

(1994) 11 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition No. 15388 of 1994

K.S.R.T.C.

APPELLANT

Vs

John D'souza

RESPONDENT

Date of Decision : 25-11-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11 A

Citation : (1995) ILR (Kar) 405 : (1995) 2 KarLJ 305

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Judgement

1. This petition raises an interesting question of law concerning Section 11(a) of the Industrial Disputes Act. The subsidiary point that has been raised which also falls for determination is the question as to whether in a case where the High Court finds that the Tribunal has gone legally wrong, whether it is incumbent upon the High Court to remand the matter to the Tribunal for a fresh decision. An elaborate narration of the facts is not very necessary because the issues basically concern points of law. The petition before me has been presented by the Karnataka State Road Transport Corporation and it assails an award dated December 7, 1993 passed by the presiding Officer" Labour Court Bangalore in relation to the case of dismissed Conductor, who is the respondent to this proceeding. On December 14, 1986 the respondent was the conductor of Bus No. MYF 919 plying between Cannanore and Bangalore. It is alleged that this vehicle came to be checked by the Vigilance Staff of the Corporation at a place called Virajpet and that it was disclosed that certain passengers had not been issued tickets. Unlike most of the present cases of this type, there are other allegations that the respondent who was the conductor of the bus refused to allow the checking staff to board the bus. There are also subsidiary charges against him and apart from the non-issuance of tickets and the misappropriation of the Corporation's funds, he is alleged to have threatened the checking staff with dire consequences including the threat that he would allege that they had demanded

bribes from him and it is further the case of the Corporation that the petitioner is alleged to have instigated several members of the public in order to stall the action against him, the police were required to intervene and even after the matter was taken up by the police, it is alleged that the respondent behaved in a rude and boisterous manner. It is for this series of charges that an enquiry came to be held and after considering all the oral and documentary evidence adduced, the Enquiry Officer submitted his report to the effect that all the charges have been proved. The disciplinary authority considered the material placed before him and passed a speaking order in which, he has taken a cognizance of the overall conduct of the petitioner not only in relation to his misconduct while functioning as a conductor but his general behaviour on that day and the fact that in his short period of service with the Corporation that the respondent had been involved in cases of insolence and rude behaviour on six or seven occasions and awarded minor penalties in the hope that he would behave himself in future. The disciplinary authority has come down strongly on the conduct of the respondent while holding that even though it is necessary to view the cases of employees in disciplinary proceedings with a high degree of sympathy since the consequences could involve loss of their employment that this was one of the cases which fully merited the extreme penalty of dismissal. The disciplinary authority has substantiated the grounds on which this punishment had been awarded and the respondent was accordingly dismissed from the service of the Corporation.

2. The matter thereafter went to the Tribunal and it is material to point out that in the proceedings before the Tribunal the respondent did not dispute the fact that the requisite procedure has been followed nor did he dispute the fairness of enquiry. Under these circumstances, the jurisdiction of the Tribunal got considerably narrowed down and the short issue that fell for determination was as to whether the punishment order was justified and if so, whether the quantum of punishment was sustainable. The record indicates that the management examined two more witnesses and that several documents were brought on record by both the parties after which the arguments were heard and the Tribunal disposed of the matter. By an award dated December 7, 1993 the Tribunal after a detailed reappraisal of the evidence on record came to the conclusion that the order of punishment was unjustified. The dismissal order was set aside and an order was passed for reinstatement with full backwages. It is this order that has been assailed through the present petition. I find from the record of the proceedings before me that the Corporation contended that the award is liable to be quashed, whereas the respondent advanced the plea that the order must be given effect to or in the alternative that the Corporation must pay him his last drawn wages. It is in these circumstances that my learned Brother set down the petition for final hearing.

3. At the hearing of the petition, the Corporation's learned counsel submitted that a perusal of the order passed by the Tribunal will indicate that a very incisive and a very critical appraisal of the record has been embarked upon by the

Tribunal. Various findings have been recorded with regard to the probabilities of the case, the credibility of each witness and on the basis of several intense comparisons of the evidence, the learned judge has come to the conclusion that none of the charges could be said to have been proved. Before me, it is submitted that the Tribunal has wholly misdirected itself with regard to the ambit and scope of its enquiry and that the manner in which the Tribunal proceeded has no legal sanction. Towards this end, petitioner's Counsel sought to rely on the well known Decision of the Supreme Court in the Firestone case reported in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, In a detailed judgment, the Supreme Court had occasion to elaborate on the manner in which the Tribunal is required to proceed in situations of this type. A perusal of that Judgment will indicate that the Supreme Court had occasion to deal with the state of the law as it existed prior to the amendment and the introduction of Section 11(a). In sum and substance, the Supreme Court has laid down the parameters of the scope available to the Tribunal and has also culled out various principles that emerge by virtue of the introduction of Section 11(a). The Court has laid down in no uncertain terms that the enquiry contemplated on the part of the Tribunal is not to be equated with appellate powers. The Court has also laid down that a certain sequence of procedure is required to be adopted by the Tribunal in cases of the present type. It is on the basis of this Judgment, the petitioner's learned Counsel has submitted before me that in sum and substance, before interfering with the order passed by the disciplinary authority of the Corporation that it was necessary for the Tribunal to have examined that order and only if it came to the conclusion that the order was inherently wrong and unsustainable or that the order was downright perverse that it could have derived the source for further appreciation of evidence even with regard to that aspect of the matter. Learned Counsel submits that the Tribunal would have to examine the reasoning adopted in the orders that were under challenge and would have to first come to the conclusion that the findings and conclusion arrived on the basis of that reasoning were unsustainable in law. Only after that stage has been arrived at, or in a given situation where the evidence was deficient or where there was no evidence. The Tribunal is entitled to thereafter lead additional evidence and add this evidence on to the pre-existing record and reduced the case. The challenge presented is not only with regard to the point of procedure but essentially touches the basic jurisdiction of the Tribunal because the argument advanced by the petitioner's Counsel is to the effect that if the earlier orders were sustainable, then the interference on the part of the Tribunal on the facts of this case was not competent at all.

