W.B. Correya Vs. Dy. Managing Director, Indian Airlines and ors.

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Court : Chennai

Decided On : Jul-22-1976

Reported in : (1977)IILLJ163Mad

Judge : G. Ramanujam, J.

Appellant : W.B. Correya

Respondent : Dy. Managing Director, Indian Airlines and ors.

Judgement :

ORDER

G. Ramanujam, J.

1. The petitioner was employed as Flight Steward in the Madras Branch of the Indian Airlines. On 24th July, 1973 the following three charges were framed against him in respect of his alleged conduct in operations offices and departure lounge on 19th July, 1973:

(1) Even though not on duty, he was found in the above offices appearing to be under the influence of liquor.

(2) He behaved in a rude, indecent and abusive manner towards Capt. N.M. Pereira, Officiating Operations Manager, by talking to him in an aggressive and threatening manner.

(3) He created a scene in the departure lounge, where passengers were seated, by shouting and using abusive and threatening language towards Capt. Pereira.

According to the management these acts constituted misconduct within the meaning of Standing Orders 16(11), 16(13) and 16(18) of Standing Orders (Regulation) hereinafter referred to as the Regulation. By the said charge memo the petitioner was asked to give his explanation to the charges. He by his letter, dated 30th July, 1973 asked for the supply of certain records to enable him to submit his explanation The Regional Director, the third respondent replied on 1st August, 1973 that the copies of the document purposed to be considered in support of the charges had already been supplied. The petitioner thereafter submitted a detailed explanation on 28th August, 1973. Subsequently one R.R. Singh was appointed as an officer to enquire into the matter. After the conclusion of the enquiry the enquiry officer submitted his report to the effect that all the three charges have been proved. On the basis of the said findings, a show cause notice, dated 14th December, 1973 was issued to the petitioner asking him to show cause why he should not be removed from service. The

petitioner submitted his representation to the show cause notice on 5th January, 1974. However, by an order, dated 7th February, 1974 the second respondent has removed the petitioner from service. Against the said order of removal, the petitioner appealed to the Assistant Managing Director, Indian Airlines. New Delhi, who is the appellate authority. By an order, dated 22nd April, 1974 the appellate authority dismissed the appeal holding that the action taken by the second respondent is justified. The petitioner has then approached this Court questioning the validity of the order of the appellate authority, dated 22nd April, 1974 confirming the order of removal dated 7th February, 1974 of the second respondent.

2. The learned Counsel for respondents has raised a preliminary ground as to the maintainability of the writ petition. According to him, Indian Airlines Corporation is not an authority as contemplated by Articles 12 and 226 of the Constitution of India and, therefore, it is not amenable to the jurisdiction of this Court. It is further contended that even if it is treated as an authority coming within the scope of Articles 12 and 226, this Court cannot interfere with the impugned order of removal as it is purely a dispute between master and servant.

3. Indian Airlines Corporation owes its existence to the Air Corporation Act of 1953. Therefore, it is a statutory authority. Section 45(2)(b) of that Act enables the Corporation by notification in the Official Gazette, to make regulations not inconsistent with the Act or the Rules made thereunder regarding the terms and conditions of service of its officers and other employees. The Regulations which deal with disciplinary proceedings have been framed under the said statutory power by the Corporation. Therefore, the officers, and employees of the Corporation have a statutory status and for the violation of any of the statutory regulation, relief can be sought in writ jurisdiction by the aggrieved party. It is not, therefore, possible to treat the matter as one purely between master and servant so as to exclude the writ jurisdiction of this Court. It has been pointed in Sirsi Municipality v. C.K.F. (sic) : (1973)ILLJ226SC , that the cases of dismissal of a servant falls under three broad heads : (1) where the relationship of master and servant is governed purely by a contract of employment, a breach of it is normally enforced by a suit; (2) cases arising under the Industrial law where the aggrieved person can approach a different forum for relief, and (3) cases arising out of the employment of personnel by the State or other public or local authorities or bodies created under the statute. Dealing with the third category of cases, the Supreme Court has pointed out in that case, that the Courts have declared in appropriate cases the dismissal of servant of statutory bodies to be invalid, if the dismissal was in violation of the principles of natural justice or if the dismissal was in violation of statutory provisions, that this is done with a view to keep the public bodies within the limits of their statutory powers and that where a State or a public authority dismisses an employee in violation of the mandatory procedural requirements or on grounds which are not sanctioned or supported by statute, the Courts may exercise jurisdiction to declare the act of dismissal to be a nullity. In Sukhdev Singh v. Bhagatram : (1975)ILLJ399SC , the Supreme Court has again reiterated the above principle thus:.We hold that rules and regulations framed by the Oil and Natural Gas Commission, Life Insurance Corporation and the Industrial Finance Corporation have the force of law. The employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in controvention of statutory provisions. By way of abundant caution we state that these employees are not servants of the 'Union or the State-These statutory bodies are 'authorities' within the meaning of Article 12 of the Constitution.

