Eastern Coalfields Ltd. Vs Misri Yadav and Others

Court: Calcutta High Court

Date of Decision: Nov. 30, 2009

Acts Referred: Industrial Disputes Act, 1947 â€" Section 11A

Citation: (2010) 125 FLR 221 : (2010) 3 LLJ 849

Hon'ble Judges: Md. Abdul Ghani, J; Kalyan Jyoti Sengupta, J

Bench: Division Bench

Advocate: R.N. Majumder, Sushanta Pal, Partha Basu and Nikhil Roy, for the Appellant;Bijay Kumar, for the Respondent

Judgement

K.J. Sengupta, J.
The instant appeal is directed against judgment and order of the learned Single judge dated December 7, 2006 by which

the appellant''s writ petition was dismissed.

2. The appellant filed the instant writ petition challenging the award dated November 20, 1998 passed by the learned Central Government

Administrative Tribunal (Calcutta Bench) in reference case No. 9/1984, whereby and whereunder the order of dismissal of the

respondents/workmen was set aside.

3. The fact and circumstances leading to filing the writ petition is stated hereunder:

The first respondent was the workman of the writ petitioner at Satgram Colliery. On November 2, 1981, the respondent Nos. 1 and 2, with other

Mason, Mazdoor, one Sri Ram Raj Yadav and Santu Roy were engaged underground in the important work of sealing isolation stopping. The

work was very urgent and had to be done expeditiously for the safety of the mine as well as workmen displayed underground. According to the

version of the appellant/writ petitioner, the said persons refused to work allotted to them on flimsy ground in spite of being explained about the

urgency of the work by Sri P.M. Banerjee, the then Assistant Manager and thereafter the then Assistant Manager Sri P.K. Majumdar. On the

contrary the said three persons including the respondent No. 1 abused and threatened Sri P.K. Majumdar assaulted and inflicted injuries'' on him.

They without doing any work left the mine at about 12.40 p.m. much before the time schedule of completion of the shift. Assistant Manager Sri

Majumdar was assaulted on the surface. Because of commission of the aforesaid misconduct the first respondent was departmentally proceeded

with issuance of charge-sheet dated November 3, 1981 under the relevant provision of standing order. The allegation of misconduct was that

leaving work without, permission or specific reason and threatening, abusing and assaulting superior officer. The first respondent through his union

replied to the said charges and having found the reply to be unsatisfactory a domestic enquiry was held. Sri D.C. Mitra, Senior Personnel Officer

of Bengal Colliery was appointed Enquiry Officer. Upon completion of due and lawful enquiry in which first respondent duly participated with the

help of co-worker with all the opportunities of being afforded during enquiry. The Enquiry Officer submitted report having found him guilty of both

the charges of assault and leaving place of work. On receipt of the report of the enquiry by an order dated April 10, 1982 General Manager,

Satgram area accepted the same, and having regard to the gravity of the misconduct he awarded punishment of dismissal from the services with

effect from April 14, 1982.

4. On receipt of the said order of dismissal the respondent No. 2 namely Workers'' Union concerned raised Industrial Dispute before the

Conciliatory Machinery of the Government of India, Ministry of Labour. On conciliation having failed Government of India, Ministry of Labour by

an order dated March 19, 1984 referred following dispute for adjudication:

Whether the action of the Manager of Satgram Colliery, Post-Devchandnagar, district Burdwan (WB) in dismissing Sri Misri Yadav Mason

Mazdoor with effect from April 14, 1982 is justified? If not, what relief the workmen concerned is entitled?.

5. The writ petitioner took a preliminary point as to legality of the enquiry conducted. The said preliminary issue was thereafter heard analogously

along with another reference being No. 5 of 1984 concerning another worker, Sri Ram Raj Yadav. By an order dated June 15, 1983 the learned

Tribunal held that enquiry was not fair and proper as it was conducted in violation of the principle of natural justice. Thereafter, the Tribunal

separated the two cases i.e. reference No. 9 of 1984 and 5 of 1984 for separate decision. In reference case No. 5 of 1984 wherein another

employee Sri Ram Raj Yadav Mason Majdoor was charged identically with the same charges as the respondent No. 1 charged herein, was heard

and adjudicated by the learned Tribunal by an order dated February 3, 1987. By this award order dismissing Ram Raj Yadav was set aside and

was reinstated with full back wages. In this case also the same award was passed.