4. The respondents' learned Counsel has sought to submit that particularly after the introduction of Section 11(a), the Tribunal which undoubtedly is not an appellate body but which is invested with the jurisdiction to reappraise the case, is not barred from looking at the evidence. Learned Counsel submits that it is impossible for a Tribunal to even examine the correctness or otherwise of the

earlier orders without reappraising the material on record and to this extent therefore, that the procedure followed by the Tribunal was fully justified. Learned Counsel has also relied on certain passages from the Firestone case and he has drawn try attention to a decision of this Court reported in Karnataka Elec. Board, Bangalore Vs. Workmen of M/s Amalgamated Electric Co. Ltd. Belgaum and Others, wherein the Division Bench of this Court had occasion to examine the scope and ambit of Section 11(a). The point involved in that case was entirely different is so far as it was sought to be contended that the scope of the Tribunal's powers was extremely restrictive and that it did not extend to a situation where the Tribunal could differ in opinion with the decision of the employer particularly on the question of quantum of punishment. That was not a case in which the Tribunal had misdirected itself as is the allegation in the proceeding before me. The Division Bench of this Court on that occasion had occasion to reproduce some of the passages from the Firestone case. It thus related principally to the evidence that was led before the Tribunal for the first time. The situation in the present case is exactly the opposite and that Decision would therefore not be of any assistance to the respondents.

5. Learned Counsel for the respondents also placed reliance on a Decision of the Supreme Court in *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, Undoubtedly, that was one of the instances where Section 11(a) fell for interpretation, but again the High Court and the Supreme Court were confronted with an entirely different situation since it was a case of no evidence. The controversy with regard to reappraisal of evidence in that case again arose in relation to evidence that came to be recorded at the second stage of the proceedings when the matter was before the Tribunal. I do not find any parallel between that case and the present one.

6. The controversy that has been raised in this proceeding can virtually be set at rest principally on the basis of the well defined principles that have now crystallised in the various Decisions. In the first instance, the proceeding before the Tribunal is not to be construed either as a first appeal or a second appeal or for that matter as an appellate proceedings. If that were to be the case, then the production of evidence at that stage would have been inconceivable. Apart from that, the scheme of the Industrial Disputes Act itself does not prescribe for any further appeal after the disciplinary proceedings have been concluded but what it provides for is for an independent review of the case. It is very necessary to distinguish these powers from the ones that vest in an appellate authority because an appellate authority is virtually required as of right to do a complete de nova evaluation of everything including the appraisal of evidence and to virtually reduced the case. As far as the Tribunal is concerned, it is required to review the matter in the light of the grounds that have been adduced before it. Consequently, the first duty that is cast on the Tribunal is to examine the order that has been complained against and to ascertain whether that order is sustainable in so far as whether there was material before the authority concerned to pass that order. Secondly, whether the procedures prescribed by

law have been complied with thirdly whether the reasoning and the conclusions arrived at are legally justified. In disciplinary proceedings, it is equally necessary while examining the conclusions to find out as to whether a reckless or run away order has been passed, whether it is malicious or vindictive, whether the limits of Judicial discretion have been overstepped in the matter of evaluating the gravity of the charges, the nexus between the misconduct alleged and proved and the punishment that has been imposed and several other well defined legal principles. If on the basis of this appraisal, if the order in question requires interference, then a finding to that effect has to be recorded. This is condition precedent. The effect of such a review is that the scope of the enquiry thereafter gets widened in so far as it may be advisable or permissible to add on to the evidence and it may thereafter be necessary to take a fresh look at the matter not only in the light of the additional evidence but the effect that it could have on the material that is already on record. "It is in these circumstances and at this stage only that the jurisdiction of the Tribunal gets expanded. Unless and until the first stage of appraisal has been gone through and unless and until there is a clear cut finding to the effect that the order is wrong, unsustainable or perverse, it would not be permissible for the Tribunal to exercise the expanded powers."

