

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2020

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

W.P.No.11369 of 2003

S.John

... Petitioner

-Vs-

1. The Presiding Officer
Central Government Industrial Tribunal
Shastri Bhavan, Haddows Road,
Chennai 600 006.

2. The Indian Airlines Corporation rep.by its
Regional Director, Southern Region
Chennai 600 027.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus calling for the records of the first respondent in I.D.No.493 of 2001 dated 26.11.2001, quash the same and consequently direct the 2nd respondent to reinstate the petitioner in service with effect from the date of dismissal, with all attendant benefits like promotion as also treat the period of suspension as spent on duty paying him the arrears of pay and allowances.

For Petitioner :Mr.R.Parthiban

For Respondents :Mr.Srinivasamurthy for M/s.NGR Prasad

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the first respondent in I.D.No.493 of 2001 dated 26.11.2001, quash the same and consequently direct the 2nd respondent to reinstate the petitioner in service with effect from the date of dismissal, with all attendant benefits like promotion as also treat the

period of suspension as spent on duty paying him the arrears of pay and allowances.

2. The necessary facts which are required for the disposal of this writ petition are as follows, that the petitioner along with two other employees were arrested on 14.12.1986 by the Customs Department under the Customs Act on the alleged crime that the petitioner and two other employees, who were working under the second respondent, were involved in smuggling activities.

3. Pursuant to the said arrest, a complaint was given to the Additional Chief Metropolitan Magistrate stating that, the petitioner and others have attempted to smuggle three suitcases containing synthetic stones and they have confessed the crime of attempting to smuggle those three suitcases.

4. On coming to know about the offence, the petitioner and the other two employees had been arrested as stated above. The second respondent, on 17.12.1986, placed the petitioner and the other two employees under suspension in connection with the said incident. Subsequently, on 20.02.1987, a Charge Memo was issued to all the three including the petitioner alleging that, they had committed misconduct under the Standing Orders of the respondent Corporation especially Standing Orders 16(1)(4) and (6) and that, the petitioner and others have not maintained the integrity and devotion of duty and they involved in theft, fraud and dishonesty in connection with the business or property of the Corporation and breach of Standing Orders.

5. Though sufficient particulars, according to the second respondent, were given to the petitioner for giving reply to the said Charge Memo, no reply had been given. Therefore, the second respondent employer proceeded to enquire the matter by appointing an Enquiry Officer, before whom, the petitioner and the other two employees appeared and the enquiry was conducted. According to the second respondent, after giving due opportunity to the petitioner and others, the Enquiry Officer concluded the enquiry and gave a report stating that, the charges against the petitioner and others were proved. Having accepted the same, the second respondent decided to inflict the punishment of dismissal of service on the petitioner and others.

6. At that juncture, before implementing the order of dismissal, since there had been an issue with regard to the service conditions of the employees of the second respondent organization pending before the National Industrial Tribunal at Mumbai, as per the statutory requirement under Section 33(2)(b) of the Industrial Disputes Act, 1947, a permission petition was filed by the second respondent organization to seek permission

or approval for dismissing the services of the petitioner and two others. The National Industrial Tribunal also, after having gone into the said request made by the employer, has given its findings as well as approval for such an action of dismissal of service, which can be inflicted against the petitioner and others, pursuant to which the orders of dismissal were passed by the employer against the petitioner and two others. Challenging the same, under Section 2(A)(2) of the Industrial Disputes Act, 1947, industrial disputes were raised by filing I.Ds., separately by all the three employees including the petitioner in I.D.Nos.105 of 1996, 61 of 1998 and 62 of 1998 respectively.

7. In this context, it is to be noted that all the three I.Ds., were heard together and ultimately the Labour Court ie., the Central Government Industrial Tribunal-cum-Labour Court, Chennai, in its Common Award dated 26.11.2001, dismissed those three I.Ds., filed by the employees including the one filed by the petitioner, as against which, the petitioner herein as well as two other employees filed separate writ petitions. However, insofar as the other two employees viz., M.V.Anantha Subramanian, and D.Kumar Christopher are concerned, they have not pursued the same and therefore the only writ petition which is to be decided now is the writ petition filed by the employee S.John in the present writ petition in W.P.No.11369 of 2003, which is filed against the Common Award passed in I.D.No.62 of 1998 on the file of the Industrial Tribunal dated 26.11.2001. That is how this writ petition has come before this Court for hearing.

