

\$~26

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

%

Date of Decision: 15th July, 2019

+ W.P.(C) 4414/2017

M/S DECCAN CHARTERS PRIVATE LIMITED Petitioner

Through: Ms.Surbhi Sharma, Advocate

versus

VIKRAM THAPA

..... Respondent

Through: Mr.Gajendra Giri, Advocate

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The petitioner has challenged the order dated 04th January, 2017 whereby the Industrial Tribunal held that the domestic inquiry conducted by the petitioner was violative of the principles of natural justice. The Industrial Tribunal directed the petitioner to pay interim compensation at the rate of 50% of the last drawn wages from the date of filing of application by the respondent.

2. Learned counsel for the petitioner submits that the respondent indulged in a serious misconduct. It was further submitted that the respondent was warned for his misbehavior towards customers, pilots and other members of the Company but he did not pay heed to the warnings issued against him. The four show cause notices dated 31st May, 2011; 01st December, 2011; 02nd December, 2011; and 16th December, 2011 issued to the respondent for his misbehavior are reproduced hereunder:-

2.1. **First show cause notice dated 31st May, 2011**

“Dated: 31 May 2011

*Mr Vikram Thapa
Emp Code - 562 Driver
Deccan Charters Ltd.
New Delhi*

SHOW CAUSE NOTICE NO -1

1. *It has been observed the following:-*
 - (a) *On 28 May 2011, when you are performing the duty on Innova vehicle and detailed for the conveyance of Pilots from Airport to D-1 Guest House. You have given a additional task to drive on Tavera also in Hanger for 15-30 Mins only but you have refused to do the duty on Tavera resulting Mr Chander Prakash had hired at temp driver to drive Tavera vehicle and paid Rs.1655/- (Rupees One Thousand Six Hundred Fifty Five Only) by the Company.*
 - (b) *On 28 May 2011, you had performed the duty on Innova from D-1 Guest House to Nizamuddin and back without information of the designated authorities.*
 - (c) *On 31 May 2011, as per roster for the month of May 2011 you were detailed for morning duty from (0600-1400 hrs) on Innova, at 0630 hrs the under signed had given a movement for conveyance of Pilots for dep of VT - DAR at 0730 hrs but you have replied that I will come at 0800 hrs which is violative of the order.*
2. *Your above activities have been viewed seriously because you have not taken the seriousness on the orders issued by your superior.”*

(Emphasis Supplied)

2.2. **Second show cause notice dated 01st December, 2011**

“Dated: 01 Dec 2011

*Mr Vikram Thapa
Emp Code - 562 Driver
Deccan Charters Ltd.
New Delhi - 37*

SHOW CAUSE NOTICE NO -2

1. *It has been observed that on 30 Nov 2011, when you were performing the duty on Tavera vehicle in the hanger, I receive a call*

from Col K Valsaraj, Chief Pilot stating that pilots (Cap Vikas & Cap Rishi) who were to go on sortie of VT - DAR are being delayed as you are not coming to pick them up even after timely messageses were passed to you by the coordinators i.e. Traffic Assistant Mr Chander Prakash, Jitender Singh Negi & Anil Kumar at 1515 hrs. You then reported only at 1545 hrs at your convenience.

2. Investigation report of the incident by Col Naveen Wig is attached.”

2.3. Third show cause notice dated 02nd December, 2011

“Dated: 02 Dec 2011

*Mr Vikram Thapa
Emp Code 562 Driver
Deccan Charters Ltd.
New Delhi - 37*

SHOW CAUSE NOTICE NO -3

1. It has been observed that Wg Cdr S Katoch of J&K Govt - Civil Aviation Department had four times complaint against you for late reporting with the vehicle, when you were performing the duty in the hanger area on Tavera vehicle and after that on asking reason by him, you misbehaved with him in presence of one of the Traffic Assistant i.e Mr Chander Prakash, Jitender Singh Negi & Driver Anil Kumar on the following dates:-

- (a) 16 April 2011*
- (b) 19 October 2011*
- (c) 08 November 2011*
- (d) 30 November 2011*

2. You are well aware that J&K Govt - Civil Aviation Department is our valued customer since long. Your indifferent approach and unnecessary arguments with Wg Cdr S Katoch have resulted in the customer giving intimation that they will be withdrawing from the ongoing contract with us, thus resulting in financial loss to the company.”

