
(2009) 07 DEL CK 0420

In the Delhi High Court

Case No : Writ Petition (C) No. 1424 of 1999

Than Singh Chabra

APPELLANT

Vs

Indian Oil Corporation Ltd. and Others

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Industrial Disputes Act, 1947 — Section 2(8)

Citation : (2010) 124 FLR 830 : (2009) 8 ILR Delhi 59 Supp : (2010) 2 LLJ 623

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : S.S. Arya, for the Appellant; Jagat Arora and Rajat Arora, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—The petitioner, being aggrieved by the dismissal order dated 03.08.1998 and appellate order dated 25.09.1998 has filed the present writ petition.

2. The petitioner is M.Com. by qualification, was appointed by the management to the post of Junior Accounts Clerk on 14th September, 1979 and subsequently promoted to the post of Senior Accounts Clerk in 1982. Unfortunately, the petitioner lost his both eyes in an accident in 1984 when the petitioner was posted at Allahabad as Senior Accounts Clerk. After the said incident, the petitioner was posted at Delhi but he was given a fresh appointment as Junior Clerk. Against the said decision of the respondent, the petitioner represented to his department. On finding no answer, the petitioner represented on 26th July, 1996 to the Secretary, Human Rights Commission but his grievance could not be redressed. Meanwhile, the petitioner was issued charge sheet on 9th September, 1996, which reads as under:

Indian Oil Corporation Limited

Mathura Jalandhar Pipelines

Bijwasan New Delhi -61

No. MJPL&A/CFD/DC-1/96

Dated: 9.9.96

Charge Sheet

To,

Shri Than Singh Chabra,

Sr. Clerk/Typist

Expl. No. 95062

MJPL Bijwasan

New Delhi-61

1. On 3rd Sep. 1996 at 2.30 PM you wanted to meet me and on permission you came along with Sh. Pritam Chand Office Equipment Operator to my chamber when S/Shri S. Deb., Maint. Manager, H.B. Singh, PAM T.I.J acob DMTM N.K. Sharma, PS-II, Vinod Mishra , Technician Gr. I (Mech.) and Ajit Singh, Helper-I were sitting in my chamber. After taking your seat you wanted to know as to why you have not been promoted this year. I explained to you that suitability of promotion is determined. On the basis of overall assessment of the concerned employee on three criteria i.e. qualification, seniority & performance. Since you are not holding the office decorum with respect to your punctuality, behaviour and neither you are doing any job nor taking any interest in the job, you were not considered for promotion. From time to time you were counselled to improve upon your performance, punctuality & behaviour by your departmental head but no improvement was found. After explaining this when I asked you to identify the areas of job which you can perform, you told that you can only make payments towards telephone bills and can do typing jobs with some audio aid and help of another person, you demanded that the existing bus route be changed so that you can board the bus from your residence. I told you that telephone bill submission work is hardly required once in a month and for typing job you require audio aid as well as help of another person which is not practical. I also advised you to come out clearly regarding the jobs which you can perform independently and if is not possible for you, then the Corporation has got Voluntary Retirement Scheme which you may think to opt. for. You immediately got up from your seat and started shouting at me using derogatory language. You told "Tu kya karega, mere ko VRS dilayega? Tere ko zinda khayega main, Salle Madrasi Kuttey tere jaise bahut dekhe hai. Me 58 saal tak hi service karunga." While shouting you started moving your hand in a violent and attacking manner towards me. When I told you to cool down and behave properly in the office you told me "Bula Police ko aur mere upper action lo". In

the meantime Sh. H.B. Singh, PAM intervened and persuaded you to come to his chamber. You left my chamber alongwith S/Shri H.B. Singh, PAM Ajit Singh, Helper-I and Shri Vinod Mishra, Tech. Gr. I (Mech.)

2. It is also reported that earlier on 3.9.96 around 2.00 PM you went to Sh. S.K. Giri, Sr. Assistant's seat and after taking seat in front of Sh. Ram Kishan, Sr. Clerk you started abusing Union, Management for not promoting you to the higher grade and all of a sudden you started hurling abuses to Sh. S.K. Giri by name when he was performing his job in his seat. You taking very loudly and in indecent manner which is against the office decorum.

