

(2013) 07 AHC CK 0241
In the Allahabad High Court
Case No : C.M. W.P. No. 44338 of 2012

Indian Oil Corporation Ltd.

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2013) 6 AWC 6281

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Ashwani K. Mishra and Ankush Tandon, for the Appellant; Ashok Bhatnagar, for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—The petitioner. Indian Oil Corporation Ltd. is a Government owned Corporation and has an oil refinery at Mathura, which is engaged in the production of petroleum products. In this refinery, the petitioner has also established a hospital with a view to render better medical service to its workers and staff. On 19.10.1989, a duty rotation roster of the pharmacist was circulated by the Joint Chief Medical Officer, which was revised by another circular dated 20th October, 1989. making it effective from 23rd October, 1989. This new rota system was not liked by the pharmacists, who were working in the hospital and, instead of protesting peacefully made it into an ugly incident. It transpires that an incident took place in the evening of 23rd October. 1989 in the room of Dr. A.K. Sen, who was holding a meeting with other doctors and officers of the management, when a crowd of 30 persons led by Sri R.K. Gautam and by the workman and other pharmacists, employees and their wives barged into his room and hurled abuses, threw paper weights, chappals and other items upon the doctors and other officers of the management. The crowd not only threatened the doctors with dire consequences, but also ruffled them up and, in the process, ransacked the room, injured Dr. A.K. Sen, broke the glass top of the table and damaged other items in his office. Dr. A.K. Sen and other doctors were

confined for three hours and was ultimately forced to sign a document withdrawing the new rota system.

2. This incident created a fear and terror amongst the doctors leading them to submit a joint complaint dated 24th October, 1989 to the Executive Director bringing to his notice about the incident which occurred in the previous evening indicating therein the persons, who were responsible for the incident. The said doctors also submitted a joint resignation letter dated 24th October, 1989.

3. On account of this incident, the working of the hospital was paralysed and a lockout was declared. The patients were shifted to a hospital in the city. The management was in a fix and in order to restore normalcy in the hospital and in the refinery, the management took immediate measures in terms of Clause 18.8 of the Certified Standing Orders of the Company and terminated the services of Sri R.K. Gautam and the workman, Harish Chandra Gupta. Not only this, the management also lodged a first information report against R.K. Gautam and the workman.

4. Sri R.K. Gautam and the workman Sri Harish Chandra Gupta, being aggrieved by the order of the termination of their services, filed two separate writ petitions. Sri R.K. Gautam filed a writ petition before the Delhi High Court and the workman filed writ petition No. 29656 of 1990 before this Court. The writ petition of Sri R.K. Gautam was allowed and the writ petition of the workman was also allowed by a judgment of this Court dated 2nd April, 2004. The writ court held that the condition precedent for invoking Clause 18.8, of the Certified Standing Orders of the Company did not exist nor did the management recorded its reasons for invoking this provision, and consequently, this Court set aside the order of termination giving opportunity to the management to initiate departmental proceedings against the workman.

5. Based on the said decision, the workman was reinstated on 20th April, 2004. It has also come on record that Sri R.K. Gautam was also reinstated in service. The management, took a decision to charge-sheet the two workers, and accordingly, a charge-sheet dated 28th May, 2004 was issued. Four charges were levelled against the workman. Since the charges will have bearing in the case, the charges are extracted hereunder:

In October, 1989 while you were posted and working as Pharmacist in Mathura Refinery Hospital. Mathura, it is alleged that you committed the following acts of omission and commission:

1. With a view to streamline the system for rendering better medical services to the patients, the duties and revised duty rota of the pharmacists was circulated by the then Joint Chief Medical Officer. Dr. A.K. Sen vide Circular No. M.R./M.E.D. dated 19.10.1989, which was revised after discussions by another Circular dated 20.10.1989. The revised duty rota was made effective from 23.10.1989 and the same was intimated to all the pharmacists including yourself.

