Employers of Firestone Tyre and Rubber Co. Ltd.

Vs

Their Workmen

Civil Appeal No. 515 of 1966

(M.Hidayatullah, C. A. Vaidialingam JJ)

22.08.1967

JUDGMENT

HIDAYATULLAH, J. -

The present appeal arises from the award of the Presiding Officer, Labour Court, Andhra Pradesh, Hyderabad, by which the dismissal of one Subramaniam, van driver in the employ of the Firestones Tyre & Rubber Co. (P) Ltd., after a domestic enquiry was set aside and the Company was ordered to reinstate him but not to pay him his back wages. The reference in which this decision was rendered was made by the Government of Andhra Pradesh on February 7, 1964. The following are the circumstances leading up to it.

Subramaniam was a van driver with the Firestone Tyre & Rubber Co. from 1953. One of his duties as a van driver was the transportation for delivery of the products of the Company. On May 28, 1963, Subramaniam set out to deliver tyres covered by six invoices to diverse addresses. Two of the invoices (nos. 13815 and 13816) were concerned with eight tyres (4 tyres per invoice) of the specification 8.25 x 20 Tran. H.D.Nyl. 12-PR. Subramaniam took delivery of the tyres and signed the six invoices. After locking the tyres in his van with a key which he claims never left his possession, he set out with one M. V. Das (packer/scooter driver) by his side in the driver's cabin. This was soon after the lunch break. At about 3.15 p.m., Subramaniam telephoned to the office of the Company that two tyres from the two invoices were short. He was asked to return at once. On his return the tyres with him were unloaded and counted. By way of an immediate check the tyres held in stock were also counted. There was no excess in stock. The tyres in the van were short by two. Subramaniam maintained that no tyres were lost or stolen on the way. His case was that the tyres were shortloaded. After investigation, a charge-sheet was served on him for the following act of misconduct :-

"Theft, fraud or dishonesty in connection with the employer's business or property".

The charge-sheet gave full details and fixed the time and place of an enquiry to be held against him and further informed him that he could defend himself through a workman, produce evidence or cross-examine the witnesses. He was suspended pending the result of the enquiry. The enquiry was held by Mr. R. M. Coyajee, Industrial Relations Officer. Four witness for the Company and two for Subramaniam were examined. The Company filed 20 documents and Subramaniam filed 2 documents.

Mr. Coyajee found the charge proved and submitted the minutes of the enquiry to the Superior officers. Then the Manager, Southern Division informed Subramaniam that he was convinced of the

latter's guilt and that he had tentatively decided to dismiss him. He asked Subramaniam to show cause, if any, against this decision. Subramaniam showed cause but the Manager ordered his dismissal.

The Tyre and Rubber Company's Employees Union having raised a dispute the matter was referred to the Tribunal :

> "(a) whether the dismissal of Shri K. Subramaniam, van Driver by the employers of Firestone, Tyre & Rubber Co. (P) Ltd. Hyderabad is justified ?
>
> (b) If not, to what relief is he entitled ?"

Before the Tribunal the Union contended that the enquiry was opposed to the principles of natural justice and the conclusion was perverse. The Tribunal held that the enquiry was not held properly and the conclusion arrived at the domestic enquiry was perverse. The Tribunal rejected the evidence and on the basis of evidence recorded by it, held that the charge was not proved.

The Tribunal gave several reasons for its conclusion that the enquiry was not properly conducted. These were :

> (a) that the inquiry was held immediately after the investigation without taking the explanation of the workman;
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> (b) The workman was examined and cross-examined even before the evidence against him was recorded;
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> (c) Copies of the statements of witnesses examined at the preliminary enquiry were not supplied to the workman;
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> (d) Copies of the minutes of the inquiry were not given to the workman before asking him to reply to the show cause notice; and
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> (e) the evidence of Das which cleared the workman was not properly considered.

The Tribunal did not rely upon the record of the enquiry and on the basis of evidence recorded by itself, held that the fault of the workman was not established and that his dismissal was wrong, with the result already indicated.

The Company now contends that none of these grounds has any validity. It has tried to meet each of the grounds and in our opinion successfully. We shall take these grounds one by one and indicate the submissions which in our opinion must be allowed to prevail. As regards ground No. (a) it is clear to us that, although it may be desirable to call for such an explanation before serving a charge-sheet, there is no principle which compels such a course. The calling for an explanation can only be with a view to making an enquiry unnecessary, where the explanation is good but in many cases it would be open to the criticism that the defence of the workman was being fished out. If after a preliminary enquiry there is prima facie reason to think that the workman was at fault, a charge sheet setting out the details of the allegations and the likely evidence may be issued without offending against any principle of justice and fairplay. This is what was done here and we do not think that there was any disadvantage to the workman. The management has pointed out that even on facts the view is not correct. They have referred to the workman's letter dated May 30, 1963 in which he reiterated that

he was supplied a shorter number of tyres than that given in the invoices and to his statement before Mr. Coyajee that he would state his case fully. In these circumstances, it is hardly possible to say that the workman was at a disadvantage in any way.

We may leave for the present ground No. (b) and proceed to consider the others. Ground No. (c) was not a ground of complaint before the Tribunal. This ground was made out by the Tribunal. In fact these statement were not included in the record of the enquiry. Nor were they made the basis of any conclusion. As to ground No. (d) it is sufficient to say that the minutes were hardly needed as the workman was present personally and had conducted the defence. If he needed to read the record he could have easily asked for an inspection and we have no doubt in our mind that he would have been given such an inspection. The minutes show an utmost consideration at all stages of the need for a proper defence. The Tribunal equated the domestic enquiry to enquiries under Art. 311 of the Constitution which was hardly proper.