3. It has been reported that earlier also on 28th, Aug. 1996 at around 4.00 PM while I was not in my office you entered Sh. N.K. Sharma, PS-II's cabin and enquired whether I am in the office. On knowing that I am not in my chamber and started hitting chairs and tables with your hard stick and simultaneously hurling abuses on me, management and union started that "Mujhe Promotion nahin delayega" for around 30 minutes while Sh. S.C. Garg, SFM & Sh. Tasleem Ahmed, DMTS came to my chamber along with Sh. N.K. Sharma, PS-II on hearing your shouting.

3. The aforesaid acts of omissions and commissions on your part amounts the misconduct in terms of sub Clause No. 20.9, 20.25, 20.29, 20.32, 20.39, 20.43, 20.47 of Clause 20.0 of the Certified Standing Orders of MJPL as applicable to you which is read as follows:

20.9 "... Ri-otous, disorderly, or indecent behaviour within the premises of the company or any act subversive of discipline."

20.25 "Causing damage to work in progress or to ... Either wilfully or ... Or abetting the same in any manner."

20.29 "Threatening , intimidating, forcibly detaining ...or assaulting alone or ... any employee of the company inside the company premises of ?

20.32 "Levelling malicious or false allegations against any employee of the company"

20.39 "Abusing, showing disrespect etc. to any superior authority while on duty or..."

20.43 " Doing anything prejudicial to the interest of the company"

20.47 "Commission of any act subversive of discipline or of good behaviour."

Your aforesaid acts are considered serious and it is, therefore, considered desirable that you should not remain on duty during the inquiry to be conducted into the aforesaid acts alleged against you. You are, therefore, hereby suspended from duty pending enquiry with immediate effect. You shall now leave headquarters during suspension period and report your attendance at the gate every day at 9.15 AM. You are hereby advised to submit your written explanation

within 7(seven) days of receipt of this letter, latest by 16th Sept. 1996 failing which it will be deemed that you have nothing to say in the matter and appropriate action will be initiated against you as per the Standing Orders applicable to you.

(V.K. Rajan)

Chief Operation Manager

4. The petitioner filed his reply to the said charge sheet and refuted the charges levelled against him. The counsel for the petitioner states that the aforesaid charge sheet and suspension order was issued by Mr. V.K. Rajan, respondent No. 4 herein, who himself was complainant in the present case, and was also a disciplinary authority to the petitioner. Besides, the respondent No. 4 herein had also got appointed Mr. Vilas Bhagwat, the Senior Operation Manager, MJPL, as inquiry officer, who was immediate subordinate to him vide order dated 27th September, 1996. As stated by petitioner, by issuing the charge sheet, placing the petitioner under suspension and appointing Mr. Vilas Bhagwat, an immediate subordinate as Inquiry Officer, Mr. V.K. Rajan, respondent No. 4 had shown his undue interest and had become instrumental in dismissal of the petitioner. Not only that he had also appeared as a key witness before the Inquiry Officer. It is stated that there are two cardinal principles of natural justice that justice should not only be done but it appears to have been and one should not become the judge of his own cause. He has relied upon the judgment of the Apex Court in Arjun Chaubey Vs. Union of India (UOI) and Others, vide which it was held that no person can be the judge for his own case and no witness could say that his own testimony was true and that anyone who had a personal stake in the enquiry must keep himself aloof from the enquiry.