8. Heard Mr.R.Parthiban, learned counsel appearing for the petitioner employee, who submitted that , the petitioner wants to assail the impugned Award passed by the Labour Court on two grounds. According to him, the first ground is that, when preliminary objection was raised about the fairness of the domestic enquiry conducted by the employer, the Labour Court ought to have decided that issue as preliminary issue, of course separately, and after rendering the decision on that issue only, the labour Court should have proceeded to decide the ID., on merits. However, the Labour Court failed to do the same as it has clubbed the preliminary issue of fairness of the enquiry and also the merits of the I.D., and accordingly the present Award, which is impugned herein, was passed and therefore it is unlawful and hence on that ground, the impugned Award is liable to be interfered with.

9. The learned counsel has raised a second ground that, during the enquiry, a co-employee of the petitioner was sought to be pressed into service to assist the employee, however on the particular date of enquiry, the co-employee, who was at Hyderabad, could not move due to unforeseen reasons and when the

same was brought to the notice of the Enquiry Officer, he has rejected the said plea made on behalf of the employee / petitioner. Therefore, the chance of getting assistance of his choice by the employee, who was facing the enquiry, was denied and this kind of denial on the part of the Enquiry Officer is unlawful in view of the law having been declared by this Court in a reported decision in "Management of Chidambaram Shipcare Ltd -vs- Presiding Officer, Labour Court, Chennai [2011 (7) MLJ 1065] . Therefore, on that ground also, the Award impugned is infirm and therefore on these two grounds, the impugned Award can be interfered with by this Court and the relief sought for by the petitioner can be considered to be granted.

10. However, Mr.Srinivasamurthy, learned counsel appearing for the second respondent Organization, who is the employer, has submitted that, insofar as the first ground that, the preliminary issue about the fairness of the domestic enquiry is concerned, in normal circumstances, that kind of preliminary issue, if it is raised, would be decided separately by the Labour Court concerned. However, in the present case, when the employer decided to inflict the punishment of dismissal against the petitioner and other two employees, they had to get a nod from the National Industrial Tribunal, Mumbai, where, so many other issues regarding the service conditions of the employees of the respondent organization was pending and therefore, as per the statutory requirement under Section 33(2)(b) of the Industrial Disputes Act, 1947 a petition was filed by the Management before the said National Industrial Tribunal and the said Tribunal, while considering the plea raised by the Management to give permission within the meaning of Section 33 (2)(b) of the Act, has also considered the issue with regard to the fairness of the domestic enquiry since that was specifically raised by the employee's side before the National Industrial Tribunal. The National Industrial Tribunal, having gone into the said aspects, has come to a conclusion that, the domestic enquiry was conducted fairly and in that respect, the preliminary objection even before the National Industrial Tribunal on the employee's side was considered and rejected.

11. Only in that context, since already a judicial forum has gone into that aspect and has made its findings, that was taken in aid by the present Labour Court and therefore in fact the present Labour Court need not have gone into the preliminary issue, which has already been raised before the National Industrial Tribunal. Nevertheless, the present Labour Court has framed that issue as one of the issue and has given its answer in the impugned Award, where of course the findings given by the National Industrial Tribunal has been taken in aid. Therefore, the counsel for the second respondent Management would contend that, the said objection raised on behalf of the employee that,

the fairness of the domestic enquiry should have been decided as preliminary issue separately, may not be required to be followed in the present case, in view of the afore stated peculiar facts and circumstances and therefore the said ground cannot be sustained.

12. Learned counsel for the second respondent, in respect of the second ground raised by the petitioner's side would contend that, as far as the claim of the employee that the co-employee, who was in Hyderabad at the time of domestic enquiry since could not move due to unforeseen reasons, the Enquiry Officer has not considered the plea raised on behalf of the employee and rejected the same, by thus the employer had denied a fair opportunity to the employee to put forth his defence effectively before the Enquiry Officer is concerned, this position has been explained by the Management in their counter affidavit before the Labour Court, where the learned counsel for the second respondent has relied upon the following portion.

"8. With regard to para 7, it is submitted that the Enquiry Officer permitted the petitioner to avail the assistance of Shri A.J.Elisha, Technical Assistant, as his friend, though the said employee was positioned at Hyderabad. As per instructions, only in respect of employee in outstation, where a limited number of staff are working, the facility of friend from a base station / other outstation is allowed. Though the petitioner who was working in a base station ie., Chennai, where there were about 1500 employees working, could have chosen a friend from the base station, but still he opted to avail the assistance of Shri A.J.Elisha of Hyderabad but, however the Enquiry Officer permitted him to have the assistance of the said Shri A.J.Elisha. On that score he cannot claim an extra privilege. For the enquiry fixed on 11.05.1992 the petitioner's friend sent a message seeking adjournment due to "unforeseen circumstances". The Enquiry Officer informed the petitioner that the enquiry was in progress since 11.03.1992 and he had sufficient time for arranging his friend to come, adjournment on this ground was not granted. In fact, the 'friend' never turned up for any of the subsequent sittings also though he could have assisted the petitioner in the subsequent proceedings. Since it was a joint enquiry, Shri.Ananthsubramaniam, a co-accused and is post-graduate in Physics, was also effectively cross-examined the witnesses at the enquiry, which was being conducted mostly on a day-to-day basis. The

petitioner cannot therefore be said to have been prejudiced."