As per the revised duty rota you were attending duty in the evening shift of 23.10.1989 at Mathura Refinery Hospital, in Mathura Refinery Township. However, in the night of 23.10.1989 when the doctors of the Hospital namely. Dr. A.K. Sen, the then J.C.M.O., Dr. V.N. Mishra, the then D.C.M.O., Dr. S.A. Abbas, the then D.C.M.O., Dr. R.P. Patel, the then D.C.M.O., Dr. R.K. Singhal. and Dr. Prathiba Singhal were having a meeting at Mathura Refinery Hospital at Mathura Refinery Township in the room of Dr. A.K. Sen. at or about 9.40 p.m. you entered the room of Dr. A.K. Sen with a crowd of approx 30 persons comprising other pharmacists S/Shri R.K. Gautam, "Ajay Bajpai. R.L. Gautam, Dauji Ram and their wives alongwith some other employees. You alongwith Shri R.K. Gautam. then led and instigated the crowd in hurling abuses and threats of dire consequences against the doctors present unless the revised duty rota was immediately withdrawn. Thereafter, at your instigation the group of persons attacked the doctors present by throwing paper weights, files, sandals, and the hospital records and equipment lying in the room at the doctors present, resulting in Dr. A.K. Sen being injured and resulting in the glass top of Dr. A.K. Sen's table being broken. You alongwith others in the crowd thereafter continued with the above action and kept the doctors forcefully and illegally confined in the room for almost three hours until signatures on the document hereinafter referred to withdrawing the revised duty rota was obtained, and released the doctors from the room only after the said document was signed.

2. Having come to know about the above incident in the hospital the then Commandant C.I.S.F. Shri R.C. Kalia alongwith S/Shri N.S. Narang the then S.P.A.M., D.V. Oak and S.L. Verma, the then P.A.M.s. rushed to the hospital at around 10.30 p.m. and tried to counsel you and others present in the room of Dr. A.K. Sen to desist from such action. However, you alongwith others not only refused to heed to their requests but instead confined these officers, also in the room with the doctors and threatened them also with dire consequences.

3. Thereafter, you and Shri R.K. Gautam threatened Shri Narang and Dr. A.K. Sen with dire consequences including fatal harm to them if they do not agree and sign the note showing continuation of old rota system. Under such threats and under the wrongful confinement and duress you forcefully obtained the signatures of Dr. A.K. Sen and Shri N.S. Narang on a note stating that the old rota system will continue and a new rota system will not be implemented.

4. You were at all times illegally carrying a weapon while delivering the threats.

5. The above acts of yours in combination with others vitiated the working of the Refinery Hospital to such an extent that it became impossible to run the hospital services (both indoor and outdoor) and the management had to declare a lock-out of the hospital on 24th October, 1989. As a result, the patients had to be shifted to Methodist Hospital. Mathura and the employees and their dependants faced great difficulties in availing essential medical facilities.

6. The workman filed his reply and denied the charges. Thereafter, an enquiry

officer was appointed and an enquiry was conducted. After recording the evidence, the enquiry officer submitted a report holding that the charges levelled against the workman stood proved. Based on this enquiry report, the management considered the matter and passed an order dated 31st July, 2008 dismissing the workman from the service. It may be stated here that similar domestic enquiry proceeding was also initiated against Sri R.K. Gautam and, after due enquiry, an order of dismissal of the same date was also passed against him.

7. The petitioner, being aggrieved, raised an industrial dispute under the Industrial Disputes Act. The Central Government referred the dispute to the Industrial Tribunal for adjudication with regard to the validity and legality of the order of dismissal. Upon the exchange of the pleadings, a preliminary issue was framed by the Tribunal with regard to the fairness of the enquiry. By an order dated 9th June, 2010, the Tribunal held that the enquiry was not in accordance with the principles of natural justice, and consequently, vitiated the enquiry. The management filed writ petition No. 36671 of 2010, which was allowed by a judgment dated 14th March, 2011. The order of the Tribunal was set aside and the matter was remitted to the Tribunal to decide the matter afresh. The Tribunal, thereafter, passed a fresh order dated 2nd June, 2011 vitiating the enquiry on the ground that the workman was not given an opportunity to cross-examine one of the witness D.V. Oak and that on two dates, the enquiry was held at Baroda instead of at Mathura. The Tribunal also held that photo copies of some documents were relied upon in the absence of the original document. The management, being aggrieved by the order of the Tribunal, filed writ petition No. 35533 of 2011, which was dismissed by an order dated 13th April, 2012 permitting the petitioner to challenge the said order after the award was given.

