

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 25th July, 2017

Date of decision : 28th July, 2017

W.P.(C) 6293/2017 & CM APPL. 26075/2017

SANJAY KUMAR

..... Petitioner

Through Mr. Girdhari Singh, Adv.

versus

THE UNION OF INDIA & ANR

..... Respondent

Through Mr. Ripu Daman Bhardwaj,
CGSC with Mr. Sahaj Garg,
Adv. for R1/UOI.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

CM APPL. 26075/2017

This is an application filed on behalf of the petitioner / applicant Sh. Sanjay Kumar seeking exemption from filing certified copies of the orders and dim annexures.

Exemption allowed, subject to just exceptions. The application is disposed of.

W.P.(C) 6293/2017

1. The petitioner has assailed the impugned Award dated

04.01.2017 of the Presiding Officer, Central Government Industrial Tribunal No.-II, Karkardooma Court Complex, Delhi – 110032 in I.D. No. 1/12 whereby the reference of the Central Government of the Ministry of Labour sent Letter No. 11012/02/2011(IR(CM-I) dated 20.12.2011 : -

“Whether the action of the management of JAC Air Service Pvt. Ltd. in termination the service of Sanjay Kumar is legal and justified? To what relief the workman concerned is entitled to?”

was answered against the workman / the petitioner herein in favour of the Management / the respondent.

2. During the course of the proceedings before the Presiding Officer, Central Government Industrial Tribunal No. –II, Karkardooma Court Complex, Delhi – 110032, the following issues were framed : -

“1. Whether the action of the management of JAC Air Services Pvt. Ltd. in terminating the service of Sh. Sanjay Kumar is legal and justified? If so its effect?

2. To what relief the workman is entitled to?”

3. The workman / the petitioner herein through his Statement of Claim filed on 07.08.2013 sought reinstatement of his services with continuity of his previous service alongwith full backwages and other

consequential reliefs and the Management / the respondent herein on the other hand i.e. M/s. JAC Air Services Pvt. Ltd., arrayed as respondent no. 2, to the present petition prayed for dismissal of the Statement of Claim of the workman / the petitioner herein.

4. The evidence led in relation to Issue No. 1 by the Management / the respondent herein brought forth through the testimony of the petitioner himself examined as WW1 that an incident of theft took place on 03.08.2008 during the flight check operation for which the memo was issued to the workman / the petitioner herein and an inquiry was held in which the workman / the petitioner herein participated and after the inquiry report, the Disciplinary Authority terminated the services of the workman / the petitioner herein which letter of termination was received by the workman / the petitioner herein, who despite the same filed no appeal against his termination. The workman / the petitioner herein also admitted in his cross-examination that he had filed no objection against the manner of the conduct of inquiry by the Inquiry Officer. He further stated that no copy of the report of the inquiry was supplied to him but stated that he does not apply for the copy of the inquiry report till the date of his

5. Mr. K.J. Ratwani examined as MW1 on behalf of the Management before the Presiding Officer, Central Government Industrial Tribunal No.-II, Karkardooma Court Complex, Delhi – 110032 categorically stated that the inquiry was conducted in a proper manner and that the principles of the natural justice had been followed. Despite cross-examination conducted on behalf of the workman / the petitioner herein by his Presenting Officer, there is no substantial query put to MW1 on behalf of the workman / the petitioner herein to challenge the veracity of the testimony of MW1.

“IO What you know about your charge sheet.

Whether you have committed theft from Dell and

caught hold ?

Mr. Sanjay

Sir, I am working in this field from the last two years. These was a shipment of eight packets, various other person were also working in our company, meanwhile Mr. Leela Ram Assistant Security Officer came, he unwrapped the tape and put the T shirt on the packet and took the photographs. He told me that I was committing theft from the packet and then he took me to the DIAL / AAI Security officer and directed me to write a statement in this respect. I wrote my statement and handed over the same to him. He also took away my entry card by which I used to make my entry.

Mr. Kaushikji

Sanjay took out T Shirt form the packet, while performing his duty. He was caught red handed by the security. The report of which has been given by them to the company vide letter No. DIAL / CGT / SEC / IND / 206/2008 / 557 dated 5.8.2008. Secondly Sanjay has also accepted his

guilt of theft in his statement. From which it is proved that he tried to commit theft and therefore the charge levelled against him is proved.

