

(2013) 11 DEL CK 0319

In the Delhi High Court

Case No : Writ Petition (C) 2537 of 2010 and 3560 of 2011

Rajender Kumar Dixit

APPELLANT

Vs

Management of Hindustan Times Ltd.
 Hindustan
Times Ltd. Vs Rajender Kumar Dixit

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 1 LLJ 377

Hon'ble Judges : A.K. Pathak, J

Bench : Single Bench

Advocate : Manish Sharma and Party in Person, Mr. Mohit Gupta, Ms. Vidhi Gupta, Ms. Megha Gaur and Ms. Alka Chojar, for the Appellant; Mohit Gupta, Ms. Vidhi Gupta, Ms. Megha Gaur and Ms. Alka Chojar, Mr. Manish Sharma, Party-in-Person, for the Respondent

Final Decision : Disposed Off

Judgement

A.K. Pathak, J.—Workman as well as management have challenged the Award dated 19th January, 2010 passed by the Labour Court-VII, Delhi, by way of above mentioned writ petitions under Article 226 of the Constitution of India, therefore, same are being disposed of together by this common order. Workman was working as a "Peon-cum-Messenger" at Bhopal Office of the management. A domestic enquiry was held against him on the following charges:-

That it has been reported that on July 22, 1999 at about 10.30 am when Mr. Ravi Sharma, Branch Manager, Bhopal Office asked you to pick up the teacups lying on his table and to serve water to the newspaper agent Mr. Nirmal Jain who was sitting with Mr. Sharma. You not only refused to pickup teacups from the table of Mr. Ravi Sharma but also refused to serve water to Mr. Nirmal Jain. When Mr. Ravi Sharma asked you to behave properly and do the office work inter alia giving water to the office staff/guests and to pick up cups from the table you told him that you will not do this and used abusive language for Mr. Ravi Sharma.

When Mr. Ravi Sharma asked you to keep quite and to maintain decorum of the office you reportedly told him that that it was your office as well and you will behave the way you would like to and also challenged the authority of Branch Manager to stop him from doing so. You are also reported to have abused former Executive President - Mr. Naresh Mohan, Personnel Manager Mr. A.C. Seth, the Union and its office bearers.

2. That you left the office at about 1 pm and came back at about 4 pm in drunken state and again used abusive language for the above mentioned officials. Your above acts of not complying with lawful and reasonable orders of your superior, coming to the office premises in the drunken state and using abusive language for the officials of the Company are misconducts under para 14(2)(a), 14(2)(h), 14(2)(i) of Certified Standing Orders making you liable for disciplinary action.

You are therefore, called upon to show cause within seven days of receipt of this charge sheet as to why disciplinary action should not be taken against you.

2. Enquiry was conducted by Sh. D.K. Saxena, Advocate, appointed by the management. Initially, workman participated in the enquiry but subsequently stopped appearing. His attitude remained non-cooperative during the enquiry which fact has been duly recorded in the enquiry report. Workman was afforded opportunity to cross examine the witnesses of the management but he did not come forward to cross examine the witnesses. Upon appreciation of evidence Enquiry Officer concluded that charges against the workman were duly proved.

3. Workman was served with the copy of enquiry report and was asked to submit his explanation, if any. Workman submitted his representation, however, explanation given by him was not found satisfactory. Accordingly, vide order dated 25th April, 2000 management dismissed the workman from service with effect from the afternoon of April 29, 2000.

4. Workman raised industrial dispute which was referred by the Secretary (Labour) to Labour Court for adjudication in the following terms:-

Whether Shri Rajender Kumar Dixit has been dismissed from service by the Management illegally and/or unjustifiably, if so, to what relief is he entitled and what directions are necessary in this respect?

