

(2006) 04 DEL CK 0067

In the Delhi High Court

Case No : Writ Petition (Civil) No. 8986 of 2005

Sultan Singh

APPELLANT

Vs

DTC

RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 130 DLT 174

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Jyoti Singh and Ankur Chibber, for the Appellant; Saroj Bidawat, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—The instant case raises a question as to whether an employer can be permitted to contend that it can be permitted to prove a case entirely different from the charge against the workman and still it urge that the workman was guilty of the case which was proved and not of the case with which he was charged. As a corollary, the question which has arisen as to whether the workman would be precluded from raising an objection to this effect in a writ petition filed by him impugning such action of his employer and the award of the industrial adjudicator on such plea, if he had not specifically raised the same in any proceedings prior thereto.

2. The petitioner in the instant case was employed as a driver with the DTC with effect from 1st August, 1975. On 26th October, 1983 he was on duty with bus No. DLP 1230 on the Delhi-Shimla route. Allegations were leveled against the petitioner to the effect that when the checking officials gave a signal and blew the whistle to the petitioner to stop the bus for checking at Delhi, he did not care to stop the bus but sped away. In this behalf, a charge sheet dated 18th November, 1983 was issued to the petitioner, the relevant portion whereof reads thus:

CHARGE SHEET

You are required to explain as to why disciplinary action under Clause 15 (2) of the D.R.T.A. (Condition of Appointment and Service Regulations, 1952 read with Road Transport Corporation Act 1950 and Delhi Transport Law (Amendment) Act, 1971, should not be taken against you for the following irregularities:

That on 26.10.83 while you were on duty with bus No. DLB-1230 on Delhi-Shimla route, the checking officials gave a signal and whistle to stop the bus at Delhi at 19.15 hrs. for checking purpose but you did not care the same and sped away the bus. This shows your malafide intention in dealing with the corporation's business and you also mixed up with the conductor for N.I.O.Ts. Your above action tantamount to misconduct within the meaning of Para 19 (b), (f), (h) and (m) of the standing order governing the conduct of D.T.C. Employees.

3. On the basis of this charge sheet, an inquiry was held. There is no dispute that in this inquiry, there was no evidence brought on record against the petitioner to the effect that he did not stop the bus at Delhi. On the contrary, it was stated in the evidence on behalf of the DTC that the bus did not stop at Kanda Ghat but stopped at Delhi. However, the inquiry officer submitted a report dated 26th June, 1984 holding the petitioner guilty of the charges with which he had been charged. In these circumstances, the depot manager imposed a punishment on the petitioner of this stoppage of his next increment with cumulative effect. The petitioner preferred an appeal dated 24th July, 1984 under the rules to the competent authority which was rejected by an order passed on 19th September, 1984. The second appeal preferred by the petitioner was rejected on 25th February, 1985.

4. Thereafter, the petitioner was advised and had filed a suit for a declaration to the effect that order dated 26th June, 1984 be quashed and declared as null and void and a decree be passed in favor of the petitioner removing the punishment imposed upon the petitioner. A suit filed by the petitioner was dismissed on 15th December, 1990 and the appeal against the same was also dismissed vide judgment dated 21st October, 1994 by the Additional Senior Civil Judge. The plea on which the petitioner had challenged the order imposing the penalty was on the plea that the inquiry was conducted in violation of principles of natural justice but the petitioner failed to lead evidence on this issue and did not give any evidence about the competence of the disciplinary authority on which plea also he had challenged the order of punishment. In these circumstances, the civil court held against the petitioner.

5. The petitioner thereafter set up an industrial dispute which was referred for adjudication by the appropriate government vide its order dated 24th May, 1996 on the following terms of reference:

Whether the punishment of stoppage of next due one increment with cumulative effect imposed on Sh. Sultan Singh is illegal and/or unjustified and if so, what relief is be entitled and what directions are necessary in this respect?

The industrial tribunal had proceeded to record evidence in the matter and after a detailed consideration had answered the reference against the petitioner vide its award dated 2nd April, 2003. This award has been assailed by the petitioner by way of the present writ petition. From the award it appears that the petitioner had challenged the order dated 26th June, 1984 on the ground that the same was based on a false and fabricated report and a baseless charge.

