

(2006) 08 P&H CK 0534
In the Punjab And Haryana At Chandigarh

Sunder Dass

APPELLANT

Vs

General Manager, Haryana Roadways and Others

RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 113 FLR 303

Hon'ble Judges : J.S. Narang, J;Arvind Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Arvind Kumar, J.—Petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking a writ in the nature of certiorari for quashing of order dated 29.8.2000 (Annexure P-4) and subsequently award dated 27.3.2003 (Annexure P-5).

As per case set out by the petitioner (hereinafter referred to as "the workman") in the writ petition, the workman was appointed as Conductor on 3.6.1971. On 14.12.1999 when he was on duty on Bus No. 4253 on Chandigarh-Gurgaon route, the said bus was inspected/checked by the Checking Staff and it was detected that the tickets issued by him to certain passengers were old one, already punched from both sides, in this way, he was found to have embezzled Government money to the tune of Rs. 424/-. It was found that the workman in any case had charged more amount than the amount for which tickets were allegedly issued to passengers. He was accordingly placed under suspension whereafter charge-sheet was served upon him. Vide order 29.6.1994 his services were terminated by the respondent No. 1 (hereinafter referred to as "the management"). The statutory appeal and also the second appeal were also dismissed. Petitioner-workman raised an industrial dispute which was referred to the Labour Court by the Government for adjudication. A claim statement was filed by him before the Labour Court alleging that the enquiry against him had not been conducted in a fair and proper manner. Upon notice thereof, respondent-

management filed its reply. Replication too was filed by the petitioner-workman to the written statement. The learned Labour Court vide order dated 29.8.2000, Annexure P-4, did not agree with the plea of the petitioner-workman and held that the enquiry so conducted was fair and proper. Thereafter, the learned Labour Court proceeded with to examine the termination order and finally, vide its award dated 27.3.2003, holding the termination to be valid, dismissed the claim of the petitioner-workman and answered the reference against him. Hence, the present writ petition by petitioner-workman.

2. Upon notice of motion the written statement has been filed by respondent-management, inter-alia, stating that the enquiry so conducted against the petitioner-workman is based upon facts and evidence adduced on record. It has been stated that due opportunity of being heard had been afforded to the petitioner-workman. The order of the termination is, thus, legal.

3. We have heard the learned Counsel for the petitioner.

4. Petitioner-workman has assailed the enquiry proceedings on all possible grounds, i.e. the Inquiry Officer himself was the employee of the employer; he was acting as Presenting Officer, cross-examining the witnesses; the workman had not been given an opportunity to cross-examine the witnesses and to lead any defence evidence; no passengers were examined; on documents including Way Bill were supplied to him, and no opportunity of personal hearing was afforded.

5. It has also been argued that the Labour Court fell into error in ignoring the said lacunas in the enquiry and answered the reference against him. The argument is not convincing. It is settled proposition of law that strict rules of evidence are not applicable in departmental enquiry and the standard of proof being different, it is sufficient to establish the charge by evidence, albeit not by any conjecture or surmises, acting upon the same reasonably and objectively, a reasonable man could uphold the charge.

6. In *R.S. Saini v. State of Punjab* 1999 (83) FLR 377 it has been held that insufficiency of evidence is not a ground to interfere with the findings in an inquiry report and the scope of interference in this respect is quite limited. If there be some evidence to reasonably support the findings of Inquiring Authority, the Court, in exercise of its writ jurisdiction, would not reverse the findings merely on the ground of insufficiency of evidence. In the instant case, a bare perusal of the enquiry proceedings, case-file and the award of the Labour Court shows that the petitioner had filed reply to the charge-sheet, which was considered and found unsatisfactory. A full-fledged enquiry was conducted against him and he fully participated in the enquiry proceedings. He not only cross-examined the witnesses i.e. the Inspector who had conducted the checking but also examined himself as well as defence witness. He also filed reply to the second show-cause notice. It was only after having heard him, the disciplinary authority passed order terminating his services on 29.6.1994. He was also

afforded personal hearing by the appellate authority before dismissal of his appeal on 20.6.1995. His second appeal/revision was also dismissed on 22.2.1996 with a speaking order. In the second round of litigation before the Labour Court, the evidence was re-appraised and it was found that the enquiry was conducted in a fair and proper manner. No doubt, Mr. L.D. Gandhi, Inquiry Officer, was the Superintendent of the Department but it is well known that enquiries of this type are generally conducted by the officers of the employer and in the absence of any special individual bias attributable to a particular officer, it has never been held that the enquiry is bad just because it is conducted by an officer of the employer.

7. In *Syed Rahimuddin Vs. Director General, C.S.I.R. and Others*, , it has been held that bias undoubtedly, would have to be established either by evidence or on the materials on record, which are relied upon by the inquiry officer in coming to his conclusion as to the guilt of the delinquent. Thus, the onus of proving bias is on the delinquent and this allegation should be clearly proved if the enquiry proceeding are sought to be set aside. In the instant case, the petitioner-workman has not discharged the burden to attribute any specific bias to Mr. L.D. Gandhi, Inquiry Officer. Therefore, not only the allegation of bias, is not based on facts but is also not proved, warranting any interference. As discussed above, he had been participating in the enquiry throughout and as such, non-supply of documents, by itself cannot suffice to vitiate the enquiry and no interference with the enquiry report would be called for unless some prejudice is shown to have been occasioned in prosecuting his defence. In what way non-supply of documents including way-bill had prejudiced the petitioner, could not be brought out on his behalf. In the circumstances, he cannot derive any advantage on this count. The Inquiry Officer, if during the course of enquiry puts certain questions to the witnesses in order to elicit the truth before the cross-examination of the delinquent, as in this case, cannot be construed to have a biased attitude or solely acting as Presenting Officer.

