

(2008) 12 DEL CK 0012

Delhi High Court

Case No: LPA No. 26 of 2007

R.K. Singhal

APPELLANT

Vs

Presiding Officer Industrial
Tribunal

RESPONDENT

Date of Decision: Dec. 3, 2008

Acts Referred:

- Industrial Disputes Act, 1947 - Section 33(1), 33(2)

Citation: (2009) 2 LLJ 467 : (2009) 7 SLR 337

Hon'ble Judges: A.P. Shah, C.J; Dr. S. Muralidhar, J

Bench: Division Bench

Advocate: H.L. Hans, for the Appellant; Rajinder Dhawan and S. Dhawan, for the Respondent

Final Decision: Dismissed

Judgement

S. Muralidhar, J.

This appeal is directed against the impugned judgment dated 18th November 2006 passed by the learned Single Judge dismissing Writ Petition (C) No. 3835 of 2003.

2. Prior to 1978 the Appellant was working as a Senior Laboratory Assistant in the Department of Anthropology, University of Delhi. By a resolution dated 29th April 1975 read with Office Order dated 7th June 1975 and Notification dated 27th September 1975, the post of Storekeeper in the Science Department was abolished and posts of Senior Technical Assistants and Junior Lab Assistants were created in the Department of Physics, Chemistry, Botany, Zoology and Anthropology. In the Department of Anthropology there was only one post of Technical Assistant created by abolishing existing post of Storekeeper. Shri N.C. Jain, who was working as Technical Assistant in the said department, was promoted as Senior Technical Assistant with effect from 11th November 1976. The Appellant was promoted as Technical Assistant in the Department of Anthropology with effect from 16th March

1978. Shri N.C. Jain handed over charge to the Appellant on 18th February 1979.

3. According to the Appellant he was on leave from 7th August 1981 to 16th September 1981 on account of the illness of his wife and his son. According to the Appellant, even while when he was on leave, the Head of the Department of Anthropology issued a letter dated 15th September 1981 asking him to hand over charge of the store to Shri N.C. Jain with immediate effect. The Appellant did not comply with this order. Instead, on 7th September 1981 he wrote to the Head of the Department of Anthropology as under:

Sir,

Please refer your letter No. A/81/00/1402 dated 2.9.81. I have to state as under:

The Executive Council in its meeting held on 29.4.75 decided that the charge of the stores in Anthropology Department shall remain with Technical Assistant. Now, the above cited letter is in violation of E.C. decision. Secondly Sir, I was never handed over full charge of the stores by Mr. N.C. Jain (Ex-storekeeper) inspite of the written and verbal instructions and office order of the then Head of the Department.

Thirdly, I am shocked that the order to hand over the charge of the store was sent to me when I am on leave due to illness of my son and wife. Fourthly, to hold the charge of the stores does not include in the duty of S.T.A. Anthropology.

I was not allowed to function as store incharge and various obstacles were being created in my way of working in the past. So much so an enquiry was conducted by the Head of the Deptt. about the purchases and store record I have made in the Department and I was found honest whereas no enquiry has been held till now pertaining to the other purchase irregularities and store record etc. made earlier.

Keeping in view of the above facts I request you Sir, to kindly review your order in the light of E.C. decision.

Thanking you,

Yours faithfully,

Sd/-

(R.K. Singhal)

4. In response to the above letter, the Professor and Head of the Department of Anthropology sent a memorandum to the Appellant on 15th September 1981 again directing the Appellant to hand over the charge of the store to Shri N.C. Jain by 19th September 1981 "failing which suitable disciplinary actions would be initiated against him." The Appellant did not comply with this order as well. In fact on 26th September 1981 he wrote a letter questioning the order. He stated thus:

In this connection, may I state that as Technical Assistant, I am holding charge of the stores as per decision of the E.C. The Head of the Department has no discretion to revise the duties of the Technical Assistant holding the charge of Stores unless such duties are got revised from the E.C. It is, therefore, not a matter of dereliction of duties. Besides, the clerk who used to handle the stores prior to the decision of the E.C. had resigned and it was for you to create the post of Technical Assistant. However, I being the only Technical Assistant, I am holding the charge of the stores as per decision of the E.C. I shall be happy to hand-over the charge of the Stores as soon as a revised decision of the E.C. is received by the undersigned whereby the Senior Technical Assistant will hold the charge of the Stores.

5. By a letter dated 20/22nd April 1982 addressed to the Deputy Registrar (Establishment), the head of the Department of Anthropology mentioned the fact that the Appellant had not handed over the charge of the laboratory despite being directed to do so. It was noticed that the Appellant was to cross the "Efficiency Bar" ("EB") on 1st March 1982. It was proposed by the Head of the Department that the decision on crossing of the EB by the Appellant "may be deferred for a period of three months, in the first instance".

6. On 10th January 1982 the Registrar of the University of Delhi wrote to the Professor and Head of the Department of Anthropology stating that the recommendations in respect of the Appellant to allow him increments had not been received and that it should be sent without any delay. This was replied on 13th January 1982 by the Head of the Department pointing out that the Appellant had not yet handed over the charge and also had not done any work during the said period. Consequently, no recommendations could be made.

