

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17th February, 2011

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W.P.(C) 7299/2002

J.S. JOSEPH

..... Petitioner

Through: Mr. Rajeev Kumar Singh with
Mr. Praveen Kumar Jain & Mr.
Santosh Kumar, Advocates

Versus

**THE COMMERCIAL MANAGER, NATIONAL
AVIATION COMPANY OF INDIA LTD.**

..... Respondent

Through: Ms. Padma Priya, Advocate

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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 the Digest? No

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the award dated 10th September, 2002 of the
Industrial Tribunal on the following reference:

“Whether the action of the Management of Air India,
New Delhi in dismissing J.S. Joseph, Traffic Assistant
from service vide their order dated 12th August, 1988 is

justified. If not, to what relief the workman is entitled?”

holding that the domestic enquiry held against the petitioner was fair and proper and that there was no material to show that the domestic enquiry was a mere formality or that members of the Enquiry Committee were biased or that the enquiry was held under the thumb of the Management; it was also held that the petitioner had admitted that he was accorded full opportunity to cross examine the witnesses. The Industrial Tribunal further held that the enquiry report is not perverse and the findings in the enquiry are supported by reliable evidence and circumstances. It was yet further held that the action of the respondent employer, on the basis of inquiry report, of punishing the petitioner by way of dismissal could not be faulted. The punishment of dismissal was also not found to be disproportionate since the nature of proved misconduct was fraudulent and a serious view was necessary.

2. Notice of the petition was issued. The writ petition was dismissed vide order dated 14th November, 2006 on the ground that the order made on the application earlier filed by the respondent employer under Section 33(2)(b) of the Industrial Disputes Act, 1947 having attained finality, the award could not be challenged. The petitioner preferred intra court appeal being LPA No.707/2008 and which was allowed on 16th December, 2008 and the matter remanded to this Bench for decision on merits. The counsels for the parties have been heard.

3. The only ground urged by the counsel for the petitioner is of the finding in the enquiry report of misconduct on the part of the petitioner being perverse for the reason of being based on no material whatsoever.

4. The petitioner was employed as a Traffic Assistant with the respondent employer (Air India) and was rostered for night shift duty on 16th March, 1987 from 2300 hours to 0730 hours on 17th March, 1987. During the course of the said duty, he checked in six Nigerian passengers on Flight No.AI 880 of 17th March, 1987. It is not in dispute that the petitioner prepared and issued Excess Baggage Ticket (EBT) and charged for excess baggage from these Nigerian passengers at the rate of ₹8/- per Kg. for the sector Delhi-Bombay only, although, the said passengers were holding confirmed bookings on Flight No.AI 205 for the Sector Delhi-Bombay-Lagos. The said Nigerian passengers on reaching Lagos complained that their luggage had not reached; they claimed that they had booked the luggage at Delhi for the entire sector Delhi-Bombay-Lagos. Their luggage in fact was at Bombay. Air India however finding that the baggage tickets which the said Nigerian passengers were holding did indeed show booking of baggage for the entire sector Delhi-Bombay-Lagos, sent the luggage from Bombay to Lagos on the next flight. Since the said Nigerian passengers had been charged for excess baggage only for the sector Delhi-Bombay, though their baggage had been booked for the entire Sector Delhi-Bombay-Lagos and resultantly revenue loss of approximately ₹1,50,000/- for excess baggage charges had been caused to

the respondent employer, an investigation was conducted by Mr. G.N. Bhongade, Security Manager of Air India and which found that the petitioner though had checked the said Nigerian passengers for the sector Delhi-Bombay only but had issued the baggage tickets to them upto Lagos and charged excess baggage charges for Delhi-Bombay only. Accordingly, the petitioner was served with a chargesheet dated 21st December, 1987.

5. In the chargesheet, it was recited that the petitioner interlined the baggage for Delhi-Bombay-Lagos without charging the excess baggage charges for the sector Bombay-Lagos; that the petitioner issued two coupon EBT which were later on amended entitling the passengers to claim their baggage without paying for the excess baggage for the sector Bombay-Lagos; that the petitioner though had checked the passengers upto Bombay only but put the baggage tags with Lagos as destination without charging them for the Sector Bombay-Lagos and which showed that the petitioner was in connivance with the said passengers for ulterior motives and had inflicted monetary loss of approximately ₹1,50,000/- on the respondent employer. The petitioner was accordingly charged under the Air India Employees' Service Regulations with the following:

- (a) Commission of an act subversive of discipline and good behavior;
- (b) Dishonesty during the discharge of official duties;

- (c) Breach of rules and regulations of the Corporation; and
- (d) Causing grave financial loss to the Corporation.