2.4. Fourth show cause notice dated 16th December, 2011:

“Dated: 16 Dec 2011

Mr Vikram Thapa
Emp Code - 562 Driver
Deccan Charters Ltd.
New Delhi - 37

SHOW CAUSE NOTICE NO -4

1. It has been observed that when you were performing the duty on Tavera vehicle today in hanger. After B Jets Flight movement, I received a complaint against you from Traffic Assistt Chander Prakash and Driver Anil Kumar who are performing the duty of the ground handling on arrival of B Jets Flight movement at 1700 hrs. Cap Wadva and Cap M Shariq (Pilots) were also awaiting you. When Chander Prakash asked for your vehicle you have told that I am with Er Rajeev Kumar Singh. When Chander Prakash checked with Er Rajeev Kumar Singh, told that I am not with driver Vikram Thapa as I am coming on foot.
2. Complaint of the incident by Traffic Assistt Chander Prakash and Driver Anil Kumar is attached.”
3. The charge against the respondent mentioned in the termination letter dated 15th March, 2012 is reproduced hereunder:

“This has reference to the show cause notices issued to you for your misconduct, dated 31 May 2011, 01 Dec 2011 and 02 Dec 2011. Your replies to the show cause notices are unsatisfactory. Moreover, you have thereafter been continuing with your misconduct, which are not only adversely affecting the normal working but also affecting the image of the company with its passenger/clients. We have received several complaints of your misbehaviour with our passengers/clients. You have on several occasions failed to perform your day-to-day duties and often disobeyed the instructions of your reporting officers. You are also refusing to accept work from your supervisor/carry out assigned work by him. And you are the in the habit of arguing with your supervisors and other colleagues.

It has also been reported against you as under:

That on March 6, 2012, when tasked by your superior you refused to accept assigned work and later when enquired by the VP – Northern Region about your misconduct, it was observed that you refused to respond to the questions/concerns raised by the VP- Northern Region

and walked out stating that “I will not do any duty or words to this effect”, in a highly rude manner.

Thus, you have contravened the Code of Conduct Policy of the Company and the terms & condition of your employment, of the following clauses viz:

- 1. Acts of indiscipline.*
- 2. Hindering the normal work by refusing to perform your duties.*
- 3. Misconduct with passengers/clients, supervisory staff and VP-Northern Region.*
- 4. By refusing to maintain your vehicle or refusing to take it for servicing, you have causing damage to property of the Company.*

In view of the above circumstances, as well as on violating the Code of Conduct Policy of the Company and the terms & conditions of your employment, we are not in a position to continue to avail your services as Driver. Hence your services are terminated with immediate effect, under clause 5 of the terms of your appointment, by payment of one month’ salary in lieu of notice period. You are requested to return all properties of the Company in your possession to your immediate superior, including the Airport Entry Pass issued by the Airport Authorities, Government of India. Necessary instructions will be given to the Accounts Department to settle your accounts with the Company.”

4. Learned counsel for the petitioner submits that this is a clear case of loss of confidence by the petitioner in the respondent and no inquiry was required to be conducted by the petitioner for the first instance as per the principles laid down by this Court in ***State Bank of Travancore v. Prem Singh***, 2019 SCC OnLine Del 8258 in which this Court held that the employee can be terminated without inquiry in the case of loss of confidence. This Court further held that even if the inquiry was held to be bad, the employee is not entitled to reinstatement but only compensation.

5. Learned counsel for the petitioner submits that this case is squarely covered by the principles laid down by this Court in ***State Bank of***

Travancore (*supra*) and, therefore, even if the inquiry is held to be vitiated, the respondent is not entitled to reinstatement but only compensation. It is submitted that this submission is without prejudice to the petitioner's case that there has been no violation of principles of the natural justice. It is further submitted that the learned Industrial Tribunal be directed to hear the matter afresh in terms of the principles laid down by this Court in *State Bank of Travancore* (*supra*).

6. The law with respect to the loss of confidence is well-settled that the reinstatement cannot be ordered when an employee acts in a manner by which the management loses confidence in him. In case of loss of confidence, only compensation can be awarded. Reference be made to the recent judgment of this Court in *State Bank of Travancore* (*supra*) in which this Court, after considering *M/s Francis Klein & Co. Pvt. Ltd. v. The Workmen*, AIR 1971 SC 2414, *Air India Corporation v. V.A. Rebellow*, AIR 1972 SC 1343, *Anil Kumar Chakaborty v. M/s Saraswatipur Tea Company Limited*, AIR 1982 SC 1062, *Chandu Lal v. Management of M/s Pan American World Airways Inc.*, (1985) 2 SCC 727, *O. P. Bhandari v. Indian Tourism Development Corp. Ltd.*, (1986) 4 SCC 337, *Workmen v. Bharat Fritz Werner (P) Ltd.* (1990) 3 SCC 565, *A.K. Dass v. National Fed. of Coop. Sugar Factories Ltd.* 1994 SCC Supl. (2) 520, *Punjab Dairy Development Corporation Ltd. v. Kala Singh*, (1997) 6 SCC 159, *Sudhir Vishnu Panwalkar v. Bank of India*, (1997) 6 SCC 271, *Kanhaiyalal Agrawal v. Factory Manager, Gwalior Sugar Co. Ltd.*, AIR 2001 SC 3645, *Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane*, (2005) 3 SCC 254, *Bharat Heavy Electricals Ltd. v. M. Chandrasekhar Reddy*, AIR 2005 SC 2769, *T.N.C.S. Co. Ltd. v. K. Meerabai*, (2006) 2 SCC 255, *State Bank*

