

#7

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 6648/2000

SHASHI BHUSHAN SHARMA Petitioner
Through: Mr. Shankar Raju with Mr. Amit
Anand, Advocates.
Versus

M/S INDIAN SEWING MACHINES CO. Respondent
Through: Mr. Kailash Vasdev, Senior
Advocate with Mr. Sanjay Kumar
Shandilya, Advocate.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in Digest? No

ORDER
12.08.2011

CM APPL Nos. 9365/2002 & 9366/2002

1. Mr. Kailash Vasdev, learned Senior counsel appearing for the Respondent states that costs in the sum of Rs. 25,000/- was tendered by way of cheque to the workman through counsel in January 2011 but was not accepted. It was later sent by post but returned undelivered. It is directed that the said sum be given to the Petitioner by way of a demand draft on or before 23rd August 2011.
2. The applications are disposed of.

Review Petition No. 123 of 2002

3. Learned counsel for the parties state that this review petition does not survive in view of the subsequent developments.

4. The review application is disposed of.

W. P. (C) 6648/2000 & CM APPL No. 13567/2002

5. The challenge in this writ petition is to an Award dated 6th March 2000 passed by the Labour Court in I.D. No. 75 of 1986 holding that the inquiry held by the Respondent management, M/s Indian Sewing Machine Co. Ltd. ('ISMCL'), preceding the dismissal of the Petitioner from service was just and fair. A further prayer is for a direction to Respondent management to reinstate the Petitioner in service with effect from 30th March 1985.

6. The Petitioner was appointed as Assistant Ware House Keeper in Respondent No. 2 ISMCL with effect from 22nd March 1979. He was promoted as Ware House Keeper with effect from 20th May 1982.

7. On 30th January 1985, the management issued to the Petitioner a chargesheet listing out six items of charge as under:-

“1. You demanded and collected a sum of

Rs. 150/- from Mr. Gurwant Singh Kathuria, Agent of M/s Kanpur Delhi Goods Transport Co. (P) Ltd., Delhi, in respect of lorry loads booked to Kanpur under G. R. Nos. 422489 and 163465 (copies enclosed).

2. You demanded and collected a sum of Rs. 360/- from the said Mr. Gurwant Singh Kathuria in respect of 2 lorry loads booked to Madras/Cochin under L. R. Nos. 259782 and 259783 both dated 17.8.84 (copies enclosed), of Patel Roadways, Delhi.

3. You demanded and collected a sum of Rs. 45/- from the said Mr. Gurwant Singh Kathuria against G. R. 222212 dated 18.8.84 (copy enclosed) of M/s Kanpur Delhi Goods Transport Co. (P) Ltd.

4. You demanded and collected moneys from Mr. Suresh Dewan C & F Agent as under:

(i) Rs. 238/- on 3.9.84 in respect of a consignment of accessory boxes carried by him to Ludhiana.

(ii) You demanded money from Mr. Suresh Dewan for allotting Accessories Box-

Assembly contract, when there was proposal from Purchase & Distribution Department, Bombay.

5. Under Invoice No. 1141 dated 15.9.84, (copy enclosed), raised on M/s. R. K. Enterprises, Delhi, only 18 cartons, i.e., 2592 oil bottles (85ml each) were to be supplied whereas, you actually supplied or caused to be supplied 24 cartons i.e., 3456 oil bottles (85ml each) thus cheating the Company to the extent of excess oil bottles and appropriating the proceeds thereof.

6. Under invoice No. 983 dated 10.8.84 (copy enclosed) raised on M/s. Khanna Traders, Sadar Bazar, Delhi, only 12 cartons i.e. 1728 oil bottles (85ml each) were to be supplied whereas you actually supplied to the party 36 cartons, i.e. 5184 oil bottles (85ml each), thus cheating the company to the extent of the excess oil bottles and appropriating the proceeds thereof.

The surplus oil and oil bottles were generated by you by deliberately causing the oil bottles, particularly the ones supplied free with accessory boxes, under-filled and reporting short receipts of empty oil bottles and procuring supplies against such short receipts.

In respect of such supplies, however, you never used to raise regular invoices on the dealer or dealers concerned while effecting supplies but used to circumvent this requirement by calling the dealer in person to the warehouse and obtaining his acknowledgement.”

8. The Petitioner was asked to show cause as to why an inquiry should not be held against him for:

- (i) dishonesty in connection with the business of the company.
- (ii) commission of acts subversive of discipline.

9. The Inquiry Officer ('IO'), after due notice to the Petitioner, held proceedings on 21st February 1985. The report of the IO records, *inter alia*, that though the Petitioner stated that he had submitted an explanation to the chargesheet, when asked by the IO whether he would like to submit a copy to the IO, he replied in the negative. The management examined four witnesses. The report of the IO records that the Petitioner was given an opportunity to cross-examine all the four witnesses. However, the Petitioner did not examine them. The Petitioner confirmed having received the chargesheet and having understood its contents. He reiterated that he had submitted an explanation but

answered in the negative when asked whether he would like to submit a copy thereof. The management however, informed the IO that no such explanation had been received from the Petitioner.

10. The report dated 8th March 1985 of the IO discussed each item of charge and the evidence presented before the IO in support of each charge, in great detail. The IO concluded that while charges at Serial Nos. 1, 5 & 6 were proved, the charges at Serial Nos. 2, 3, & 4 were not proved. On the basis of the report of the IO, the managing director of ISMCL on 26th March 1985 dismissed the Petitioner from service.

