

(2008) 11 DEL CK 0050

In the Delhi High Court

Case No : LPA 34 and 36 of 2007 and CM Appl No's. 693, 697 and 698 of 2007

Indian Airlines Ltd.

APPELLANT

Vs

V.K. Gupta

RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Citation : (2008) 11 DEL CK 0050

Hon'ble Judges : A.P. Shah, C.J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Jayant Nath, Upender Thakur, K.M. Singh and N.K. Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

1. These two appeals by Indian Airlines Limited, now constituted as the National Aviation Corporation of India Limited, common sets are against a common judgment dated 17th October 2006 passed by the learned Single Judge disposing of WP (C) No. 3568 of 1989 filed by the Appellant herein and WP (C) No. 69 of 1990 filed by the Respondent.

2. The Respondent was employed with the Indian Airlines in 1955 as a Cleaner. Thereafter he was appointed as a Mechanic on 2nd October 1965. He was in 1980 working as an Aircraft Technician. In relation to an incident that took place on 31st July 1980 a disciplinary enquiry was initiated against him on the following charges:

Charge-1 That you were rostered for after-noon duty on 31.7.80 and after your duty was over you punched "out" your gate card at 21.31 hours. It is alleged that on the above date you were found unauthorizedly in the operational/protected area, after your duty hours at about 21.35 hours near this aircraft which had operated an international flight No. IC-452 (D) from Kabul.

Charge-II That at about 21.40 hours on 31.7.80 you were found sitting in I.A. passenger coach No. 3536 alongwith a Card Board box. The said passenger

coach had just been used for transporting the passengers who had arrived from Kabul by Flight No. IC-452 (D) and was parked near the domestic sterile lounge. It later came to light that the above card board box contained imported uncleared customs articles (37 pieces of dinner set).

Charge-III That when you were sitting in the passenger coach No. 3536 as stated in Charge II above Shri R.A. Misra, Driver of the above coach enquired from you about the ownership of the said card board box. You replied that the same belonged to Mr. Sehgal. Further, when the Driver asked you as to who was Mr. Sehgal, you replied that you were Mr. Sehgal and thereby gave false identify.

3. It is not in dispute that Charge III was not pressed in the domestic enquiry. The Respondent was found guilty of Charges I and II. By an order dated 12th April 1982 the Respondent was dismissed from service. His appeal against the dismissal was rejected. Thereafter the Respondent raised an industrial dispute which came to be decided by the Central Government Industrial Tribunal ("CGIT"). By an order dated 25th July 1989, the CGIT concurred with the findings of the domestic enquiry not only in respect of Charges I and II but Charge No. III as well. However, as regards the punishment, the CGIT concluded as under:

The punishment of dismissal from service without any compensation for long service rendered appears to be a bit harsh. It may be pointed that the dinner set imported by the workman is not contraband and is only a dutiable article. It could have been got cleared from the customs on payment of duty which may be few hundred rupee. It is therefore, directed that it shall be deemed to be a case of simple discharge from service and the workman shall be paid a sum of Rs. 1,00,000/- (Rupees one lakh only) of lump sum compensation and the workman will have no other claim against the management whatsoever. The management shall forward a cheque or draft for the said sum of Rs. 1,00,000/- to this Tribunal within one month of the enforcement of the award failing which it shall be liable to pay interest @ 15% per annum and the amount with interest, if any, shall be deposited with the Post Master Parliament Street in the name of the workman in the monthly income Scheme. The workman shall be entitled to the monthly income which is expected to be Rs. 1,000/- per month (Rupees one thousand only) and the principal shall not be paid to him till he attains the age of 58 years. This reference stands disposed of accordingly.