In that case the employees of Oil and Natural Gas Commission, the Life Insurance Corporation of India and the Industrial Finance Corporation which are all statutory bodies, have been held to have a statutory status and a consequent right to question an order of dismissal, if the dismissal is in contravention of the statutory provisions. In that case an earlier decision of the Supreme Court in Indian Airlines Corporation v. Sukhdev Rai : (1971)ILLJ496SC , holding that the relationship between the Corporation and its employees is not statutory and, therefore, they are governed purely by the law of master and servant has been overruled. The Supreme Court's present view is that where a man's rights are affected by decision taken under statutory powers, the Court would presume the existence of a duty to observe the rules of natural justice and to comply with rules and regulations imposed by statute. Therefore, net only the violation of any statutory provisions governing the terms and conditions of service but also the violation of the principles of natural justice would enable the Court to interfere with the order of dismissal passed by a statutory authority against its employee who is shown to have a statutory status. Therefore, I proceed to deal with the merits of the case on the basis that the writ is maintainable.

4. The grounds on which the petitioner attacks the order of removal are four in number. The first ground is that there have been vital and serious defects in the procedure followed by the enquiry officer which have vitiated the impugned order. Secondly, it is contended that certain additional documents which are necessary for establishing the petitioner's defence have been denied to aim and this amounts to the violation of the principles of natural justice. The third ground is that the disciplinary authority, the second respondent merely accepted the findings of the enquiry officer without any discussion of the evidence for and against and proceeded to impose the punishment without considering the various objections raised by the petitioner in his answer to the show cause notice. Fourthly, it is contended that the appellate authority has merely affirmed the order of dismissal passed by the second respondent without considering the various objections raised by the petitioner in his grounds of appeal.

5. As regards the first ground of attack, the learned Counsel for the petitioner points out that 9 witnesses who had been called to give evidence before the enquiry officer by the management were never examined in chief by the management but straightaway offered for cross-examination and the petitioner was asked to cross-examine those witnesses on the basis that the statements given by them behind his back at the stage of investigation constituted substative evidence against him] and, therefore, the petitioner has to controvert the game. It is also said that the witnesses were allowed to have their ex parte statements in their hands and that the replies to the questions put in cross-examination by him were given by them only after perusing those statements. It is also pointed out by the learned Counsel that whenever these witnesses were cross-examined on matters not found in their earlier statements the enquiry officer disallowed such questions on the ground that no question should be asked in cross-examination except in relation to the matters spoken to by them in their statements. It is submitted by the learned Counsel that normally ex parte statements obtained from the witnesses at the stage of the preliminary investigation cannot constitute substantive evidence at the enquiry unless those statements are affirmed by the witnesses in chief examination, that it is only when the ex parte statements given by the witnesses at the stage of preliminary enquiry becomes substantive evidence, the petitioner has to cross-examine the witnesses with regard to the facts referred to by them in chief examination, and that the ex parte statements which are not referred to and affirmed by the witnesses in chief examination cannot form part of the evidence at all. In support of this stand reference is also made to

Regulation 27 of the Regulation which contemplates examination of witnesses before be is offered for cross examination.

6. Reference has also been made to the decision of the Supreme Court in state of Mysore v. Sivabasappa : (1964)ILLJ24SC , wherein the Supreme Court has held that though Domestic Tribunals exercising quasi-judicial functions are not Courts and therefore, not bound to follow the procedure prescribed for trial of actions in Courts and the strict rules of evidence, and they can obtain all information and material for the points under enquiry from all sources and through all channels without being fettered by rules of evidence and procedure which normally govern proceedings before the Courts, they are under an obligation not to act on any information which they may have obtained or received unless they put it to the party against whom it is to be used and give him a fair opportunity to explain. The Supreme Court had pointed out further that even in a domestic enquiry the person against whom the charge is made should know the evidence which is given against him so that he may be in a position to give his explanation, that if the evidence is oral, normally the examination of the witnesses should, in its entirety take place before the party charged who will have then a full opportunity to cross-examine him, that the position is the same when a person who had already given a statement is called as a witness, that statements given previously by him behind the back of the party should be put to him and admitted in evidence before the party is to be given an opportunity to cross-examine him, and that though it is not necessary for the witness to repeat word by word or sentence by sentence the earlier statement, the rules of natural justice require that the previous statements given by the witnesses should be read over to them and marked on their admission and copies thereof given to the person charged before he is asked to cross-examine the witness. In an earlier decision in Phulbari Tea Extate v. Its Workmen : (1959)IILLJ663SC , Wanchoo, J. (as he then was) speaking for the Court observed that the admission in evidence of the prior statements or the witnesses without putting them to the witness was not in accordance with the principles of natural justice. In Central Bank of India v. P.C. Jain : (1969)IILLJ377SC , the Supreme Court had observed.

