

(2005) 03 BOM CK 0152
In the Bombay High Court
Case No : Writ Petition No. 350 of 2005

Indian Airlines Ltd.

APPELLANT

Vs

Premchand

RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2005) 3 BomCR 605 : (2005) 2 MhLj 1019 : (2005) 2 MhLj 1018

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : C.U. Singh, Abhay Kulkarni and Pooja Kulkarni, for the Appellant;
Deepkamal, for the Respondent

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—Notice has been issued in this petition on 14th February, 2005 for hearing and final disposal at the stage of admission. The respondent has accordingly appeared before the Court in response to the notice through counsel. The petition has in these circumstances been heard and is being finally disposed of by consent at the stage of admission.

2. The respondent joined the services of Indian Airlines as an Air-conditioning technician in the Engineering Department on 18th March, 1983 and was later confirmed. On 23rd June, 2000 a charge-sheet was issued to the respondent for unauthorized absence for a period of 96 days during the period 1998-99. The respondent filed his reply on 12th July, 2000 and claimed that his absence from duty was on account of sickness and that he had been a heart patient since 1992. The respondent annexed certain copies of his medical reports. A departmental enquiry was convened against the respondent to enquire into the charge of unauthorized absence. On 24th August, 2000 proceedings took place before the enquiry officer at which the respondent was represented by Rampal Singh as his defence representative. The Minutes of the enquiry proceeding have been signed by the defence representative as well as by the respondent. In

response to a question of the enquiry officer, the respondent stated that he was pleading guilty of his "own accord and without any pressure from any quarter". The respondent, however, stated that he had to remain absent from duty on the ground of sickness. The charge of unauthorized absence was sought to be proved by the management through a representative from the Time Office who produced the leave and attendance record of the respondent for the years 1998-99. The leave and attendance record showed that the respondent was absent for 44 days in 1998 and for 52 days in 1999. The enquiry officer asked the respondent as to whether he was satisfied with the attendance record maintained by the Time Office to which he answered in the affirmative. The enquiry officer thereupon gave to the respondent an opportunity to furnish any reason or comments in his defence including medical certificates in support of his plea of absence due to sickness. The respondent stated that he was a heart patient since 1992 and was undergoing medical treatment through Indian Airlines Limited. Moreover, it was stated that the MRI of his Lumbar Spine had revealed certain irregularities with reference to which a medical certificate was issued on 5th April, 2000 by an Imaging Laboratory in New Delhi. The respondent also produced an Electro physiology report dated 20th May, 2000. The respondent stated that he had been obtaining medicine from the medical department of Indian Airlines for the previous four or five years and that he was sick during the period 6th August, 1999 to 10th August, 1999, 12th August, 1999 to 14th August, 1999 and 9th October, 1999 to 13th October, 1999. The respondent stated that he had remained absent mainly due to his sickness and requested the management to consider his case sympathetically by taking a lenient view. The enquiry officer in the course of his report adverted to the leave and attendance record of the respondent and to the material which had been produced by the respondent in support of his absence from duty on the grounds of sickness. The enquiry officer accepted the medical documents submitted by the respondent and came to the conclusion that these documents accounted only for unauthorized absence of a period of 13 days of the 96 days for which he had been charge-sheeted. The charges were consequently held to be proved.

3. An approval application was filed u/s 33(2)(b) of the Industrial Disputes Act, 1947 by Indian Airlines Limited before the National Industrial Tribunal at Mumbai. The Presiding Officer of the National Industrial Tribunal has held that there was a breach of the principles of natural justice. Consequently, the enquiry was set aside and the management was given an opportunity to prove the charge of misconduct before the Tribunal.

4. Counsel appearing on behalf of the petitioner urges, that the finding of the Tribunal to the effect that there was a breach of the principles of natural justice is ex facie perverse and that it would warrant the interference of this Court under Article 226. In the present case, the workman had admitted the factum of absence and pleaded guilty to the charge. However, his explanation was that he was absent from duty on the ground of sickness. The enquiry officer had thereupon furnished an opportunity to the workman to produce medical

certificates in support of his plea of sickness and upon production of documents by the workman, the enquiry officer had given credit to the workman for those days on which his absence from duty was supported by a medical certificate signed by the medical officer of Indian Airlines. The submission was that there was absolutely no breach of the principles of natural justice.

