

(2010) 12 KAR CK 0078
In the Karnataka High Court
Case No : Writ Appeal No. 88 of 1999

The Regional Director, Indian Airlines Limited

APPELLANT

Vs

Mr. B. Babal Rao

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 226, 229, 229

Citation : (2010) 12 KAR CK 0078

Hon'ble Judges : V.G. Sabhahit, J;S.N. Satyanarayan, J

Bench : Division Bench

Advocate : Subha Ananthi and K. Kasturi, for the Appellant; M.N. Prasanna, for P.S. Rajgopal, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Satyanarayana, J.—The Respondent - Indian Airlines Limited, in W.P. No. 18730/1994 is impugning the order dated 21.09.1998 passed in. the said Writ Petition.

2. The facts leading to this Intra Court appeal are as under :

Respondent herein while he was working as Traffic Officer of the Appellant alleged to have involved in serious misconduct in respect of which preliminary investigation was conducted by C.B.I., and submitted its report on 30.06.1992. Pursuant to said enquiry, Appellant also instituted an enquiry appointing one R. Pushpavanam as enquiry officer, which commenced on 24.04.1993 and concluded on 29.11.1993, after examining 17 witnesses and marking of more than 100 documents on behalf of management, Appellant herein. Thereafter, enquiry officer submitted a finding giving reasons for arriving at conclusion holding the Respondent is guilty of the charges alleged.

3. Pursuant to the said finding of the enquiry report, show cause notice was issued on the Respondent on 16.06.1994 proposing punishment for his removal from service which was challenged by the Respondent in W.P. No. 18730/1994

which was initially stayed and later by an order dated 14.09.1994 Single Judge of this Court permitted the Appellant to complete the disciplinary proceedings and pass final orders. However, the Appellant was not permitted to give effect to the said order, until further orders to be passed in the said Writ Petition. Subsequently, enquiry was completed and the order was passed for removal of Respondent from service by order dated 04.05.1995. On such order being passed, Respondent herein, Petitioner before Single Judge, made necessary amendment to the Writ Petition filed by him. Thereafter the Single Judge by an order dated 21.09.1998 allowed the said Writ Petition filed by the Respondent - employee holding that the enquiry conducted by the Appellant is defective and hence the order of his removal from service was quashed reserving liberty to the Appellant herein to hold denova enquiry against the Respondent - delinquent employee and also granted certain reliefs to the Respondent regarding payment of full salary from the date of suspension till the date he will be reinstated with all consequential benefits and also for payment of monetary benefits within 60 days from the date of receipt of the said order. If the Petitioner is continued under suspension until denova enquiry is completed, he shall be paid subsistence allowance including increments in addition to the back salary payable to him as above.

4. The said finding of the Single Judge is under challenge in this appeal, on the ground that the view of the Single Judge that the enquiry is defective for non issue of copies of documents pertaining to CBI and Vigilance Officer is not valid and contrary to law laid down by the Apex Court and the reasons given by Single Judge that opportunity to cross examination was not granted is contrary to the records. That the finding of the Single Judge so far as it pertains to observing that non production of documents pertaining to investigation has vitiated the enquiry is not correct, when the said documents were not relied upon for the purpose of arriving at the findings in the enquiry., Further, though the preliminary enquiry report submitted by N.P. Raghavan was not relied upon in the enquiry and the attempt on the part of the Single Judge to hold that non production of document sought for amounts to reappreciation of evidence, which is not permissible under Article 229 of the Constitution of India. When there is sufficient evidence to prove the charges, learned Single Judge should not have considered the same as case of no evidence and should have interfered with the finding of the enquiry. Further the finding to the effect that the witnesses are speaking about the contents of the documents marked through them is also untenable and contrary to the decision in *Kuldip Singh v. State of Punjab* reported in 1997(1) LLN 62 and in the light of the said decision, strict proof of evidence was not applicable to the domestic enquiry and also challenged the same on the ground that the principle laid down by the Apex Court./relied in *Pooran Mal case* and *State Bank of Bikanir and Jaipur v. Srinath Gupta* reported in 1997 (1) LLN 149 and *State of Mysore v. Shivabasappa Shivappa Makapur* reported in 1963 SC 375. The ratio enunciated in these judgments are not properly appreciated and the finding of the learned Single Judge is more on

technicalities than the appreciation of overall evidence available on record.

5. It is also the case of the Appellant that in the instant case, where irregularities have taken place in respect of shipment i.e., flower baskets, excess quantities received are delivered immediately as they are perishable in nature. Therefore in spite of concrete evidence available regarding excess baskets of goods which are unmanifested or properly evidenced through the witness Siddaiah, the same is not properly appreciated and the learned Single Judge has misdirected itself to rely upon the case of Kuldip Singh, which is totally unwarranted in the facts and circumstances of the case, more particularly when the Respondent has circumvented the procedure and accounting for the same. Therefore the reasoning given in this behalf is also incorrect and not sustainable in the eye of law. It is also contended in this appeal that when all the charges against the delinquent employee, Respondent herein are clearly based on oral and documentary evidence, in a matter where the charges are serious in nature, interference into the same by the learned Single Judge was not warranted, that while considering the same the learned Single Judge has placed reliance upon the decisions of the Apex Court which are subsequently modified and deviated from the earlier judgments by later judgments of the Apex Court and the reliance placed on some of the judgments are not directly applicable to the facts of the case and the same will have no force in the case on hand. Therefore, the finding given by the learned Single Judge based on these judgments is erroneous.

