
(1996) 03 CAL CK 0018

In the Calcutta High Court

Case No : Appeal from Original Order No. 1310 of 1994

Indian Airlines Ltd. and Others

APPELLANT

Vs

Amarnath Halder and Others

RESPONDENT

Date of Decision : 26-03-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 2 CALLT 261

Hon'ble Judges : Satyabrata Sinha, J; Satya Narayan Chakrabarty, J

Bench : Division Bench

Advocate : R.N. Majundar, Saikat Basu and Sudarsan Roy, for the Appellant; Arun Prakash Chatterjee, Bikash Ranjan Neogi, P.K. Sen, D.R. Chakraborty and A.K. Das, for the Respondent

Final Decision : Dismissed

Judgement

Satyabrata Sinha, J.—This appeal is directed against a judgment and order passed by a learned Single judge of this court dated 19-4-94, whereby and whereunder the writ petition filed by the writ petitioner/respondent No. 1 questioning an order of termination of service dated 7.8.91 was said aside and the writ petitioner/respondent No. 1 was directed to be reinstated with full back wages.

2. The fact of the matter lies in a very narrow compass.

3. The writ petitioner/respondent No. 1, at the material time was posted as Station Manager at Tejpur, Assam, on or about 1/7 July, 1987, a charge sheet was issued as against the writ petitioner. The said charge-sheet

Is contained in Annexure "B" to the writ application, charge Nos. 2 and "

4 whereof read thus :

"2. That you. have paid Rs. 700/- to the same party i.e. M/s Trade Land for off loading a Boeing Pax. Step from a truck which came from Guwahati (Ref.

1CV-596 dt. 14.3.86) and made another payment of Rs. 400/- to the same party, i.e. M/s. Trade Land, towards painting of Trolleys, Trestles etc., without obtaining the payee's signature on the P/C Vouchers as per procedure (Refer 1CV No. 597 dt. 14.3.86). It has been alleged that no contractors men was deployed either for off loading the pax step from the truck or for painting of trolleys etc.

4. That you paid Rs. 3,352/- only towards Hotel accommodations and food charged to Hotel Luit Vide ICV No. 162 dt. 14.7.86 and also Rs. 402/- to Hotel Parijat vide ICV No. 224 dt. 14.8.86 for the passengers and crew of grounded flight No. 1C-212 of 15.6.86. On subsequent verification, discrepancies were noticed about number of rooms and passengers accommodated in the above Hotels, as well as cost of food charges as per Hotel records which did not tally. Moreover no written request was sent to the Hotels with the names of the passengers and crew requiring accommodation, as required under rules."

4. An enquiry was held on various dates. On 7.9.89 the enquiry officer submitted his report. However, upon an order passed by the competent authority, the Enquiry officer fixed 23.10.90 for further enquiry in order to enable the writ petitioner/respondent No. 1 to make his final submission. The writ petitioner stated that as he had nothing to submit enquiry report ought to have been made in terms of the circular letters issued by the appellant Corporation within 2 weeks from the date of completion of the said enquiry. As no further reply was submitted, a supplementary report : was made by the Enquiry officer on or about 28.11.90, which is contained in Annexure "C to the writ application. A second show cause notice was served upon the respondent No. 1 on 17.12.90 directing him to show cause on 26.12.90 as to why punishment of removal from service shall not be inflicted on him. The writ petitioner/respondent No. 1 requested for extension of time which was allowed whereafter the writ petitioner without filling any show cause, filed a writ application in this court. By a judgment and order dated 11.1.91, a learned Judge of this Court directed the appellant to give an opportunity of hearing to the writ petitioner and to pass a reasoned order within 4 weeks from the date thereof. The order dated 8.1.91 removing the respondent No. 1 from service was also set aside. Pursuant to the said judgment, a personal hearing was given to the respondent No. 1 by the appellant No. 2 on 28.1.91. The impugned order was passed on 7.2.91 in terms whereof the writ petitioner was removed from service. Thereafter, a writ application was filed which was marked as CO. No. 16645(N) of 1991, and by an order dated 4.3.91 a learned Single Judge of this court while Issuing direction for affidavits, passed an interim order to the effect that the writ petitioner should not join the office until further orders and the appellants would not give effect or further effect to the impugned order of removal. The said writ application was allowed by the impugned judgment dated 10.4.94.

