

(1997) 01 DEL CK 0094

In the Delhi High Court

Case No : Letters Patent Appeal No. 3 of 1995

Pushpa Gupta

APPELLANT

Vs

Chairman and Managing Director, Engineers India Ltd.

RESPONDENT

Date of Decision : 01-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 AD 381 : (1997) 66 DLT 161 : (1997) 41 DRJ 339 : (1997) 1 LLJ 819

Hon'ble Judges : M. Jagannadha Rao, C.J.; Manmohan Sarin, J

Bench : Division Bench

Advocate : N.N. Keshwani, Raj Birbal, Saurabh Parkash and Vidhu Upadhayay, for the Appellant;

Judgement

M. Jagannadha Rao, C.J.

(1) This is a Letters Patent Appeal against the judgment of the learned Single Judge in Cwp 3555/91 dated 3.12.94. The writ petitioner is the appellant. The 1st respondent is Engineer (India) Ltd. represented by its Chairman and Managing Director while the 2nd respondent is its Director Technical).

(2) The appellant was recruited as a typist by the 1st respondent organisation on 29.12.1965 and got her promotions at the relevant time and was working as the Private Secretary to the Deputy General Manager (Engineering). Her case was that on 19.5.1989, when she visited the office of Mr. M.M. Lal, Deputy General Manager (Admn) for some work, the said officer touched her and pushed her (But the officer's case is that she shouted at him when asked why she had come to the Administration department and she left and came later on 4.30 Pm with Union members and for the first time raised a plea that at 2.30 Pm or so, the officer had pushed her). On 19.5.1989 she filed a complaint against the said officer. The Secretary of the Union also accompanied on 19.5.1989 against Mr. Lal while forwarding the appellant's complaint. On 21.5.89, the said Mr. M.M. Lal filed a complaint against the appellant and also against some officers of the

Union, the charge against the appellant as disclosed from the charge sheet given to her before inquiry was (as extracted in the judgment under appeal) that:

(I) on 19.5.89, at 2.40 Pm, the appellant was going from the seat of Smt. Adrash Kapahi (Jr. Assistant Gr. 1) in the Administration department and Mr. Lal noticed her (she belongs to Engg. Deptt) in his Deptt. (i.e. Administration) and asked her the purpose of her visit to the Administration Department. Instead of giving a reply, appellant challenged the authority of Mr. Lal to put her that question. Mr. Lal told her he wanted to know the purpose of her visit to his department. He proceeded to the seat of Mr. R.B. Kapoor, Manager (Admn) and then appellant followed, shouted at Mr. Lal and misbehaved using derogatory and indecent language, hailed insults and disrupted office work. (ii) At 4.30 Pm, she went to the office of Mr. Lal and joined Mr. R.C. Naithani, Rakesh Rohtagi, S.P. Khware and K.P. Singh who were already there, making baseless accusations against Mr. Lal and demanding unqualified apology from him for his alleged misbehavior. Appellant persisting with unruly behavior, insulted and threatened Mr. Lal and disrupted normal working of the office till 5.10 PM. The appellant accompanied by the employees went to Mr. Lal's residence and insulted him in the presence of his family members. (iii) At 5.15 Pm, appellant and other employees stopped Mr. Lal's car when he was leaving the office along with Mr. R.C. Chowdhary, General Manager (Engg) and used offending language, tried to get into the car. The car was detained for 1 hour.

(3) A preliminary inquiry was made recording statement of witnesses. On 2.6.89, appellant was suspended by orders of the 2nd respondent and on 12.6.89, charge sheet was served mentioning also names of certain other employees involved in the incident. On 7.7.89, appellant was informed that an inquiry will be held. Inquiry was held and ultimately, the Inquiry Officer found against the appellant and sent a report of findings etc. on 17.12.90. The appellant sent reply to the report on 22.2.91. An order of dismissal was passed on 29.4.91.

(4) Appeal dated 29.5.91 to the Chairman of the company was dismissed on 30.7.91. Writ petition was filed on 30.10.91 and was dismissed by the learned Single Judge holding.