6. It is also their case that the learned Single Judge has ignored the decision cited by the Appellant herein in the matter of State Bank of Patiala, where the principles enunciated in the said judgment would squarely be applicable to the facts and circumstances of the case, where the Apex Court has held that the valuation of rights has to be tested on the grounds of prejudice. If the same is applied to the case on hand, it is seen that the statement of witnesses examined in preliminary investigation, were furnished to the delinquent employee to the extent relied upon and inspection of all documents relied upon in the proceedings are also permitted. Since no inspection was sought by the Respondent at any point of time, therefore the same should have been considered with right perception. It is also the case of the Appellant that when once preliminary enquiry loses all its importance and the requirement of law in such cases in furnishing all copies or statement relied upon in the enquiry should be produced. In the instant case, when the same is complied with, the enquiry should not be held to be vitiated. It is also the case of the Appellant that when documents are produced through witnesses by furnishing copies to the Respondent holding the same as inadmissible in evidence is opposed to the ratio laid down by the Apex Court in the matter of Makapur reported in State of Mysore Vs. S.S. Makapur, and it also amounts to re-appreciation of evidence, which is not permissible under Article 226 of the Constitution of India.

7. Though there is voluminous evidence available on record to come to the conclusion that the Respondent has committed misconduct relying upon the

evidence of one of the witnesses and coming to the conclusion contrary to the findings given by the learned Single Judge is not well placed and that there is non appreciation of the contentions advanced by the Appellant to the effect that the delinquent employee is an undesirable element, whose continuance in employment would jeopardise the interest of the Company apart from the lives of passengers. Therefore, the relief of reinstatement and only reasonable compensation as indicated by the Apex Court in catena of cases should be granted is not properly appreciated and considered by the learned Single Judge. It is also contended that the learned Single Judge has not appreciated where public interest is involved, services of employees can be terminated without holding enquiry. In the light of that, in the instant case, though elaborated enquiry is conducted into the matter, after giving sufficient opportunity to the employee to put forward his defence and thereafter order passed for his removal from service should not have been set aside on technical ground. The learned Single Judge has also failed to appreciate that on the relevant date though the Respondent employee was not on duty, he was present, in the place of occurrence which is confirmed by M.W.5 and the reasons given by the learned Single Judge in that behalf is incorrect view. It is also their case that even before the order of removal dated 04.05.1995 is given effect to, Respondent could not have challenged the same, where the regulations provide for an appeal before challenging the same before this Court in a writ jurisdiction.

8. Learned Counsel appearing for Appellant try to substantiate the aforesaid grounds on which the appeal was filed challenging the order of the learned Single Judge supported by catena of judgments of this Court and also the Apex Court. The aforesaid grounds urged by the Appellant were negated by the counsel appearing for the delinquent Respondent employee and tried to substantiate the judgment of the learned Single Judge is proper and reasonable.

9. After hearing the counsel for the Appellant and Respondent and on going through the findings of the learned Single Judge in the impugned order, it is seen that the learned Single Judge has gone through the aforesaid contentions in the light of the judgments cited by the counsel appearing for the Appellant management and the Respondent employee in the writ petition and on appreciation of the same, has framed the following issues :

1. Whether the enquiry conducted against the Petitioner was legal, valid fair and was in accordance with the relevant Regulations?
2. Whether the findings recorded by the Enquiry Officer are legal and valid?
3. Whether the penalty of removal proposed to be imposed on the Petitioner was justified?
4. To what relief the Petitioner is entitled to?

and has ..rightly answered each one of them with reference to the available material on record and has come to the right conclusion in partially allowing the

writ petition filed by the Respondent employee herein and the learned Single Judge has rightly declined to consider the Petitioner's prayer to declare Rule 30 of the Standing Order Regulations is void.

10. Though the learned Single Judge has quashed the impugned order so far as removal of Respondent from service, holding that the said removal from service is not preceded by valid and proper enquiry. The charge sheet based on which the enquiry was conducted is not quashed Liberty is reserved to the Appellant herein to hold a denova enquiry against the Petitioner on the same charges in accordance with law by compliance with the principles of natural justice, if the Appellant so desires. Therefore, the contention of the Appellant that the impugned order is bad in law cannot be accepted in the light of the aforesaid opportunity being reserved to the Appellant herein to hold denova enquiry against the Respondent employee herein. It is also seen that considering the nature of the charges levelled against the Respondent and also the evidence available on record and the fact that the enquiry being pending for long time, the learned Single Judge has rightly awarded payment of full back salary. It is further observed by the learned Single Judge that if the Respondent herein is continue to be under suspension till the completion of denova enquiry, the same can be continued on payment of subsistence allowance.

11. Therefore, there is no compulsion on the part of the Appellant to take the Respondent employee back into service and to presume that the interest of the general public would be jeopardised by taking him into employer also does not arise. In any event, this Court is of the opinion that in this Intra Court Appeal the finding given by the learned Single Judge on appreciation of evidence available on record cannot be found fault with and the same cannot be set aside for the aforesaid reasons.

12. The appeal filed by the Appellant Management is dismissed without any order as to costs, with a direction to comply with the order of the learned Single Judge so far as it pertains to payment of full back salary and continuation of payment of subsistence allowance with increments and revision of pay scale, in accordance with law until the completion of denova enquiry, pursuant to the charges which are already framed against him.