11. The resultant dispute was referred for adjudication to the Labour Court in ID No. 75 of 1986 which held the inquiry, held prior to the dismissal of the Petitioner, to be fair and proper. On the said issue, the Labour Court examined the evidence in great detail. It was held that the management had given 15 days' time to arrange for a co-worker to represent him and also witnesses in its defence in the inquiry which was held on 15th February 1985. The inquiry proceedings were not conducted on that date but postponed to 21st February 1985. In his cross-examination, the Petitioner admitted that he had signed the inquiry proceedings and received a copy of the same. The Petitioner had at no

point protested to the IO or the management about the inquiry being conducted contrary to the principles of natural justice or in an improper or unfair way. The Labour Court held that the Petitioner was fully conversant with the charges and the material against him and had cross-examined the witnesses produced by the management at length. The IO held the charges at Serial Nos. 1, 2 and 4(i) & (ii) to be proved. The remaining charges were held not to be proved, by giving the benefit of doubt to the workman. The fact that the inquiry was concluded in one day was held not to have caused any prejudice to the Petitioner. The non-examination of Mr. Kartar Singh was held not to have vitiated the inquiry. It was, therefore, held by the Labour Court that the inquiry was fair and proper.

12. Mr. Shankar Raju, learned counsel appearing for the Petitioner reiterated that the Petitioner was not given an effective opportunity to defend himself against the charges. In particular, he was not permitted to file a statement of defence or lead evidence.

13. However, this Court finds on a perusal of the record that the Petitioner in fact declined to provide the IO with a copy of the defence statement and also declined to lead evidence apart from examining himself.

14. It was next submitted that sufficient time was not given to the Petitioner to prepare for the cross-examination of the management witnesses since the list was not given to him in advance. Moreover, the entire cross-examination of the witnesses was concluded on one single day. Therefore, an effective opportunity of cross-examining the management witnesses was not given.

15. There is no merit in the above contention as well. In his cross-examination in the Labour Court, the Petitioner admitted that he had received copies of the proceedings and in fact had cross-examined each of the management witnesses. He had at no point protested to the IO about the procedure adopted. It appears that at that stage, the Petitioner did not have any grievance.

16. In any event, even assuming that the Petitioner did not get the opportunity to lead evidence, he could have examined witnesses in the Labour Court in support of his claim or at least filed an application before the Labour Court asking it to summon some of the witnesses including Mr. Kartar Singh. The Petitioner did not do so and therefore, missed another opportunity of producing evidence before the Labour Court to substantiate his claim. In the circumstances, this Court is unable to

accept the submission made on behalf of the Petitioner that great prejudice was caused to the Petitioner on account of the entire inquiry having been concluded on one single day.

17. The last point urged by Mr. Shankar Raju was based on the decision of the Supreme Court in *Managing Director, ECIL, Hyderabad v. B. Karunakar* (1993) 4 SCC 727. In particular, he relied upon the observations in para 30(iv) in which it was held that the right to make representation to the disciplinary authority against the findings recorded in the inquiry report is an integral part of the opportunity of defence against the charges and it is a breach of principles of natural justice to deny the said right. Further, it was observed that this rule should apply to employees in all establishments “whether Government or non-Government, public or private”.

18. In the present case, prior to the impugned order dismissing the Petitioner from service, he was not furnished with a copy of the inquiry report. The second grievance is that the order of dismissal refers to the past record of the Petitioner having been taken into account by the management. It is submitted that this past record could not be used to prove the charges against the Petitioner and therefore, the process of

awarding the punishment of dismissal was unfair. Lastly, it is submitted that in the chargesheet itself, it was stated that the Petitioner if found guilty of the said charges would be dismissed from service. It is accordingly submitted that the management had already made up its mind about the punishment even before the inquiry commenced and, therefore, the inquiry proceedings were an empty formality.

19. As regards the submission concerning non-furnishing of the inquiry report to the Petitioner, the consequences would be that the proceedings will have to be relegated to the stage at which they were prior to the issuance of the order of dismissal. Then again all that would be done is that the management would issue to the Petitioner a show cause notice on the penalty imposed asking him to make his representation against the inquiry report. Considering the passage of time, it does not appear to be expedient to relegate the matter to the disciplinary authority of the management at this stage. If the Labour Court could exercise its powers under Section 11A of the Industrial Disputes Act, 1947 ('ID Act') and interfere with the quantum of punishment, upon finding it to be shocking to the judicial conscience, then this Court too can determine if the punishment awarded to the Petitioner was appropriate.

20. The Petitioner has been unable to outline the circumstances that would justify the award of a lesser punishment to the Petitioner. This is particularly true in the light of the charges which have now been held to be proved against the Petitioner. Charges at Serial Nos. 1, 5 & 6 touch upon the issue of dishonesty. This Court is unable to find any perversity in the findings of the IO as regards these charges. In any event, considering that the Petitioner has been held guilty in three of the six charges which substantiate the management's plea that he acted dishonestly, the punishment of dismissal cannot be said to be disproportionate. If the ultimate punishment awarded to the Petitioner does not call for interference, no purpose would be served relegating the entire matter to the management for a fresh determination as to the quantum of punishment.

21. For all the above reasons, this Court finds no ground having been made out for interference with the impugned Award of the Labour Court.

22. The writ petition and the pending application are dismissed.

S. MURALIDHAR, J.

AUGUST 12, 2011

ha