6. The learned Tribunal set aside the enquiry held by the appellant against the respondent/employee, Misri Yadav, holding the same being illegal

and invalid and as such chances were given to the Appellant, Management and Workman concerned to adduce fresh evidence before the learned

Tribunal. The learned Tribunal after having appreciated and analyzed evidence came to fact finding that charges of assault and misbehaviour were

not proved as there was no evidence. However, second charge of abandoning the place of work unauthorizedly before schedule time, was proved

before the; learned Tribunal. It appears in exercise of its power u/s 11-A of the Industrial Dispute Act, 1947 the learned Tribunal has decided that

on the second charge being established, extreme punishment of dismissal from services was not justified and, as such the punishment was reduced

to reduction of two increments. Against the aforesaid award both the management as well as the workmen, Yadav filed two Separate writ petitions

in this Court before the learned Single Judge being W.P. 13256 (W)/2000 (filed by the appellant/management) and W.P. 1832 (W)/2002 (filed by

the workmen concerned). Both these two petitions were heard together and disposed of by the impugned Judgment by the Hon''ble Trial Judge.

7. It appears that Hon''ble Trial Judge after having gone through the award and other; materials did not find any error there. It was observed by the

Hon''ble Trial Judge, having regard to the fact finding of the learned Tribunal that the order of dismissal imposed by the management was not

justified on the charge of leaving place of works unauthorizedly before time and reduction of increment was sufficient.

8. Mr. R.N. Majumdar, learned Advocate appearing for the appellant has reiterated the submission as it was made before the Hon''ble Trial Judge

as it appears from the record. We summarized his submission as follows:

The learned Tribunal has been clearly in error in adopting the standard of proof as applicable in criminal trial in the domestic proceeding. Now it is

settled law that in departmental proceeding compliance of natural justice and the proof of the charges with the standard of preponderance of

probability are sufficient to hold a delinquent guilty and to inflict punishment. It is also settled law that in domestic proceeding adequacy and

inadequacy of the evidence is not required. He says that before the Tribunal there was sufficient proof in support of both the charges and there was

no reason to discard the evidence adduced by the management.

9. He submits the Hon''ble Trial Judge has mechanically accepted the finding of the learned Tribunal. He further submits that the learned Tribunal

should not have interfered with the punishment of dismissal when there has been evidence of assault preceded by use of abusive and filthy

languages against a superior officer the order of punishment of dismissal was justified.

10. The learned Tribunal before exercising its power u/s 11-A of the Industrial Disputes Act, 1947 should have been careful to see whether it is fit

case to interfere with the punishment inflicted by the Management. He further submits that absenteeism in duty, which is admittedly accepted to

have been proved before the Tribunal is good enough for inflicting punishment of dismissal. In support of his submission he has relied on the

following decisions:

11. The The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, ; Employers, Mgmt., M. Colliery,

BCCL Ltd. Vs. Bihar Colliery Kamgar Union through Workmen, ; Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., and L and T Komatsu

Ltd. Vs. N. Udayakumar, .

12. No one appears on behalf of the respondents except Mr. Bijay Kumar learned Advocate who appears for Misri Yadav.

13. Mr. Kumar submits that the Hon''ble Trial Judge should have set aside the order of punishment awarded by the learned Tribunal of reduction

of two increments. He says that order of the learned Trial Judge upholding the portion 2 of award questioning dismissal order is justified.

14. He submits that there has been no proof of the second charge even, therefore, awarding of punishment was not at all called for. He further

submits that management has miserably failed to prove any of the charges and his contention is that earlier findings recorded by Departmental

Enquiry Officer cannot be taken into consideration when the learned Tribunal was holding enquiry by itself. In this connection he has relied on a

decision of the Supreme Court in Neeta Kaplish Vs. Presiding Officer, Labour Court and Another,

15. We have heard the learned Counsels for the parties and considered the materials carefully. In the context of the submission made and materials

placed before us, the question which has fallen for consideration of this Court is as follows:

16. Whether the learned Trial Judge is justified in accepting the award passed by the learned Tribunal without any interference. We therefore,

examine the legality and validity of the award passed by the learned Tribunal. The admitted position is that the respondent/Yadav was charge-

sheeted along with other co-workers and they were proceeded with departmentally on enquiry officer being appointed. Before Enquiry Officer

both the Management and Workmen adduced evidence and report was against Yadav. Thereafter the appellant/management after having accepted

the report had inflicted punishment of dismissal. It appears that the learned Tribunal did not accept the legality and validity of the domestic and

departmental enquiry. Therefore, the said enquiry report was set aside and it was open at that stage after having set aside the same and also the

order of dismissal either to send back to the management for fresh enquiry or to hold fresh enquiry by itself. The Tribunal had adopted the later