6. The inquiry Committee recorded the statements of Mr. G.N. Bhongade aforesaid and Mr. A.R. Kadam, Senior Security Assistant of the respondent as management witnesses and of Mr. R.K. Marwah, ADO and Mr. Ram Gopal, Cashier as the witnesses of the petitioner. It was the defence of the petitioner that he had checked in the passengers, only for the domestic sector and had issued the baggage tags also for the sector Delhi-Bombay only. The inquiry Committee on the evidence led before it and the opinion produced by the respondent employer of an handwriting expert that the baggage tags for the sector Delhi-Bombay-Lagos were in the handwriting of the petitioner and further on the basis of the report dated 18th March, 1987 of Mr. A.F. Mendonca, Duty Officer, Bombay held the petitioner guilty of the charges aforesaid. The Disciplinary Authority of the respondent meted out the punishment of dismissal of the petitioner.

7. The counsel for the petitioner has argued that there were three charges against the petitioner; firstly that he should have booked the passengers for the sector Delhi-Bombay-Lagos instead of booking them for sector Delhi-Bombay only; secondly, that he issued two coupon EBT instead of one coupon EBT and lastly that he put the tags with Lagos as destination, without charging excess baggage charges till Lagos.

8. With respect to the first charge aforesaid, it is contended that it was the defence of the petitioner that the practice in the Airline was that if the connecting flight was at a gap of more than six hours, it was not necessary to check the passenger till the final destination. Attention is invited to the cross examination before the Industrial Tribunal of Smt. Meenakshi Dua witness of the respondent employer where she admitted that the general practice was that if the transit time was more than six hours, the passenger may or may not be directly checked up to the final destination. It is contended that the management has not shown any rule to the contrary and thus the said charge could not have been held to have been made out and is without any basis.

9. With respect to the second charge aforesaid, attention is invited to the statement of Mr. Ram Gopal, Cashier before the enquiry officer to the effect that on the concerned date, only the two coupon EBT were in use and not the single coupon EBT. It is thus contended that the said charge also could not have been held to have been established.

10. With respect to the last charge, it is contended that it was upheld on the basis of the report of the handwriting expert only and which handwriting expert was neither produced nor opportunity was given to the petitioner to cross examine him. It is argued that though the petitioner before the Labour Court had also made an application for having the documents examined from an independent handwriting expert but the said

application was kept pending till the final stage and no order was passed thereon. It is thus urged that the findings of misconduct against the petitioner are perverse and a case for interference with the award is made out.

11. The report of the Enquiry Committee, as aforesaid has also referred to the contemporaneous statement of Mr. A.F. Mendonca, Duty Officer, Bombay Airport. He has reported that it was brought to his notice at about 12 O'clock on 17th March, 1987 that though there was baggage in the Transit Baggage Area but no passengers in the Transit Lounge; that the said baggage was found to have tags of Flight No.AI 205; that the bags were found to be very heavy but without any excess baggage coupons; that these bags were accordingly not loaded on to Flight No.AI 205; that on subsequent investigation, it was found that the said baggage was the baggage aforesaid booked by the petitioner.

12. I have enquired from the counsel for the petitioner as to how the baggage, if booked by the petitioner from Delhi to Bombay only, landed in the Transit Baggage Area. The question of the baggage landing up in the Transit Baggage Area would arise only if the baggage was booked at Delhi with the destination as Lagos. If the baggage had been booked by the petitioner till Bombay only, the same would not have found its way to the Transit Baggage Area.

13. The counsel for the petitioner states that the same was not the charge against the petitioner and as such the petitioner was not required to explain the same and has no explanation for it today also. He contends that it was for the respondent employer to explain the same.

14. I am unable to accept the contention aforesaid. The report dated 18th March, 1987 of Mr. A.F. Mendonca, Duty Officer, Bombay was the subject matter of the charge against the petitioner and was very much part of the record of the Enquiry Committee as evident from the report of the Enquiry Committee. The charge against the petitioner was with respect to the said baggage only and the petitioner cannot shy away from explaining the same. It is the admitted position that it was the petitioner who had checked in the baggage at Delhi.

15. Faced with the same, the counsel for the petitioner contends that the baggage after being checked in by the petitioner was also handled by the others. However, the said others would only be Loaders at Delhi and Bombay who loaded and off loaded the baggage from Flight No.AI 880 from Delhi to Bombay. The said Loaders do not come in contact with the passengers. The baggage once checked-in and the baggage tag put thereon, is guided by the said tag and not in any other way. The baggage could have landed up at Bombay Airport in the Transit Baggage Area only if had been checked-in at Delhi with destination as Lagos and not with destination as Bombay. It was thus for the petitioner as the person

checking in the said baggage to explain the same. The petitioner till date has no explanation for the same.

16. In view of the aforesaid circumstances alone, I am satisfied that no injustice has been done to the petitioner and the finding, of the petitioner though having checked in the baggage with destination as Lagos but having charged the excess baggage charges only till Bombay and thus having caused loss of ₹1,50,000/- to the respondent employer cannot be said to be without any basis or perverse, as the sole argument urged by the petitioner before this Court is. In my view the petition is liable to be dismissed on this ground alone.

