Supreme Court in Hindustan Aeronautics Limited and Ors. v. Hindustan Aeronautics Canteen Karmchari Sangh and Ors. Civil Appeal No. 2968 of 2002 decided on 8.7.2002, and a Constitution Bench judgment is Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.,

8. The Respondent appearing In person submitted that the order in Hindustan Aeronautics Limited and Ors. v. Hindustan Aeronautics Canteen Karmchari Sangh

and Ors. supra), was in respect of issuance of licence to the Respondents by the State Government and was not rendered in respect of any industrial dispute. He submits that the proviso to Clause D of Chapter III of the Industrial Disputes Act, 1947, provides, that where the dispute is in relation to which the Central Government is the appropriate Government, it shall be for the Government to refer the dispute to a labour court or to Industrial Tribunal, as the case may be, constituted by the State Government ; and a notification of Ministry of Labour dated 3.7.1998 u/s 39 of the Industrial Disputes Act, 1947, by which the Central Government directed in exercise of powers u/s 39 of the Industrial Disputes Act, 1947, that of powers exercisable by it under the Acts and Rules made thereunder shall in relation to all the Central Public Sector undertakings, and their subsidiary Corporations and Autonomous Bodies specified in schedule annexed to the notification be exercisable also upon the State Government subject to the condition that the Central Government shall exercise all the powers under the said Act and Rules made thereunder as and when it considers necessary to do so. Hindustan Aeronautics Limited, Bangalore, is included in the revised schedule at item No. 40. The workman has also relied upon a judgment of Supreme Court in Hindustan Aeronautics Ltd. Vs. The Workmen and Others, , wherein reference was made to a industrial dispute raised by the West Bengal Government to Vth Industrial Tribunal, West Bengal, in respect of issuing the relief of allowance for the education of employees" children ; house building loan, free conveyance or conveyance allowance, revision of lunch allowance and certain canteen employees to be made permanent, it was held in paragraph 4 that Barrackpore branch was under control of the Bangalore division of the company. Yet it was separate branch engaged in an industry of repairs of aircraft"s or the like at Barrackpore. For the purposes of the Act and on the facts of this case, the Barrackpore branch was an industry carried on by the company as a separate unit. The workers were receiving their pay packages at Barrackpore and were under the control of the officers of the company stationed there. If there was any disturbance of industrial peace at Barrackpore where a considerable number of workmen were working the appropriate Government concerned in the maintenance of the industrial peace was West Bengal Government. The grievance of workmen of Barrackpore were their own and the cause of action in relation to the industrial dispute in question arose there. The reference, therefore, for adjudication of such a dispute by the Governor of West Bengal was good and valid.

9. The aforesaid judgment in Hindustan Aeronautics Ltd. Vs. The Workmen and Others, was considered in C.B. Raman v. Management of Bank of India, III (1988) ACC 105 and has been noted with approval in para 39, in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., . It was noticed that the Court had taken into account in M/s. Hindustan Aeronautics Limited v. Workmen ; Heavy Engineering Mazdoor Union v. State of Bihar, I (1969) ACC 765, and had taken into consideration the factors i.e., if there is any disturbance of industrial peace where a considerable number

of workmen, the appropriate Government concerned, for the maintenance of industrial peace was the West Bengal Government ; that Barrackpore industry was a separate unit and cause of action in relation to the industrial dispute arose at Barrackpore.

10. Coming to the present case, I find that Kanpur Unit of Hindustan Aeronautics Limited is a separate unit where, according to the averment made by Petitioner, in paragraph 1 of the writ petition, about 2,200 employees are working. The dispute in the present case relates to industrial peace in respect of a workman who is alleged to have assaulted his own officer, and thus even if the notification u/s 39 dated 3.7.1998 is taken to be subsequent to the reference, the State Government was competent to refer the dispute to the labour court.

11. The Petitioner is also estopped from raising this question at this stage. It had all the opportunities to object to the reference made by the State Government in its first two writ petitions filed before this Court as well as raising it as a preliminary issue before labour court. The conciliation board case started in the year 1985. Petitioner, however, waited upto 1999 to raise this issue before the labour court.