5. Mr. R.N. Majumdar, learned counsel appearing on behalf of the appellants has raised various contentions in support of this appeal. Learned counsel firstly submits that the judgment of the learned Trial Judge suffers from an illegality

apparent on the face of the judgment in so far as no reason has been assigned in support thereof. Learned counsel contends that the learned Trial Judge while holding that the findings of the disciplinary authority are perverse apart from failing to assign any reason in support thereof, failed to take into consideration that the Charge Nos. 2 and 4 are absolutely separate, and thus, even if the principles of natural justice were not complied with in relation to charge No. 4, Charge No. 2 must be held to have been proved and in that view of the matter, the entire judgment should be set aside. Learned counsel submits that failure on the part of the presenting officer to examine the witness had not prejudiced the writ petitioner, and thus, the impugned judgment cannot be sustained. Reliance in this connection has been placed in the cases of *K.L. Tripathi Vs. State Bank of India and Others*, and *Rustom & Hornsby(I) Ltd. v. T.B. Kadam*, reported in AIR 1975 SC 2025. It has been further submitted that it is a settled law that the provisions of the Evidence Act having no application in a domestic enquiry, High Court while exercising its power of judicial review cannot sit in appeal over the finding of the Enquiry Officer, nor can it appreciate the evidence adduced before it. According to the learned counsel, assuming that only Charge No. 2 was proved, the order of punishment would be sustained on the basis of the said charge itself, and in any event, the learned counsel contends the learned Trial Judge ought to have remitted the matter back to the Enquiry Officer from the same stage and in support of his aforementioned contention, reliance has been placed in the case of *S.C. Glotra v. United Commercial Bank and Ors.*, reported in 1996(1)LLJ 10 and *State of U.P. v. Ravinder Nath Chatuwedi and Anr.*, reported in 1995 SCC (L & S) 1426. It has been further contended that in any event, the question of reinstatement and back wages should not be passed at this stage and the same should be subject to the ultimate order that may be passed by the disciplinary authority. In support of his aforementioned contention, reliance has been placed in the case of *Managing Director, ECIL v. B. Karunakar*, reported in 1993(4) SCC 737.

6. Mr. Arun Prakash Chatterjee, learned counsel appearing on behalf of the respondent No. 1, however, submits that the records of enquiry proceedings would show in no uncertain terms that there had been a gross violation of the principles of natural justice. It has been submitted that in the instant case the presenting officer was a witness and thus he was biased. It is further submitted that the bias on the part of the presenting officer and/or the enquiry officer has vitiated the entire proceedings. Our attention was further drawn to the fact that even in the second show cause notice, the disciplinary authority has taken into consideration the report of the Commercial Manager, and thus, the order passed by the disciplinary authority must be held to be wholly illegal and without jurisdiction.

7. It is not disputed that in terms of the letter dated 1.7.87, 5 charges were served upon the writ petitioner. In the Enquiry the petitioner has been held to be guilty only in respect of Charge Nos. 2 and 4 which have been noticed hereinbefore. In the chargesheet which is contained in Annexure "B" to the writ

application, it was stated that by reason of the said acts of omission and commission on the part of the delinquent officer he had incurred the above expenditures from the station's imprest float irregularly and in abuse of his power without satisfactory reasons and justifications for such expenditures resulting in financial loss to the establishment, as per evidences brought on record, which, if proved, will mean an act of misconduct and attract disciplinary action. The writ petitioner is said to have violated clauses 1, 16(4), 16(8), 16(13) and 16(53) of the standing order. It is submitted that during pendency the aforementioned disciplinary proceeding, the presenting officer sought to prove a certificate which was marked Ext. 12, whereby an whereunder the management of Hotel Luit sought to state the names of persons who were accommodated in the said hotel on 15.6.86. From the enquiry proceedings dated 1.9.88, it appears that the writ petitioner disagreed with the contents of the said documents and wanted to cross-examine the persons concerned who had given, according to him, contradictory or inconsistent statements. The presenting officer stated that he had to take up the matter with the competent authority for exploring the possibility of examining the concerned witnesses. From the minutes to the meeting dated 7.12.88, it appears that the presenting officer in answer to question of the Enquiry Officer stated that since the persons required for cross-examination are outsiders, they have no hold on them. The Enquiry officer recorded that the presenting officer has expressed his inability to produce the persons whom the writ petitioner wanted to question, whereafter certain other documents were taken as exhibits. The writ petitioner stated before the Enquiry Officer that the presenting officer had presented two statements from two different hotels which are contradictory and unless he is given an opportunity to cross-examine the witnesses, it will be blatant violation of the principles of natural justice and so he wished to cross-examine them and if the presenting officer is not able to produce them for his cross-examination they should not be considered at all.