8. The Tribunal, while vitiating the enquiry permitted the petitioner to lead evidence since a plea to that effect was taken by the employers at the initial stage at the time of the exchange of the pleadings. Accordingly, the management led the evidence to prove the charges against the workman. A large number of documents were filed by both the sides. On behalf of the employers, four witnesses appeared. The workman also deposed. The Tribunal, after considering the material evidence on record, gave an award dated 24th July, 2012 holding that the order of dismissal was illegal, and accordingly, directed reinstatement of the workman with full back wages. The management, being aggrieved by the said award, has filed the present writ petition.

9. The Tribunal while setting aside the order of dismissal held that the workman was nowhere involved in the incident and that the charges levelled against the workman could not be proved beyond a reasonable doubt by the management. The Tribunal held that Dr. A.K. Sen. who was the star witness and, in whose room, the incident had occurred has nowhere stated either before the Enquiry Officer or before the criminal court or before the Industrial Tribunal that the workman had led the mob or was present in the room or that he had instigated

the mob. The Tribunal further held that the mere fact that Dr. A.K. Sen had proved the joint statement, which he had signed alongwith the other doctors and members of the management did not mean that the contents of the documents could be read as evidence, unless the contents of that document was narrated verbatim by him before the Tribunal. The Tribunal held that since Dr. A.K. Sen did not narrate the contents of the joint statement, the contents made in the joint statement cannot be read as evidence, and consequently, rejected the evidence of Dr. A.K. Sen.

10. The Tribunal rejected the evidence of D.V. Oak on the ground that he had filed two reports with regard to the same incident, wherein he had named the workman in one report and did not name him in the second report. The Tribunal further held that, even though, the witness had proved the photostat copy of the report filed by the management, in which the workman was named, the same could not be read in evidence, since the original was not produced nor did the management pleaded that the original was lost, or misplaced.

11. The Tribunal also rejected the statement of the remaining two witnesses. Dr. Abbas and Dr. V.N. Mishra, on the ground that there were major variation in their evidence. The Tribunal held that Dr. Abbas did not remember the document PE-13 before the Enquiry Officer, but now remembers the said document before the Tribunal. It need to be stated here that the document PE 13 relates to an order issued by the management with regard to the lock out. The statement of Dr. V.N. Mishra was also rejected on the ground that the said witness did not name the workman in the enquiry, but now named him before the Tribunal. The Tribunal further came to the conclusion that since the workman had totally denied his involvement in the incident and no evidence has been brought to indicate the involvement of the workman, the Tribunal, accordingly, set aside the order of dismissal and directed reinstatement with continuity of services and full backwages.

12. The Court has heard Sri Ashwani Kumar Mishra, the learned counsel assisted by Sri Ankush Tandon. the learned counsel for the petitioner and Sri Ashok Bhatnagar. the learned counsel for the respondent workmen at length.

13. The learned counsel for the petitioner, at the outset, submitted that the Tribunal committed a manifest error in vitiating the enquiry on the ground of violation of natural justice and submitted that full opportunity was given to the workman to defend himself.

14. Having heard the learned counsel for the petitioner on this issue and having perused the order, the Court finds that there was a basic flaw in the proceedings adopted by the enquiry officer. The management has relied upon photocopies of certain documents without producing the original. The management has nowhere stated as to why the original documents could not be produced. It is settled law that in the absence of the original document and in the absence of any plausible explanation being given, photocopies of the document was not admissible as

evidence. The mere fact that the witness had proved the photocopy of the document as written by him in his own hand-writing would not make a difference with regard to the admissibility of that document. On this short ground, coupled with the finding of the Tribunal that, an opportunity was not given to cross-examine the witness of the management, the Court is of the opinion that the Tribunal rightly vitiated the enquiry proceedings as being violative of the principles of natural justice.