6. An issue was framed with regard to validity of the disciplinary inquiry which was decided against the petitioner vide an order dated 31st May, 2001. It was held that the inquiry officer had not violated the principles of natural justice.

7. In the discussion in the award dated 2nd April, 2003, the labour court has noticed that as per the charge sheet Exhibit MW1/1, the workman on 26th October, 1983 while on duty with bus No. DEP 239 on the Delhi-Shimla route, the checking staff/officials gave a signal and whistle to stop the bus at Delhi at about 19.50 hours for checking purpose but the workman did not care to heed the same and took the bus away intentionally. The industrial tribunal held that the charges stood proved against the workman definitely and the same constituted misconduct. The industrial tribunal was of the view that the charges were very serious with respect to a driver but he has only been punished with stoppage of one increment with cumulative effect and for this reason held that the punishment was not unjustified or illegal in any manner and was not disproportionate to the charges leveled against him. In these circumstances, the reference was answered against the workman.

8. Before this court, the principal ground of challenge to the award and the proceedings of the industrial tribunal are on the ground that the industrial tribunal had completely ignored the evidence which was produced before it to the effect that the petitioner had stopped the bus at Delhi and hence there the DTC had leveled a false charge against the petitioner. To put it otherwise, it is contended that DTC had failed to prove the charges leveled against the petitioner.

9. It is noteworthy that in the report submitted by the checking officials which was relied upon by the respondents, it was stated that they were waiting at Kanda Ghat and that the bus arrived at about 1700 hours when they had given a stop signal by raising their diaries and blowing whistles. However the driver did not stop the bus at Kandaghat. Consequently the checking staff had tried to chase the bus by following it in a Himachal Roadways bus but they could not catch the DTC bus up to Delhi. The driver, that is the petitioner, had stopped the bus at Delhi when he was asked reasons for not stopping it at Kandaghat.

10. There is Therefore material contradictions in the time and place of the occurrence and the misconduct. Thus there is contradiction in material particulars in the charge with which the petitioner was charged and the report of the checking staff which was relied upon by the DTC to hold the petitioner guilty.

11. The petitioner has pointed out that written statements were taken from several passengers wherein no complaints were made and the same did not

support the charge against the petitioner in any manner. Furthermore, the petitioner had produced a witness Shri Kuldeep who with his family was traveling on seat Nos. 2, 3, 4, 5, 6 and 7 who made a clear statement that no inspectors were found standing at Kandaghat nor any sound of whistle was heard and further that the two inspectors had checked the tickets of this witness and his family at Delhi. This witness had even made a statement on oath before the industrial adjudicator to the effect that the bus had stopped at Kandaghat and nearly 8-10 passengers had got down while two or three passengers had boarded the bus. He also proved on record 12 tickets which were purchased by this family of six people from the Delhi to Shimla route and from Shimla to Delhi. It is noteworthy that the industrial adjudicator had completely failed to consider the evidence of this witness who stated that the conductor was sitting in the back of the bus at his seat.

12. It is noteworthy that the documentary evidence on record in the nature of way bills, way vouchers which established that there were passengers who had got in to the bus at not only at Kandaghat but also at several stops between Kandaghat and Delhi including Sogi, Tara Devi, Shimla, Lakra Bazar, Sanjoli etc. This, according to the petitioner, contradicted the checking staff in its statement that they could not catch up with the bus between Kandaghat and Delhi.

13. However, these material facts do not need to detain this Court inasmuch as the principal issue remains as to whether the fact that there was no evidence in support of the charge sheet which was leveled against the petitioner and consequently he could have been held guilty of any other allegations. Undoubtedly, the petitioner was charged with having failed to stop the bus at Delhi. There is not an iota of evidence either in the inquiry proceedings or before the industrial tribunal to this effect. On the contrary, the witnesses produced by the respondent have themselves stated that the bus had not stopped at Kandaghat. The petitioner was never charged with the charge that he had failed to stop at Kandaghat.