7. On account of the refusal by the Respondents to permit him to cross the EB, he raised an industrial dispute being ID No. 898 of 1984 which was later renumbered as ID No. 210 of 1997. The Appellant was suspended from service with effect from 16th June 1983 and received subsistence allowance with effect from 16th September 1983. A charge sheet dated 28th February 1984 was issued to the Appellant. The charges included disobedience of lawful orders issued by the Head of the Department i.e. 2nd and 15th September 1981, 21st September 1982, 29th/30th September 1982 and 23rd October 1983. He was also charged with non-performance of duties assigned to him by an order dated 23rd October 1981. The other charge was that he was willfully disobeying orders and committing acts subversive of discipline. The enquiry proceedings found the Appellant guilty of the charges. By a show cause notice dated 6th January 1986 issued by the Registrar, Delhi University the Appellant was asked to show cause why he should not be compulsorily retired from service. Thereafter with effect from 30th May 1986 the Appellant stood compulsorily retired.

8. The Respondents filed an application ID No. 10 of 1986 before the Industrial Tribunal No. 3, Delhi u/s 33(2)(b) of the Industrial Disputes Act, 1947 ("ID Act")

seeking approval of its action of compulsory retirement of the Appellant. Since the dispute pertaining to the deny of EB to the Appellant was pending by way of ID No. 898 of 1984 the Respondents were required to seek the post facto approval of the Labour Court.

9. By the order dated 24th July 2002 the Labour Court came to the conclusion that the Respondent Management had complied with the provisions of Section 33(2)(b) of the ID Act. As regards the punishment the Tribunal held that it was not shockingly disproportionate and therefore did not call for any interference. Aggrieved by the aforementioned Award dated 24th July 2002, the Appellant filed Writ Petition (C) No. 3835 of 2003 in this Court. By the impugned order dated 18th November 2006 the said writ petition was dismissed by a learned Single Judge in the manner indicated hereinbefore. Hence, this appeal.

10. It is submitted by Mr. H.L. Hans, learned Counsel appearing for the Appellant that the Respondent No. 2 erred in directing the Appellant to hand over the charge to Shri N.C. Jain who was a Senior Technical Assistant when there is no such post in the Department of Anthropology. It was sought to be contended that the Appellant was justified in refusing to obey such an unlawful order. Therefore there was no occasion for the Appellant to be proceeded against disciplinarily. Secondly, it is submitted that the Respondent No. 2 ought to have filed an application u/s 33(1)(a) of the ID Act and not u/s 33(2)(b) thereof. In other words, it is submitted that the prior permission and not ex post factor approval of the Tribunal before whom the earlier ID No. 898 of 1984 ought to have been obtained. The absence of such prior permission vitiated the order of compulsory retirement.

11. Having heard learned Counsel for the parties, we are unable to agree with the submission of the learned Counsel for the Appellant. The narration of facts and documents produced on record reveal that the Appellant had clearly disobeyed the order of his superior asking him to hand over charge of the store to Shri Jain. Instead he kept continuously writing to the Respondents asking them to change the decision. It is one thing to question the validity of a decision of the administration, but another to disobey the orders passed by the superior.

12. In our view, if an employee takes upon himself to pre-judge as to the legal nature of the command, it would be an act of insubordination to defy such an order. Even if it is assumed that he has a legitimate grievance that there is no post of Senior Technical Assistant and therefore the charge of the stores should not be handed over to such person, this would be no justification for him to refuse to carry out such an order. The remedy in such circumstances is to seek independent legal redress in so far as the question of validity of the order is concerned.

13. We accordingly concur with the view expressed by the learned Single Judge that the evidence on record demonstrates that the Appellant had defied the orders of the Head of the Department by refusing to hand over the charge. It was sought to

be contended that no witness was examined on behalf of the Respondents to prove the charges of insubordination. We find that the letters written by the Appellant, which have been exhibited during the proceedings, and form part of the appeal paper book and have not been denied by the Appellant, adequately demonstrate that the Appellant had failed to comply with the order directing him to hand over charge of the stores to the Senior Technical Assistant.

14. It was next contended that the application should have been filed by the Respondents u/s 33(2)(a) of the ID Act and not 33(2)(b) thereof. It was sought to be contended that the proceedings which culminated in the order of compulsory retirement was a dispute connected with the pending dispute concerning the non-grant of EB to the Appellant. It was accordingly submitted that prior permission of the Tribunal had to be sought for which purpose an application has to be filed u/s 33(2)(a).

15. We find no merit in this contention. In the first place, this point was not raised in the writ petition filed by the Appellant. Therefore we do not see why we should permit him to do so now. The point has been raised in a note titled "Legal Submissions" copy of which annexed to the appeal. It is submitted in the said note which was placed on the record of the writ petition, should be read as part of the writ petition itself.

16. Even assuming that the Appellant had raised the point, it does not seem to have been urged before the learned Single Judge. In any event, we find no merit in the submission as well. On the facts of the present case, it is seen that the proceedings which culminated in the order of compulsory retirement was not connected with the grant of EB. The proceedings arose out of refusal by the Appellant to hand over charge of the stores to the Senior Technical Assistant. Therefore in our considered view in the facts of the present case Section 33(2)(a) of the Act was not attracted. The application filed u/s 33(2)(b) was disposed of in accordance with law by the Tribunal. We accordingly find no merit in the appeal and it is dismissed as such with no order as to costs.