

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

% W.P. (C) 16926/2004

+ Date of Decision: 7th September, 2012

**# Management of M/s Cambata
Aviation Pvt. Ltd. Petitioner**

**! Through: Mr. Ashok Kumar Srivastava,
Advocate**

Versus

**\$ The Presiding Officer, Labour
Court-IV & Anr. ...Respondents**

Through: Mr. Atul T.N., Advocate for R-2

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

This Writ petition has been directed against the award dated 7th August, 2003 passed by the Labour Court whereby it had granted the relief of reinstatement to respondent no. 2-workman with 50% back wages.

2. In this case, the respondent no. 2 was working with the petitioner as Utility Hand-cum-Driver. On the day of alleged incident that is, 15th June, 1993 the respondent no. 2 was

deputed on duty for attending the work of loading and unloading in Lufthansa cargo. He alongwith his two other companions, Ram Kumar and Gulshan Rai were alleged to have consumed liquor in the Equipment Parking Area at the Indira Gandhi International Airport at about 0100 hours. When the caretaker on duty objected to that he was threatened by the respondent no. 2 of dire consequences. On the aforesaid allegations, show cause notice dated 16th June, 1993 was issued to the respondent no. 2. This is what exactly was alleged in the notice:-

“It is reported that while you were on duty on June 15, 1993 from 2200 hours to 0600 hours, in Lufthansa Cargo, you alongwith M/s Ram Kumar and Gulshan Rai consumed liquor and meat at about 0100 hours in our Equipment Parking Area. This was objected by the Caretaker on duty. But you threatened him with dire consequences, if he reports the matter to authorities. After about half an hour when Duty Officers and a Supervisor came on round to that area, the Caretaker informed them of the above. They smelled alcohol when they came near to you, on their questioning you shouted at them and even refused to hand over your airport entry pass when demanded.

Your explanation to the above misconduct is to reach the office of the undersigned latest by June 21, 1993. In case no explanation is received by that day, further disciplinary action shall be initiated against you.

Till the time this matter is disposed off, you are required to report for duty at B 5, West End, from 0900 to 1700 hours with an off on Sunday and get your presence marked on the enclosed card.

You are also required to handover your airport entry pass to any staff in the office and get an acknowledgement for the same immediately on receipt of this Show Cause Notice.”

3. Respondent no. 2 refuted these allegations against him and demanded enquiry in the matter. His reply is also being reproduced below:-

“With due respect I beg to state that in reference to your Show Cause Notice No. CAPL/PER/412/93 DATED 16.6.93, I was on duty on 15.6.93 from 22.00 hrs. to 6.00 hrs. in Lufthansa Cargo. When I was coming from Cargo to W.N. 43 then my Tractor’s head light done loose. So I informed L H Staff Mr. S. Malhotra at 01.10 hrs and reached for light fitting and returned back at 01.20 hrs. When I was on my duty then at 04.00 hrs Mr. V Kandari & Mr. Solanki came to me and said that you have drunk liquor, so you can go home. After that I said that I have not drunk liquor and that I am ready for the medical check-up. Then Mr. Kandari said that you may go home and there will be no absent as you are present on duty that day. So I went to home.

No Airport Entry Pass was demanded by them from me. I have already submitted the Airport Entry Pass in the Office on 18.6.93.

In view of the above I humbly request your goodself to kindly make enquiry face to face before me from those who are leveling false allegations against me.

My reply is submitted for necessary action please”.

4. The petitioner then gave charge sheet to the respondent no. 2 and the other two persons confessed his fault during the enquiry and so charge-sheet against him was withdrawn and he was given the punishment of stoppage of his one increment. Enquiry was held against respondent no.2 in which he was found guilty of the aforesaid charge. The enquiry officer’s report was accepted by the management and it decided to

terminate the services of respondent no. 2 and accordingly his services were terminated.

5. The respondent no. 2 then raised a dispute and the Government of NCT of Delhi referred the same for adjudication to the Labour Court. The following was the term of reference:

“Whether the termination of the services of Shri Shiv Kumar is illegal and/or unjustified and, if so, to what relief is he entitled and what directions are necessary in this respect?”

