

(1995) 07 DEL CK 0054

In the Delhi High Court

Case No : Letters Patent Appeal No. 40 of 1995

Hotel Kanishka

APPELLANT

Vs

Delhi Administration

RESPONDENT

Date of Decision : 24-07-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (1995) 59 DLT 553 : (1996) 73 FLR 1706 : (1996) 1 LLJ 1006

Hon'ble Judges : Dr. M.K. Sharma, J; D.P. Wadhwa, J

Bench : Division Bench

Advocate : S.N. Bhandari and Mamta Mehra, for the Appellant;

Judgement

M.K. Sharma, J.

(1) This appeal arises out of the judgment and order passed by the learned Single Judge dated 28.4.1995 in Civil Writ Petition 424/1990 and CM. 2606/1993, dismissing the writ petition, as having no merit.

(2) The writ petition (CIVIL Writ PETITION 424/1990) arose out of the order of the Industrial Tribunal No: I dated 31.7.1989 by which the Tribunal held that the enquiry conducted by the Enquiry Officer against the workmen/respondents was bad in law, and accordingly declared the same as invalid.

(3) The industrial dispute which is the subject-matter of the present case was raised by the Union on behalf of 16 workmen after the conciliation proceedings u/s 12 of the Industrial Disputes Act, 1947 failed to yield any results. The Conciliation Officer on 21.10.1985 sent a failure report to the Appropriate Government under Sub-section (4) of Section 12 of the Act. Acting on the report of the Conciliation Officer the State Government in exercise of powers conferred by Section 10(1)(d) of the Industrial Disputes Act referred the disputes arising between the workmen and the management for adjudication to the Industrial Tribunal. In the proceedings before the Tribunal the Union took up the plea regarding the competence of the Enquiry Officer in holding the enquiry against

the workmen. The Tribunal, after hearing the parties and on consideration of the material on record came to the conclusion that Shri S.P.S. Ahluwalia, Enquiry Officer was not an officer of the management and being an outsider was not competent to hold the enquiry. In coming to the aforesaid conclusion, the Tribunal, inter alias relied on Standing Order No. 16(iii) of the Standing Orders, 1984.

(4) Being aggrieved by the aforesaid order of the Tribunal the aforesaid writ petition was preferred by the management before this Court, which was subsequently dismissed by this Court on 31.7.1989. This Court while disposing of the aforesaid writ petition considered the submission made on behalf of the management and came to a categorical finding that Shri S.P.S. Ahluwalia was not an officer of the Corporation in view of the specific provision in the Standing Orders namely - Standing Order No. 16(iii) that an enquiry against a workman could be conducted only by an officer of the Corporation/Hotel and accordingly the enquiry conducted against the workmen by Shri S.P.S. Ahluwalia was without any jurisdiction. The learned Counsel appearing for the appellant submitted before us that the Enquiry Officer being an officer/employee of the Hotel/Corporation was competent to hold the enquiry against the concerned workmen. In support of his contention the learned Counsel for the appellant relied upon the decision of the Supreme Court in the case of Central Bank of India Vs. C. Bernard, .

(5) In order to appreciate the contention of the learned Counsel for the appellant, it is necessary to reproduce para 16 (iii) of the Standing Orders, which admittedly is the provision applicable to the facts and circumstances of the present case:-

"16.Procedure for Dealing with Cases of Misconduct: (i) xxx xxx xxx (ii) xxx xxx xxx (iii) An employee against whom an enquiry has to be held shall be given a charge-sheet clearly setting forth the charges against him indicating therein the nature of offence as laid down in any of the sub-clauses of Clause 14 above and the full particulars thereof. The charge-sheet will invariably lend up by calling upon the employees to give his Explanation in writing by a stipulated date. If his reply is not considered satisfactory by the Management or if no reply is received within stipulated time or any extension thereof, an enquiry shall be held by an officer/employee of the Hotel Corporation not lower than the accused."

(6) In this connection it is also necessary to refer to the office order appointing Shri S.P.S.Ahluwalia for conducting the enquiry in departmental cases, which according to the learned Counsel for the appellant is his appointment order appointing him as an officer/employee of the Hotel/Corporation:-

"SHRI S.P.S.Ahluwalia has been engaged on relationship basis w.e.f. 23.5.84 for conducting enquiries in the departmental cases. He will enjoy status equivalent to an officer in the scale of Rs. 1500-2000. sd/- (P.C. ARORA) Deputy General Manager (E)"

(7) From a bare perusal of the aforesaid provision of para 16(iii) of the Standing Orders it is apparent that the disciplinary enquiry against a workman is required to be conducted by an officer/employee of the Hotel/Corporation, who also should not be lower than the accused (workman).

(8) Now the question that is to be determined is whether Shri S.P.S. Ahluwalia, who was appointed as the Enquiry Officer in the present case was an officer/employee of the Hotel/Corporation and not lower than the workmen. From the aforesaid appointment order it cannot be said that Shri S.P.S. Ahluwalia, the Enquiry Officer was an officer of the Corporation. The aforesaid appointment order categorically states that he is engaged on relationship basis for conducting enquiries enjoying the status equivalent to an officer in the scale of Rs. 1500-2000. Although in terms of the aforesaid order the Enquiry Officer was enjoying the status equivalent to an officer in the scale of Rs. 1500-2000, he was himself not appointed to the said scale but was engaged on relationship basis only. That being the position it cannot be held that Shri S.P.S. Ahluwalia was an employee/officer of the Corporation. The source of power of appointment of an Enquiry Officer being the Standing Order which categorically lays down that he must be an officer/ employee of the Corporation/Hotel not lower than the employee against whom an enquiry is to be held, no other person than an officer/employee of the Corporation Hotel could function as an Enquiry Officer in disciplinary proceedings conducted against any workman of the Corporation/Hotel.

(9) On perusal of the impugned judgment and order challenged before us, we find that the learned Single Judge has considered the provisions of the Standing Order 16 (iii) and also the order appointing Shri Ahluwalia for conducting enquiries in departmental cases and on consideration of the same has come to a categorical finding that Shri Ahluwalia was not an officer/employee of the Corporation and accordingly in terms of the Standing Order No. 16(iii) he was not entitled to conduct an enquiry. In coming to the aforesaid conclusion the learned Single Judge also considered the decision of the Supreme Court in the case of Central Bank of India (supra), relied upon by the learned Counsel for the appellant and came to the conclusion that in the facts and circumstances of the present case the ratio of the said decision is not applicable inasmuch as the present case stands on a different footing, as in the present case one is faced with a Standing Order which has the force of law.

(10) On careful consideration of the findings and the decision arrived at by the learned Single Judge we find that the decision arrived at by him does not suffer from any infirmity and is based on reasons and proper appreciation of the provisions of the Standing Orders, and the order of appointment of Shri S.P.S. Ahluwalia as the Enquiry Officer.

(11) In the result the present appeal has no merit and is dismissed.