15. The learned counsel for the petitioner took pains in impressing the Court to peruse the entire award and the statements of the witnesses and the findings given by the Tribunal. The learned counsel laboured to read the statement of the witnesses of the management and impressed upon the Court to show that the findings given by the Tribunal was based on irrelevant consideration which no reasonable person could arrive at.

16. Normally, a finding of fact given by the Tribunal should not be interfered with in a writ jurisdiction and, only in exceptional circumstances, the Court would interfere in findings of fact, where it finds that the conclusion arrived at by the Tribunal was either based on extraneous consideration or was based on irrelevant evidence or was based on no evidence or where the finding was perverse and against the material evidence on record.

17. In *Khushiram Behari Lal and Co. Vs. The Assessing Authority, Sangrur and Another*, , the Supreme Court held that the High Court in a writ jurisdiction can interfere with a finding of fact only if the finding was based on no evidence or irrelevant evidence or was otherwise perverse or based on extraneous ground.

18. In *Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram*, , the Supreme Court held that the writ court can interfere in a finding of fact if it was based on no evidence or where the finding was perverse in law.

19. Similarly, in *State of West Bengal Vs. Atul Krishna Shaw and Another*, , the Supreme Court again held that a Court can interfere with a finding of fact if it was based on no evidence or was based on surmises and conjectures.

20. In the light of the aforesaid decisions of the Supreme Court, the learned counsel for the petitioner took pains to show that the findings of the Tribunal was perverse and based on irrelevant consideration in the light of the deposition made by various witnesses.

21. The Court, upon a perusal of the statement of the witnesses is constrained to observe that the findings and conclusions arrived by the Tribunal is patently perverse and is based on irrelevant consideration for the reasons given hereunder.

22. To recapitulate, the charge-sheet, which has been quoted in extenso indicates that a mob of 30 persons including pharmacists. workers and their wives led by R.K. Gautam and the workman barged into the room of Dr. A.K. Sen. where he was holding a meeting with other doctors and were abused.

Paperweights and chappals were hurled upon the doctors. The room was ransacked and Dr. A.K. Sen was injured. The mob also confined Dr. A.K. Sen and others for a couple of hours. The charged atmosphere, and the illegal confinement created a terror which forced Dr. A.K. Sen to sign a document withdrawing the rota system.

23. The Court has to examine as to whether this incident has been proved by the witnesses of the management or not. The Court finds that all the four witnesses of the management has proved the incident. Dr. A.K. Sen in his statement has categorically stated that the incident occurred in his room in the evening of 23rd March, 1989 and that the details of the incident was given by him and other doctors and members of the management in a joint report. Dr. A.K. Sen at the relevant moment of time was the joint Chief Medical Officer/Head of Department and had retired when he gave the statement. Similarly Dr. Abbas, who was the Chief Medical Officer also narrated the incident. D.V. Oak who was not present in the meeting, but came in the chamber of Dr. A.K. Sen immediately upon hearing the ruckus has also proved the incident. The fourth witness. Dr. V.N. Mishra in his deposition also verifies the incident, which took place in his presence as he was one of the members present in the room of Dr. A.K. Sen.

24. From the statement of the four witnesses, the Court comes to the conclusion that an incident took place in the chamber of Dr. A.K. Sen, in which the doctors were abused, papers weights were thrown and chappals were hurled upon the doctors. Further, the room was ransacked and Dr. A.K. Sen was injured.

25. The next question, which is required to be proved, is whether the workman was present in the incident or not? According to the management. he was one of the workers who was not only present, but also instigated the incident. It has come on record that all the doctors had given a joint statement/joint report to the Executive Director narrating the incident. In this joint report, the incident, which has been referred to the above and quoted in extenso in the charge-sheet has also been recorded in the joint statement, namely, that R.K. Gautam led the mob and that the workman was also one of the instigators, who was with R.K. Gautam. This joint report has been proved by three witnesses. The contents of the joint report has also been proved. The Tribunal has erred in rejecting the credibility of the statement of Dr. A.K. Sen on the sole ground that he had not named the workman in his deposition. The approach of the Tribunal in this regard was patently erroneous and the evidence of Dr. A.K. Sen has been rejected on an erroneous ground. No doubt. Dr. A.K. Sen was the star witness. The incident occurred in his room; he was the head of the department and he was totally slackened by this gross misconduct committed upon him. Even though, he did not name the workman, but has categorically proved the joint report, in which the workman was named and submitted that the contents of that document may be read as his evidence and that he had nothing further to add other than what had already been stated in the joint report.

