

(2017) 02 KAR CK 0274
In the Karnataka High Court
Case No : 11256 of 2009

N. Ramesh

APPELLANT

Vs

Management of Karnataka State Road Transport Corporation,
Mysore

RESPONDENT

Date of Decision : 22-02-2017

Acts Referred:

Citation : (2017) 02 KAR CK 0274

Hon'ble Judges : G. Narendar

Bench : SINGLE BENCH

Advocate : V.S. Naik, Hareesh Bhandary T.

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the respondent.

2. The facts of the case in brief are as follows: The petitioner was working as a conductor on the bus belonging to the respondent. On 09.03.1997, while he was conducting bus No.1181 on route No.84, the checking staff checked the bus near Hittina Hebbagilu. Subsequently, the respondent issued articles of charge stating that on 09.03.1997 he refused to give the tray box and the way bill to the checking staff and questioned the checking staff. It was also charged that he had not issued tickets to several passengers and instigated all the passengers not to pay penalty and also not to sign any papers. It is also alleged that he was not wearing his uniform and was not carrying his cash bag at that time.

According to the petitioner, he had not committed any misconduct as alleged against him. The respondent conducted a domestic enquiry. But, he was not given reasonable opportunities to defend himself. He was not given an opportunity to cross-examine witnesses of the management. Subsequently, the respondent passed punishment order on 28.08.2004 reducing basic pay by three incremental stages with cumulative effect and treating the suspension period as a period not on duty. The said order of the respondent is illegal, unjust and

unfair. Therefore, the petitioner praying to set aside the above said order and to direct the respondent to pay all arrears had approached the Tribunal through the Union.

The Tribunal after hearing the parties, rejected the reference. Hence, the petitioner is before this Court, being aggrieved by the Award passed by the Industrial Tribunal in Reference No.67/2006, dated 29.12.2007 whereby, the Reference Court was pleased to reject the reference and uphold the punishment of reducing the pay by 3 incremental stages with cumulative effect and treat the period of suspension as not spent on duty.

3. Learned counsel for the petitioner would contend that the Award impugned herein is a non-speaking Award and that the Tribunal has omitted to assign any reason for arriving at the conclusion to reject the reference and upheld the punishment imposed. Per contra, learned counsel for the respondent would vehemently contend and support the impugned Award.

4. A perusal of the Award would reveal that the Tribunal after re-producing the enquiry report, has merely proceeded to render a conclusion as follows: "In these circumstances, it is contended by second party that the domestic enquiry has been conducted providing reasonable opportunities to the first party and therefore it has contended that punishment order passed against first party is just and proper order. I find sufficient strength in this contention of second party in view of the oral and documentary evidence on record. Hence, I answer this point in Affirmative."

With the aforesaid observation, it has proceeded to pass the order rejecting the reference.

5. Learned counsel for the petitioner would contend that the Tribunal has omitted its onerous duty of re-appreciating the material on record. He would further contend that the Labour Court apart from stating that in view of the oral and documentary evidence on record it does not find any grounds, it has not ventured to appreciate any of the material on record. He would take this Court through the impugned Award and submit that the impugned Award is nothing but re-production of the report of the Enquiry officer. He would further rely on the ruling of the Hon"ble Apex Court, rendered in the case of *The Workmen of M/s. Firestone Tyre & Rubber Co. of India P. Ltd. v. The Management and others* reported in AIR 1973 Supreme Court 1227 wherein, the Hon"ble Apex Court at para 36 has been pleased to observe as follows: "Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under Section 11A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is

proved."

6. A perusal of the above would clearly demonstrate that in the light of the law laid-down by the Hon"ble Apex Court, the Tribunal is cast with the duty to appreciate the evidence and the material placed before it and thereafter ought to have arrived at a conclusion. After appreciation of the said material, it is vested with the authority to arrive at a conclusion contrary to the conclusion arrived at the enquiry. It has been held that even in a case where the enquiry has resulted in the finding of commission of misconduct, the Tribunal is empowered to re-appreciate the evidence and arrive at a conclusion different from one that is arrived in the enquiry and hold that no misconduct is proved.

7. In the case on hand, a perusal of the impugned Award would clearly demonstrate the singular fact that the Tribunal has not made any endeavour to assess and appreciate the material placed on record.

8. The employer has got marked Exs.M1 to 12 through the Enquiry officer and the employee i.e., the petitioner herein has got himself examined as W.W.1 and also got marked Ex.W1.

9. The impugned Award does not reflect appreciation of any of the material or oral evidence let in on behalf of the party. Hence, in the light of the law laid-down by the Hon"ble Apex Court, the impugned Award liable to be rejected and calls for interference at the hands of this Court. Accordingly, the impugned Award is set aside. The matter is remitted back to the Industrial Tribunal, Mysuru, to re-hear and re-adjudication of the reference in accordance with law. In view of long pendency of the case, the Tribunal is directed to expedite the disposal at any rate within a period of six months from today. The parties shall not wait for any notice from the Tribunal and shall appear before the Industrial Tribunal, Mysuru, on 22.03.2017.

Registry is directed to return the lower Court records forthwith. The writ petition is disposed of on the above terms.

Order accordingly.