14. The purpose of serving a delinquent with a charge sheet is to make known to him the allegations with which he is charged and the case he is expected to meet. The contents of the charge sheet would have a material bearing on the defense of the workman. The importance of the charge sheet cannot in any case be watered down or ignored by raising a plea to the effect that the workman had committed some misconduct, even though he was not charged with the same. Undoubtedly, stringent rules of the law of evidence and procedure are not applicable to departmental proceedings. However, it is a fundamental requirement of law and justice that the principles of natural justice are strictly adhered to and non-observance may be permissible only in exceptional circumstances or statutory provisions may warrant their non-observance. A workman who is charged with misconduct is put to notice of the allegations against him which he is required to meet in his defense and evidence. The failure to prove the allegations would defeat the case of the management. A workman

cannot be found guilty of the offence he is charged with if the management fails to prove the same by cogent and reliable evidence in support or if the evidence of the management points towards some act other than that with which the workman is charged.

15. It is an admitted case that there is no evidence in support of the charge with which the workman was charged. The workman has consistently taken a stand that the case against him was false and fabricated. Undoubtedly, the petitioner has not specifically pointed out that the management had not led evidence in support of the charge. However, the failure to say so in such specific terms would not preclude the workman from pointing out the fact that the management had failed to prove the charges against him.

16. The contention of the workman is supported by the pleas set up in the counter affidavit by the respondents themselves. It has been stated by the respondent in the counter affidavit that there has been a typographical mistake in the place and time in the charge sheet. In the light of this admission on the part of the respondent there is force in the contentions of the petitioner that the respondents had failed to prove the charges on which the inquiry was held against the workman and that the inquiry report was consequently based on no material. For this reason, the punishment imposed upon the petitioner also cannot be sustained.

17. From the copy of the judgment passed by the Civil Court it is to be seen that the petitioner had contended that the allegations in the charge sheet were made arbitrarily by the DTC and that the inquiry report had arrived at findings to the contrary. It may also be noticed that the respondent was conscious of the charges it had leveled against the petitioner. It led evidence before the industrial tribunal as if the charge sheet was correct. It is for the first time in the counter affidavit filed before this court, that the respondent has set up a plea of a typographical error.

18. In the light of the aforestated discussion, it is an admitted case that the articles of charge with which the petitioner was charged were not proved. The workman was charged with not having stopped the bus at Delhi while the witnesses of the respondent in fact stated that he had stopped at Delhi. Consequently, the workman could not have been held guilty of the charges with which he was charged in the charge sheet dated 18th November, 1983. In my view, the industrial tribunal has fallen into error also in ignoring the material evidence on this aspect which was led by the petitioner and in upholding the penalty imposed upon the petitioner. The finding of guilt of the petitioner is based on no evidence.

19. The learned Counsel for the petitioner has placed reliance on the pronouncement of the Apex Court in *State of Haryana and Another Vs. Rattan Singh*, in support of the contention that in the absence of evidence, a workman cannot be held guilty of the allegations with which he has been charged. It was

held thus by the Apex Court:

It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The "residuum" rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

20. In Ahmedabad Municipal Corporation Vs. Virendra Kumar Jayantibhai Patel, it has been held that the High Court in exercise of its powers of judicial review under Article 226 can examine the record to see if there was any evidence to support the findings arrived at against the workman. It has further been held in AIR 2001 SC 8 Saurashtra Cement and Chemical Industries V. UOI, that in exercise of the powers to judicial review, this Court would examine as to whether the findings against the delinquent are based on no evidence or are legally untenable. To the same effect are the principles laid down by the Apex Court in Syed Yakoob Vs. K.S. Radhakrishnan and Others,

21. Ms. Saroj Bidawat, learned Counsel for the respondent has vehemently urged that even though the charge sheet was to the effect that the petitioner did not stop at Delhi, however the entire evidence which was led by the DTC was to the effect that the workman did not stop at Kandaghat. Therefore, the petitioner

knew the case of the respondent and has never objected to the same anywhere. It has been contended that for this reason the workman cannot raise this issue at this stage.

22. I have noticed hereinabove that the consistent case of the workman was that the charges against him were false and fabricated. In my view, the plea raised by the workman to the effect that the charges against him were not proved would be covered in this submission. The importance of the charge sheet is well established and the respondent cannot urge a technical plea of there being no specific challenge, even though in the instant case, the petitioner has consistently urged that the charges against him were false and fabricated.