8. The only argument left is non-examination of the passengers during enquiry proceedings. It is now settled proposition, as held in *State of Haryana v. Rattan Singh* 1977 (34) FLR 264 that non-production of passengers is not fatal to the domestic enquiry. In *Rattan Singh's* case, the following three contentions were raised :

- (1) None of the passengers travelling without tickets were examined, in the domestic enquiry.
- (2) The checking inspectors had violated a departmental instructions by not recording the statements of the passengers.
- (3) The co-conductor in the bus had affirmed the innocence of the conductor.

In Paragraph 4 of the said judgment the Supreme Court had held that a domestic inquiry can take into consideration all materials logically probative for a prudent mind and that there is no allergy of hearsay evidence, provided it has reasonable

nexus and credibility. It was also held in the said decision that the passengers are not required to be chased and brought before the Domestic Tribunal. On the scope of permissible Interference with the conclusions of a domestic inquiry, the Supreme Court said in the same paragraph that what has to be seen is whether there was some evidence or was it a case of no evidence. It was further held that as long as there was some evidence, sufficiency thereof in proof of a finding by a Domestic Tribunal is beyond scrutiny. The Supreme Court found that there was some evidence before the inquiry officer and, therefore, the order passed in the domestic inquiry could not be held invalid. The following passage from the decision of the Supreme Court needs to be noticed which is as under:

It is well settled that in a domestic inquiry 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 objectively, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play 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 common sense 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 Chaman Lal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

9. In the present case also, apart from the detailed report, there was evidence of the Inspectors, who checked the bus establishing misconduct on the part of the petitioner. As discussed above, they were also subjected to cross-examination by the petitioner. No ill-will or enmity either has been suggested or proved against the present petitioner. The decision in Rattan Singh's case (supra) has also been

followed in Divisional Controller, K.S.R.T.C. (N.W.K.R.T.C.) v. A.T. Mane 2004 (103) FLR 428 wherein there was evidence of the Inspector, who conducted the checking, which was accepted by the Domestic Tribunal and delinquent was found guilty and the Hon"ble Supreme Court observed that the Court below misdirected themselves on insisting on the evidence of the passengers to reject the said finding.

10. The department has also examined Mr. L.D. Gandhi, Inquiry Officer, before the Labour Court, when it was to be ascertained whether the enquiry was conducted in a fair and proper manner. He detailed the manner in which the enquiry was conducted, which led the Labour Court to conclude that the enquiry was conducted in a fair and proper manner. As discussed above, the appellate and the revisional authority had also appraised evidence before rejecting his appeal and second appeal/revision respectively. Present case is definitely not a case of no evidence. There was definitely legal evidence before the Inquiry Officer having nexus with the events that were being enquired into. We find that fair treatment had been given to the petitioner in the enquiry. There had been a lawful exercise of power by the disciplinary and appellate authority. A bare perusal of the award shows that the petitioner-workman had not touched the merits of the case. The only stress was that the Labour Court should have invoked its jurisdiction u/s 11-A of the Act. The learned Labour Court has rightly not interfered with. When a departmental enquiry has been held by the employer and finding of misconduct is supported from the evidence adduced in the said-enquiry, Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate authority. Interference with decision is justified only when the enquiry is unfair or findings arrived at in the enquiry are perverse or the punishment imposed is so disproportionate to the proved charges as to shock the conscience of the Court. Reference in this regard can be made to a decision of the Hon"ble Supreme Court in B.C. Chaturvedi v. Union of India 1996 (72) FLR 316 .

11. The decision in B.C. Chaturvedi's case (supra) has also been followed in U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others, , and Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others, , wherein it was observed that "in the background of what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited." This exactly has been observed in Director General R.P.F. and Others Vs. Ch. Sai Babu, , wherein it was observed as follows:

Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a Tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant facts including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/

establishment in which the delinquent person concerned works.

12. In Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., , it has been observed that the discretion which can be exercised u/s 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which requires the reduction of sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the instant case, on a bare perusal of the order passed by the appellate authority in a second appeal/revision, what emerges is that workman's past record was full of blemishes, having been punished a number of times for his wrong doings and a few cases are also pending against him which could not be completed because of order of termination passed in this case. Thus, in the instant case it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. This issue also came up for consideration before the Supreme Court in Karnataka State Road Transport Corporation Vs. B.S. Hullikatti, wherein it has been held that in such cases where bus conductors carry passengers without ticket or issue tickets at a less rate than the proper rate, the said acts would inter-alia, amount to either being a case of dishonesty or of gross negligence and such conductors are not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the road transport corporation. In the said case, their Lordships of the Supreme Court were of the firm opinion that in cases like the one before them, orders of dismissal should not be set aside.

13. Applying the ratio of judgment of B.S. Hullikatti's case (supra) to the facts of the present case, we are of the view that the order terminating the services of the petitioner has rightly been passed against him and thus, calls for no interference.

Consequently, we find no merit in the writ petition. The same is hereby dismissed.