course of action and after giving opportunity to both the parties to adduce evidence afresh before it. Order setting aside the report of the enquiry

remains unchallenged. Nothing was on record. We have gone through the award of the learned Tribunal. The learned Tribunal while recording fact

finding in our view painstakingly and minutely, came to the conclusion. When we read evidence by ourselves accurately we do not find any flaw in

said fact finding, although there has been no challenge against the correctness of the fact findings of the learned Tribunal. Moreover, it is now firmly

settled by high authorities in exercise of power of judicial review, in absence of any challenge against the fact finding on the ground of absurdity and

perversity the Court cannot under any circumstances read and analyze any evidence. It is urged by Mr. Majumdar that there are evidence to

establish the first charges against the respondent/Yadav that he is a guilty and such evidence is not all taken into consideration. We are unable to

accept his contention when we read the portion of the fact finding of the learned Tribunal, who has analyzed the evidence of the management''s

witness as follows:

So far as the alleged assault on P.K. Mazumder by the concerned workmen and his co-workers, Mr. P. Banerjee, learned Advocate appearing

for the Management, frankly conceded that there is no documentary evidence in support of the alleged occurrence. Mr. P.K. Mazumder in his

evidence stated that no FIR was lodged in the matter. No office record was also produced to show that any written complaint was lodged in the

office by Sri. Mazumder after alleged occurrence Mr. Mazumder also stated that as per request of the General Manager he went to the hospital

but no medical report was produced before the Tribunal. His evidence that it was produced before the Enquiry Officer but it was lost therefrom

cannot be believed. It further appears from the evidence of Mr. Mazumder that place where he was assaulted was on the surface and the assault

took place in presence of Sri. S.D. Singh, Safety Officer and Sri. P.K. Banerjee, Assistant Manager.

17. Thereafter the learned Tribunal has analyzed the evidence of management witness, Sri. S.D. Singh in the manner as follows:

...Shri S.D. Singh the Security Officer of Satgram Colliery was examined as M. W.3 in this case. He stated that neither Shri Mazumdar, nor Shri

Banerjee reported to him anything about the incident which occurred underground the mine. He further stated that the three workmen became

furious on seeing them coming from underground, but they were prevented from assaulting Shri Mazumdar by him and Mr. Banerjee In his cross-

examination, however, M.W.3, S.D, Singh clearly stated, that he had not seen any of these workmen assaulting either Shri Mazumdar or Shri

Banerjee either underground or over-ground at any point of time, Shri Banerjee also did not make any complaint about any assault on him. This

witness of the management denied instead of corroborating the story of the assault as made out by Shri D.K.. Mazumdar, the charge of assault of

Shri P.K. Mazumdar by the concerned workmen appears to be, baseless.

18. It is for the first fact finding authority either to believe or disbelieve testimony or evidence adduced by any authority. It is not for the Writ Court

to perform this duty. But, it would have been mandatory task of the writ Court had there been absurd fact finding on the face of the evidence to

examine whether fact finding and reading of the evidence are done on a given testimony, as it ought to have been done by a reasonable prudent

man.

19. On the aforesaid analysis of evidence and reading the deposition applying the test we do not think that analysis of evidence of learned Tribunal

is an absurd one. According to us while rejecting submission of Mr. Mazumder, there has been evidence to prove as it has been recorded by the

learned Tribunal. The Hon''ble Trial Judge has also accepted reasoning of the learned Tribunal appropriately and legitimately. We are of the view

that evidence as recorded and analyzed by the learned Tribunal and accepted by the Hon''ble Trial Judge, did not meet any standard not to speak

of preponderance of probability. We are unable to accept submission of Mr. Mazumdar that the Hon''ble Trial Judge has adopted the standard of

proof as required in case of criminal trial namely beyond reasonable doubt. In view of the aforesaid discussion we hold that the learned Tribunal

has come to correct conclusion that there is no evidence to prove the first charge of assault or using filthy languages. The Hon''ble Trial Judge

rightly did not interfere with this finding. We find that Hon''ble Trial Judge has also noted similar argument advanced by the appellant before His

Lordship and dealt with the same. It has been appropriately concluded by the Hon''ble Trial Judge when the case of using abusive and filthy

language or assault is not proved extreme punishment of dismissal was not warranted. Naturally the decision cited by Mr. Mazumdar in Bharat

Cocking Coal Ltd. v. Bharat Colliery Kamgar Union (supra) is not helpful in this case. In the case cited before us and also before the Hon''ble

Trial Judge there was proof of Misconduct of assault on the senior officials by the workmen in discharge of their Duties and the Hon''ble Supreme

Court dealt with the question of punishment of dismissal in that situation observing that if the assault by a worker upon the superior officer is

mitigated with the lesser punishment then theory of proportionalism by inflicting lesser punishment would not be rationally applied by reason of the

fact that superior officer in the working field will be totally demoralized.

