

(2006) 12 DEL CK 0114
In the Delhi High Court
Case No : Writ Petition (C) 15902 of 2006

Roop Singh

APPELLANT

Vs

Aganall Traders Limited

RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (2006) 12 DEL CK 0114

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Anil Mittal, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition the petitioner has challenged the validity of order dated 30.4.2005 as well as validity of the Award dated 9.5.2005. By first order Labour Court held that domestic enquiry against petitioner was held in a fair and proper manner and by the second Award Labour court held that the termination of services of petitioner was not illegal and unjustified.

2. Briefly the facts are that petitioner was working as a driver. The following charges sheet was served upon him:

Dear Sir,

It is reported that on 31st January 1987 at 11.30 a.m you picked up quarrel with Shri Prabhu Singh, Chowkidar on the premises of the establishment, when he was on duty. You abused him in filthy language in the name of his mother and sister. You also beat him and threatened him to stab him by knife.

When Shri Shakti Chand, another employee of the company tried to separate you and stop beating of Shri Prabhu Singh Chowkidar, you beat him also and twisted his hand. When he tried to persuade you not to quarrel, you threatened him for further beating and serious consequences. You misbehaved with him very badly.

You also threatened Shri Mahimanand, another employee on the same day, for killing him and Therefore, he is afraid of his life and sought protection from the management.

You are, Therefore, charged with having committed the following grave misconduct:

1. Riotous and disorderly behavior during working hours at the establishment or act subversive of discipline.
2. Beating, abusing and threatening the other co-workers at the establishment."
3. Committing a scene and thereby creating panic and harming the working of the establishment.

You are hereby directed to submit your Explanation to the aforesaid charges in writing within three days of the receipt of this charge sheet, as to why disciplinary action should not be taken against you?

In the meantime you are hereby suspended. Should you fail to submit your Explanation within the stipulated time, it will be presumed that you have no Explanation to offer and the charges as leveled above will be deemed to have been accepted by you as correct and further action may be taken against you without any further reference.

3. An enquiry was held into the charges and after holding enquiry, Enquiry Officer found charges against the petitioner proved. The disciplinary authority imposed penalty of dismissal on the petitioner and an application u/s 33(2)(b) of the Industrial Disputes Act 1947 was filed before the Labour Court by the management for approval of its action. Labour Court framed preliminary issue about the enquiry being fair and proper and held that the enquiry was held in a fair and proper manner. An award was passed after appreciating the evidence and the Tribunal held that the penalty of dismissal of the petitioner was not disproportionate to the charges.

4. The Award has been challenged by the petitioner on the ground that Labour Court Committed grave error in holding that the enquiry was fair and proper. The petitioner was not given subsistence allowance during the pendency of the enquiry. Due to this it was very difficult for the petitioner to participate in the enquiry. The petitioner filed a case for subsistence allowance which was pending during the enquiry proceedings. The petitioner also informed the Enquiry Officer about the pendency of the case and prayed for stay of the proceedings of the enquiry. The Enquiry Officer did not accept this request of the petitioner. Enquiry Officer instead considered that the petitioner was delaying the proceedings and was not cooperating in the proceedings. He proceeded ex parte against the petitioner and gave enquiry report. The other ground taken is that the management did not provide a copy of the enquiry report to the petitioner nor a show cause notice was given prior to the dismissal of the services.

5. It is now well settled that whenever a workman alleges violation of the principles of natural justice, he has to show how the alleged violation caused prejudice to him. Petitioner has failed to show that non giving of subsistence allowance caused any prejudice to him. The management had in this case appointed retired Labour Commissioner as Enquiry Officer. The rules of holding enquiry were followed by the Enquiry Officer meticulously. The workman had appointed one Mr. Karamvir as his defense representative in the enquiry. Intimation of the enquiry was sent to the workman from time to time. Mr. Karamvir attended the enquiry proceeding with the petitioner on some dates and on some time without the petitioner. The evidence of witnesses except MWs 2, 3 and 4 was recorded in the presence of representative of the workman. Adjournments were sought by the representative of the workman which were granted by the Enquiry officer. However, DR of the workman as well as workman, did not appear in the enquiry on 17.6.88, 6.7.88, 2.9.88 and 19.9.88, without any intimation. The Enquiry Officer had to proceed ex parte and completed the enquiry only when the petitioner and his AR failed to participate in the enquiry further.

6. A perusal of the appointment letter of the petitioner shows that in the event of his suspension, he was not entitled to any salary for the suspension period. Thus as per terms and conditions of his service he was not entitled for any subsistence allowance. He filed an application claiming subsistence allowance before the Labour Court during the pendency of enquiry, but this application was withdrawn by the petitioner himself. Right of the petitioner to obtain subsistence allowance during pendency of enquiry, despite his service conditions, was not adjudicated by the Labour Court in his favor. I consider that the petitioner has failed to show if any prejudice was caused to him by non payment of subsistence allowance.

7. In U.P. State Textile Corporation Ltd. Vs. P.C. Chaturvedi and Others, , the issue was whether non payment of subsistence allowance to the workman would vitiate the Award. The High Court had taken a view that non payment of subsistence allowance shall vitiate the Award. The Supreme Court held that the view of the High Court was not tenable. Supreme Court referred to the rules of service governing the workman and found that the workman had not complied with the conditions given in service rules to entitle him to subsistence allowance, Therefore, non payment of subsistence allowance was not fatal to the enquiry. Supreme Court also held that workman had failed to show any prejudice was caused to him because of non payment of subsistence allowance and reversed the order of the High Court.

8. The petitioner also failed to show how non supply of the Enquiry report caused prejudice to him. In fact it is the petitioner who stopped participating in the enquiry and did not bother about the enquiry report. In Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , Supreme Court observed:

When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-

furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report has to be considered on the facts and circumstances of each case. Where, Therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

9. The petitioner in the present case, failed to show how prejudice was caused to him because of non supply of the report either before the Tribunal or before this Court. He despite opportunity did not participate in the enquiry. Non-supply of enquiry report, as alleged, would have made no difference in such a case.

10. It is apparent that there was total lack of cooperation by the petitioner in the later stage of the enquiry. Petitioner tried to drag the enquiry and made a complaint that enquiry was taking long time so he should be paid subsistence allowance. A fair opportunity was given to the petitioner during the enquiry but the petitioner was not willing to avail this opportunity. Petitioner cannot make a grievance about denial of opportunity nor Tribunal could have shown any indulgence in favor of the person who did not participate in the enquiry.

11. In view of the above discussions, I find no ground to maintain this writ petition. Writ petition is hereby dismissed in liming.