8. From what has been noticed hereinbefore, it is evident that the purported certificate which was issued in the year 1988 that, is much after the acts of omission and commission were allegedly made by the writ petitioner, some new documents were sought to be introduced in evidence without examining the makers thereof. The said documents were proved by the presenting officer. It is true that the provisions of the Indian Evidence Act have no application in relation to a domestic inquiry, but it is well settled that principles of natural justice are required to be complied with. Submission of Mr. Majumdar to the effect that by reason of non-examination of the said witnesses the petitioner was not prejudiced, cannot be accepted. As a document was sought to be proved as against the petitioner in violation of the principles of natural Justice, the petitioner was evidently prejudiced thereby. The decision of the Supreme Court in K.L. "Dipathi"s case (supra) upon which Mr. Majumdar has placed strong reliance, has no application. In the said decision itself, it has been held that the basic concept is fair play in action administrative, judicial or quasi-judicial.

However it was held that as the delinquent officer had admitted the fact sought to be proved by the witness, non-giving of an opportunity to the delinquent to cross-examine the said witness did not prejudice him. Such is not the position here. In *Huston & Hornby's case* (supra), the Supreme Court merely outlined the power of the Labour Court while adjudicating upon the question of dismissal of a workman. In the facts of that case, it was held that there was no failure on the part of the Inquiry Officer to give a reasonable opportunity to the workman and the inquiry was fair. The other submission of Mr. Majumdar, learned counsel, to the effect that the delinquent officer could have examined the said witnesses himself is stated to be rejected. The certificates granted by the authority of the Hotel were relied upon by the appellant, whether they rely on the said documents or they do not rely on the said documents. If they intended to rely upon the said documents, they are bound to bring the same on records upon compliance of the principles of natural justice. It is now well known that a documents do not prove itself. Reference in this connection may be made to the case of *Swapan Ray v. Indian Airlines Ltd.* reported in 1996(1) CHN 147. In that Judgment, this court had laid down the law as regards compliance with the principles of natural justice and has also distinguished the case of *K.L. Tripathi Vs. State Bank of India and Others*, It was held as follows :-

"It is now well known that although principles of natural justice are based on two pillars, namely (1) nobody shall be condemned without hearing & (2) nobody shall be a judge of his own cause, in relation to domestic inquiry, fairness in the procedure is admittedly a part of the principles of natural justice. As in the instant case, there has been a gross violation of the principles of natural justice, the impugned orders must be held to be bad in law, reference in this connection may be made to *Khem Chand Vs. The Union of India (UOI)and Others*, "

9. In that case as in the present case the presenting officer does not appear to be an impartial person, inasmuch as admittedly he had examined himself as a witness.

10. It is true the aforementioned documents were sought to be relied upon by the presenting officer in relation to Charge No. 4. The submission of Mr. Majumder, learned counsel, to the effect that upon perusal of the report of the Inquiry Officer it would appear that the writ petitioner's evidence has been considered in terms of the defence of the writ petitioner and must be held to be guilty of failure on his part to supervise. The petitioner was not charge-sheeted on that line cannot be accepted.

11. Mr. Majumder, learned counsel, has accepted that it is not the case against the petitioner that he had made any personal gain out of the transaction but because of his lack of supervision, the Corporation has suffered loss.

12. In this view of the matter, we are of the opinion that the said certificate had a vital role to play on the culpability of the petitioner and thus the petitioner must be held to be prejudiced as the maker of the said certificate has not been

produced for his cross examination. It is not necessary for this court to go into the question as to whether charge No. 2 has been proved or not inasmuch as, the writ application can be allowed on another question.

13. In the second show cause notice, the disciplinary authority has categorically stated that he had taken into consideration the observations made by the Commercial Manager, the respondent No. 2 herein.

14. In terms of the notification issued u/s 45 of the AIR Corporation Act, a Standing order was framed: Clause 16 of the said Standing Order defines misconduct.

15. Clause 17 provides for the Rules of Conduct and Disciplinary Procedure and also provides for the nature of punishments which can be imposed upon a delinquent officer which are specified in clauses (a) to (h) thereof from the schedule appended to the said Standing Order it appears that the Commercial Manager being the Regional Departmental Head, was entitled to impose punishment in terms of Clause (b) of the Standing Order No. 17, that is, fine whereas the Regional Director was entitled to impose punishment in terms of clauses (e) to (h) thereto.

16. The chargesheet was submitted by the Regional Commercial Manager who was the Regional Departmental Head. The enquiry officer submitted a report before the said authority. He however thought that the matter should be referred to the Regional Director as he was not in a position to impose adequate punishment upon the delinquent officer, Mr. Majumder is very fairly placed the aforementioned report of the Commercial Manager dated 29th November, 1990.