20. Similarly the decision of the Supreme Court rendered in case of Mahindra and Mahindra Ltd. v. N.B. Narawade (supra), does not lend any

assistance to this case, as unlike in this case it was proved that the workmen concerned in the reported decisions there was proof of using abusive

language. The Supreme Court in that context held that use of abusive language means subversive of discipline and this really disturbed fatally the

working atmosphere in the establishment. In that situation punishment of dismissal was not disproportionate.

21. The next authority cited by Mr. Mazumdar namely the decision of Apex Court in case of L and T Komatsu Ltd. v. N. Udayakumar (supra),

does not appear to be any relevance in this case. In that case there has been proof of habitual absenteeism. Here we do not find any case of

habitual absenteeism. We came to know from the records that there has been a case of abandonment of duty without any authority before the end

of duty hours. Thus, it is one time abandonment rather absenteeism of part of a single day. Therefore this case is not the authority to hold here that

punishment of dismissal was just and proper.

22. The Hon''ble Trial Judge has carefully discussed in details and recorded the applicability of the said authorities and we are in full agreement

with His Lordship that those are not the authorities to hold in this case that order of punishment of dismissal is not appropriate in this case.

23. Now question emerges whether on the charges that has been established, as has been recorded by the learned Tribunal and accepted by the

Hon''ble Trial Judge what punishment is justified. The learned Tribunal in its wisdom has reduced the punishment to lesser degree by reducing two

increments as indicated above. It has been contended by Mr. Kumar that the said order of punishment or any amount of punishment was not called

for. Such contention was not accepted by the Hon''ble Trial Judge, and we also do so for the same reason that finding of the learned Tribunal is

based on evidence. Therefore, we do not find any reason to upset the same nor any cogent ground has been made either orally or otherwise for

doing so. We, affirm the finding of the Hon''ble Trial Judge and the learned Tribunal as they have correctly found the second charge of

abandonment of duty before end of duty hours unauthorisedly has been proved. There cannot be any dispute of legal proposition with regard to the

quantum of punishment that it is no doubt the learned Tribunal has discretion to inflict punishment. If we read the reasoning of the learned Tribunal

simply having regard to the gravity of misconduct we think punishment of reduction of increment may be justified ordinarily. But we at the same

time express our reservation whether it would be appropriate in all situations. We are of the view it depends upon the nature of the work in which

an employee was engaged or entrusted to do any work. For instance a personnel in fire fighting department being engaged to extinguish a fire and

he leaves the job before the duty hour is over unauthorisedly even for a single minute it becomes fatal and it may call for punishment lesser than

dismissal. Therefore, the Tribunal ''not being employer is not expected to comprehend the gravity and nature of the duty in which the workman was

entrusted. It is for the employer who is to understand the loss that will occasion if such work is not done by the workmen concerned who leaves

the place unauthorisedly before the duty hour is over.

24. We are of the view in this circumstance it is in the sole judgment of employer what should be appropriate punishment to be imposed. From the

evidence of Yadav himself in cross-examination it appears that the nature of the works to be performed by him along with other co-workers was

isolation stoppage underground pit. The gravity of nature of this kind of job cannot be understood either by the learned Tribunal or by the Court

who cannot have any knowledge of the same. Therefore, the decision with regard to the quantum of punishment can only be taken by the

management. It would be inequitable for the Tribunal if not unfair if such decision is taken by itself. According to us the Hon''ble Trial Judge has

missed this aspect of the matter. After holding enquiry the decision of inflictment of punishment should have been left with the management on the

proved second charges.

25. We hasten to add in complete agreement with the learned Tribunal, and also the Hon''ble Trial Judge on the second charges having been

proved extreme punishment of dismissal from services is disproportionate as there has been no evidence that because of this abandonment of the

duty there has been serious loss and prejudice of the appellant.

26. Under those circumstances we modify the order of the Hon''ble Trial Judge and also the award of the learned Tribunal to the extent that the

appellant would be at liberty to inflict any punishment other than order of removal or dismissal from services. While doing so chance of hearing

should be given proposing nature of the punishment which will be inflicted. We also uphold the award of the learned Tribunal as well as the

Hon''ble Trial Judge of reinstatement of the petitioner in services and also the portion of backwages after adjusting all the payments which have

already been made.

Thus, this appeal is disposed of. There will be no order as to costs.