
(2011) 07 DEL CK 0396

In the Delhi High Court

Case No : Writ Petition (C) No. 6187 of 2002

Kewal Krishan

APPELLANT

Vs

Presiding Officer, Industrial Tribunal and Another

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 6 AD 301 : (2011) 182 DLT 133 : (2012) 1 LLJ 731 : (2011) LLR 1011

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Prafulla Behera and Dolly Prabhakar, for the Appellant; Harvinder Singh, for R-2., for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—Whether Reporters of local papers may be allowed to see the judgment? No 2. To be referred to the Reporter or not? Yes 3. Whether the judgment should be reported in Digest? Yes JUDGMENT 25.07.2011 1. The challenge in this petition is to the impugned Award dated 4th April 2001 of the Industrial Tribunal holding that the dismissal of the Petitioner workman was neither illegal nor unjustified.

2. The Petitioner states that he has been working with Respondent No. 2 Hindustan Times Limited ("HTL") for several years. The Petitioner was issued two charge sheets.

In the first charge sheet dated 31st July 1984, the following two charges were levelled against him:

(i) on account of the go-slow tactics adopted by him in the night of 19th July 1984 the advertisement editions were delayed and the First City Edition could not come out in time; and

(ii) On 23rd July 1984 at about 1.15 pm. Mr. D.D. Sharma, English News Foremen asked Mr. Mukesh Kumar Srivastava to bring a trolley for evening news pages 4 and 5 which were ready to be proofed. The Petitioner objected to it and started shouting in a loud voice. When Mr. D.D. Sharma told him that he was in fact speaking to Mr. Srivastava and not to the Petitioner, the Petitioner advanced towards Mr. Sharma in a threatening posture as if he was going to hit Mr. Sharma. Further on 30th July 1984 he again adopted go-slow tactics to harm the interest of the management.

3. The Petitioner in his explanation denied both the charges. The Inquiry Officer ("IO") who inquired into the two charge sheets found that the incident of 19th July 1984 was not proved by the Management. As regards the incident of 23rd July 1984 it was held that the behaviour of the Petitioner could not be said to be normal. As regards the incident of 30th July 1984 the Petitioner was held not guilty.

4. The Petitioner was issued a second charge sheet dated 17th September 1985. This concerned the false accusations made by him against his superior officers in three letters dated 4th September 1985. He was warned by HTL on 24th August 1985 not to make such accusations. However, he persisted in making such allegations. In his reply dated 23rd September 1985 the Petitioner did not deny having written the letters but claimed that the statements made therein were in good faith and in the interest of the organization.

5. The inquiry into the second charge sheet was entrusted to Mr. Harvinder Singh, a lawyer who was otherwise retained by the HTL for its cases. The IO examined the numerous letters (DW-1/1 to DW-1/20) written by the Petitioner to the management complaining against Mr. M.J. Sharma. When the management asked him to desist from making such allegations, the Petitioner wrote three letters dated 4th September 1985 in which he stated that the Personnel Department as well as the Deputy General Manager had joined hands with Mr. M.J. Sharma to victimize him. The Petitioner stated in the first letter dated 4th September 1985 as follows:

Sir, I have written many letters regarding Mr. Sharma and Mr. Ayub.

You have not taken any step against the erring people as a result of which decorum as well as functioning of the department still the same.

The Personnel department as well as you have joined hands with Mr.

Sharma to victimize me. It means if Mr. Sharma is guilty, you people also. Explain it as early as possible.

6. In the second letter dated 4th September 1985 the accusations made against Mr. Sharma read as under:

Sir, Mr. Sharma who was hardly available in the department in the past and also hardly available at present and who are indulging the misappropriation of the

paper which I have reported and I have also mentioned in one of my letter that Mr. Sharma misappropriations of other things also. The management never take any action. Why not the management reply the letters to me.