5. The learned Counsel for the petitioner further stated that during the inquiry, the petitioner requested that he may be permitted to have the assistance of a co-worker or a lawyer of his choice because the petitioner being a visibly impaired person was not able to understand the proceedings before the Inquiry Officer. On his request Mr. V.K. Rajan, Chief Operation Manager, himself considered the application of the petitioner and decided that inquiry related to the petitioner was of a simple nature and, therefore, there was no necessity to provide a lawyer and also declined the request of co-worker from Delhi, New Delhi or NOIDA office. The counsel for the petitioner relied upon the judgment titled J.K. Aggarwal Vs. Haryana Seeds Development Corporation Ltd. and others, wherein it was discussed that the matter is guided by the Provisions of Rule 7(5) of the Haryana Civil Services (Punishment and Appeal) Rules, 1952, which says:

The person against whom a charge is being enquired into, shall be allowed to obtain the assistance of a Government servant, if he so desires, in order to produce his defence before the enquiring officer. If the charge or charges are likely to result in the dismissal of the person from the service of the Government, such person may, with the sanction of the enquiry officer, be represented by

counsel.

6. The petitioner had also alleged that the employees of the pipeline were frightened to defend the case of the petitioner and, therefore, they were not willing to assist the petitioner as the defence assistant. Therefore, he made another representation dated 18th December, 1996 and requested that the petitioner may be permitted to have its co-worker appointed as defence assistant either from marketing division or refineries head quarters. His request was declined on 13th January, 1997. Without considering the aforesaid request of the petitioner the respondent allowed on 22nd April, 1997 to have Mr. Virender Kumar Jutshi as defence assistant. The Inquiry Officer proceeded with the Inquiry and witnesses namely L.K. Sharma - PS-II, S.K. Giri ? Senior Assistant, S.Dev ? Manager (Maintenance), V.K. Russell ? Chief of the Operation Manager, who were present and were examined. The petitioner, without the aid of the defence assistant could cross examine the witnesses and, therefore, the Inquiry Officer permitted Mr. Virender Kumar Jutshi to represent the petitioner as a defence assistant on 5th May, 1997 and further proceedings were fixed for 12th May, 1997. It is alleged by the petitioner that the Inquiry Officer had also asked the petitioner to submit the bio-data of the defence assistant Mr. Virender Kumar Jutshi. The petitioner requested the Inquiry Officer to grant time upto 1st June, 1997 to enable the defence assistant to study and prepare the case and also to enable the petitioner to submit the bio-data of the defence assistant as desired by the Inquiry Officer.

7. After analyzing the evidence on record and documents, the Inquiry Officer submitted his perverse report holding the charges to be proved. On 3rd August, 1998, on the basis of the Inquiry Officer, the respondent awarded the punishment of dismissal of service. Being aggrieved from the aforesaid the petitioner preferred an Appeal before the Appellate Authority raising the points on which the Inquiry was conducted in violation of the principles of natural justice but the same was rejected on 25th September, 1998.

8. The present writ petition being filed against the aforesaid order dated 3rd August, 1998 of the respondent and the Appellate order dated 25th September, 1998. The petitioner herein has raised legal issues as discussed above.

9. Counsel for the petitioner further referred Certified Standing Orders MJPL of Indian Oil Corporation Limited. The Certified Standing Order 21.5.3 reads as under:

The order of suspension shall be given in writing and shall be followed within seven days by a charge-sheet setting out in precise terms the misconduct alleged against him. The suspended workman shall be required to record his attendance at the appointed time and place daily. During the period of suspension a workman shall not, except when required to do so for the limited purpose of making daily attendance, enter the work premises except on order or with the permission of the Management nor shall he leave the station without the

permission of the Management.

10. As per the aforesaid Standing Orders the order of suspension shall be given in writing and shall be followed within 7 days by a charge sheet. However, in the present case the counsel for the petitioner states that the charge sheet and suspension order were served on the same day and by the same memo by respondent No. 4 himself which was in violation of the aforesaid Standing Orders issued by the respondents.

11. Counsel for the petitioner further stated that list of witnesses were not provided along with the charge sheet, which were recorded during the preliminary inquiry. Learned Counsel for the petitioner has relied upon the judgment titled *State of UP v. Shatrughan Lal and Anr.* 1999 (1) SRJ 97 wherein it was held as under:

5. Preliminary inquiry which is conducted invariably on the back of the delinquent employee may, often, constitute the whole basis of the charge-sheet. Before a person is, therefore, called upon to submit his reply to the charge sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. This principle was reiterated in *Kashinath Dikshita v. Union of India* (supra), wherein it was also laid down that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those documents had not caused any prejudice to the delinquent in his defence.