13. By relying upon the said averments, the learned counsel for the second respondent would further contend that, the domestic enquiry was not over in one day and it was conducted between 11.03.1992 and 11.05.1992 and even thereafter, and on the particular day ie., on 11.05.1992 the said plea was raised on behalf of the employee that, the co-employee one A.J.Elisha was required to be pressed into service to assist the employee. However, the Enquiry Officer had no objection for having the said employee viz., A.J.Elisha and that permission was already given between 11.03.1992 to 11.05.1992. Though the enquiry was conducted for so many days, the said A.J.Elisha never appeared before the Enquiry Officer and even after 11.05.1992 when the enquiry was conducted, the said employee did not appear before the Enquiry Officer and since it was a joint enquiry in respect of three cases against three employees, including the petitioner, and one of the employee M.V.Ananthasubramanian, who is a post-graduate in Physics since had himself cross examined the witnesses on behalf of the Management, even during those days, opportunity was given to the petitioner to make the said employee A.J.Elisha to present before the Enquiry Officer to have effective assistance on behalf of the petitioner, but he has not taken steps and therefore the said allegation cannot be countenanced, he contended.

14. In reply to the said argument, Mr.Parthiban learned counsel for the petitioner would submit that, there may be 1500 employees working under the second respondent organization and if the defence now taken by the employer's side that any one working in Chennai could have been used or pressed into service as assisting employee for the petitioner, the said diktat could not have been made by the employer as the issue has been settled in this regard that insofar as the assistance is concerned, it is upto the choice of the delinquent concerned and if he chooses a particular employee of his choice to assist him in the domestic enquiry not only from the Trade Union where both belong to, but also from some other Trade Union. That kind of choice on the part of the delinquent should be recognized and the very same employee who is chosen by the delinquent has to be permitted, and this proposition was in fact reiterated in the said judgment in "2011 (7) MLJ 1065 Management of Chidambaram Shipcare Ltd -vs- Presiding Officer, Labour Court, Chennai)" cited supra. Therefore, the non-permission of the particular co-employee to assist the petitioner's case on a particular date certainly would be fatal to the whole enquiry, he contended.

15. Insofar as the counter argument of the learned counsel for the second respondent on the 1st ground, Mr.R.Parthiban learned counsel for the petitioner would further contend that, if this logic on the part of the Management is accepted, then, in any case, where approval petition is cleared by the authority concerned under Section 33(2)(b) of the Act, it can be said that the preliminary issue on the fairness of the domestic enquiry need not be gone into separately as preliminary issue. Therefore, the said defence taken on behalf of the learned counsel for the second respondent also cannot be countenanced or accepted. Hence, the learned counsel for the petitioner reiterates his stand on the two aforesaid grounds and seeks the indulgence of this Court.

16. I have considered the rival submissions made by the learned counsel for both parties and have perused the materials placed before this Court.

17. As has been projected by the learned counsel for the petitioner, he has attempted to assail the impugned Award only on the aforesaid two grounds. Insofar as the first ground that, the preliminary issue as to the fairness in the domestic enquiry should have been decided separately as preliminary issue is concerned, this Court feels that, no doubt in normal circumstances if it was raised as a preliminary issue, the Labour Courts / Industrial Tribunals would take it as a preliminary issue and would decide the same as preliminary issue separately before going into the merits of the main industrial dispute.

18. However, in the present case, in view of the requirements under Section 33(2)(b), the issue had gone to the National Industrial Tribunal at Mumbai, where the issue of fairness in domestic enquiry was also raised by the employee's side and this has been elaborately gone into and decided by the National Industrial Tribunal and in order to appreciate the discussion of the Labour Court in the present impugned Award about the findings of the National Industrial Tribunal on this preliminary issue which was taken into aid, the relevant portion of the impugned Award would explicitly explain the said position. The same is extracted hereunder.

"A perusal of the exhibits filed on the side of the Management as well as the petitioners clearly show that what is alleged before the National Tribunal, Bombay in the Approval Application by the respondent / Management is correct. Ex.M.15 is the xerox copy of the letter dated 01st September 1994 enclosing the copy of the order passed by the National Tribunal, Bombay in the Approval

Applications filed by the Indian Airlines Ltd., against all the three petitioners. All the contentions raised here were raised before the National Tribunal also for the stand of the petitioners that the enquiry conducted by the Management is not fair and proper. In that order itself, the Hon'ble Tribunal had come to the conclusion that an enquiry was held into the charges in accordance with the principles of natural justice, equity and fair play and in accordance with the provisions of Standing Orders applicable to them. So, under such circumstances, it cannot be said that the petitioners was not fair and proper and the petitioners were not given sufficient opportunity to defend them in the enquiry."