17. In the said report, the Commercial Manager has clearly stated that in the past also similar allegations were there against the petitioner and the petitioner was cautioned in writing to be more careful in his dealings. Apart from the fact that he had expressed his views as regards guilt of the delinquent officer by concerning with inquiry report; evidently he had also taken into consideration additional materials. The finding of guilt is an additional material as has been held by the Supreme Court of India in the case of Managing Director, ECIL v. B. Karunakar reported in 1993(4) SCC 737. In the instant case, the disciplinary authority had acted illegally in considering the aforementioned report of the Commercial Manager without furnishing a copy thereof to the writ petitioner. From the order passed by the disciplinary authority dated 7.2.91 it appears that he had arrived at the said finding after considering the report of the inquiry officer along with the proceedings produced in course of the inquiry and all of the relevant documents. He has further stated that I have gone through once again the inquiry report the proceedings of the enquiry, the evidences given and the documents produced in course of the inquiry and all other relevant documents as also your reply dated 7.1.91 to the show cause proposing the punishment. He, therefore, considered not only the documents produced in course of the enquiry but other documents including the letter of the Commercial Manager dated

19.11.90 as would be evident from his second show cause notice. Further more despite the order passed by S.K.Sen, J, he has not passed any reasoned order. He has merely stated that he has analysed the evidence. It is true as has been submitted by Mr. Majumder, that the disciplinary authority while concurring with the report of the inquiry officer need not assign any reasons. Reference in this connection may be made to 1996 Lab IC 210 State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal Grover, but in the instant case S.K.Sen, J had directed the authority to pass a reasoned order. His Lordship also directed the authority to give a personal hearing to the writ petitioner and consider the entire matter afresh. In that view of the matter, he was required to pass a reasoned order. In this view of the matter although we agree with the submission of Mr. Majumder, learned counsel, to the effect that the learned Trial judge has not assigned any reasons in support of his finding but keeping in the fact that the matter had been argued at length we dispose of the writ application finally.

18. There cannot be any doubt whatsoever that in view of the aforementioned irregularities, the Department is entitled to cause a fresh inquiry to be made as against the petitioner in terms of the decision of the Supreme Court in the case of S.C. Glotra v. United Commercial Bank and Ors. reported in 1996(1) LLJ 10 and State of U.P. v. Ravtnder Nath Chaturvedt and Anr. reported in 1995 SCC 1426. We are however unable to agree with Mr. Majumder, learned counsel, that the question of grant of relief of reinstatement and full back-wages should not arise. In view of the fact that we are satisfied that the inquiry had been conducted in flagrant violation of the principles of natural justice and thus the question of leaving the matter of punishment once again at the hands of the disciplinary authority at this stage does not arise.

19. In B. Kannakai's case (supra) upon which reliance has been placed by Mr. Majumder, the Supreme Court directed that the principle of natural justice has to be complied with so as to enable the delinquent officer to submit the second show cause. Thus the Supreme Court did not set aside the finding of the disciplinary authority upto the stage of issuance of the second show cause notice. In the instant case, in view of our findings, aforementioned, the inquiry proceeding, the show cause notice issued by the disciplinary authority as also the impugned order passed by him removing the petitioner from the service are found to be wholly illegal. Any order passed in violation of the principle of natural justice should be treated to be nullity. This however does not mean that the Court in a given situation may not grant full relief to the petitioner. However keeping in view the conduct of the appellant and particularly in view of the fact that they had un-necessarily caused delay in the disciplinary proceeding, inasmuch as, as noticed hereinbefore, despite the fact that the writ petitioner had categorically stated before the enquiry officer that he had no further argument to submit and despite the fact that acting thereupon the enquiry officer submitted his report on 7.9.89 although the last enquiry was held on 7.3.80, a purported further opportunity was sought to be given to the petitioner by the enquiry officer in terms of his letter dated 23.10.90. It is not disputed that

in terms of the circular letter issued by the appellants themselves, enquiry report is to be submitted within a period of two weeks from the date of completion of enquiry and the disciplinary authority must pass an appropriate order within two weeks thereafter.

20. Evidently as the disciplinary authority did not do so, the enquiry officer/ disciplinary authority failed to comply with the said requirement and a further opportunity was sought to be given by adopting a contrivance.

For the reasons aforementioned, there is no merit in the appeal which is dismissed.

However it would be open to the appellants to proceed with the enquiry proceeding in terms of the observations made hereinbefore as against the respondent No. 1.

This appeal is dismissed with costs.

Counsel's fees in assessed at 100 G. M.

The prayer for stay of operation of this judgment made by Mr. Majumder, learned counsel, is considered and refused.

S.N. Chakrabarty, J.

21. I agree