26. The Court is of the opinion that this by itself proved the involvement of the

workman. Not only Dr. A.K. Sen has proved the incident and the involvement of the workman, but the three other witnesses has also proved the presence of the workman at the time of the incident. D.V. Oak specifically stated in his deposition that the workman was present, when he reached the spot. The Tribunal has rejected his entire evidence on the ground that he had submitted two reports, one in which he had not named the workman and in the second report, he had named the workman. The Court can understand that the reliance of the photocopy of the report given by D.V. Oak was rightly rejected by the Tribunal, but the Court fails to understand as to how his evidence can be rejected on the ground that he had given two reports. The workman had also filed a report, in which, the incident is narrated. D.V. Oak categorically stated in his deposition that the workman was present, when he reached the spot and that he tried to control the situation. Incidentally, this witness, D.V. Oak was the Manager, Personal and Administration at the relevant moment of time. The Court is consequently of the opinion that the Tribunal committed a manifest error in rejecting the statement of this witness, D.V. Oak on irrelevant ground.

27. The statement of the two witnesses Dr. Abbas and V.N. Mishra, the Deputy Chief Medical Officer has been rejected on the ground that there has been a variation in their deposition before the Enquiry Officer and before the Tribunal. The finding of the Tribunal on this issue holding that it appears that these witnesses were tutored witnesses is patently perverse. The Tribunal has rejected the evidence of these two witnesses on irrelevant consideration. In the first instance, the Court finds that when the enquiry has been vitiated, the evidence led by the various witnesses before the enquiry officer cannot be taken into consideration for any evidentiary value or for collateral purpose by the Tribunal. No comparison can be made. In any case, the variation indicated by the Tribunal is insignificant and does not justify the rejection of their evidence under any circumstances.

28. In criminal cases, where standard of proof is much higher, the Supreme Court, in a series of cases. in *State of U.P. Vs. M.K. Anthony*, and *Narotam Singh Vs. State of Punjab and Another*, , have held that even minor discrepancies in the version of prosecution witnesses will not demolish the prosecution case. In *Sampat Tatyada Shinde Vs. State of Maharashtra*, , the Supreme Court held that variations creep in because there are always natural differences in the faculties of different individuals in the matter of observation. perception and memorisation of details.

29. Consequently, if there are minor discrepancies in criminal cases, and the same does not jeopardise the prosecution case, then in my opinion, the same principle will apply with even greater force in civil cases where the burden of proof is much lighter.

30. Further, the rule relating to appreciation of evidence in criminal proceedings and in departmental proceedings are totally different and distinct. In criminal cases, the charge has to be proved "beyond a reasonable doubt." In a

departmental enquiry, a penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability" as held by the Supreme Court in *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, and in *Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, etc.,* .

31. In the light of the aforesaid, it is clear that the object of departmental proceedings is to ascertain whether the delinquent is required to be retained in service or not. On the other hand, the object of criminal proceedings is, to find out whether the offence in the criminal statute has been made out or not. The object in both the proceedings are different. Whereas, departmental proceedings are initiated to maintain discipline and efficiency in the service, criminal proceedings are initiated to punish a person for committing an offence violating any public duty.

32. The Court finds that the incident took place in 1989 and the evidence of these witnesses was recorded by the Tribunal after 22 years. It is but natural that variations in the matter of observation. perception and memorisation of the details of the incident would automatically creep in. It is not humanly possible to narrate the incident verbatim which had occurred 22 years ago.

33. While appreciating the evidence of a witness, the approach should be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed. minor discrepancies on trivial matters not touching the core of the case, becomes irrelevant and attaching hyper technical approach by taking a sentence torn out of context here or there from the evidence which does not go to the root of matter would not permit rejection of the evidence as a whole.