(1) That the preliminary objection raised by the respondent that the appellant was a "workman" and ought to have availed the remedy under the Industrial Disputes Act, was correct. It is not her case that she was having any "managerial or administrative" duties. She was only a "private secretary". she was a "workman". Appellant had not stated in her rejoinder that she has any such duties which exclude her from the definition of "workman". Learned Single Judge followed *Hariba vs. Ksrtc* 1983 XI LJ 76 as approved in *Sreeramulu vs. Ksrtc* 1982 2 LJ 864, *Vial Contractor Workers Assn. (R) & Another) vs. Viswaswaraya Iron and Steel Ltd.* 1990 (2) C L.R. 700. (2) Petitioner's reliance on Article 14 as regards discrimination and victimization cannot be accepted as there is no proof adduced in that behalf. (3) Petitioner has not even examined herself in the inquiry before the Inquiry Officer. She did not lead any evidence. She specifically

refused to cross-examine witnesses and said she will not examine herself. Her participation was confined to her mere presence and raising a few objections. No genuine attempt was made to dislodge the evidence adduced by the company.

(5) In the grounds of appeal, the appellant contended in the grounds of appeal that (i) Documents sought for were not furnished to the appellant on the ground that they were not relied upon by the Inquiry Officer nor were the basis for framing charges. (ii) Appellant was denied assistance of legal practitioner. (iii) Co-delinquents who were charge-sheeted in connection with the incidents dated 19.5.89 were let off and no action was taken against them. Some of them (Mr. K.L. Rekhi) was let off with a warning. This offended Article 14 of the Constitution of India, (iv) Appellant was victimised for lodging a complaint against Mr. M.M. Lal. As regards the preliminary objection, it is stated that once the writ petition was admitted in the presence of the respondent's counsel on 31.3.92, the said objection cannot be permitted at a later stage. It is contended that when violation of principle of natural justice was pleaded, there was no need to avail the alternative remedy or go to the Industrial Court that denial of copies of the complaint which is the foundation of the case, vitiated the entire proceedings, copies of charge-sheets served on co-delinquents were not given, that the action was mala fide and was a counter-blast, that copies of the statements of witnesses who deposed in the preliminary inquiry were not given and that learned Single Judge erred in holding appellant was a workman.

(6) The points for consideration in this appeal are: (1) Whether the learned Single Judge was wrong in holding that the appellant was a "workman" and should have pursued alternative remedy under the Industrial Disputes Act? " (2) Whether there was violation of principles of natural justice in that certain relevant documents were not supplied or legal assistance was not given and there was consequent gross prejudice and hence petitioner was justified in invoking the jurisdiction of this Court under Article 226 of the Constitution of India. (3) Whether because of the co-delinquents were not visited with same punishment but were either let off or given only a warning, that amounted to discrimination under Article 14? (4) Whether the action was mala fide? Points 1 & 2

(7) These two points are some-what interconnected. If the petitioner's case under Point 2 that there was gross violation of natural justice and consequential prejudice cause to the appellant is to be accepted, it can perhaps be said that petitioner need not have proceeded under the Industrial Disputes Act,

(8) First, we shall deal with the question whether appellant was a "workman". Now, so far as the pleading of the respondent that the appellant was a "workman" as pointed by the learned Single Judge, the appellant did not allege either in her rejoinder that she had any managerial or administrative functions which will take her out of the category of "workman". There was no such plea in the rejoinder nor in the grounds of appeal. Except to say that she was not a workman as found by the learned Single Judge, it was not stated even in the

grounds of appeal that she had any managerial or administrative functions. Hence, there is no real attack to the finding of the learned Single Judge that appellant was not a "workman". The learned Single Judge was right that she should have proceeded under the Industrial Disputes Act. It is true that the writ petition was admitted in the presence of "respondent's counsel but there is no material to say that any such objection raised by the respondent was rejected at that stage. In the order admitting the writ petition, there is no reference to rejection of any objection of the respondent at the stage of admission. Objection to the maintainability of the petition can still be canvassed at the stage of final disposal especially when appeal or petition is being disposed of expeditiously.

(9) We shall now examine if there was any violation of principles of natural justice and if so, whether there was proof of any prejudice to the case of the appellant during the inquiry and whether she could have straight-away approached this Court. As already stated, the appellant did not examine herself in the inquiry in regard to the allegations against her and contended herself by being present and raising a few objections, (i) Non-supply of copy of complaint by Mr. Lal

(10) As we shall presently show, this plea was never raised in the inquiry. The charge-sheet against the appellant is charge-sheet No. 5011 dated 12.6.89 and was served on her long before inquiry. From the record of the Inquiry Officer which we have called for, we find that the charge-sheet dated 12.6.89 was given to the appellant and she admitted the same when questioned by the Inquiry Officer on 5.9.1989. It is in the light of this fact that if assuming that a copy of the complaint of Mr. M.M. Lal was not given to the appellant - we have to decide whether any principle of natural justice was violated or prejudice caused.

