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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.154 OF 2007

Shri Mahadeo Naik

...Petitioner

vs

Maharashtra State Road Transport Corporation ...Respondent

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Mr. S. N. Deshpande, a/w. Mrs. S.P. Munshi and Ms. Nivedita Deshpande, for the Petitioner.

Mr. G.S. Hegde, a/w. Mr. C.M. Lokesh, i/b. G.S. Hegde & Associates, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED: FEBRUARY 7, 2017

(JUDGMENT) :

. This writ petition, filed under Article 226 of the Constitution of India, challenges an award passed by the Labour Court at Mumbai rejecting a reference. The reference impugned an order of termination passed by the Respondent Corporation holding the Petitioner to be guilty of misconduct in a domestic inquiry. The Labour Court found the inquiry to be fair and proper, the findings of the Inquiry Officer to be acceptable and the punishment to be proportionate.

2. Since 19 April 1988, the Petitioner had been working as a bus driver with the Respondent. On 10 May 1996, the State Transport bus driven by the Petitioner collided with a truck coming in the opposite direction, resulting into the death of 2 passengers and injuries to several

others. The Respondent issued a charge-sheet against the Petitioner, levelling charges of misconduct. The Inquiry Officer found the Petitioner to be guilty of gross negligence in driving and held his misconduct of indiscipline, severe damage and inconvenience to the Corporation and the public, breach of departmental circulars/directives and rash driving to be proved. The Respondent thereafter issued a show-cause notice concerning the proposed disciplinary action and after hearing him dismissed him from service with effect from 27 May 1997. Being aggrieved by the dismissal, the Petitioner raised an industrial dispute which was referred as Reference (IDA) No.811 of 1998 to IV Labour Court at Mumbai. By its preliminary awards, the Labour Court held the inquiry to be fair and proper and findings not to be perverse. Thereafter, after hearing the parties on the quantum of punishment, the Court passed its final award, rejecting the reference, finding the punishment to be proportionate.

3. Learned Counsel for the Petitioner, apart from assailing the fairness and propriety of the inquiry and its findings, questioned the disciplinary action from the standpoint of principles of natural justice. Learned Counsel submitted that the person issuing the charge-sheet, and conducting the inquiry himself acted as a disciplinary authority and passed the dismissal order. He acted as an investigator, prosecutor and also a judge. Learned Counsel relied on the judgment of the Supreme Court in the case of **State of Uttaranchal vs. Kharak Singh**¹, and the judgments of our court in the cases of **N.S.S Chari vs. Union of India**²,

1 2008 III CLR 1062 (para 12)

2 1988 II CLR 249 (paras 19 and 20)

Murlidhar Sitaram Rane vs. State of Maharashtra³, **D.S. Patil vs. R.B. & Co.**⁴ and **Shantilal Motilal Marwadi vs. Lipton Tea**⁵ in support of his contentions.

4. The principle of law laid down in the judgments cited by learned Counsel for the Petitioner is that domestic inquiries must be conducted honestly, bonafide and without any bias; the delinquent employee must be given a fair opportunity to defend himself at the inquiry; and he must have an equally fair opportunity to show cause against the penalty proposed against him based on the findings of the inquiry. These requirements, which are basic and form part of the very process of natural justice by which all judicial proceedings must be informed, lead to other incidental or subsidiary requirements, namely, the inquiry officer cannot himself be a witness or he cannot both prosecute the delinquent and be his judge or where the enquiry officer is other than the disciplinary authority, the proceedings of inquiry and disciplinary action must be held in two separate stages. In **Kharak Singh's** case (supra), the enquiry officer after putting certain questions to the delinquent employee and securing answers presented a report. No witnesses were examined. There was not even a presenting officer. The enquiry officer himself inspected the site and took note of the deficiencies and after securing answers from the charge-sheeted employee made his report. What is more, he himself strongly recommended a severe punishment, namely, that of dismissal from service. In other words, he himself acted as an investigator, prosecutor

3 1990 I CLR 337 (paras 15 to 18)

4 1986 (56) CLR 39 (para 8)

5 1991 II CLR 225 (paras 7 and 8)

and judge. There was no evidence to show that before the disciplinary authority took action, a copy of the report was furnished to the employee and he had adequate opportunity to show cause against the punishment. In the premises, the order of dismissal was quashed by the Court. Even in the Bombay cases, the thrust of challenge was that the enquiry officer had himself entered the arena and acted as the prosecutor and the judge combined. In **Murlidhar Sitaram Rane's** case (supra), the enquiry officer did this despite there being a presenting officer present in the enquiry to represent the management. In **Shantilal Motilal Marwadi** (supra), the enquiry officer not only acted as a prosecutor but also refused to allow a co-workman to defend the delinquent workman and relied extensively on hearsay evidence to hold the delinquent employee guilty. In **D.S. Patil's** case (supra), the enquiry officer, besides entering the arena, interfered with the production of evidence by the charge-sheeted employee. These were all stark instances of denial of natural justice.

