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(1988) 02 GAU CK 0003

Gauhati High Court

Case No: Civil Rule No. 229 of 1975

Jitentdra Nath Biswas		APPELLANT
	Vs	
Presiding Officer		RESPONDENT

Date of Decision: Feb. 26, 1988

Acts Referred:

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

Citation: (1988) 1 GLJ 351

Hon'ble Judges: K.N.Saikia, C.J. and R.K.Manisana Singh, J

Bench: Division Bench

Advocate: T.C.Khetri, S.N.Sharma, P.K.Barua, J.P.Bhattacharjee, Advocates appearing for Parties

Judgement

1. By this writ application, the petitioner has challenged the approval accorded under section 33 (2)j(b) of the Industrial Disputes Act by the Industrial Tribunal of Assam at Dibrugarh to dismiss the petitioner from his services.

2. The petitioner Jitendra Nath Biswas was a Jamadar babu of Borjuli Tea Estate (hereinafter referred to as the management). The management charged the petitioner that on 15.10.71 he paid Rs. 20 to Smt. Konokdai as her weekly wages although she did not actually work for the whole of that week committing thereby an act of gross misconduct. The petitioner was served with the charge and was asked to submit his explanation. A domestic enquiry was held by the manager. On 19.11.71 the manager recorded his findings that the charges against the workman had been proved and by his letter dated 22.11.71, the petitioner was dismissed from his services. Thereafter, the manager made an application under section 33 (2) (b) of the Industrial Disputes Act, for short the Act, to the Industrial Tribunal for approval of the dismissal. On 15.10.74 the Industrial Tribunal in Case No 57 of 1971 approved the dismissal. Thereafter, by a letter dated 10.12.74 the manager informed the petitioner that permission in writing of the competent authority had

been obtained to dismiss him from his services and asked him to vacate the quarters occupied by him. Hence this petition.

3. Under .section 33 (2) (b) of the Act, jurisdiction of the Tribunal is limited. As regards the scope of the power of the Tribunal to grant or refuse permission under section 33 (2) (b) of the Act, the Supreme Court has, in Lala Ram vs. Management of DCM, AIR 1978 SC 1004, after considering its earlier decisions, summarised as follows :

"The position that emerges from the above quoted decisions of this Court may be stated thus : In proceedings under S. 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/ Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to b bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co. v. Ram Probesh Singb, (1964) 1 SCR 709 : (AIR 1964 SC 486) ; Titaghur Paper Mills Co.Ltd. v. Ram Naresh Kunoar (1961) 1 Lab LJ 511 (SC) ; Hind Construction & Engineering Co. Ltd.v. Their workmen, (1965) 2 SCR 83 : AIR 1965 SC 917; Workmen of Messrs Firestone Tyre & Rubber Company of India (P.) Ltd. v. Management, (1973) 3 SCR 587 : AIR 1973 SC 1227, and Eastern Electric and Trading Co. v. Baldev La], 1975 Lab 1C 1435 : (AIR 1975 1892) that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribuinal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of malafides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has sinraltaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him."

4. Keeping the above principles in mind let us now examine the case on hand. We have perused the findings recorded on 19.11.71 by the manager who held the domestic enquiry. We are of the opinion that the manager has not given reasons for reaching its conclusion. That apart, the manager has not discussed the statement of Konokdai (PW 4) that, in that particular week, she worked for four (4) days. The Tribunal held that the domestic enquiry had not violated the principles of N natural justice and that the domestic enquiry was not defective. Thereafter, the Tribunal considered the .evidence Jed by the management before the enquiry officer (manager) and held that the charges against the petitioner had been proved. The Tribunal also did not deal with the statement of Konokdai (PW 4).

5. It is well settled that judicial review generally speaking, is not directed against the decision, but is directed against the ﷺdecision making processﷺ. If any authority is required we may refer to Ranjit Thakur vs. Union of India, (1987)4 SCC611. The question which, therefore, arises is whether the decision of the manager was vitiated by the omission to record reasons for reaching the conclusion.

6. If an anquiry officer gives reasons, it enables the aggrieved party to know the reasons which he weighed in his mind. Therefore, recording the reasons in support of the conclusion is, like the principle of audi alteram partem, a basic principle of natural justice, and the recording of reasons for coming to a conclusion by the enquiry officer affecting rights of a party is in consonance with the principles of natural justice, or, rule of fair play and justice. More particularly so when the findings are likely to lead to the dismissal of an employee, and there is a statutory provision, namely section 33 (2) (b) of the Act, for approval of the order of dismissal by the Tribunal. It is not, however, necessary that the reasons must be lengthy one recording in detail all the reasons for coming to conclusion. What is imperative is to record the relevant reasons which were taken into account by the enquiry officer in coming to its final conclusion, there by enabling both the party seeking justice and the Tribunal to know or to be apprised of the reasons. In other words, rule of fair play and justice should be observed in its true spirit and mere pretence of the compliance with it would not satisfy the requirements of the rule.

This view of ours, finds support from the decision of the Supreme Court in Khardah & Co. Vs. Workmen, AIR 1964 SC 719, in which the Supreme Court held :

ﷺIt may be that the enquiry officer need not write a very long or elaborate report; but since his findings are likely to lead to the dismissal of the employee. It is his duty to record clearly and precisely his conclusions and to indicate briefly his reasons for reaching the said conclusions. Unless such a course is adopted, it would be difficult for the Industrial Tribunal to decide whether the approach adopted by the enquiry officer was basically erroneous or whether his conclusions were perverse.ﷺ

7. The recording of reasons is a ﷺdecision making processﷺ. Judicial review is directed against the ﷺdecisionmaking processﷺ as already stated. Therefore, the

omission to record reason would vitiate the conclusion reached as the omission to record reason is against the principle of natural justice., or in any event the conclusion is perverse or arbitrary. For these reasons, we hold that the domestic enquiry held by the manager was defective for his omission to record reasons for reaching the conclusion, and that the impugned order of the Tribunal cannot be sustained.

8. As regards the statement of Konokdai (PW 4) that she worked for four (4) days in that particular week, as already stated, the Tribunal as well as the enquiry officer did not deal with the statement. She was examined on behalf of the management. If her statement was considered by the enquiry officer or the Tribunal the decision might have been otherwise. Therefore, her evidence has a material bearing on the case and as such, the non consideration of the statement of Konokdai has affected the decision of the Tribunal. In such a situation, we hold that the Tribunal has exercised its jurisdiction illegally. In this view of the matter, the impugned order of the Tribunal cannot be sustained on this ground also.

9. The next question which arises for consideration is whether the matter should be sent back to the Tribunal for disposal afresh, on the facts and in the circumstances of the case. The occurrence took place on 15.10,71. The workman was dismissed on 22.11.71. The charge was that the petitioner paid Rs. 20/ to Konokdai as her weekly wages although she did not actually workded for whole of that week. PW 4 Konokdai stated in her evidence that she had worked for four (4) days in that particular week. Reading the evidence of PW 1 Rawat, Assistantincharge, PW3 Ludri and PW4 Konokdai together shows that the money was paid to Jamuna, mother of Konokdai, and Ludri snatched the money out of Jamuna''s hand and she returned it to the Assistantincharge (PW1). Considering the overall circumstances of the case including the nature of the offence, we are of the opinion that if the proceedings are terminated here, it will meet the ends of Justice. Accordingly, we set aside the impugned order of the Tribunal and that of dismissal. The petitioner shall be entitled to and shall be reinstated As regards the back wages of the petitioner, the management shall decide it in accordance with law.

The petition is allowed with the above direction and the rule is made absolute. No costs.