12. On merits, Ms. Bharti Sapru submitted that the workman waited for five years before approaching the Deputy Labour Commissioner for conciliation. He committed serious act of misconduct in assaulting his superior officer, which amounted to acts or omission constituting misconduct under para 25 of the Certified Standing Orders of the Company. The workman was charge-sheeted and was given full and fair opportunity to defend himself in the domestic enquiry, and was also permitted assistance of one Sri J. S. Srivastava and was allowed to cross-examine witnesses. The entire proceedings were duly verified and signed by him. His replies were considered and the inquiry officer found that the explanation given by the workman was not supported by any evidence. The complaint given by Sri Harbans Singh was proved and that consequently the workman was dismissed. The labour court has erred in law in holding that the inquiry did not conform to the principles of natural justice. It was further submitted on behalf of Petitioner that by the time, Petitioners were required to lead evidence, the assaulted officer had expired and that the inquiry officer had retired. More than 14 years had expired at the time of leading evidence and thus the employer was seriously handicapped. Summons were obtained for witnesses who were associated with the inquiry. They had since retired, and thus did not respond to make deposition. The findings of the labour court that the complaint of Sri Harbans Singh was not proved and cannot be believed, is a perverse finding as the entire record of domestic inquiry was placed before the labour court. Further she submits that since the workman had assaulted a superior officer, the order of reinstatement was not justified, and that Petitioner was not entitled to backwages. In any case since there was a delay in approaching the Deputy Labour Commissioner, Petitioner was not entitled to back wages from 1980 to 1985, and that during the pendency of the case before the labour court,

Petitioner had attained the age of superannuation. Ms. Sapru had also challenged the recovery in proceedings u/s 6H and the amount calculated by the Deputy Labour Commissioner on the ground that Petitioner had retired on attaining the age of superannuation at 58 years. His extension was subject to his medical fitness and thus he cannot claim wages beyond the period he completed 58 years of age.

13. Sri R. C. Thakur, appearing in person, on the other hand, submits that the charge-sheet was laconic and vague. The names of witnesses were not given in the charge-sheet, and that Petitioner was not given opportunity to defend his case. The inquiry report did not consider the reasons and the evidence and the defence of the workman. The request to change the inquiry officer was refused by the superior officer. Sri Harbans Singh was not medically examined to support the allegations of assault, and that no complaint was made by him and no first information report was lodged with the police station. Rules of natural justice were violated. He was not provided a copy of the report of inquiry officer along with notice dated 18.9.1979 which was proved by the statement of B. N. Khanna Presenting Officer of the inquiry. According to workman, the labour court as such rightly came to the conclusion that the domestic inquiry was not just and fair, and violated principles of natural justice. Thereafter the employer failed to prove the charge against Petitioner in the labour court. Sri P. C. Tripathi, Deputy Manager (Personnel), admitted in his cross-examination that he did not take part in the domestic inquiry, and that the complainant Harbans Singh did not sign before him. He also accepted that Daljeet Singh stated in the proceeding on 16.4.1979 that Harbans Singh, the assaulted officer, had not made any complaint. In the circumstances the labour court rightly came to the conclusion that the charge of misconduct was not established against him. He submits that there is no limitation for approaching the forum of industrial adjudication, and that similarly situated persons were continued upto the age of 60 years. Since his dismissal has been held to be wrongful, he was entitled to continue in service and was also entitled to the extension of service, and that his claim for arrears before the Deputy Labour Commissioner for execution of the award and back wages is correct and justified.

14. In Writ Petition No. 6494 of 1993, this Court had, by its order dated 18.9.1998, given opportunity to employer to challenge the order dated 15.1.1993 by which the domestic inquiry was held to be against principles of natural justice. Since Petitioner has challenged the said finding, it is now necessary to examine the validity of the said order of the labour court.

15. In this order dated 15.1.1993, the labour court found that the workman was given a charge-sheet for assaulting Sri Harbans Singh, Deputy Manager (Instruction). The workman gave a long reply which indicates that some incident took place on 8.1.1979 but the details are not clear. The management decided to hold domestic inquiry by appointing Sri Dhruv Kumar, Project Manager as inquiry officer. Petitioner was duly informed with the appointment of the inquiry officer