19. That apart, the Labour Court in the impugned Award also, has raised the question whether the domestic enquiry conducted by the Management against the petitioner was not fair, proper and in violation of principles of natural justice and only in order to answer the said question, the earlier decision taken by the National Industrial Tribunal at length has been taken in aid and accordingly the aforesaid findings were given by the Labour Court in the impugned Award. On going through the said findings given by the Labour Court through the impugned Award, I find no force in the said submission made by the petitioner's side, who raised a ground that, the preliminary issue of fairness of the domestic enquiry should have been decided separately as preliminary issue before going into the main issue, in view of the peculiar facts and circumstances of the case.

20. Insofar as the second ground raised by the petitioner's side is concerned, absolutely we have no quarrel on the principle laid down by this Court in "Management of Chidambaram Shipcare Ltd -vs- Presiding Officer, Labour Court, Chennai (2011 (7) MLJ 1065)". However, as has been rightly pointed out by the learned counsel for the second respondent, it is not the case that, actually the plea of the petitioner to have the co-employee one A.J.Elisha to assist him was denied, though on 11.05.1992, ie., on the particular date of hearing before the Enquiry Officer, the said plea raised by the petitioner might have been turned down by the Enquiry Officer. However the fact remains that, it is not an one day enquiry and it was conducted for several hearings between March and May 1992, where the domestic enquiry was conducted and absolutely, there had been no impediment on the part of the petitioner to present the said co-employee on his behalf to assist him. Even after 11.05.1992, when several hearings went on, the chance of conducting the case including cross examination of the Management witnesses was

given to each of the employee including the petitioner, where the chance was utilized by one of the delinquents viz., M.V.Ananthasubramanian, who is a postgraduate in Physics. During that time also, if at all the petitioner had intended to involve the service of his co-employee A.J.Elisha, he could have done so, but he had not chosen to present the said co-employee to assist him. Therefore, if we look at the aforesaid happenings, where the enquiry was conducted for several hearings, where absolutely there has been no impediment for the petitioner to press into service his co-employee A.J.Elisha and the said chance has not been utilized by the petitioner, it cannot be construed that, because of the denial of the permission on a particular date ie., on 11.05.1992 that the said A.J.Elisha, the required co-employee to assist the petitioner was not permitted to present the case of the petitioner, it is a fatal to the whole enquiry and therefore, on that ground, the enquiry conducted by the Management can be found fault with. Moreover, if we see the conduct of the petitioner as has been discussed at Para 12 of the impugned Award, he wanted to be given Tamil version of the Charge Sheet, which was also accepted and implemented by the Management, where several opportunities were given to him, at least on four occasions ie., on 20.02.1988, 15.04.1988, 30.12.1988 and 12.01.1989 letters were issued on behalf of the Management to the petitioner to give reply to the Charge Memo, but eventually he had not chosen to give reply.

21. Therefore, this attitude on the part of the petitioner / employee clearly establishes the fact that, he has not cared to participate in the enquiry with full heart by giving full cooperation to the Management as well as to the Enquiry Officer to complete the disciplinary proceedings in a fair manner and this action on the part of the petitioner has also given an indication that he wanted to prolong the enquiry for one reason or the other, through which, he might have thought of achieving something at his desire.

22. Further, it is also to be noted that, the charge framed against the petitioner and other co-delinquent/employees were very serious in nature and in this regard, they were initially convicted under the COFEPOSA Act. Learned counsel for the second respondent submits that, he has no further instructions whether any appeal was filed, where the petitioner and other delinquents were acquitted. Be that as it may. Since it is a domestic enquiry, where the degree of proof is preponderance of probabilities and in this case, on merits, the petitioner has not raised any issue except the aforesaid two technical grounds, which are also squarely answered by the Management side by citing the aforesaid factual matrix therefore, by considering all these aspects, this Court feels that the two grounds now

raised by the petitioner are unsustainable, based on which the impugned Award cannot be successfully assailed.

23. In the result, the writ petition fails and it deserves to be dismissed. Accordingly, it is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST

To

1.The Presiding Officer,
Central Government Industrial Tribunal,
Shastri Bhavan, Haddows Road,
Chennai- 600 006.

2.The Regional Director
The Indian Airlines Corporation,
Southern Region, Chennai- 600 027

+1cc to Mr.N.G.R.Prasad, Advocate, sr no.34194
+1cc to Mr.R.Parthiban, Advocate, sr no.34472

W.P.No.11396 of 2003

CP (CO)
RMP (02/12/2020)