Management Of Eastern Electric & ... vs Baldev Lal on 11 August, 1975

Equivalent citations: AIR1975SC1892, [1975(31)FLR239], 1975LABLC1435, (1975)IILLJ367SC, (1975)4SCC684, 1975(7)UJ613(SC), AIR 1975 SUPREME COURT 1892, 1975 4 SCC 684, 1975 LAB. I. C. 1435, 48 FJR 56, 21 FACLR 239, 31 FAC L R 239, 1975 2 LABLJ 367

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Bench: A. Alagiriswami, N.L. Untwalia, P.K. Goswami

JUDGMENT

A. Alagiriswami, J.

1. This is an appeal by special leave against the order of the Industrial Tribunal, Delhi in an application made under Section 33(2)(b) of the Industrial Disputes Act by the appellant for approval of their action in dismissing the respondent.

2. The respondent while an industrial dispute was pending before the Industrial Tribunal. Therefore, the appellant made the application. Four chargesheets were served on the respondent on 15-12-1965, 31-12-1965, 1-1-1966 and 4-1-1966 containing in all eight charges. On 8th January 1966 an enquiry officer proceeded to hold the enquiry. The respondent appeared before the enquiry officer and wanted to consult somebody outside. He came back after about an hour and 15 minutes and the enquiry was resumed. When he was asked to sign the first page of the enquiry proceedings the respondent refused to do so. He again left the enquiry saying that he would consult his companions outside. When one of the Management's witnesses, Mr. P.S. Bedi was about to give his evidence the respondent's brother entered the enquiry room and asked "who is Mr. Gulati, I want to see him and find out his office address and residential address", Mr. Gulati being the enquiry officer. He asked him who he was and he said that he was from the Labour Department. When he was told that the had no business to interfere in the enquiry he flared up. Mr. Motwant, one of the partners of the appellant firm telephoned to the police. The appellant's brother thereupon tried to run away after snatching some papers. Mr. Nanak, manager of the appellant company, tried to prevent him from running with the papers. There was a scuffle in which Mr. Nanak's finger got fractured and he also received some blows. The appellant's brother ran away after tearing the papers. The enquiry was adjourned to January 20 and a telegram was sent to the respondent, on the 10th January a telegram was received from respondent's wife saying that he was out of station and requesting postponement of the enquiry. The enquiry was however held and as a result of the enquiry the respondent was dismissed.

3. The Industrial Tribunal took the view that the enquiry was held without complying with the principles of natural justice and fair play. The Industrial Tribunal thereupon proceeded to examine witness and as a result of the assessment of the evidence adduced came to the conclusion that charge 1 & charge 3 read with charge 7 were proved but that the extreme penalty of dismissal was not in tune with those incidents and clearly showed the malafide intention of the company to victimise the workmen, and refused to accord approval. The charge 1, 3 and 7 are as follows:

> (i) That on 6th December, 1965 he behaved badly with one customer Shri P.S. Bedi and shouted at him.
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> (iii) That he flouted the orders of the partner by not allowing the table of Shri Manohar Singh to be removed to another room and behaved in an insolent manner.
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> (iv) That he obstructed the peon in the performance of his duties.

Charges 3 and 7 are not serious ones and we would therefore confine ourselves to charge 1. The chargesheet in relation to this is as follows :

> We produce below a letter received by us from one of our esteemed customers stating that you shouted at him and also misbehaved:
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> I am sorry to bring to your notice the insulting attitude of one of your mechanic Shri Baldev towards me when I visited your showroom yesterday on the 6th Dec. 65. My two radios given for repair have totally been spoiled and when he was called to tell me the parts if any required, he shouted in an insulting tone and misbehaved. "This kind of attitude shown to your customers by your employees is definitely harmful to the interests of such standard company". I would therefore request you to return my other set immediately through bearer of this letter as I no longer want to deal with you.
>
> Yours faithfully Sd/- P.S. Bedi You will notice that business with the customer is now lost because he insists that he will not get any repair work done by us.
>
> Let us have your explanation in regard to the above arid also show cause why disciplinary action should not be taken against you.
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> In his evidence before the Industrial Tribunal Mr. Bedi, who had made the above complaint, in addition to what is contained in his letter stated as follows:
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> All this happened because I had refused to get the radios privately repaired through those mechanics. In fact, I actually received an advice to that effect from Shri. Manohar Singh a co-mechanic in the same ,concern who both were indulging in this sort of practice jointly. I think it was further reason alone that I was harassed like this in this matter of repairs.

> This was the answer given toy him in the cross-examination. Now if this charge is held proved the respondent deserves no punishment short of dismissal. No commercial firm can tolerate an employee who insults its customers because they do not make use of the services of that employee privately. The employer whose business with the customer is lost because of the behavior of one of his employees can have no use for the services of that employee. We are not therefore able to uphold the view of the Industrial Tribunal that the penalty is not in tune with the incidents and clearly showed the malafide intention of the company to victimise him.

4. The question of punishment is essentially one for the management to decide. In Workman v. Firestone Tyre & Rubber Co. this Court elaborately considered the various decisions of this Court regarding the principles governing the jurisdiction of the Tribunal when adjudicating disputes regarding dismissal and discharge. From those decisions they dedten broad principles of which the ninth is:

> (9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interferred with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

We cannot certainly agree that in this case the punishment was so harsh as to suggest, victimisation.

5. In Bind Constrn & Bluing. Co. Ltd. v. Their Workmen (1965) (1) LLJ 462 this Court observed;

It is new settled law that the Tribunal is not to examine the finding of the quantum of punishment because the whole of the dispute is not really open before a the Tribunal as it is ordinarily before Court of Appeal. The Tribunal's powers have been stated by this Court in a large number of cases and it has been ruled that the Tribunal can only interfere if the conduct of the employer shows lack of bona fides or victimisation of employee or employees or unfair labour practice. The Tribunal may in a strong case interfere with the basic error on a point of fact or a perverse finding, but it cannot substitute its own appraisal of the evidence for that of the officer conducting the domestic enquiry though it may interfere where the principles of natural justice or fair, play have not been followed or where the enquiry is so perverted in it's procedure as to amount to no enquiry at all. In respect of punishment for misconduct under the standing orders, if any, is a matter for the management to decide and if there is any justification for the punishment imposed, the Tribunal should not interfere. The Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice.

We do not consider that the punishment is shockingly disproportionate.

6. In this view it is not necessary to go into the question whether the Tribunal's conclusion that the domestic enquiry was not a proper one is correct or not. Considering the incident on the 8th of January 1966 it would be difficult to say that if the enquiry officer took the view that the telegram sent by the respondent's wife was merely another justance of the undiligences of the respondent to take part in the enquiry and was attempt to avoid it and therefore the enquiry ought to be held even in the absence of the respondent, it is unreasonable view.

7. The appeal is allowed with costs and the order of the Industrial Tribunal set aside. The result would be that the respondent would be deemed to have been validly dismissed.