6. Labour Court after examining the claim statement of respondent no. 2-workman, written statement of petitioner management and evidence adduced held that there was a proper enquiry conducted against the respondent no. 2. Still, the Labour Court decided to give the relief of reinstatement to respondent no. 2 while observing as under:-

“I have given my considered thought to the arguments advanced by both the parties and I am of the considered view that imposing of major penalty in the case where both the workman have admitted their guilt and felt sorry for the same, awarding of termination of services to workman is highly disproportionate and not justified in the circumstances. Hence, it is held that termination of services for misconduct proved against workman who was drinking at the Airport while handling costly equipment is not justified. However, since the workman had confessed misconduct himself, I hold that he is entitled to be reinstated with 50% of the back wages with continuity in service and ancillary benefits and with stoppage of two annual increments. It is ordered accordingly.....”

7. The petitioner then challenged the said award dated 7th, August, 2003 passed by the Labour Court by filing this writ

petition. Learned counsel for the petitioner had contended that since the charge that respondent no. 2 had consumed liquor while on duty in the area which could have led to a disaster had been proved in the enquiry, the Labour Court was not justified in granting the relief of reinstatement to respondent no.2. It was further contended by the learned counsel for the petitioner that the Labour Court erred in observing that since respondent no. 2 had also tendered an apology he should have also been given the same punishment as was given to Ram Kumar respondent no. 2 had denied having written any apology letter and so he could not claim parity with his co-worker Ram Kumar.

8. Per contra, learned counsel for the respondent no. 2 contended that the management had treated two similarly placed employees discriminately while awarding them punishment. Counsel, however, did not claim that respondent no.2 had also accepted his fault and prayed for pardon as was done by Ram Kumar. It was also contended that in fact the management had wrongly given lesser punishment to Ram Kumar and considering the gravity of the wrong act committed by these employees dismissal was the only appropriate punishment.

9. I have heard the rival contentions of both the parties and in my opinion this petition deserves to be allowed since the case of

respondent no. 2 cannot be treated at par with that of Ram Kumar as he had not faced the enquiry and instead accepted his guilt and so he was let off with a minor punishment.

10. Reference can here be made to a judgment of the Supreme Court, facts of which were similar to the case at hand, and is reported as *(2005) 8 SCC 46, "Obettee (P) Ltd. V. Mohd. Shafiq Khan"*. In that case on the instigation of the concerned workman, some workers of the employer went on strike despite being warned by the manager. Five persons other than the concerned workman were charge sheeted and were suspended. Two employees gave an assurance of performing their duties diligently and on their tendering an unqualified apology, they were not proceeded against. However, the concerned workman continued to contest the charges levelled against him. The tribunal held the termination of that workman to be legal and proper and distinguished the case of the respondent with his other counterparts. The High Court reversed the order of the tribunal. The appeal was preferred before the Supreme Court by the management which was accepted and it was observed:

“8. On consideration of the rival stand one thing becomes clear that Chunnu and Vakil stood at different footing so far as the respondent - workman is concerned. He had, unlike the other two, continued to justify his action. That was clearly distinctive feature which the High Court unfortunately failed to properly appreciate. The employer accepted to choose the unqualified apology given and regrets expressed

by Chunnu and Vakil. It cannot be said that the employer had discriminated so far as the respondent-workman is concerned because as noted above he had tried to justify his action for which departmental proceedings were initiated. It is not that Chunnu and Vakil were totally exonerated. On the contrary, letter of warning dated 11.4.1984 was issued to them.

9. In Union of India v. Parma Nanda, (1989)IILLJ57SC the Administrative Tribunal had modified the punishment on the ground that two other persons were let out with minor punishment. This Court held that when all the persons did not stand on the same footing, same yardstick cannot be applied. Similar is the position in the present case. Therefore, the High Court's order is clearly unsustainable and is set aside.”

11. In view of the said judgment of the Apex Court this Court is not inclined to accept the contention of respondent no. 2 that on the ground of parity he also deserved to get the same punishment as was given to his co-worker Ram Kumar.

12. The Labour Court erred in not appreciating the fact that the respondent no. 2 could not be treated at par with Ram Kumar. This petition is, therefore, allowed and the order of the Labour Court granting the relief of reinstatement to respondent no. 2 and 50% back wages is set aside.

P.K. BHASIN, J

September 7, 2012