(11) It is argued that it was only in this Court that the copy of the complaint, was produced but the copy of it was not given to her during the inquiry. Now it is not contended that there is any variation between the facts stated in the complaint and those stated in the charge sheet. Further, it is not contended that any facts stated in the complaint and not stated in the charge sheet have been relied upon by the Inquiry Officer or the disciplinary authority.

(12) In fact, in the departmental appeal dated 29.5.91 the only grievance of the appellant is

"I requested for two things (1) the help of a defense assistant and (2) the copies of the statements recorded during the preliminary inquiry, in order to conduct effective cross examination of the witnesses and prepare a cogent and forceful defense."

(13) In the departmental appeal, no ground was raised that she had asked for a copy of the complaint given by Mr. Lal on the basis of which the charge sheet could have been prepared or that its absence prejudiced the case of the appellant.

(14) The law relating to violation of principles of natural justice and the need to prove "prejudice" has now been clearly laid down by the Supreme Court in a recent judgment in State Bank of Patiala and others Vs. S.K. Sharma, . A proof of prejudice is, in disciplinary inquiries, an essential requirement and as there is no plea either before the Inquiry Officer or before the Appellate Authority that she had asked for a copy of the complaint or it contained more prejudicial allegations than those contained in the charge sheet nor there any plea of consequential prejudice, hence the non-supply of the complaint did not, in our view, vitiate the inquiry.

(15) Therefore the ruling in Jog Raj Singh vs. The Delhi Administration, Delhi and others 1970 Slr (Del) 400 is of no help to the appellant. (2) Non-supply of statements of witnesses examined in the preliminary inquiry : It is not the case of the appellant that the Inquiry Officer or the Disciplinary Authority has relied upon any statement of witnesses recorded in the preliminary inquiry. The Inquiry Officer's report dated 17.12.90 runs into 29 pages of very detailed discussion of the evidence of witnesses adduced in the case. It says that the inquiry was conducted at 22 sittings. As stated below the finding is that the appellant shouted at Mr. Lal at 2.30-2.40 Pm left and came back at 4.40 Pm with union leaders and for the first time contended that at 2.40 Pm she was pushed by Mr. Lal. At P. 18 the report says:

"MRS. Gupta did not produce any witness nor cross examined the PO's witnesses. In her defense against the charge sheet issued and witnesses produced in support of the charges, Mrs. Gupta refused to cross examine the witnesses produced, did not examine herself nor produced any witnesses in her support or any statement of eye witnesses nor made any attempt to disprove or challenge their statement."

(16) As regards her allegation that Mr. Lal touched her body or manhandled or pushed her into a corner, the Inquiry Officer found it to be totally false. Actually the allegation of Mrs. Gupta was that this happened when Mr. Lal questioned her why she had come to the Administrative department. The Inquiry Officer stated:

"MRS. Adarsh Kapahi has mentioned that Mrs. Pushpa Gupta, a friend and acquaintance of 10 years standing, had come to her on that day on personal work, Mr. Kapahi & Mr. MM. Singh without hesitation has given evidence that at no time Mr. Lal even touched Mrs. Gupta's person nor was he near enough to do so, leave aside his manhandling and pushing her to a corner. No witnesses have come forward, nor statement of witnesses have been produced to support Mrs. Gupta's serious complaint even though it was in open hall during busy working hours. Mr. Kapoor, Mr. Ghuliani and Cap. Yadav have stated that when Mrs. Gupta followed Mr. Lal into Mr. Kapur's room also, she never mentioned anything about Mr. Lal having touched or manhandled her near the fourth floor entrance."

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It is found that this allegation by Mrs. Gupta was made when she came back at

4.30 Pm Along with office bearers of the staff association. The evidence as summarised by the Inquiry Officer is as follows:

"MR.M.M. Singh, Mr. Kapur, Capt. Yadav have stated that this allegation they heard first in Mr. Lal's cabin around 4.30 Pm when Mrs. Gupta came Along with some of Eilea office bearers."