Recording evidence in the presence of the workman concerned was a very important purpose The witness knows that he is giving evidence against a particular individual who is present before him and therefore, ha is cautious in making his statement. Besides, when evidence is recorded in the presence of the accused person, there is no room for persuading the witness to make convenient statements, and it is always easier for an accused person to cross-examine the witness if his evidence is recorded in his presence. Therefore, we would discourage the idea of recording statements of witnesses ex parte and then producing the witnesses before the employee concerned for cross-examination after serving him with such previously recorded statements, even though the witnesses concerned make a general statement on the later occasion that their statements already recorded correctly represent what they stated.

7. The said decisions of the Supreme Court clearly lay down that though it is well-established that domestic Tribunals like the enquiry officer is not governed by the strict rules of evidence or of procedure, it cannot ignore the substantive rules constituting the principles of natural justice. One of the statutory considerations of natural justice is that a statement taken behind the back of the person charged is not to be treated as substantive evidence and that such statements can form part of the substantive evidence only when the persons who make statements are examined before the domestic Tribunal and the facts referred to in the statement are spoken to

or affirmed before the enquiry officer, it is true, it is not necessary for the person who has given the statements behind the back of the person charged to speak word by word or sentence by sentence before the Tribunal. But the facts referred to in the statements should be affirmed at least in a general way in his evidence before the Tribunal.

8. In this case, as already stated, the witnesses from whom statements were taken behind the back of the petitioner at the preliminary investigation were straightaway offered for cross-examination and the petitioner was asked to cross examine them on the basis of their statements copies of which have been given to the petitioner. Admittedly the witnesses were not examined in chief at least to affirm the statements earlier given by them. The enquiry officer has proceeded on the basis that the ex parte statements formed substantive evidence and it is for the petitioner to disprove the facts referred to in the statements by cross-examining the witnesses. This assumption of the enquiry offices that the ex parts statements of the witnesses given at the stage of the preliminary enquiry behind the back of the petitioner can become substantive evidence as already stated only if the statements are affirmed at least general terms in chief-examination. A perusal of the enquiry proceedings clearly shows that witnesses were not examined in chief by the enquiry officer. This fact also is not disputed by the learned Counsel for the respondents He would, however, say that the petitioner cross-examined the witnesses on those ex parte statements and obtained answers affirming the same and, therefore, whatever error that was committed by the enquiry officer in not examining the witnesses in chief with reference to their earlier statements, that has been rectified by the petitioner himself cross-examining the witnesses on their prior statements. I am not, however, inclined to agree with the learned Counsel for the respondent. The petitioner is very much handicapped in his defence by the witnesses not being examined in chief by the enquiry officer or by the department in support of the charges. The petitioner was not aware as to what was the substantive evidence that is against him which he has to controvert in cross-examination. If the witnesses are not examined in chief with reference to their earlier statements which were taken behind the back of the petitioner, the petitioner can proceed on the basis that there is no substantive evidence against him. In the circumstances of this case the petitioner would have been very well justified if he had refrained from cross-examining the witnesses on the ground that the witnesses have not spoken anything against him at the enquiry and. therefore, there is no need or necessity for cross-examining them. The fact that the petitioner as a layman chose to cross examine the witnesses when the witnesses have not spoken anything against him at the enquiry cannot go against him. Regulation 27 of the Service Regulations clearly contemplates that the enquiry officer has to examine the witnesses in chief before they are offered for cross examination. Therefore, the enquiry officer in this case has not only violated Regulation 27 but also the substantive rules which form part of the principles of natural justice in that the statements obtained from witnesses behind the back of the petitioner have been taken as substantive evidence against the petitioner which he cannot do.

9. The learned Counsel for the respondent refers to the following observations of the Supreme Court in Firestone Tyre and Rubber Co. v. Their Workmen : (1967)IILLJ714SC .

This leaves over the contention that before examining the witnesses Subramanian was subjected to cross-examination. This was said to offend the principles of natural justice and reliance was placed on Sur Eacmel and Stamping Works Ltd. v. Workmen :

(1963)IILLJ367SC . Those cases on doubt lay down that before a delinquent is asked anything, all the evidence against him must be led. This cannot be an invariable rule in all cases.

and submits that witnesses should be examined before they are subjected to cross-examination before an enquiry officer is not an invariable rule. I do not think the said observation of the Supreme Court will help the respondents. It is seen that the said observations came to be made by the Supreme Court in a case where the charge is based on records or on admitted facts, and it is only in such a case it may be permissible to draw the attention of the delinquent officer to the evidence on the record which goes against him and which if he cannot satisfactorily explain must lead to a conclusion of guilt. In that case the Supreme Court points out that in certain cases it may even be fair to the delinquent to take his version first so that the enquiry may cover the point of difference and the witnesses can be asked properly on the aspect of the case suggested by him, and that it is all a question of justice and fair play.