5. In the statement of claim, workman alleged that he was appointed as a "Peon-cum-Messenger" vide appointment letter dated 26th April, 1976 with effect from 1st April, 1976. His last drawn salary was Rs. 6800/- per month. He was transferred to Madras and subsequently to Bhopal. He was harassed by the management. Enquiry was conducted against him on the charges that on 22nd July, 1999 he was asked to pick up cups and plates from the table but he refused to do so, inasmuch as abused superiors in drunken state. Enquiry was conducted in gross violation of principles of natural justice. In fact on 22nd July, 1999 he was asked to leave office and thereafter he was not allowed to resume his duties.

His services were illegally terminated vide letter dated 25th April, 2000 with effect from 29th April, 2000.

6. In the written statement, management stated that at the time of dismissal from service, workman was employed in Bhopal Office, inasmuch as, the domestic enquiry was conducted at Bhopal, thus, cause of action, if any, arose at Bhopal within the State of Madhya Pradesh. Accordingly, reference made by the Government of NCT of Delhi was without jurisdiction. Workman was transferred due to bona fide administrative exigencies and in accordance with the terms and conditions of his employment. It was denied that workman was asked to perform any such duties which were not part of his normal assigned duties. Picking up of cups and serving tea and water were normal duties of a "Peon" which workman could not have refused to perform, inasmuch as, he misbehaved with his superiors. It is the workman who refused to perform his assigned duties. Enquiry was held in accordance with the Standing Orders and rules of natural justice were duly followed. Workman had failed to participate in the enquiry on 8th January, 2000 despite due notice and without any reasonable cause, thus, was rightly proceeded ex-parte. Workman was rightly dismissed from service on the basis of proven serious misconduct.

7. In rejoinder, workman denied the averments as contained in the written statement and reiterated whatever he had stated in the statement of claim.

8. On the pleadings of the parties following issues were framed by the Industrial Adjudicator:-

(i) Whether this Court has no territorial jurisdiction to decide the present dispute?

(ii) Whether a fair and proper enquiry was not conducted in accordance with principles of natural justice?

(iii) As per the terms of Reference.

9. Parties were afforded opportunity to lead evidence. Upon scrutiny of evidence adduced by the parties Industrial Adjudicator, vide order dated 13th December, 2010, has held that enquiry was conducted by following principles of natural justice, inasmuch as, opportunity was granted to workman to defend himself. By placing reliance on the answers given by the workman, in his cross examination, that during the course of enquiry he used to sign the enquiry proceedings whenever he appeared, inasmuch as, enquiry was conducted in Hindi at his request, Industrial Adjudicator has concluded that due opportunity was given to the workman, inasmuch as, principles of natural justice were followed. Enquiry proceedings were also perused and it was concluded that workman chose not to appear in the enquiry proceedings on 8th January, 2000. However, he participated in the proceedings conducted on 11th March, 2000 and 16th March, 2000. Conduct of the workman indicated that he participated in the enquiry off and on as per his own whims and fancy. Since petitioner had stopped appearing during the enquiry proceedings, he cannot take a plea that statements of

management's witnesses were recorded behind his back. Industrial Adjudicator was also of the view that Court has only to see that enquiry officer had followed the broad principles of natural justice and it cannot sit over the findings of enquiry officer as a court of appeal. It was further concluded that evidence on record was sufficient enough to prove guilt of workman, therefore, enquiry proceedings were not vitiated, inasmuch as, liable to be upheld.

10. Despite returning the finding that enquiry was conducted by following the principles of natural justice and was not vitiated, Industrial Adjudicator, while determining the question of propriety of punishment awarded to the workman, ventured to sift and weigh the evidence adduced before the Enquiry Officer threadbare and held that charge of workman entering in office in drunken state and misbehaving with the superiors remained unproved. It was held that only charge proved against the workman was of insubordination and for such mild misconduct removal from service was not warranted. Industrial Adjudicator upon appreciation of evidence adduced during the enquiry proceedings observed that Enquiry Officer had overlooked the fact that testimonies of Sh. Ravi Sharma, Sh. Avinash Khandelkar, Mr. Lokesh Dubey and Ms. Shruti Sharma were one sided since they were not cross-examined by the petitioner. In the charge-sheet, it was mentioned that workman abused Sh. Ravi Sharma, Branch Manager, Sh. Naresh Mohan, former Executive President, Sh. A.C. Sethi, Personnel Manager as also hurled abuses against the Union and its office bearers. However, said officials were not examined. Workman was not even medically examined to find out whether he was drunk or not. It was concluded that for small charge of insubordination punishment of dismissal from service was disproportionate.

