

(1997) 01 RAJ CK 0065
In the Rajasthan High Court
Case No : C.W.P. No. 1695 of 1995

Rajasthan State Road Transport Corporation	APPELLANT
Vs	
Girdhar Singh and Another	RESPONDENT

Date of Decision : 30-01-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 32(2)

Citation : (1998) 1 LLJ 134 : (1997) 2 WLC 48

Hon'ble Judges : N.L. Tiberwal, J

Bench : Single Bench

Advocate : Kewal Ram, for the Appellant; Babu Lal Gupta, for the Respondent

Final Decision : Allowed

Judgement

N.K. Tiberwal, J.—Rajasthan Road Transport Corporation (for short the Corporation) is a statutory body incorporated under the Road Transport Act. 1950. It is engaged in plying buses in the State of Rajasthan and other States to provide means of transporation to the public. By this petition under Article 226 and 227 of the Constitution, the Corporation is challenging the order dated, July II. 1994 ot the Industrial Tribunal, Jaipur whereby approval of dismissal of the respondent-Conductor Shri Girdhar Singh u/s 33 (2) (b) of the Industrial Disputes Act, 1947 (hereinafter to be referred to as the Act) has been declined.

2. Necessary facts of the case are extensively set out in the impugned order of the Labour Court. Put shortly on, April 30, 1989, the respondent-workman was Conductor in Bus No. 7060 of the Corporation which was plying from Bhilwara to Amjer. It was checked at Village Nang-Ji-Ka-Kheda by the Checking party and 22 passengers, out of 23 total passengers travelling in the Bus, wer found without tickets and 60 Kg. of luggage was being transported without paying fare, though the conductor had charged fare from them. A domestic enquiry was initiated fro the above misconduct. The Conductor was suspended and a regular charge-sheet was served upon him. After Completing regular enquiry, the Enquiry Officer found his guilt established. Competent Authority, after service of the show cause

notice, imposed penalty of dismissal agreeing with the findings of the enquiry officer. Since a general demand charter was pending before the Industrial Tribunal, Jaipur an application u/s 33 (2) (b) of the Act was moved by the Corporation before the Tribunal to accord approval of dismissal of the workman. The learned Judge of the Tribunal, though held that the workman was paid wages of one month as required by the proviso to Section 33(2) (b) of the Act, declined to accord approval holding domestic enquiry proceeding to be vitiated for violation of the principles of natural justice on the ground that the enquiry officer himself put question and cross-examined defence witness Nainu Ram and the workman was not allowed to cross-examine the witness thereafter and opportunity was also not afforded to him to explain the facts. The learned Judge placed reliance on the decision of this Court in *Hukam Chand v. Union of India and Ors.* 1990(1) RLR 647.

3. Shri Kewal Ram, learned counsel appearing for the Corporation while assailing the order of the Tribunal strenuously contended that the scope and power of the Tribunal u/s 33(2) (b) of the Act is limited to the extent as to whether a prima facie case has been made out by the employer against the employee or not. That the Tribunal is not required to consider merits of the case as trying the case itself or as an appellate authority. Criticising the impugned order of the Tribunal, learned counsel urged that the principles of natural justice can neither be reduced to any hard and fast formula nor it can be put in a straightjacket. Their applicability depends in the context and facts and circumstance of each case. The objective is to provide a fair and impartial hearing and a fair deal to those whose rights are going to be affected. Learned Counsel contended that by mere putting certain questions to a defence witness and eliciting answers from him, in absence of anything more, does not warrant the criticism that the enquiry officer acted both as a prosecutor and Judge when he recorded evidence in the case. It was further submitted that there is nothing on record to show that the workman was not allowed to re-examine or cross examine his own witness Nainu Ram or that he was denied the opportunity to explain the facts narrated by the witness in his cross-examination. In absence of any material on record, learned counsel contended, the Tribunal committed serious error on the face of the record by assuming those facts and therefore, in holding the proceeding of the domestic enquiry to be vitiated.

On the other hand, learned counsel, appearing for the workman conductor, supported the order of the Tribunal relying on the decision of *Hukam Chand's* case (supra).