10. The learned Counsel for the respondent then refers to the decision in State of U.P. v. O.P. Gupta A.I.R. 3970 S.C. 679, and contends that so long as the petitioner has been supplied with copies of the statements taken from the witnesses the preliminary enquiry on the basis of which he had cross-examined the Witnesses, he cannot have any grievance. In the same decision the Supreme Court had pointed out that the principles of natural justice are not fixed or embodied principles, that what principle of natural justice should be applied in a particular case should depend upon the facts and circumstances of that case, and that all that the Courts have to see is whether the non observance of any of those principles in a particular case is likely to have resulted in deflecting the course of justice and that the user of the statements of the witnesses taken at the preliminary stage of the enquiry at the enquiry docs cot vitiate the enquiry if those statements were made available to the delinquent and he was given opportunity to cross examine the witnesses in respect of those statements. But it is not clear from the facts set out in that case whether the statements of witnesses recorded at the preliminary enquiry we re straightaway taken as substantive evidence as has been done in this case. A Division Bench decision of this Court in Hindustan Lever v. Presiding Officer Labour Court, Mudurai : (1970)IILLJ201Mad , is also relied on, as in that case the enquiry officer conducting the domestic enquiry had cross examined the defence witnesses and put leading questions, it was contended before the Court that this was violative of the principles of natural justice. Dealing with this contention the Division Bench held that the enquiry officers were not trained in law or in the method of conducting enquiry and, therefore, the said features by themselves would not vitiate the enquiry, for be principle of natural justice has in fact been violated and that the governing test in such cases will be whether the examination, cross-examination or putting of leading questions by the enquiry officer are such as would indicate that he was not fair or that h& was biassed, in the sense that he thereby acted not as an enquiry officer but played the role of a prosecutor.

In Divakaran v. C.ls of Police, Munnar 1963 I L.L.J. 342, the accused officer had been given an opportunity to cross-examine the witnesses whose evidence bad already been recorded on the prosecution side, long before the accused officer appeared before the enquiry officer. The question was whether the evidence given in chief examination which had taken place in the absence of the accused officer can be used against him. Vaidyalingam, J. (as he then was) held that as the evidence in chief had

not been taken in the presence of the accused officer, the principles of natural justice had been violated. The case on hand is an a fortiorari one for in this case there has been no examination in chief at all and the petitioner was asked to cross-examine the witnesses on the assumption that the statements given by them at the preliminary enquiry constituted substantive evidence.

11. The learned Counsel for the respondents then contends that even if the conduct of the enquiry officer in not examining the witnesses with reference to the statements given by them at the preliminary stage before offering them for cross-examination by the petitioner is taken to be erroneous still, so long as the petitioner has not shown prejudice, fee cannot question the ultimate order of removal on the ground that it is violative of the principles of natural justice. I am not inclined to agree with this contention of the learned Counsel. It is not the law that even if there is a clear violation of the principles of natural justice in the conduct of the enquiry by a domestic Tribunal, still the aggrieved party has to establish prejudice. It may be that for certain minor irregularities in procedure the aggrieved party may have to show prejudice before the enquiry is held to be vitiated. But where the substantial rules forming part of the principles of natural justice ere violated, the proceedings will not only be irregular but will entirely be void. In this connection the following observations of Lord Denning, M.R. in Anmmunthodo v. Oil Fields Workers T.U. [1961] 3 All E.R. 621 . are very pertinent:

Counsel for the respondent-union did suggested that a man could not complain of a failure of natural justice unless he could show that he had been prejudiced by it. Their Lordships cannot accept the suggestion. If a domestic Tribunal fails to act in accordance with natural justice, the person affected by their decision can always seek redress in the Court. It is a prejudice to any man to be denied justice. He will not, of course, be entitled to damages if he suffered none. But he can always ask for the decision against him to be set aside.

For the reasons set out above, I have to bold that the entire proceedings are vitiated for violation of the basic principles of natural justice as the statements taken behind the back of the petitioner at the time of the preliminary enquiry have been taken to be substantive evidence.

12. Since the petitioner has succeeded in setting aside the order of removal on the first ground, it is not necessary to deal with the other contentions The order of removal is set aside and the writ petition is allowed, It is, however, open to the respondents to conduct a de novo enquiry in accordance with law on the same charges. No. costs.