11. It is trite law that Labour Court or Industrial Tribunal has only to go into the question of validity of enquiry in the sense that it has to be seen as to whether the same was conducted by following rules and regulations governing the service conditions of the employee and by broadly following principles of natural justice. Labour Court or Industrial Tribunal has not to sift and weigh the evidence adduced before the Enquiry Officer and to substitute its finding over and above the findings returned by the Enquiry Officer. Industrial Tribunal cannot act as an Appellate Court. Adequacy of evidence or for that matter its reliable nature cannot be made a ground to interfere with the conclusions reached by the Enquiry Officer. Industrial Tribunal or the Labour Court will interfere with the enquiry report only if it finds that the same is based on no evidence or is perverse in the sense that no reasonable and prudent person can arrive at such a finding on the basis of evidence adduced. In *State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya*, , Supreme Court has held thus:-

It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be

grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with the findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.

12. In this case Industrial Adjudicator, upon appreciation of evidence and on a perusal of enquiry proceedings, had already returned a categorical finding vide order dated 13th December, 2010 that enquiry was conducted in a fair and proper manner and by following principles of natural justice, inasmuch as, was based on the evidence adduced before the Enquiry Officer and was not vitiated. Enquiry report was upheld. In such an eventuality, it was not open for the Industrial Adjudicator to again sift and weigh the evidence lead during the enquiry and return a finding that the only charge proved against the workman was that of insubordination. In view of order dated 13th December, 2010 only point which remained to be considered was regarding quantum of punishment. Thus, the subsequent finding of Industrial Adjudicator that only charge of insubordination was barred is contrary to the settled principles of law and is perverse.

13. A perusal of record makes it clear that principles of natural justice were duly followed during the enquiry proceedings, inasmuch as, workman was given ample opportunity to defend himself which he did not avail for which he has to blame himself. He participated in the proceedings off and on. At his request, enquiry proceedings were conducted in Hindi. This itself suggest that Enquiry Officer, who was an independent person, had acted fairly. Enquiry Officer did not act in haste and adjourned the proceedings on more than one date, inasmuch as, permitted the workman to participate in the enquiry in spite of the fact that he had been proceeded ex-parte. However, attitude of workman remained all along non-cooperative. He was given opportunity to cross examine the witnesses but he did not avail the same. Accordingly, I am of the view that Industrial Adjudicator vide order dated 13th December, 2010 had rightly held that enquiry was held in a fair manner and by following the principles of natural justice and was in consonance with evidence and was not vitiated.

14. Once it had been held by him that enquiry was held fairly and by following principles of natural justice and enquiry report was not vitiated the only question remained to be considered was, as to whether the punishment awarded to the workman was shockingly disproportionate to the misconduct as alleged and proved on all the charges.

15. In Management of The Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal, , Supreme Court held that

punishment for misconduct is a matter for the management to decide and if there is justification for punishment imposed, the Tribunal should not interfere; but where the punishment is so disproportionate that no reasonable employer would ever have imposed it in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. In *Hind Construction and Engineering Co. Ltd. Vs. Their Workmen*, , Supreme Court held that Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But where the punishment is shockingly disproportionate regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the tribunal may treat imposition of such punishment as itself showing victimization or unfair labour practice.