As regards the events at 2.40 Pm

"MRS. Kapahi, Mr. Manmohan Singh have, while describing the incident and interaction between the two at 2.40 Pm near the travel section stated that Mr. Lal neither shouted, nor was he made nor used derogatory language but was trying to calm and pacify Mrs. Gupta while Mrs. Gupta raised her voice and was questioning the authority of Mr. Lal and used offensive language and words which is not expected to be used while interacting with another senior employee and that too without serious provocation."

The above evidence, including the evidence of a lady Mrs. Kapathi whom Mrs. Gupta went to meet shows that the allegation of Mr. Lal touching her or pushing her did not at all happen at 2.40 Pm but she put forward with the allegation at 4.30 Pm when she came back with the office bearers of the staff association. The Inquiry Officer, in fact, held that such an allegation on the part of a lady would have a demoralising effect on the department. At p. 23 of the report, it is held that the evidence of Mr. Kapathi, M.M. Singh, R.B. Kapur, Mr. Ghuliana. Cap. Yadav, Mr. A.K. Pal and Mr. A.R. Gupta showed that Mrs. Gupta shouted and gesticulated at Mr. Lal at 2.40 Pm and later and there was no occasion for Mr. Lal touching her. It is significant that the very lady Mrs. Kapahi whom the appellant went to meet in the administrative wing at 2.30 Pm has not supported the appellant's case. In regard to the plea of non-supply of documents relating to previous statement of witnesses in the preliminary inquiry, the Inquiry Officer observed (p.29) that

"The evidence recorded before the issuance of charge sheet or a report of a previous inquiry can be made use of during the full scale inquiry and becomes relevant to the inquiry provided the copies of such evidence is made available to the delinquent for his/her examination, defense and to give an opportunity of explaining them. In this case, the charge sheet referred to no previous-statements or reports. Po also declared in the beginning of the proceedings that he is not relying on any documents and in fact he did not produce any statements previously recorded. No material collected or conclusion drawn before was made use nor relied upon in the inquiry".

Learned counsel for the appellant has relied upon State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs., that non-supply of statement of witnesses, in the preliminary inquiry amounts to violation of natural justice. We may point out that the above decision has been referred to in Chandrama Tewari Vs. Union of India (UOI) (through General Manager, Eastern Railways), . Other cases of Stale of Mp Vs. Chintamani AIR 1961 Sc 1623 and Union of India (UOI) Vs. T.R.

Varma, , State of Punjab vs . Bhagat Ram , Kashinath Dixit vs. Union of India Air 1986 Sc 2108, were also referred to. But the Court relied upon State of Assam and Another Vs. Mahendra Kumar Das and Others, to say that if such material was not relied upon, failure to supply copies thereof did not vitiate the inquiry. On facts, in Chandrama Tiwari's case, in fact, the Supreme Court held (see para 10) : "The Inquiry Officer has not either referred to nor relied upon that report in recording findings on the charges framed against the appellant." The Court also held:

"A copy of the statement as recorded by the Inquiry Officer has been placed before us by the appellant. On a perusal of the same, we find that Sri A.C. Das (was) cross-examined at length in detail. His examination-in-chief runs into six foolscap typed pages. The appellant has failed to point out as to how he was prejudiced. In our opinion the appellant was not handicapped in cross-examining Sri A.C. Das".

In the present case, the appellant took up a rigid posture and refused to cross-examine the witnesses produced by the department, nor examine herself. There is no absolute rule that, in all cases, prejudice is to be presumed. As already stated the witnesses including Mrs. Kapahi in whose presence the incidence is said to have happened, were examined in the regular inquiry. Mrs. Kapahi and other witnesses gave evidence totally against Mrs. Gupta - that Mr. Lal never touched or pushed her at 2,40 Pm and that it was she (Mrs. Gupta) who shouted at Mr. Lal. Mrs. Gupta came forward with the plea of Mr. Lal pushing her for the First lime at 4.30 Pm when she returned back with the office bearers. We do not find any justification whatsoever for the adamant attitude of the appellant in refusing to cross examine Mrs. Kapahi - her close acquaintance for over 10 years - or the other witnesses, nor in her not examining herself. In such a scenario, the insistence on copies of the statement of witnesses examined in the preliminary inquiry and in raising a pica of violation of natural justice, in our opinion, is wholly unreasonable and, in fact, no where the appellant has mentioned what prejudice she had suffered. For the aforesaid reasons, we are satisfied that there was no prejudice caused to the appellant on account of non-supply of these statements in the preliminary inquiry. As already staled, they have not been relied upon either in the charge sheet, or in the evidence at the inquiry, nor in the inquiry report nor later even by the disciplinary authority. Non-supply of copies of charge-sheets on co-delinquents : We do not think that supply of charges against co-delinquents is part of the procedure for conducting an inquiry against the appellant. As pointed out by the Inquiry Officer, the whole incident turned upon the misconduct of the appellant in shouting at Mr. Lal at 2.30 p.m. and coming back at 4.30 p.m. with other employees and again making baseless allegations against Mr. lal and demanding an apology from him and going to his residence and again insulting him in the presence of his family members. At page 25 of his report, the Inquiry Officer observed:

"HOWEVER, Mrs. Gupta was the root cause of Eilea office bearers" protest,

gheraoing Mr. Lal in his cabin, shouting slogans, insulting - causing disruption to office routine by Eilea office bearers and causing people to follow to stop and hold Mr. R.C.P. "Chowdhary"s car for some time."

The co-employees in fact, tendered their unconditional apologies. In fact, this aspect is mainly urged in connection with the warning given to other co-delinquents or in connection with exoneration of some of them. We are not told how the non-supply of the charge-sheet on other co-delinquents has prejudiced the case of the appellant. Not giving assistance of a Lawyer: It is true that the appellant had asked for help of a Lawyer and the same was not given. The Presiding Officer was neither a Lawyer nor a Law graduate. The appellant was admittedly not denied the help of a co-employee but she insisted only for a Lawyer's help. It is now well-settled that unless the department has the help of a lawyer or a law graduate, the employee has no right to a Lawyer's help and if, in such circumstances a lawyer's help is not given, there is no violation of principles of natural justice (Board of Trustees of Port Trust of Bombay Air 198 Sc 109; J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others, , (State of Rajasthan Vs. S.K. Dutt Sharma 1993 Suppl (4) Scc 61. We Therefore, hold that the inquiry was conducted in accordance with principles of natural justice and though some documents were not furnished, they were neither relied upon tin the charge-sheet, nor in the inquiry nor in the report of the Inquiry officer, nor even in the order of punishment. There is also, as already stated, no proof of prejudice to the appellant. Point 2 is held against the appellant. Point 3 : As staled towards the end of para 2, there is no discriminatory treatment meted out to the appellant. The appellant is the main or root cause of the whole incident at 2.30 p.m, 4.30 p.m. again when Mr. Lal was going by Mr. Chowdhary"s car and at the residence of Mr. lal. These acts of misconduct have been established as a result of the evidence of a large number of witnesses. The other co-delinquents" role was minor and in fact, they all tendered unconditional apology. The role of the other employees in the whole episode being very minor as compared to that of the appellant, there is no violation of Article 14 of the Constitution of India. Point 3 is held accordingly. Point 4 : There is no proof of mala fides. The incident of Mr. Lal pushing the appellant at 2.40 Pm when appellant came to the administrative department of Mr. Lal has not been proved. No witness not even her 10 year-old friend Mrs. Kapahi supported the appellant in that behalf. In fact, the appellant had come to Mrs. Kapahi at 2.30 PM. The Inquiry Officer has considered the entire evidence adduced before him in great detail, if this incident is held not proved, then the charge against the appellant and her misbehaviour towards Mr. Lal alone remains and there can be no question of mala fides. In fact, the Inquiry officer has also considered this aspect in his report and held against the appellant. No witness examined by the department supported her case. She refused to examine herself or other witnesses. She refused to cross-examine the witnesses produced by the management. Therefore, there is no proof of mala fides. Point 4 is held against the appellant. In fact, as pointed out by the Inquiry Officer, if the appellant did

not allege at 2.30 Pm that Mr. Lal pushed her but came forward with such an allegation only at 4.30 p.m. when she came along with office bearers of the Union and even Mrs. kapahi did not support her, - the Inquiry Officer was right in observing that false allegation by the lady would have a demoralising effect on other officers. The findings here are pure findings of fact supported by ample evidence. For the aforesaid reasons, the Lpa is dismissed.