4. Aggrieved by the order of the CGIT the Appellant filed Writ Petition (Civil) No. 3568 of 1989 and the Respondent filed Writ Petition (Civil) No. 69 of 1990 in this Court. By the impugned common judgment dated 17th October 2006 the learned Single Judge disposed of both the writ petitions. The learned Single Judge concluded that the CGIT had travelled beyond the scope of the reference by returning a finding on Charge No. III which was not proved. As regards its findings on Charges I and II it is held that "there was evidence available with the CGIT and therefore, this finding cannot be said to have been perverse." As regards the punishment the learned Single Judge observed that:

What was proved, in fact, was not any misconduct relating to the card board box. The only misconduct found was the petitioner's presence in the operational area not only in the bus but also near the aircraft. Therefore, the punishment order could only relate to this misconduct. The petitioner has certainly misused his identify card which allowed him entry in that area. However, it cannot be said that for this kind of misconduct any major penalty could have been imposed on him. The penalty of dismissal for this misconduct and, therefore, cannot be upheld. Even if his earlier misconducts are seen, which again were minor, it will be too harsh to dismiss him for this misconduct.

5. Consequently while setting aside the Award dated 25th July 1989 passed by the CGIT the learned Single Judge issued a direction that the Appellant herein will levy a fresh penalty on the Respondent keeping in view the misconduct proved and will pay salary and allowances as permissible under the Rules subject to such punishment. It may be noticed that the Respondent herein has not challenged the impugned judgment of the learned Single Judge whereby the findings on Charge No.I and the findings in part on Charge No.II have been held to be proved.

6. We have heard Mr. Jayant Nath, learned Senior counsel appearing for the Appellant and the Respondent who appeared in person.

7. It is submitted by Mr. Nath that the scope of the present appeal is only to the extent of interference by the CGIT with the punishment awarded to the Appellant. He submitted that there was no occasion for the learned Single Judge to have required the Appellant to reconsider the penalty imposed since the misconduct was indeed a serious one particularly in view the past acts of misconduct of the Respondent. In particular he referred to certain incidents of October 1960, August 1962 and July 1972 where some minor penalty was awarded to the Respondent. Referring to the judgments of the Supreme Court in Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., , J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another, , Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others, and the judgment of the Madras High Court in L.M.W Limited v. The Presiding Officer, Labour Court 1997 (ii) LLJ 196 he submitted that in the facts of the present case the punishment of dismissal awarded to the Respondent could not be said to be shockingly disproportionate and therefore did not warrant any interference.

8. As regards the extent of misconduct stated to have been proved against the Respondent in the instant case it appears that the Charge No. I was that the respondent punched "out" his gate card at 21.31 hours on 31st July 1980 and he was found four minutes later near the aircraft which had operated an international flight No. IC-452 (D) from Kabul, at Palam Airport in New Delhi. Five minutes later he was found sitting in a passenger coach. Although the charge is that he was found in the passenger coach along with a card-board box, none of the witnesses spoke of his being found with the said card board box. The facts which are not in dispute are that the Respondent's son Raj Kumar Gupta,

arrived by the said flight from Kabul. A card board carton was found lying in the passenger coach but was not in the Respondent's possession. The CGIT concluded that "there is no evidence that the dinner set was brought by the son of the workman or that it was carried by the workman to the Coach No. 3536". Yet the CGIT drew an adverse inference to that effect based on the "preponderance of probabilities." The learned Single Judge examined the record as well as depositions of MW-5 Mahesh Anand, Security Guard, MW-4 M.A. Mishra, Driver, MW-1 S.P. Chopra, Senior Traffic Superintendent and MW-7 Ram Bharose and concluded that Charge No. III having being dropped "the allegations and imputation that the petitioner had anything to do with the carton containing the dinner set had altogether been dropped."

9. Having examined the impugned order as well as the record, it is plain to this Court that there is no evidence to show that the Respondent was found with the card board box in the passenger bus. Clearly, therefore, the misconduct if any that could be stated to have been proved against the Respondent is that he was present unauthorizedly in the prohibited area immediately after his duty hours and that soon thereafter he was present in the bus that carried the passengers from the aircraft which landed from Kabul in which his son also travelled. In the facts and circumstances, we concur with the view expressed by the learned Single Judge that the misconduct proved against the Respondent was not one which could attract a major penalty.

10. In light of the law explained by the Supreme Court in the judgments referred to by learned Senior counsel for the Appellant, we are of the view that the punishment of dismissal from service was, in the facts of the present case, indeed "shockingly disproportionate." We find no infirmity in the impugned judgment of the learned Single Judge that calls for interference.

11. The appeals and the pending applications are, accordingly, dismissed. The appellant is directed to comply with the impugned order of the learned Single Judge within a period of three months from today.