5. A perusal of the record of the enquiry held on 24th August, 2000 would show that the enquiry officer had called upon the respondent to state his plea in response to the charges. The workman stated that he was pleading guilty of his own accord without any pressure from any quarter. Undoubtedly, the explanation of the workman was that he had to remain absent from duty on grounds of sickness. The leave and attendance record of the workman was produced by the Time Office and it showed unauthorized absence of 96 days, 44 in 1998 and 52 in 1999. The workman stated that he was satisfied with the attendance record which was shown to him. (The workman, it must be noted, stated before the Tribunal that he did not want to lead any evidence.) He was represented by a defence representative in the course of the enquiry. Once the workman accepted the factum of absence from duty, the burden of proving his explanation was on him. The Industrial Tribunal observed that the enquiry officer had called upon the representative of the Time Office to produce documents and upon production of the record he had directly asked the workman whether he was satisfied with the attendance record maintained by the time office. Then, according to the Tribunal instead of asking the workman or his representative to cross-examine the witness the enquiry officer informed the workman that he was giving him a final opportunity to produce any documents in support of his defence including medical certificates. The observation of the Tribunal was that the workmen was not asked to lead any evidence but was asked to make only comments.

6. There is merit in the contention of counsel appearing on behalf of the petitioner that the approach of the Tribunal on the question as to whether there is a violation of the principles of natural justice is inconsistent with the settled principles of law relating to the evaluation of such matters involving the exercise of disciplinary jurisdiction. The representative from the Time Office of the employer produced the leave and attendance record and the workman stated that he was satisfied with the attendance record that was shown to him. That being the position, the Tribunal was patently in error in holding that the workman should have been asked to cross-examine the witness. The workman accepted the attendance record and in fact he did not dispute the days of his absence. The defence of the workman was that he was prevented from attending to duty on the ground of sickness. Hence, the essential question which had to be decided in the disciplinary enquiry was as to whether the workman had a fair and bona fide opportunity to establish his defence that he remained absent on grounds of medical unfitness. The fact that the evidence of the representative from the Time Office was not recorded in "evidence form" is to take a rather technical view of the matter when the purpose of summoning the witness was to produce documents relating to the official leave and attendance record of the charge-

sheeted workman which in any event the workman did not dispute. The record of the enquiry shows that the enquiry officer, on the workman stating that he was satisfied with the attendance record, gave to the workman an opportunity to furnish any reason or comments in his defence including medical certificates in support of his absence due to sickness. The workman produced the medical record upon which the enquiry officer gave him credit for the days which according to the enquiry officer the workman had been declared to be unfit for duty by the examining doctor. On this state of the record, it is impossible to subscribe to the view of the Tribunal that there was a breach of the principles of natural justice. Disciplinary enquiries are not governed by the strict rules of evidence that would govern a criminal trial. The standard of proof and the mode of proof that would apply in a criminal trial are not attracted to disciplinary enquiries. The view of the Tribunal that there was a breach of the principles of natural justice is, therefore, unsustainable.

7. The Tribunal would still have to consider the question as to whether the charge has prima facie been established consistent with the parameters of the jurisdiction of a Tribunal in an approval application u/s 33(2)(b) of the Industrial Disputes Act, 1947. Counsel appearing on behalf of the workman has stated before the Court that the enquiry officer has not allowed to the workman the benefit of several days of absence because the medical Certificate was not countersigned by the medical officer of Indian Airlines. Similarly, a photocopy of the treatment card of the Indian Airlines has been produced before the Court to show that the workman had received treatment from the Indian Airlines" Medical Officer during, certain periods in 1998 and 1999. Since the issue as to whether the charges have been proved has not been considered by the Tribunal, I am of the view that it would not be either appropriate or proper for this Court to express any view on that aspect of the matter. In the circumstances, it would be appropriate and proper to remand the matter back to the National Industrial Tribunal to reconsider the approval application u/s 33(2)(b) by proceeding ahead with the remaining determination that is required to be arrived at in accordance with law. Having regard to the circumstances of the case, the Tribunal is requested to expedite the disposal of the approval application and to endeavour to do so by the end of June, 2005.

8. Liberty is granted to the respondent to file an additional affidavit before the Tribunal annexing copies of the treatment card of Indian Airlines and such other documentary material which he may seek to rely upon before the Tribunal. All the rights and contentions in this respect on merits are kept open.

9. The petition is allowed in the aforesaid terms and the order of the Tribunal dated 10th August, 2004 is quashed and set aside. There shall be no order as to costs.