7. In the third letter (MW-1/4) the Petitioner alleged that Mr. Sharma did not come to work on time, did not maintain the office decorum and did not listen to anybody when approached as regards work. The IO found that simply stating that he had acted in good faith was not sufficient. It was incumbent on the Petitioner to produce material to substantiate the defamatory aspersions made by him against the superior officers. The preliminary enquiry made by the management with regard to the allegations of misappropriation of papers by Mr. Sharma had found the said allegation not to be in good faith. The IO noted in his report that the Petitioner refused to divulge the names of the persons who had spoken about Mr. Sharma's alleged misappropriation of paper.

The Petitioner stated that he would not disclose his source unless security was provided to him. This was not found by the IO to be convincing. In the circumstances, the IO held that the charge sheet dated 17th September 1985 was proved.

Consequently, an order was passed on 31st October 1988 by HTL dismissing the Petitioner from service.

8. The consequential dispute was referred to the Industrial Tribunal ("Tribunal") in ID No. 212 of 1989. It was decided by the Tribunal by the impugned Award dated 4th April 2001 upholding the dismissal of the Petitioner.

9. Learned Counsel for the Petitioner objected to the lawyer retained by the management being appointed as the IO. It is contended that the enquiry proceedings stood vitiated on account of the bias of the IO.

10. This Court finds that no such plea of bias of the IO was raised by the Petitioner at any time either before the IO himself or even before the Tribunal. Such a plea ought not to be permitted to be raised for the first time in these proceedings. In *Dalmia Dadri Cement, Ltd. Vs. Shri Murari Lal Bikaneria*, the Supreme Court explained in para 19 as under: (SCC, p. 27)

The Tribunal seems to have been greatly impressed by the fact that instead of appointing someone in the Appellant's factory itself as the Enquiry Officer the Works Manager had brought in an outsider who was no other than a junior advocate occasionally assisting Anand Prakash, their counsel in some matters. The Tribunal's view that this was wholly unwarranted and done with the purpose of loading the dice against the workmen appears to be unreasonable. Merely because the Enquiry Officer was a junior advocate and that he had on occasions been engaged by the Appellant, it is not possible to take the view that he would necessarily be biased against the workmen. Evidently some of the workmen had behaved rudely to some members in the managerial cadre and it would not have been at all difficult for the Works Manager to appoint as Enquiry Officer some

person of the factory itself over whom he was likely to have greater influence than on an outsider. As he himself was going to be a witness in the enquiry he entrusted the appointment of the Enquiry Officer to the Director of the Company.

We find nothing unfair in this and are unable to take any exception to the course adopted.

11. Likewise, in *The General Secretary, South Indian Cashew Factories Workers' Union Vs. The Managing Director, Kerala State Cashew Development Corporation Ltd. and Others*, the Supreme Court held that the plea that the enquiry officer was biased was not raised during the enquiry proceedings or in the pleadings before the Labour Court and therefore could not be allowed to be raised in subsequent proceedings. Further, it had to be specifically pleaded and proved before the adjudicator.

12. It was then pleaded by learned Counsel for the Petitioner that Mr. Harvinder Singh, learned Counsel who appeared in these proceedings for HTL ought not to have been appointed as the IO on account of the obvious bias. This Court is unable to appreciate this plea as it nowhere affects the validity of the inquiry or the report submitted by the IO. This Court finds that the IO has proceeded on the basis of evidence produced by the management and reasons and conclusion arrived by the IO are unexceptional. The charges against the Petitioner having been proved after an enquiry with full compliance of principles of natural justice, there is no scope for interference by this Court in exercise of its powers under Article 226 of the Constitution. It was rightly observed by the Tribunal that the punishment cannot be disproportionate. The issue really was of loss of confidence by the Petitioner in the management and vice-versa.

Also, the Petitioner had been repeatedly making accusations against the superior officers but was not able to substantiate them with any material whatsoever despite being offered several opportunities. This by itself was a pointer to the fact of complete loss of confidence by the management in the worker and vice-versa. In the circumstances, the punishment of dismissal from service cannot be said to be disproportionate.

13. There is no merit in this writ petition and it is dismissed as such with no order as to costs.