IO *Whether you want to say anything in respect of your statement given by you on 29.8.2008.*

Mr. Sanjay *No.*

Mr. Satrugnan *They said that Sanjay is a good boy, but on 3.8.2008 when he was checking the TG Airline flight, he took out one T shirt from the packet and wore the same, I caught him at that time only and informed A/SO Leela Ram, who took further action for the same.*

Mr. Kaushik *Sh. Satrudhan Ji you were checking TG Flight with Sanjay Loader on 3.8.2008, You apprehended Sanjay while committing theft of T Shirt.*

Mr. Satrugnan *Yes. I caught him red handed.*

Mr. Kaushik *Mr. Sanjay you had written and stated in enquiry dated 29.8.08 I was wrapping tape on the packet*

and Leela Ram put the T Shirt on the packet and took photograph and levelled the allegations of theft on me but Mr. Satrugan stated that you have committed theft, whether you accept the same.

Mr. Sanjay Yes, I took out the shirt, but in future I will not commit such act, I may be excused.

*Sd/-
12.9.2008 ”*

Sd/-

Sd/-

7. In the inquiry proceedings the workman / the petitioner herein initially stated that there was a shipment of eight packets and Mr. Leela Ram Assistant Security Officer came and had unwrapped the tape and put the T Shirt on the packet and had taken the photographs and had told him that he had committed theft and he took the workman / the petitioner herein to DIAL / AAI Security Officer and had directed him to write a statement in this respect and that the workman / the petitioner herein had written his statement and had handed over the same to him. **On further query by the Presenting Officer for the respondent no. 2 in the inquiry proceedings, it was stated by the workman / the petitioner herein that he took out the**

T Shirt but in future he would not commit such act and that he may be excused.

8. The letter dated 04.08.2008 of the petitioner filed alongwith the petition also indicates that he did take out the T Shirt intentionally and that he admitted his fault in relation thereto.

9. During the course of the present proceedings, learned counsel for the petitioner submitted that such admission of guilt of the petitioner on 04.08.2008 was under coercion. However, the same does not suffice to explain as to why no appeal was filed by the petitioner against his termination and it cannot be overlooked that the petitioner did not challenge the conduct of the inquiry proceedings in any manner and there is nothing to bring forth that the inquiry had not been conducted fairly.

10. Rather the inquiry proceedings and the cross-examination conducted before the Presiding Officer, Central Government Industrial Tribunal No. –II, Karkardooma Court Complex, Delhi – 110032 bring forth categorically that the incident of the theft of a T Shirt which had been stolen by the workman / the petitioner herein who as per his explanation dated 04.08.2008 had suddenly been overcome by greed

had taken place on 03.08.2008 during the flight check operation.

11. In these circumstances, it is apparent that there is no infirmity in the findings of the Presiding Officer, Central Government Industrial Tribunal No. –II, Karkardooma Court Complex, Delhi – 110032 in relation to Issue No. 1 framed which brings forth that there was no illegality committed by respondent no. 2 in terminating the services of Mr. Sanjay Kumar / the workman / the petitioner herein.

12. As regards Issue No. 2, which related to the aspect as to what relief the workman / the petitioner herein was entitled to, it is apparent that as the termination of the services of the workman / the petitioner by the respondent no. 2 has been held to be justified, coupled with the factum that the petitioner had been found committing theft of a T Shirt belonging to the respondent no. 2 and though it may have been a theft of a trivial kind, the same was a material misconduct by the petitioner in discharge of his duties and thus it is apparent that he is not entitled to any relief. Thus there is no infirmity in the impugned Award dated 04.01.2017 of the Presiding Officer, Central Government Industrial Tribunal No. –II, Karkardooma Court Complex, Delhi – 110032 in I.D. No. 1/12 whereby Issue No. 2 was decided against the workman /

the petitioner herein answering the reference accordingly.

13. The totality of the circumstances brought forth on a bare perusal of the petition and the copies of the annexures thereto which include the copy of the inquiry proceedings, copy of letter dated 04.08.2008 admittedly signed by the workman / the petitioner herein and the testimony of WW1 / the petitioner herein and the testimony of MW1 Mr. K.J. Ratwani, the Executive Director of the respondent no.2 before the Presiding Officer, Central Government Industrial Tribunal No.-II, Karkardooma Court Complex, Delhi – 110032 in I.D. No. 1/12 suffice to bring forth that there is no infirmity in the impugned Award dated 04.01.2017 of the Presiding Officer, Central Government Industrial Tribunal No. -II, Karkardooma Court Complex, Delhi – 110032 in I.D. No. 1/12 and thus there is no ground to proceed with the petition in any manner.

14. It is thus not considered to issue any notice of the petition and the W.P.(C) 6293/2017 is thus dismissed.

ANU MALHOTRA, J

JULY 28th, 2017
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