23. The respondents have placed reliance on the pronouncement of the Gujarat High Court in 1996 (5) SLR 547 Himanshu S. Rajyaguru and Ors. v. State of Gujarat and Anr. In this case it was held that a second writ petition challenging an order which had been challenged in an earlier writ petition on different grounds was not maintainable.

This judgment is clearly distinguishable on the facts of the case inasmuch as in the instant case the petitioner has not filed any writ petition impugning the industrial award hitherto. In any case, I have held that the workman has consistently been challenging the action taken by the respondent on the ground that the allegations in the charge sheet were false and fabricated.

Therefore, the principles laid down by the Gujarat High Court in this judgment would not apply to the instant case.

24. In 1996 8 SLR 388 Gurnail Singh v. Presiding Officer also relied upon by learned Counsel for the respondent it was held by the High Court of Punjab and Haryana that the findings of fact returned by the industrial adjudicator were based on illegally admissible evidence and consequently the High Court would not have jurisdiction to interfere with such findings in exercise of its powers under Article 226 of the Constitution of India.

This is not so in the instant case. The admitted position before the disciplinary authority and before the industrial adjudicator was that the allegations made in the charge sheet were not supported by any legally admissible evidence. On the contrary, the witnesses of the respondents had supported the petitioner that he had stopped the bus at Delhi. In this view of the matter, this judgment does not further the case of the respondent.

25. In 1996 6 SLR 654 Delhi Administration v. Y. Singh and Ors., this Court held that the award of the labour court could be tested only in the light of such material which were placed before the industrial tribunal. Fresh material or further material which was not before the tribunal should not normally be allowed to be placed before the court. I am unable to agree with the submission of learned Counsel for the respondent that the petitioner Sultan Singh is relying on any fresh material in support of his contention that the respondents had failed

to prove the charges against him.

26. For the same reason, the principles laid down by the Apex Court in (2003) 9 SCC 5419 S.K.M. and Ors. v. State of Bihar and Ors., ? to the effect that it was not open for the appellant to take a stand that the High Court had erroneously recorded its submissions before the Apex Court. Such a submission could only have been made by moving an appropriate application before the High Court. The Supreme Court held that statement of fact as to what transpired at the hearing recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statement by affidavit or other statements.

It is not so in the instant case.

27. It would be useful to consider the principles laid down by the Supreme Court in its judgment reported at Ahmedabad Municipal Corporation Vs. Virendra Kumar Jayantibhai Patel, wherein the court held thus:

High Courts under Article 226 of the Constitution are entitled to issue directions, writs and orders for correcting the record of the inferior courts or tribunals. It is true that the High Court while exercising its jurisdiction under Article 226 of the Constitution, cannot convert itself into a court of appeal and assess the sufficiency or adequacy of the evidence in support of the finding of fact reached by the competent courts or the tribunals, but this, however, does not debar the High Court from its power to enquire whether there is any evidence in support of a finding recorded by the inferior court or tribunal. It is well established that there is a difference between a finding based on no evidence. If the finding of fact recorded by the tribunal is based on no evidence, such a finding would suffer from error of law apparent on the face of record.

28. As noticed hereinabove, in the instant case admittedly there is no evidence to support the allegations made against the petitioner. Admittedly the charge on which the inquiry was held and the proceedings held before the industrial adjudicator was not proved or established against the petitioner and Therefore, the punishment imposed is illegal.

The instant case does not relate to a case where this Court is required to test the findings returned by the industrial adjudicator on sufficiency or adequacy of evidence. The award of the industrial tribunal is clearly not sustainable in the light of the well settled principles of law and Therefore, deserves, to be set aside and quashed.

In view of the foregoing discussion, this writ petition is allowed. The award dated 2nd April, 2003 passed by the industrial tribunal is hereby set aside and quashed.

As a consequence, the order dated 26th June, 1984 imposing the penalty of stoppage of increment with cumulative effect and the orders passed on the appeal of the petitioner dated 19th September, 1984 and 26th February, 1985 are not sustainable in law.

There shall be no order as to costs.