4. I have given my careful consideration to the respective submission made on behalf of the parties.

At the out-set, it may be stated that u/s 33(2) (b) of the Act, the only function of the Tribunal is to decide whether to grant or refuse to grant permission. The Tribunal is not required to examine the sufficiency of evidence in proof of the findings in the domestic enquiry nor it is concerned with the major or harshness

of punishment. No. doubt, if the Tribunal is satisfied that the finding recorded in domestic enquiry is perverse in the sense that it is not justified by any legal evidence whatsoever, in such case, it may be entitled to consider whether the approval should be accorded to the employer or not. But it is essential to bear in mind the difference between the finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or adequate evidence. In other words there are two exceptions in which the findings of a domestic enquiry can be interfered by the Tribunal one is where the findings are not based on legal evidence and the other is where the Findings are such where no reasonable man could have arrived at on the basis of material in the domestic enquiry. It is also to be borne in mind that an approval accorded by the Tribunal u/s 33 (2) (b) does not debar an industrial dispute from being raised by the workman. Then, in a domestic enquiry, strict and sophisticated rules of evidence under the Evidence Act are not applicable.

5. In the above legal perspective, the question for consideration is-whether the proceedings in the domestic enquiry against the workman stood vitiated as being in violation to the principles of natural justice on the ground that the Enquiry Officer had put certain questions to a defence witness?

One of the principles of natural justice is that in any inquiry, the enquiry officer should not act both as a prosecutor and the Judge when he records evidence, in the case, This principle has an objective behind it. The objective is to ensure a fair and unbiased enquiry proceeding. Whether an enquiry officer acted both as a prosecutor and the judge and whether the enquiry proceedings stand vitiated or not on the ground of bias or unfairness, depends upon the context and the facts and circumstances of case. No such principle can be laid down in abstract that by merely putting some questions to a witness or witnesses by the enquiry officer itself would vitiate the entire proceedings on the ground of bias or being unfair. The principle of natural justice cannot be reduced to any hard and fast formula or in a straightjacket but it has to be considered in the context and the facts and circumstances of that particular case. No restriction can be made on the power of the Tribunal or the enquiry officer to put questions to any witness to elicit and clear up certain points of doubt or to throw light on some shaded area in the enquiry. The entire conduct of the enquiry officer has to be seen before he is labelled to be biased.

6. In *The Workmen Employed in B and C Mills, Madras Vs. The Management of B and C Mills, Madras*, the Senior Labour Officer who was the enquiry officer, put certain question to the witnesses and elicited answers from them. A similar criticism raised in that case that he acted both as Prosecutor and the Judge when he recorded evidence in the case was rejected by the Supreme Court. Their Lordships observed as under at p 31: -

"There is no warrant for the criticism levelled by the appellant that the senior labour Officer has acted both as the prosecutor and the judge when he recorded the evidence in this case. No doubt there was no officer separately conducting

the prosecution on the side of the management, but what the labour Officer had done, as evidence by ExM.9 was to put questions to the witnesses and elicit answers and allow the worker to cross-examine those witnesses. Similarly he has also taken the statements of the worker and asked for clarification from him wherever necessary. Therefore, the enquiry proceedings, as held by the Labour Court have been completely fair and impartial."

7. In Chunnilal Rathor Vs. Presiding Officer, Industrial Tribunal and Another, the Division Bench of the Orissa High Court also considered this aspect and held as under:-

"It is said that the enquiry officer cross-examined the delinquent and his witnessess closely which reduced him to the position of the prosecutor, and, accordingly, showed his bias. Again, on looking to the questions asked by the enquiry officer we are not in a position to say that he cross-examined the witness for the delinquent with any bias. The questions were a few in number and were directed to clear up some points of doubt or to throw light on some shaded areas in the enquiry. We fail to perceive from them that the enquiry officer was biased against the petitioner, except making a sincere effort to reach clarity on some points.

8. In State Bank of Patiala and Ors. v. S.K. Sharam 1991 (II) CLR 29 the Apex Court of the country, after considering the entire case law on the principles of natural justice, laid down that while applying the rule of natural justice in a case, the validity of the order has to be decided on the touchstone of prejudice. It would be convenient to refer to the following observations made in this connection: -

"It would not be correct in the light of the above decision to say that for any and every violation of the facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunmakar (supra) should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing. (i.e. adequate or a full hearing) or of violation of a procedural rule of requirement governing the enquiry, the complaint should be examined on the touchstone of prejudice as aforesaid."