5. Before we examine the facts of the present case in the light of these principles, it is important to note that there is no inherent infirmity in having the disciplinary authority inquire into the misconduct of a charge-sheeted employee. What the decided cases lay down is that where the two authorities, namely, the inquiring officer and the disciplinary authority, are different, the proceedings must be held in two separate stages, the charge-sheeted employee having an opportunity to show cause separately both in the enquiry and for the punishment proposed on the basis of the inquiry. Under the discipline and appeal regulations framed by the Respondent Corporation, as a general rule, the

Appointing Authority, or any Authority higher than it, is competent to initiate departmental proceedings and to hold enquiry against the employee concerned and to award punishment - (Clause 18). So also, without prejudice to the competence of the Appointing Authority or to the inherent powers of any higher authority, the officers mentioned in Schedule 'C' of the regulations were appointed to be the competent authority to deal with acts of misconduct of different classes of employees and to inflict punishments as if they were the competent authority under Clause 18(Clause 19). It is not in dispute that the Divisional Traffic Officer, who conducted the inquiry and decided the punishment, was a competent authority within the meaning of these clauses, and could, therefore, hold the inquiry and also inflict the punishment. There is, accordingly, no substance in the Petitioner's contention that there was breach of principles of natural justice by reason of the fact that the inquiring authority and the disciplining authority were the same.

6. Let us now consider the manner in which the inquiry was actually held in the present case. The inquiry was held on four dates. There was a presenting officer who submitted his report after he was examined. His cross-examination was conducted by the Union's representative who was conducting the defence of the workman, and who was chosen for the task by the workman himself. The workman's evidence was recorded by the competent authority with the help of the Union's representative; the former's signature was obtained on it. After the inquiry, the findings of the competent authority were supplied to the workman, before he was asked to show cause in the matter of

punishment proposed. There is, in the premises, adequate compliance with the principles of natural justice. Merely because questions were asked to the workman by the enquiry officer, it cannot be said that natural justice was denied to him. In his statement of claim before the Labour Court, the Petitioner took up a position that his statement was not recorded and that he was directly subjected to cross-examination, and he was not given documents on the basis of which he was held guilty. Both these averments are belied by his evidence laid before the Court. The Petitioner admitted in his cross-examination before the Court that *“U.R. recorded my statement and which is recorded by E.O. and my signature was obtained”*; and that it was true that *“along with charge sheet copies of police papers and the report submitted by the G.M. were given to me.”*

7. The Labour Court, in its award on the preliminary issue, after going through the record of the case and analysing the evidence led before it, held that the Petitioner had failed to prove that the enquiry conducted by the Respondent was not fair or proper. This is clearly a possible conclusion, based on evidence. It is not vitiated by reason of any irrelevant or non-germane circumstance or material being taken into account or any relevant or germane circumstance or material being disregarded.

8. As for the conclusion of the enquiry officer on the charges levelled against the Petitioner, the Labour Court, in its second preliminary award on the issue of perversity, accepted the management's case that the enquiry officer had derived his findings on the basis of the

report submitted by the reporter, panchnama and other relevant documents on record as also oral evidence led by the parties and held that the findings of the enquiry officer were based on evidence and there was no perversity in them. There was indeed material before the court which can support the findings of the inquiry officer that on a turning road and during the night, the Petitioner drove the bus at a speed which resulted into the truck driver coming from the opposite direction ramming the truck into the bus and tearing its right side till Seat No.39. The Petitioner has admitted in his evidence that the bus he was driving was on the right at the turning and only when he saw the truck suddenly coming on that he turned the bus towards the left. The Petitioner, of course, explains this by stating that there was a pitch (*ditch, sic?*) on the left side of the turning. That, however, is a matter of assessment of evidence. Based on the material before the court, namely, the reporter's report, police panchnama, statements of witnesses, etc., it cannot be said that the conclusion drawn by the Court is such as no reasonable man, duly instructed in law, could ever have arrived at.

9. In sum, there is no merit in any of the contentions advanced by the Petitioner before this Court. The writ petition is, accordingly, dismissed. No order as to costs.

(S.C. GUPTE, J.)