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W.P.No.36101 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	3/10/2023
Pronounced on	11/1/2024

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

Writ Petition No.36101 of 2015

T. Kumaresan ... Petitioner

Vs

1. The Management of Air India
rep. By its Chairman
Hansalaya Building
V Floor, 15 Barakhamba Road
New Delhi 110 001.

2. The Management of Air India
rep. By its Regional Manager
Chennai Airport
Meenambakkam
Chennai.

3. The Presiding Officer
The Central Government Industrial Tribunal
-cum-Labour Court
I Floor, B Wing, No.26 Haddows Road
Shastri Bhavan
Chennai 6.

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the records relating to the Award dated 24/2/2004 passed by the third respondent in I.D.No.27 of 2001 quash the same and direct the respondents 1 and 2 to reinstate the petitioner in service with continuity of service and backwages.

For petitioner	...	Mr.R.N.Amarnath
For respondents	...	Mr.K.Srinivasamurthy
		Central Government Standing Counsel
		for R.R.1 and 2.
		R.3 - Tribunal

O R D E R

This writ petition has been filed to quash the Award dated 24/2/2004 passed by the third respondent in I.D.No.27 of 2001 and consequently, direct the respondents 1 and 2 to reinstate the petitioner in service with continuity of service and backwages.

2. The facts in brief are as follows:-

(i). The petitioner entered into the services of the second respondent



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as Junior Operator Trainee on 21/1/1993 and his services were confirmed as Junior Operator on 1/9/1994. His nature of work is to off load the containers pallets, etc., from the aircraft and to bring containers for loading and take back empty containers, palet dollies etc. On 28/9/1995, when he was arranging the empty carriers for the next flight, saw a step ladder left in the tarmac. Hence he drove the same to the parking area. At that time, three casual workers of Singapore Airlines, requested the petitioner to assist them to shift a box full of perishable goods to old airport. On seeing the security, one of the casual workers, threw the card board into the driver's cabin through the window and ran away. When Mr.Pichappa, Security Guard questioned the petitioner about what was in the box, he replied don't know. He was arrested on the complaint lodged by Mr.Pitchappa.

(ii). The petitioner was issued with a charge memo dated 8/1/1996. Since the explanation offered by the petitioner was not accepted, he was dismissed from service, by an order, dated 13/2/1997 by the Deputy General Manager of the Airport Service Department of Air India. Being aggrieved, the petitioner has raised an Industrial Dispute in I.D.No.27 of 2001 and by an Award dated 24/2/2004, third respondent has confirmed the order passed by the Management and dismissed the Industrial Dispute. Aggrieved by the same, this



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writ petition is filed.

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3. Heard Mr.R.N.Amarnath, learned counsel for the petitioner and Mr.K.Srinivasamurthy, learned Central Government Standing Counsel for the respondents 1 and 2.

4. Learned counsel appearing for the petitioner submitted that the petitioner belong to ground handling department and no officer from the ground handling unit has been made as a member in the Enquiry Committee. Hence, the enquiry conducted by the Enquiry Committee is vitiated. It is further submitted that the dismissal order has been passed by the Deputy General Manger, who is not the competent authority, as per the Regulations of Schedule 1 of the Air India Employees Service Regulations, which would indicate that the competent authority is the controller for Ground handling and therefore, the impugned order passed by the authority is not valid in the eye of law.

5. Learned Central Government Standing Counsel appearing for the respondents 1 and 2 submitted that the petitioner was caught red handed with pilfered goods and that since the petitioner was in possession of goods pilfered from aircraft, the Enquiry Committee in its findings has stated that step ladder



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was deliberately used by the petitioner, since the closed cabin could conveniently hide the stolen property of cumbersome size and weight.

6. He has further submitted that the petitioner has committed serious misconduct of theft and that the post held by the petitioner had been one of trust and confidence which allows free entry into airport and access to landing bay. Hence, prays for dismissal of the writ petition.

7. Perused the materials available on record.

8. The petitioner who was working under the second respondent as Junior Operator Trainee was entrusted with off loading the containers, pallets dollies from the air craft and to bring containers for loading and moving the empty containers by using tractors. On 28/9/1995 at 02.00 a.m., one Mr.Pichappa, Security Guard found the petitioner with a box, while driving the step ladder and on questioning, the petitioner has informed that he does not know. The petitioner was arrested and on enquiry, the petitioner has revealed that while he was arranging the empty carriers for the next flight, he found the step ladder left on the tarmac. He therefore, took the step ladder and drove it to the parking area and while driving the step ladder, three employees of the



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Singapore Air Lines, stopped and told him that they had a box containing perishable goods and requested them to assist in shifting the said box to old Airport.

9. When the said three casual labourers found the Security Guard Mr.Pichappa, was coming over them, they threw the box into the driver's cabin through the window of the step ladder and ran away. The explanation offered by the petitioner was not accepted. Disciplinary proceedings were initiated and both was found guilty and removed from service. The petitioner has raised the Industrial Dispute which was also decided against him.

10. I have carefully gone through the award passed by the Central Government Industrial Tribunal-cum-labour Court, Chennai.

11. The petitioner has taken a defence that one of the Officers of the Enquiry Committee shall be from the Department where the petitioner was working and person who has passed the dismissal order is not competent to pass such order. The main issue to be considered is whether the petitioner was found in possession of the theft property or not. In order to get over his misconduct, the petitioner has taken technical grounds which are not very serious



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that will make the dismissal untenable.

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12. This Court, while considering the award of the Industrial Tribunal, under Article 226 of the Constitution of India, this Court is not expected to sit like the Appellate Court to reassess and reappreciate the evidence and other aspects of the Enquiry report. This Court would see whether the orders of the labour Court and review are perverse on the face of it and whether the punishment awarded is shockingly disproportionate. On going through the award, if two views are possible and if the labour Court has taken one view that cannot be intervened.

13. In the case on hand, the trial Court or Industrial Tribunal has not accepted the contention of the petitioner that the enquiry report is perverse. The petitioner in fact has admitted the fact that when he was apprehended by the Security Officer, he was in possession of certain goods. According to the petitioner, three casual labourers have requested him to help them in shifting the carton box to the old Airport and during that discussion on seeing the Security Officer, the said three casual labourers have threw the carton box into the driver's cabin through the window. It was found in the enquiry that the said carton box cannot be thrown through the window. Therefore, on the face of it,



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the petitioner's contention is not convincing. The petitioner has not identified these three casual labourers of Singapore Airlines and he has not disclosed who actually threw the carton box. There is no record to show that action has been initiated against those three persons.

14. Further, the petitioner was entrusted with the work of handling the tractor in respect of containers, pillets. It is not the job of the petitioner to drive the step ladder. If at all the petitioner was found that the step ladder is in the termac, then, he should have asked some other concerned person to drive the same to the appropriate place. It is not the job of the petitioner to clear of the step ladder and that itself shows the intention of the petitioner. As already observed, the enquiry report and award of the Central Government Industrial Tribunal-cum-Labour Court, Chennai, Labour Commission, is crystal clear that the petitioner is guilty of the misconduct and hence, there is no scope to interpret in other way.

15. In view of the above, this writ petition is dismissed. No costs.

11/1/2024

mvs.



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Dr.D.NAGARJUN,J

mvs.

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