12. He has pointed out and drawn the attention of this Court that S.K. Giri, Ajit Singh, Ram Kishan, H.B. Singh, Chhagra and Vinod Mishra who were present at the time of alleged incident as inflicted in charge-sheet but deliberately not examined due to the known reason that the whole story was concocted and these persons would not support the respondents in the departmental proceedings.

13. On the other hand the counsel for the respondents strongly opposed the contentions raised by the petitioner and states that during the pendency of the proceedings the petitioner approached the conciliation officer. Since, he was a workman, he could not challenge the action taken by the respondent by filing the writ petition and he would have approached the labour court. The second objection he has taken is that Section 2(8) of the Industrial Disputes Act as per the nature of duties the petitioner's case comes under the definition of the said Act. The respondent herein is Indian Oil Corporation Limited and an autonomous body and, therefore, the petitioner cannot challenge the action taken by the company in these proceedings. He further stated that the petitioner had also filed a complaint before the National Human Rights Commission and the respondent replied the same. Since the respondents were not at fault, therefore, no order was passed by the NHRC on his complaint.

14. The aforesaid contention of the respondent is refuted by the petitioner and

submitted that this company is governed by Article 311 of the Constitution of India, therefore, the petitioner can challenge the aforesaid grievance by filing the writ petition. Besides, the petitioner was working as Junior Clerk, therefore was on ministerial side not the operational side. Therefore, the petitioner was not a workman and he has rightly challenged by invoking writ jurisdiction. 15. Learned Counsel for the respondent further stated that Mr. V.K. Rajan (R-4) was the Head of the Department at that time, therefore he was competent to pass any order. He has also relied upon Certified Standing Orders MJPL 21.3.1 which reads as under:

No disciplinary action under these standing orders shall be taken unless the workman concerned is given a written charge-sheet detailing the alleged misconduct and the workman is given an opportunity of explaining the circumstances in an enquiry into such of the charges as are not admitted, or into all the charges when no explanation is received, which may be conducted by the Head of Dept or any other officer or officers appointed by him to conduct the inquiry. In such inquiry the workman concerned will be allowed to produce witnesses on his behalf, cross-examine the witnesses produced to prove the charges and to take the assistance of a co-worker as per rules and as amended from time to time to help him in the inquiry, if he so desires. The records of the departmental inquiry shall be kept in writing duly signed by the parties concerned.

15. The learned Counsel for the respondents has relied upon two judgments of the Apex Court in Uttaranchal Forest Development Corpn. and Another Vs. Jabar Singh and Others, and Apparel Export Promotion Council Vs. A.K. Chopra, On a perusal of the above cited judgments, this Court is of the view that the same are not relevant in the present context.

16. It is trite that in a given situation where disciplinary authority has acted in an arbitrary manner to reach on a particular conclusion, the courts or a tribunal can definitely interfere under Article 226 of the Constitution of India.

17. Keeping the judgments discussed above and the plea of the counsel appearing for the parties this Court is of the view that the respondent No. 4 had acted with the pre-determination to reach on a particular goal i.e. to dismiss the petitioner by bye-passing all the norms and the settled law by issuing suspension order and charge sheet himself against the certified standing orders MJPL of Indian Oil Co. Ltd. and not allowing the request of the co-worker or a legal practitioner in time. This Court is of the view that respondent No. 4 being the Head of the Department and the disciplinary authority had not acted fairly and rather acted arbitrarily, mala fide by showing undue interest and against the principles of natural justice. The petitioner, being visually handicapped, has suffered number of years without employment due to the faulty decisions of the respondent.

18. Accordingly, the order dated 3rd August, 1998 of the disciplinary authority

and order dated 25th September, 1998 of the appellate authority are hereby quashed. The respondents are directed to reinstate the petitioner with back wages and all consequential benefits applicable to the petitioner, within two months from today.

19. Writ petition is allowed in the above terms.