9. The decision in Hukam Chand's case (supra) is based on the judgement of the learned Single Judge of Karnataka High Court in Abdul Wahid v. State of Karnataka 1981 (1) SLJ 388. In that case, the enquiry officer cross examined the prosecution witness who had supported the version of the workman treating him as a hostile witness and also cross examined the defence witnessess, particularly suggesting them that: they were uttering falsehood, In these circumstances, it was held that the enquiry officer was biased and he had made up his mind to find the petitioner guilty to the charge. The Learned Single Judge categorically observed thus:

"In this view of the matter, we are of the opinion that the Enquiry Officer was biased and had played the role of Prosecutor and therefore, the enquiry is vitiated. Moreover, in the present case, sine the petitioner was not allowed to further crossexamine the witnesses after questions were put by the Enquiry Officer it also amounts to violation of the principles of natural justice, Since we are in agreement with this argument advanced by learned counsel for the petitioner, we refrain ourselves from mentioning or dealing with other points raised in the petition."

10. In Hukam Chand's case, the Enquiry Officer had cross-examined all the witnesses who had appeared before him during the course of enquiry and he did not allow further cross examination to the workman after cross-examination done by him. Hence, the enquiry officer was held to be biased and to have played the role of prosecutor.

11. In back-drop of legal proposition as laid down above, it may now be examined as to whether the enquiry officer acted both as a prosecutor and the Judge when he recorded the evidence in the enquiry proceedings. The Tribunal held the enquiry to be in violation of the principles of natural justice on two grounds. One is that the enquiry officer had put question on important points to defence witness Nainu Ram and the other is that the workman was not allowed to further cross-examine the witness after his cross-examination by the Enquiry Officer and he was also not allowed to give explanation to the facts elicited in cross examination of the witness.

12. So far second ground is concerned, there was no material on the record to establish or even show that the workman wanted to re-examine or cross examine the witness Nainu Ram after questioning by the enquiry officer or he was denied an opportunity to explain any fact narrated by the said witness either in examination in chief or in cross examination. On the other hand, the workman has stated in the enquiry that reply dated July 5, 1989 filed by him be treated as his statement in his defence and he did not want to make further statement in his defence. For the sake of convenience, his statement given in defence on August 23, 1989 (which was recorded after the statement of Nainu Ram of August 21, 1989) may be reproduced here in :

^ ^ IQkbZ & c;ku Jh fxj/kj flag iq= Jh ujsUnz flag ifjpkdyd HkhyokM+k vxkxkj

eSa Jh fxj/kj flag ifjpkdyd HkhyokM+k vxkxkj c;ku djrk gw? fd esjs }kjk iwoZ esa vkjksi i= la[;k 1409 fnukad 2-6-89 dk tokc izLrqr fnukad 5-7-89 dks gh IQkbZ dk c;ku ekuk tkosa A esa i` Fkd~ Is IQkbZ c;ku nsuk ugha pkgrk gq? A

eSa viuh tk?p izf?;k Is lger gw? rFkk vc bl ekeys esa u rks xokg fjdkMZ dqN Hkh is" k djuk ugha pkgrk gw? A**

13. In written reply submitted before the Industrial Tribunal also no such objection was taken by the workman that he was not allowed to cross examine or re-examine the witness Nainu Ram or given an explanation in his statement.

On the contrary, the objection taken by him is that he was not allowed to cross-examine the witnesses of the Corporation or to produce his defence witnesses in the enquiry.

14. On perusal of the statement of the witness Nainu Ram, it would transpire that statement given by him even in examination in chief is contrary to the defence taken by the workman. The questions which were put to him by the enquiry officer and reply given by the witness are wholly innocuous. Having minutely gone through the Statement of Nainu Ram. I am convinced that neither the enquiry officer was biased against the workman nor his case is prejudiced by putting 3-4 questions to the witness-Nainu Ram. The view taken by the Tribunal that there has been violation of the principles of natural justice in the enquiry proceeding is without any basis, rather it is contrary to the record. As observed earlier by mere putting a few questions to a defence witness Nainu Ram. The view taken by the Tribunal that there has been violation of the principles of natural justice in the enquiry proceeding is without any basis, rather it is contrary to the record. As observed earlier, by merely putting a few questions to a defence witness by the inquiry officer, it cannot be presumed and held that he acted both as a prosecutor and the Judge and the enquiry proceeding is vitiated on the ground of bias and being unfair. The charge of misconduct proved against the workman is of grave nature and order of his dismissal cannot be said to be harsh. Dismissal from service is proper punishment in such a grave misconduct.

15. For the aforesaid reasons, this petition deserves to be allowed and is hereby allowed. The impugned order of the Tribunal withholding approval of dismissal of the workman u/s 33(2) (b) of the Act is quashed and set aside. The case is sent back to the Tribunal for deciding the application afresh in the light of the judgement and pass necessary orders. In the facts and circumstance, parties are left to bear their own costs.