
(2009) 06 BOM CK 0095
In the Bombay High Court
Case No : Writ Petition No. 5673 of 1997

Shrikant R. Palkar

APPELLANT

Vs

Indian Airlines and Another

RESPONDENT

Date of Decision : 23-06-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 6 BomCR 380 : (2009) 123 FLR 63

Hon'ble Judges : Kanade V.M., J

Bench : Single Bench

Advocate : Meena Doshi, holding for R.R. Lote, for the Appellant; S.K. Talsania Abhay Kulkarni and Pooja Kulkarni, h/f., Bhasin and Co., for the Respondent

Final Decision : Dismissed

Judgement

Kanade V.M., J.—By this petition which is filed under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the judgment and award passed by the Presiding Officer of the Central Government Industrial Tribunal No. 2 in Reference No. CGIT-2/31 of 1992 wherein the Presiding Officer dismissed the reference and held that the order of termination of the petitioner herein was just, proper and legal. Brief facts are as under:

2. The petitioner was appointed by the respondent No. 1 as a Loader and thereafter, he was confirmed in the said post. It is alleged that on 14.6.1985 while he was on duty, one Mrs. Devaiah was going to Bangalore by flight IC 107, was holding Lufthansa tickets and she reported at the Chennai counter. It was found that she had eight pieces of baggage weighing 190 kgs. She made a request that she was traveling with three small children the said weight may be reduced and accordingly, Mr. Creado, Traffic Assistant on duty, reduced the baggage weight by 10 kg. He, however, asked her to pay excess baggage charges for Rs. 100 kgs. It is the case of the respondent that while she was going to pay the excess baggage charges, the petitioner approached her and demanded Rs. 400/- in consideration of allowing her to carry the excess baggage

without payment of the excess baggage charges. Mrs. Devaiah had paid the said amount of Rs. 400/-. At the relevant time, Mr. M.R. Dalvi, Security Assistant was on duty and he saw the petitioner accepting something from the passenger and he informed Mr. A. Prasad, Deputy Commercial Manager. A search was conducted and the amount of Rs. 400/- was found from the petitioner's pocket. According to the respondent, the petitioner accepted that he had received the said amount from Mrs. Devaiah in consideration of allowing her to carry her baggage without payment of excess baggage charges. In view of this incident, on the very next day on 15th June, 1985, the petitioner was suspended due to the alleged misconduct. The charge-sheet was issued to the petitioner under the Standing Order (Regulations) for the said misconduct. The petitioner submitted written statement on 25th July, 1985. An enquiry was conducted by the Enquiry Officer and he submitted his report dated 4th March, 1986 in which he held that the charges levelled against the petitioner had been established by the company. A show cause notice was issued asking the petitioner why his services should not be terminated. The explanation given by the petitioner was not accepted and he was removed from service on 30th May, 1986. The petitioner filed four appeals dated 24.6.86, 10.3.87, 6.3.91 and 29.1.92. The said four appeals were not entertained and the dispute was referred to the Industrial Court. Before the Industrial Court, the petitioner filed the statement of claim, list of documents. The respondents filed their affidavit-in-reply in respect of statement of claim. Award-I was passed by the Industrial Court on 9th July, 2006 in which it was held that the enquiry which was held was proper, legal and valid and thereafter, Part II award was passed on 6.12.1996 in which it was held that the order of dismissal was just, proper and legal.

3. Mrs. Meena Doshi, learned Counsel for the petitioner vehemently urged that the Enquiry Officer had not appreciated evidence on record in its proper perspective. She submitted that Mrs. Devaiah was not examined by the respondents and letter written by her was brought on record. She submitted that there was no evidence to show that the amount which was given by Mrs. Devaiah was towards a bribe for non payment of the excess baggaging charges. She submitted that in fact, the said amount was not paid by her since she was not in a position to pay the said excess baggage charges herself since she was accompanied by her three small children and there was huge rush on the counter where payment was being paid. She submitted therefore, that the finding recorded by the Enquiry Officer that the petitioner had accepted the bribe was perverse. She submitted that so far as the confessional statement which was given by the petitioner to the officers of the respondent No. 1 is concerned, the said statement was given under duress and under undue influence since he was told that if he did not give the said statement, he would be handed over to the police Secondly, it was submitted that the said order of dismissal was disproportionate to the charges which were levelled against him. Thirdly, she submitted that in several other cases the respondent had reinstated employees and the charges against the said employees were dropped. She invited my

attention to the affidavit-in-reply filed by the respondents wherein the list of cases where the employees were exonerated had been mentioned in the affidavit-in-reply. She submitted that therefore, it was a clear case of distinction between the petitioner and the other employees who were similarly situated.