of Bikaner & Jaipur v. Nemi Chand Nalwaya, (2011) 4 SCC 584, *Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal*, (2012) 1 SCC 442, *On-Dot Couriers & Cargo Ltd. v. Anand Singh Rawat*, (2009) 165 DLT 89, *All India Institute of Medical Sciences v. O.P. Chauhan*, 2007 LLR 435 (Del HC), *Abheraj Jaswal v. M/s Godrej Boyce Manufacturing*, 2011 SCC OnLine Del 3301, *Johnson and Johnson Ltd. v. Gajendra Singh Rawat*, (2016) 233 DLT 388, *Lancers Convent Senior Secondary v. Jai Prakash*, 2018 SCC OnLine Del 7763, *Sindhu Education Society v. Kacharu Jairam Khobragade* (1995) ILLJ 451 Bom, *Sanjiv Kumar Mahapatra v. A.L. Alaspurkar*, 2003 (1) ALLMR 534, *National Institute of Mental Health & Neuro Sciences v. Sri G. Suggappa*, W.P. No.66/2013, *Torrent Power Ltd. v. Chelabhai Nathabhai Luhar* 2018 SCC OnLine Guj 3580 , summarised the principles as under:-

“Summary of Principles

31. When an employee acts in a manner by which the management loses confidence in him, his reinstatement cannot be ordered because it would neither be desirable nor expedient to continue the employee in service. It may also be detrimental to the discipline or security of the establishment. In case of loss of confidence, only compensation can be awarded.

32. The plea of ‘loss of confidence’ by the employer has to be bonafide. Loss of confidence cannot be subjective. It has to rest on some objective facts, which would induce a reasonable apprehension in the mind of the management regarding the trustworthiness of the employee and the power has to be exercised by the employer objectively in good faith, which means honestly with due care and prudence. Otherwise, a valuable right of reinstatement to which an employee is ordinarily entitled to, on a finding that he is not guilty of any misconduct, will be irretrievably lost to the employee.

33. The bonafide opinion formed by the employer about the

suitability of his employee for the job assigned to him, even though erroneous, is final and not subject to review by the industrial adjudication.

34. *In case of misconduct resulting in loss of confidence, the employer is not bound to hold any inquiry to visit the employee with penal action even if such reason happens to be misconduct of the employee.* The employer, in its discretion, may invoke the power to discharge simpliciter for loss of confidence while dispensing with inquiry into the conduct of the workman. The departmental inquiry in such a case is not necessary.

35. *The reinstatement of an employee terminated for loss of confidence cannot be ordered even if the inquiry held by the employer has been held to be bad.*

36. *The reinstatement of an employee terminated for loss of confidence for involvement in a criminal case cannot be directed even if the employee is able to secure a acquittal or discharge in the criminal case.*

37. *The reinstatement has not been considered desirable in cases where there have been strained relationship between employer and employee. The reinstatement is also denied when an employee has been found to be guilty of subversive or prejudicial activities. The Courts have also denied reinstatement in cases where long time has lapsed or where the industry itself has become sick."*

(Emphasis Supplied)

7. This Court is of the *prima facie* view that this case is covered by the principles laid down in ***State Bank of Travancore*** (*supra*). In that view of the matter, the impugned order dated 04th January, 2017 is set aside and the case is remanded back to the Industrial Tribunal to hear the matter afresh in terms of the principles laid down in ***State Bank of Travancore*** (*supra*).

8. Learned counsels for the parties submit that the next date of hearing before the Industrial Tribunal is 18th July, 2019.

9. The Industrial Tribunal shall endeavour to hear and decide the matter afresh within a period of three months from 18th July, 2019.

10. The writ petition is disposed of in the above terms.

11. The amount deposited by the petitioner in terms of order dated 21st August, 2017 shall be retained by the Registrar General of this Court till the fresh order is passed by the Industrial Tribunal. The Registrar General shall disburse the amount in terms of the fresh order to be passed by the Industrial Tribunal.

12. Copy of this judgment be given *dasti* to counsel for the parties under the signatures of the Court Master.

JULY 15, 2019
ds

J.R. MIDHA, J.