16. In *U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others*, , Supreme Court held that the Labour Court was not justified in interfering with the order of removal from service when the charge against the employee stood proved. The jurisdiction vested with the Labour Court to interfere with the punishment is not to be exercised capriciously and arbitrarily. It is necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived that the punishment was shockingly disproportionate to the nature of the charge found proved, before it could interfere to reduce the punishment.

17. In *State of U.P. Vs. Sheo Shanker Lal Srivastava and Others*, , Supreme Court held thus:-

It is now-settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well-settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience.

18. In this case, charges against the petitioner which stood proved are in terms of the act of insubordination and hurling abusive language at his superiors as also entering in the office premises in a drunken state. The acts of insubordination and using abusive language against the superiors are of grave nature and if such acts are permitted the same would encourage breeding of indiscipline in an organization. In *Orissa Cement Ltd. vs. Adikanda Sahu* 1960 I LLJ SC , workman had abused the labour officer of the management in filthy language. Supreme Court held that in such a case, if the appellant took the view that it should not keep in its employment a person who was capable of such indecent conduct, it would be justified in dismissing him. In *Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc.*, , dismissal of a delinquent was upheld by the Supreme Court where the proved allegation against him was using abusive language against his superiors. In *Bharat Petroleum Corporation Ltd. vs. Industrial Tribunal & Others* 2005 LLR 878 services of a Peon were terminated

after holding an enquiry on the charges pertaining to using of abusive language towards superiors and insubordination. In the said case, Tribunal took a view that charges being not grave enough did not warrant punishment of dismissal and awarded reinstatement. Learned Single Judge of Kerala High Court upheld the award. The Division Bench set aside the order of learned Single Judge as also the award passed by the Tribunal and held that use of abusive language will undermine the discipline of the organization and punishment of dismissal from service cannot be termed as excessive or not commensurate with the gravity of the charges as levelled and proved against the workman. The Division Bench observed thus: Apex Court in *Bharat Heavy Electricals Ltd. Vs. M. Chandrasekhar Reddy and Others*, has observed thus "Once the Management has lost confidence in the respondent the question of exercising the jurisdiction u/s 11A to alter or reduce the punishment does not arise. We may also notice in the recent decision in *Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma*, , the Apex Court reminded of the discipline at the work place as a sine qua non for the efficient working of the organization. We are of the view the principle laid down by the Apex Court in the above decisions would squarely apply to the facts of this case. This is a case where Tribunal has already found that the findings of the enquiry officer are proper and valid and supported by legal evidence. If that be so, we fail to see how the Tribunal could interfere with the punishment imposed by the Management. Workman either due to her mental condition or otherwise has used intemperate language against Dy. Manager in the presence of other officers, that too when she was on probation. Use of such type of language will undermine the discipline of the institution. We are not prepared to say that the decision taken by the Management to dismiss the workman from service is excessive or not commensurate with the gravity of charges leveled against her. We therefore allow this appeal and set aside the judgment of the learned Single Judge and the award passed by the Tribunal. In the facts and circumstances of the case, there will be no order as to costs."

19. What can be culled out from the above judgments is that it is the prerogative of management to impose punishment. Tribunals or Courts shall be slow in interfering with the order of punishment on the ground of it being excessive or severe. Adequacy of punishment cannot be gone into in a routine manner. Courts and Tribunals shall be slow in interfering with the quantum of punishment. The Courts or Tribunals can interfere with the punishment only in such appropriate cases where the punishment is shockingly disproportionate to the misconduct alleged and proved. In this case, workman was found guilty of proven acts of insubordination and misbehaving with his superiors, inasmuch as, hurling abuses at them under the influence of liquor which are of grave nature, thus, the punishment of removal from service cannot be said to be disproportionate to the misconduct alleged and proved. In my view, Industrial Adjudicator has committed a patent error of law in interfering with the punishment awarded by the management. Accordingly, impugned Award is set aside. Both the above writ petitions are disposed of.