4. Mr. Talsania, learned Counsel for the respondent, on the other hand, submitted that the charge of accepting bribe of Rs. 400/- had been clearly established against the petitioner herein in the enquiry which was held. The respondent had examined various witnesses in support of its case and the said statement was scrutinized and accepted by the Enquiry Officer and later on, by the Industrial Court. He submitted that this Court while exercising its writ jurisdiction under Articles 226 and 227 of the Constitution of India, was not expected to re appreciate the evidence on record and come to a different finding on the one which was given either by the Enquiry Officer or by the Industrial Court.

5. I have perused the report of the Enquiry Officer and impugned order passed by the Industrial Court. In my view, there is no merit in the submission made by the petitioner. It is an admitted position that the petitioner had confessed in writing that he had accepted the said amount by permitting the passenger to carry their excess baggage without payment of excess baggage charges. This fact also has been independently proved. The passenger has given in writing that the said amount was given by her and at that time, she did not know that it was a bribe. The officers who were present at the relevant time also have deposed and have given the sequence of events and thus, the charge of accepting Rs. 400/- has been established by the respondent herein. Since it is a well settled position in law that in a domestic enquiry, it is not necessary for the management to establish the charge beyond reasonable doubt and the strict rules of evidence are not applicable in such domestic enquiry. Perusal of the statement of witnesses, in my view, clearly establishes the fact that the petitioner had accepted the bribe of Rs. 400/-. It is an admitted position that exact baggage charges which were to be paid by the passenger were more than Rs. 500/-. If the submissions of Mrs. Doshi is to be accepted that the amount was paid to him in order to enable him to make payment since the passenger was carrying three small children, in that event, the passenger would have paid the exact amount of excess baggage charges. In the present case, the amount which was paid by Mrs. Devaiah was less than the amount of excess baggage charges which were to be paid by her. The Enquiry Officer and the Tribunal, therefore, were justified in holding that the said amount was accepted as a bribe for nonpayment of excess baggage charges. Once the charge of acceptance of bribe is proved, the said misconduct is of a very serious nature and therefore, the management was justified in terminating the services of the petitioner herein. The Tribunal has held that the enquiry was proper, legal and valid and in Part II award, has rightly come to the conclusion that the punishment was not disproportionate.

6. Mrs. Doshi submitted that in several other cases, even though the charges

levelled against the certain employees were very serious than that of the petitioner, these employees were reinstated by the respondent company. A detailed affidavit-in-reply has been filed by Shri R. A. Kamath on behalf of the respondent company in which all these cases have been discussed in detail. It is pointed out by the learned Counsel for the respondent that in all these cases, an order was passed by the Industrial Court or by the High Court directing the reinstatement of these employees on the ground that the charges against these employees had not been proved, only thereafter, the said employees had been reinstated. Apart from the fact that an order was passed in their favour by the Competent Court, the fact remains that no comparison can be made between the two sets of employees who have been charged for different offences. It is not the case of the petitioner that out of these six employees in the same transaction, three employees were reinstated though charges were proved against them and three employees were removed from service. There is, therefore, no merit in the submission of the learned Counsel appearing on behalf of the petitioner.

7. The scope of interfering with the impugned order passed by the Industrial Court, by this Court while exercising its writ jurisdiction, is quite a limited. This Court cannot substitute its own view to the view taken by the Labour Court or by the Industrial Court. There is, therefore, no question of interfering with the impugned order passed by the Industrial Tribunal.

8. Writ petition, accordingly, is dismissed. Rule is discharged. Under the circumstances, there shall be no order as to costs.