7. I do find on the basis of the record of the present case that the Tribunal has not so much as looked at the speaking orders that were complained of. There is not a word of discussion with regard to those orders nor is there any finding to the effect that the orders are unsustainable or that the evidence requires to be expanded or increased or further more that the orders complained of are wrong and perverse. This is the fundamental error that has been committed by the Tribunal in the present case. I use the word "error" because in the course of the arguments, the record of the case has been referred to by the learned Counsel and I have had occasion to examine it virtually threadbare because this is a serious case which concerns an order of dismissal which means that it puts an end to the career of the respondents before me. Under these circumstance, the case did merit very careful and meticulous appraisal and having gone through that exercise I find that the Corporation had led sufficient evidence, at the enquiry; that the evidence led was of sufficient credibility and that the finding of the enquiry officer that the charges against the respondent were proved are fully sustainable. Even at the subsequent stage of proceedings, the disciplinary authority, as is evident from the order passed by him, has applied his mind fully and completely to the record of the case. He has even given reasons as to why in this particular case an order of dismissal was being passed by him. Having examined those reasons, I see no ground to interfere with them. The Tribunal unfortunately has completely overlooked the duty that was cast on it which was a primary duty. The Tribunal has short-circuited its functions and straightaway permitted additional evidence to be recorded and thereafter gone into a very elaborate examination of the evidence, torn it to shreds and then held that the charges are unsustainable. It is clarified, that the evidence that was led before the Tribunal was of a restrictive nature in so far as some of the officers had been

called and a few of the documents were marked.

8. The petitioner's learned Counsel has drawn my attention to a Decision of the Supreme Court reported in *State of Haryana and Another Vs. Rattan Singh*, wherein, while dealing with a case of misconduct against a bus conductor, the Supreme Court had occasion to go into the question of degree of proof. The usual argument was canvassed that the witnesses were basically officers of the Corporation, that the independent evidence was minimal and a submission was also canvassed that the evidence ought to have been dissected. Negating this argument, the Supreme Court held that the evidence in a disciplinary proceeding must undoubtedly bring home the charge but a distinction has to be drawn between the manner in which this evidence has to be appraised in so far as a disciplinary proceeding requires a lesser degree of proof than a criminal proceeding. It is that standard that is required to be applied to the evidence in a disciplinary proceeding. The Tribunal in this case has gone far beyond that and this is the fault that has been committed. I get the impression, on a careful reading of the 64 page order that has been passed by the Tribunal that the whole objective seems to have been to paraphrase each and every sentence of the evidence and to even find faults where none existed the extent that no evidence as evaluated by these standards, would pass the test of scrutiny.

9. The basic challenge presented by the petitioners against the award in the present case, to my mind, will have to be upheld. The award of the Tribunal dated December 7, 1993 is accordingly quashed and set aside. At this stage the petitioner's learned counsel drew my attention to a Decision of the Supreme Court reported in *Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhavan Ltd. & Anr.* 1984 1 LLJ 10 wherein, in slightly altered circumstances the Supreme Court set aside the award and remanded the matter for fresh appraisal. The facts of that case did justify a remand because the manner in which the Tribunal had proceeded was erroneous and the case did require a fresh decision. It was on this basis that a strong plea was canvassed that if the procedure followed by the Tribunal was erroneous, that the award may be set aside and the matter may be remanded for a fresh enquiry. There is no inflexible Rule that when an award is quashed or set aside, that a remand must be ordered. It is necessary for a Court before directing a remand to take a good look at the entire record. If in the course of the hearing the record has been evaluated by the High Court and if on such an evaluation it is quite evident that there could be no other result, a remand would be virtually futile. It is only in those of the cases where it is quite evident that a miscarriage of justice has resulted, that a fresh remand would be justified. The record of this case would not justify a remand and under these circumstances I refrain from acceding to the request of the respondents' Counsel.

10. The respondents' Counsel advances a further submission that even if the Tribunal comes to the conclusion that the charges are established, that an independent consideration is required to be done with regard to the quantum of punishment or the gravity of the punishment. The respondent's Counsel

submitted that in this view of the matter a remand would be justified on the additional ground that even if the Tribunal were to uphold the findings of the enquiry officer, that it would still have to decide as to whether the punishment of dismissal was warranted as essentially Section 11(a) confers on it the jurisdiction to interfere even with regard to this aspect of the matter.

11. In the view I have taken, I already had occasion to refer to the facts of the present case and the reasoning adopted by the authorities. The quantum of punishment is one of the factors that has already been considered. The reasons in support of the case have already been set out and this Court had occasion while evaluating the record to examine that aspect of the matter also. Had it been necessary to award any lower punishment. It is within the ambit and scope of this Court while exercising powers under Article 226 to have reduced the punishment. It is unnecessary for this purpose to remand the matter to the Tribunal. I do not consider in the present case that any other punishment than the one ordered would be justified in law. In this view of the matter, the argument is rendered academic and would not still justify any remand.

12. In the result the Petition succeeds. Rule is made absolute. The award dated December 7, 1993 is quashed and set aside. In the circumstances of the case, there shall be no order as to costs.