17. However, the arguments of the counsel for the respondent employer may also be noticed. The counsel for the respondent employer has found fault with the premise of the arguments of the petitioner of the charges against the petitioner being as enumerated above. It is stated that what is enumerated by the counsel for the petitioner is merely the recital in the chargesheet and else the charges against the petitioner were as set out in para 5 herein above. The counsel for the respondent employer has also drawn attention to the counter affidavit of the respondent employer with respect to the plea of the petitioner of the application for examination of independent handwriting expert having not been adjudicated by the Industrial Tribunal. It is pleaded that the said application was in fact withdrawn by the petitioner on 17th April, 2000.

18. At this stage, it has been enquired from the counsel for the petitioner whether the application was in fact withdrawn. He denies the same. The record of the Industrial Tribunal requisitioned in this Court has been perused. The same contains notation dated 17th April, 2000 under signatures of Mr. P.L. Sebastian, authorized representative of the petitioner that he was not pressing the application. The counsel for the petitioner confirms that Mr. P.L. Sebastian was representing the petitioner before the Labour Court. He is not in a position to deny the aforesaid endorsement under the signatures of Mr. P.L. Sebastian. He however states that the petitioner has no knowledge of the same.

19. The aforesaid also demonstrates the desperate measures being adopted by the petitioner. The petitioner inspite of plea to the said effect in the counter affidavit has not filed any affidavit of Mr. P.L. Sebastian denying the endorsement aforesaid. This Court has no reason to disbelieve the record of the Industrial Tribunal.

20. The counsel for the respondent employer has also urged that the petitioner inspite of opportunity did not cross examine the witnesses of the respondent employer before the Enquiry Committee. It is stated that no application before the Enquiry Committee was filed for cross examination of the handwriting expert also. The counsel for the respondent employer has also handed over in the Court the EBT issued by the petitioner of the transaction in question and which is taken on record. It is shown from the

same that while in the copy of the coupon filled by the petitioner at Delhi Airport, the petitioner filled the destination of the baggage till Bombay only and in the further column as to destination wrote the word “void”, but in the same column on the jacket of the coupon, the petitioner wrote the ultimate destination of the baggage as Lagos and owing whereto the baggage reached in the Transit Baggage Area of the Bombay Airport. It is contended that without the petitioner doing so, the ultimate destination in the EBT ought to have been the same as in the coupon filed at the Delhi Airport i.e. instead of the last destination as Lagos the word “void” filled in in the coupon ought to have found mention therein.

21. The counsel for the respondent also relies upon:

- (i) ***Rae Bareli Kshetriya Gramin Bank Vs. Bhola Nath Singh*** AIR 1997 SC 1908 on the scope of judicial review and on the proposition that notwithstanding the denial of opportunity to examine the handwriting expert, the report of the inquiry officer was not interfered with.
- (ii) ***Syndicate Bank Vs. Sanjay Kapoor*** MANU/DE/9552/2006 also a case where handwriting expert was not examined or cross examined and the inquiry report was not interfered with.
- (iii) ***Shakti Singh Vs. Union of India*** MANU/DE/1489/2002 on it being not permissible to take a new plea in a matter involving

imposition of punishment and holding that new plea not taken before the inquiry officer being not permitted to be taken.

Reference may also be made to *Lalit Popli Vs. Canara Bank* AIR 2003 SC 1796 laying down that in disciplinary enquiry, the technical rules of evidence and doctrine of proof beyond doubt have no application. It was further held that the Court while exercising writ jurisdiction will not reverse a finding of the enquiring authority on the ground that the evidence adduced before it is insufficient; if there is some evidence to reasonably support the conclusion of the inquiry authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding.

22. The counsel for the petitioner in rejoinder has reiterated that his plea in para 7 of the petition with respect to the six hours rule aforesaid has not been controverted; that the excess baggage prescribed from Delhi to Bombay and charged was at the rate of ₹8/- per Kg. and which had been changed to ₹108/- by inserting the figure 10 before the figure 8; that in fact the excess baggage charge from Delhi to Lagos was at the rate of ₹112/- per Kg.; that only the photocopies were given to the expert whose report was taken and on the basis whereof no opinion could be rendered. He has also relied upon *State of Himachal Pradesh Vs. Jai Lal* (1999) 7 SCC 280 on the aspect of who is an expert and the weightage to be given to the evidence of the expert.

23. In my opinion, the charge against the petitioner was made out irrespective of the report of the handwriting expert and from the EBT copy whereof with the passengers showed the ultimate destination as Lagos. The petitioner was admittedly the person who prepared the said ticket. It was for the petitioner to explain as to how the ultimate destination filled up in the copy of the coupon, filed in Delhi, had the word “void” but the copy of the coupon with the passengers had the ultimate destination as Lagos. The same was not possible without the connivance of the petitioner. The petitioner has utterly failed to explain the same.

24. Else, this Court cannot sit over the award of the Labour Court as an Appellate Court. The petitioner has not even challenged that if the charge against the petitioner is established and which this Court has satisfied itself is established, then the punishment meted out is not justified. There is no merit in the petition, the same is dismissed. I refrain from imposing costs.

RAJIV SAHAI ENDLAW, J

FEBRUARY 17, 2011

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