and was required to attend the inquiry proceedings on 13.2.1979. Petitioner requested for legal assistance of Sri G. S. Srivastava vide his application dated 15.2.1979, which was allowed by the inquiry officer. Thereafter both employer and workman adduced their evidence. It was found that the contention of the workman that he was not given full and adequate opportunity to defend himself was not correct. The workman admitted that he cross-examined the employer's witnesses but that he was not allowed to complete cross-examination and was discouraged by the inquiry officer from asking questions. He also submitted that his one or two witnesses were not allowed to be examined. The labour court did not believe the workman on this count, on the ground that the workman was not able to establish that he made any complaint in this regard either to inquiry officer or to any higher officer and was not able to establish, his complaint marked as Ext. W-8, 9 and 10, as he was not able to inform as to who received these complaints. The labour court recorded a finding that Petitioner was not able to establish that he was not given adequate opportunity to lead evidence in his defence in the domestic inquiry. The labour court also did not believe that the incident did not take place for the reasons that the assaulted officer was not medically examined, and thus it was found that the workman was given adequate opportunity. The labour court, however, proceeded further to hold that the domestic inquiry was not just and fair and conformed to the principles of natural justice, on the ground that the charge-sheet did not give the basis on which the charge was based. He found that the charge was not clearly stated in the charge-sheet, and that the charge-sheet did not give the names of witnesses who were proposed to be examined in support of the charges. Secondly, it was found that the inquiry report was not a speaking inquiry report inasmuch as it did not give any reason to arrive at the conclusion of misconduct. In the words of labour court, the concerned inquiry report with regard to domestic inquiry was very short and was not supported by reasons. The conclusions have been drawn in the enquiry report, but the basis of these conclusion have not been discussed, and that the inquiry report has not been prepared on the basis of any documentary evidence.

16. The memo of charge-sheet and the inquiry report have been annexed as Annexures-12 and 13 of the writ petition. The imputation of charge in the memo of inquiry dated 9.1.1979 is quoted as below:

It has been brought to the notice of the Management:

That on 8th January, 1979 at about 14.10 hours in the presence of Shri N. P. Rao, Engineer, you entered the office of Shri Harbans Singh, Deputy Manager (Instrument) and insisted upon him to write on your general application regarding availing of L.T.C. advance for 1976-77, that due to exigencies of work you could not be spared and forward the same to the Departmental Head. On the refusal of Shri Harbans Singh to give such remarks/ recommendations on your application in the manner as desired by you, you shouted upon him by uttering, "you have no Brain-bloody Sardarji stupid" and took the paper weight from the

table of Shri N. P. Rao and hit him on his head. You also caught hold of his hair violently when his turban fell down and pulled him on the ground. On his falling down, you beat him and ran away before Shri Daljeet Singh and few other officers reached to the office of Shri Harbans Singh.

2. Your above acts, if proved, are acts of misconduct under para 25 (1), (11) and (13) of the Certified Standing Orders of the Company.

3. You are, therefore, required to explain in writing to the undersigned within four days of the receipt/service of this memorandum as to why disciplinary action should not be taken against you. If no explanation is received within the aforesaid time, it shall be presumed that you have no explanation to offer and further action shall be taken ex parte.

17. The inquiry report of Shri Dhruv Kumar, inquiry officer dated 25.3.1979 starts with his appointment vide memo dated 3.2.1979. In his report, running into about 10 pages, the inquiry officer starts with a narration that the Defendant took his own time on various issues and kept on requesting for postponement of hearing on very flimsy grounds, hence the delay. In order to maintain independent nature of inquiry some time, unreasonable request of the workman were accepted. His attitude was defiant, and that he kept on harping on minor issues. Five witnesses, namely, M. Daber (Manager), N. P. Rao (Engineer), S. P. Chopra (Manager Inspection), Daljeet Singh, Inspector and Harbans Singh, Deputy Manager were examined in support of the charge. Their deposition in brief has been given in the report discussing the evidence of P.W. 5, Harbans Singh, the officer stated to be manhandled. The inquiry officer reports that he gave the account of the incident as it occurred on January 8, 1979. Harbans Singh stated that he was advised by the Doctor to take rest and the Doctor gave injection to ease nervous breakdown. He has also discussed the eye-witness account of Sri N. P. Rao who was present on the scene. He narrated the whole episode in no uncertain terms to which Sri R. C. Thakur called Sri Rao a liar and further had no desire to cross-examine him. Sri S. P. Chopra P.W. 3 and Daljit Singh P.W. 4 stated the actual condition of Sri Harbans Singh on their arrival at scene of incident. The report thereafter discussed the defence case and deposition of workman R. C. Thakur, D.W. 1, D.W. 2 and D.W. 3. He found that the defence witnesses were not present as only Sri N. P. Rao was present other than Sri Harbans Singh and Sri R. C. Thakur. The presence of Sri Yadav defence witness was found to be doubtful at the time of incident. The other defence witnesses did not lend support to defence version, and that they stated definitely that Sri Thakur was eager to avail the L.T.C. for the block year 1974-77. According to inquiry officer, most of the defence witnesses have stated that they were not aware of the incident whereas Sri Thakur agreed during the course of cross-examination that there was an incident. The inquiry officer found that Sri Thakur submitted a wrong application wilfully which is an offence in itself as he could not prove that he was refused leave due to service exigencies. He not only kept quiet but even tried all his efforts to force the officer to put the remarks as

he wished. Sri Thakur's allegations that his application was not recommended by the officer due to jealousy and revenge is not true, as Sri Thakur got his promotion/ confirmation/good reports through the same officer. Thereafter the inquiry officer reconstructed the scene and thereafter concluded as follows:

Incident after some discussion between Sri Harbans Singh and R. C. Thakur, Sri Thakur takes the application and puts in his pocket, and utters hasty remarks, gets worked-up picks up the paper weight, hits Shri Harbans Singh and further holds Sri Harbans Singh's hair, shakes him violently. Mr. N. P. Rao rushed out for help. Shri Thakur walked out and disowns any knowledge of this type of incident to Shri S. P. Chopra Chief Inspector.

All this is proved beyond doubt. Hence the charges mentioned in memo No. A/ PMP/ 1299/5079 dated January 9, 1979, against Shri R. C. Thakur P/5079, are proved beyond doubt.

18. The afore-quoted charge-sheet and the conclusion of the inquiry report go to show, that Petitioner was given full opportunity to defend himself and that the charge of serious misconduct was proved against him. A charge is required to contain statement of fact, imputation of misconduct, nature of misconduct alleged and the evidence proposed to be led by the employer in proof of the charge. In the present case, the facts leading to the incident, the name of the officer assaulted, the name of the witnesses, namely, N. P. Rao, who witnessed the incident and Sri Daljit Singh and other officer who reached the office of Sri Harbans Singh, were clearly stated in the imputation of the charge. In paragraph 2, it was stated that these acts, if proved, are acts of misconduct under paras 25 (1) (11) and (13) of the Certified Standing Orders of the company and that the Petitioner was required to explain in writing as to why disciplinary action should not be taken against him and if no explanation has been received, it shall be presumed that you have no explanation to offer and further action shall be taken.

19. The charge-sheet, mentioned the incident, cited the para of the Certified Standing Orders, which constituted the act as an act of misconduct, the names of persons who had witnessed the incident and, those who reached immediately thereafter were mentioned in the imputation of the charge. It cannot, therefore, be said that the charge-sheet suffered from any lack of particulars or the names of witnesses who were proposed to be examined. Since it was act of assault, there was no question of documentary evidence to be adduced in respect of the incident except the fact leading to the incident, namely, an application of L.T.C. advance, and the said application was also mentioned in the imputation of charge.

20. A perusal of the inquiry report shows that the inquiry officer not only detailed the incident, gave names of witnesses but also discussed the evidence in brief. He thereafter proceeded on the basis of the deposition of witnesses to reconstruct the scene and concluded that the incident was proved beyond doubt. An inquiry officer is not required to write a judgment. The purpose of inquiry is to find out truth of the imputation of misconduct. If the evidence is considered and

the conclusion reached is sufficiently found established, and is reported to have proved, for the assistance of the disciplinary authority to take a decision, it cannot be said that the inquiry report was not proper. The finding that the inquiry report was short and did not contain reasons or that the inquiry report was not speaking report does not make an enquiry invalid. The labour court, therefore, clearly erred in law in finding that the inquiry report did not find the charges of misconduct established against the workman and in drawing conclusion that the domestic enquiry was not proper and did not conform to the principles of natural justice.

21. From the perusal of the memo of imputation, the charge in the evidence adduced in support thereof, the reply given by the workman and the evidence adduced by him and the inquiry report, I find that Petitioner was fully aware of the charges against him and was given full and adequate opportunity to defend himself in the disciplinary inquiry. The charge of assaulting superior officer for gaining undue advantage in service, amounts to serious act of misconduct which falls within para 25 of the Certified Standing Orders of the Company. The punishment awarded was not disproportionate, to the act of misconduct which amounted to gross disorderly behaviour and amounted to act of subversion of discipline. The Petitioner was as such rightly punished dismissing him from service. His appeal was considered and decided by the Chief Administrative Manager, who did not find any cogent reason for review/ reduction of punishment and for reinstatement.

22. For the aforesaid reasons I find that the domestic inquiry was just and proper and did not violate the principle of natural justice and that the punishment awarded was not disproportionate of the act of misconduct. With the aforesaid findings, it is not necessary to further consider the evidence led by employer to prove the charge before labour court. The writ petition is allowed. The orders of Labour Court (I), Kanpur in Adjudication Case No. 124 of 1989 dated 15.1.1993 and the award dated 22.12.2000 published on the notice board on 29.3.2001 is quashed. There shall be no order as to costs.