34. In the light of the aforesaid, the Tribunal committed a manifest error in rejecting the evidence of two witnesses on the ground that there has been a variation in their evidence before the enquiry officer and before the Tribunal. In any case, the variation so detected by the Tribunal are irrelevant and inconsequential. The Tribunal rejected the evidence of Dr. Abbas on the ground that he did not remember the document P.E. 13 before the enquiry officer, but now remembers it before the Tribunal. This document P.E. 13 relates to the lock out declared by the management. The Court is aghast and is constrained to observe that this variation has nothing to do in so far as the presence of the workman in the room of Dr. A.K. Sen is concerned. The evidence of Dr. Abbas cannot be thrown out on account of this variation. The finding of the Tribunal is patently perverse on this aspect.

35. Similarly, the rejection of the evidence of V.N. Mishra on the ground that he did not name the workman before the enquiry officer but now names him, cannot be rejected on this ground itself, especially, when the witnesses gave a plausible explanation, namely, that he deliberately did not name the workman before the enquiry officer. since he was under a fear that his life would be danger if he

named the workman.

36. In the light of the aforesaid. the Court finds that the Tribunal has not only misread the statement of the witnesses, but has rejected it on irrelevant consideration. Further. considering the thrust of the evidence led by these witnesses, which was required to be seen and considered. the Tribunal instead has tried to make a mountain out of a molehill.

37. On the other hand, the workman totally denied his involvement in the incident and has gone to the extent that no such incident took place in his presence. His explanation cannot be digested easily for the reason that evidence has come on record to the effect that he used to work opposite the room of Dr. A.K. Sen and that his duty hours was till 10: 00 p.m. Assuming for a moment that he was not involved in the incident and was working in his room, it is not possible for the witness to contend that he did not hear the incident when he was right across the room when the incident took place and a mob of 30 persons barged into the room of Dr. A.K. Sen.

38. In the light of the aforesaid. the court is of the opinion that the findings given by the Tribunal are perverse and based on irrelevant consideration and cannot be sustained. The incident has been proved by the witnesses. The workman's presence in the room has been proved and the Court finds that he is guilty of the basic charge that was levelled against him.

39. In the given circumstances. the charges are grave and serious. The workman is an employee and is subject to the discipline of the establishment. The action of the petitioner in dismissing the services of the workman in the given circumstances was justified. The award accordingly is liable to be set aside, but the Court finds that, in similar circumstances, the leader of the incident R.K. Gautam was also dismissed from the service on the same date, but subsequently, Sri R.K. Gautam filed an application expressing unconditional apology and forgiveness. The Court finds that the management considered his request and issued a fresh appointment letter appointing R.K. Gautam in another unit of the petitioner's organization with a further condition that he would not take any arrears of salary, etc. which was accepted by R.K. Gautam.

40. The Court upon considering this aspect of the matter is of the opinion that a similar treatment should have been given by the management to the workman. Even though, the workman did not come forward, nonetheless when the management is acting as a benevolent employer, it should have given this option to the workman as given to R.K. Gautam. There is a saying, namely, "to err is human, to forgive is divine". When the employer can forgive the leader of the pack, there was no reason why the workman should not have been given the same treatment

41. The Tribunal in the award directed reinstatement, but before the award could be published, the workman reached the age of superannuation, and consequently, there was no question of his reinstatement of service. The only

thing remained was continuity of service with back wages. The Court while entertaining the writ petition had directed the petitioner to deposit 50 per cent of the back wages before the Tribunal. It has been stated that a sum of Rs. 13,38,203 has been deposited before the Tribunal, which has been kept in a fixed deposit.

42. For the reasons stated aforesaid, the award of the Tribunal is quashed. The Court further directs that in the given circumstances, the petitioner should be paid a lumpsum compensation in view of the fact that another charged employee whose services was dismissed was given a fresh appointment. The Court accordingly directs that justice would be served, if a lumpsum compensation of Rs. 15 lacs is paid to the workman. The Court directs that the balance amount of Rs. 1.61.797 shall be paid by petitioner to the workman concerned within four weeks from the date of production of a certified copy of this order, and the amount already deposited by the petitioner before the Tribunal alongwith interest accrued thereon can also be withdrawn by the workman concerned.

43. The writ petition is allowed. Parties shall bear their own cost.