It seems to us that the enquiring officer afforded every opportunity to Subramaniam to controvert or prove his case. Subramaniam was informed of the charge very clearly, the witnesses were examined in his presence and he was allowed to cross-examine them fully. A true record was kept. He was given an opportunity to lead evidence and the enquiry officer and the manager gave him a full chance to explain, after apprising him in detail of the findings tentatively reached. The evidence of Das was not dealt with in detail but as Das was not concerned with the loading operation and his evidence was not apparently accepted that Subramaniam had not removed the tyres. Das was apparently taken to support Subramaniam's claim that the tyres were not loaded at all, a conclusion not reached by the management on evidence.

This leaves over the contention that before examining the witnesses Subramaniam was subjected to a cross-examination. This was said to offend the principles of natural justice and reliance was place on Tata Oil Mills Company Ltd., v. Its Workmen and Anr. ([1963] 2 L.L.J. 78), Sur Enamel & Stamping Works Ltd. v. Their Workmen ([1963] 2 L.L.J. 367), Meenglas Tea Estate v. Its Workmen ([1963] 2 L.L.J. 392) and Associated Cement Companies v. Their Workmen & Anr. ([1963] 2 L.L.J. 396)

These cases no doubt lay down that before a delinquent is asked anything, all the evidence against him must be led. This cannot be an invariable rule in all cases. The situation is different where the accusation is based on a matter of record or the facts are admitted. In such a case it may be permissible to draw the attention of the delinquent to the evidence on the record which goes against him and which if he cannot satisfactorily explain must lead to a conclusion of guilt. In certain cases it may even be fair to the delinquent to take his version first so that the enquiry may cover the point of difference and the witnesses may be questioned properly on the aspect of the case suggested by him. It is all a question of justice and fairplay. If the second procedure leads to a just decision of the disputed points and is fairer to the delinquent than the ordinary procedure of examining evidence against him first, no exception can be taking to it. It is, however, wise to ask the delinquent whether he would like to make statement first or wait till the evidence is over but the failure to question him in this way does not ipso facto vitiate the enquiry unless prejudice is caused. It is only when the person enquired against seems to have been held at a disadvantage or has objected to such a course that the enquiry may be said to be vitiated. It must, however, be emphasised that in all cases in which the facts in controversy are disputed the procedure ordinarily to be followed is the one laid down by his Court in the cited cases. The procedure of examining the delinquent first may be adopted in a clear case only. As illustration we may mention one such case which was recently before us. There a bank clerk had allowed overdrafts to customers much beyond the limits

sanctioned by the bank. The clerk had no authority to do so. Before the enquiry commenced he admitted his fault and asked to be excused. He was questioned first to find out if there were any extenuating circumstances before the formal evidence was led to complete the picture of his guilt. We held that the enquiry did not offend any principles of natural justice and was proper (see The Central Bank of India Ltd. v. Karunamoy Banerjee) ([1968] 1 S.C.R. 251).

In the present case Subramaniam had complained earlier that his version ought to have been elicited first before enquiry against him was ordered. This is exactly what was done by the enquiring officer. We had the whole of Subramaniam's statement read to us and found nothing which we can say was unfair. The enquiring officer gave him an interpreter after ascertaining if he had any objection to the person selected, asked him to reply in English or Telugu as he preferred, invited him to call some workman to assist him, asked him the names of the witnesses he wished to examine and whether he wanted any further time for the preparation of his defence. He was then questioned about the loading of tyres in his van, the invoices he had signed and whether he had checked the tyres loaded. He was next asked what route he had followed, whether there was a chance of pilferage en route and whether he suspected any person of having interfered with the van. He was also asked if he was present when the stock was checked. He denied certain details of this stock taking. The issue was thus narrowed to the fact whether 8 tyres were loaded or 6, it being the case of the Company that 8 tyres were loaded and that of Subramaniam that only 6 tyres were loaded, but his receipt for 8 tyres was obtained. The witnesses who loaded the tyres were then called and were examined searchingly by the Presiding Officer and cross-examined by Subramaniam. No doubt some of the questions appeared to be leading but they were respecting the matter of record and too much legalism cannot be expected from a domestic enquiry of this character. The officer asked Subramaniam again and again whether he was defending himself properly or not and Subramaniam always expressed his satisfaction.

In these circumstances, we do not see how the enquiry can be said to have offended any principle of natural justice at all. The Tribunal mechanically applied the dicta of this Court without noticing that the facts here were entirely different from those in the cited cases and the observations covered those cases where all or most of the facts were contested and could not be made applicable to cases where a greater part of the evidence was a matter of written record and the difference was narrow. We are, therefore, of the opinion that the enquiry was properly conducted. As to the evidence of Das it is obvious that Das was supporting Subramaniam in his statement that no tyres were lost during the journey which supported the version that 6 tyres instead of 8 were actually loaded. It is curious that Das never left the van even when Subramaniam went out and on the solitary occasion when Das left the van Subramaniam was in the company of another officer of the Company at the Depot. The evidence of Subramaniam and Das taken together excludes the possibility of loading of 8 tyres. And this is how Das comes into the picture. It is obvious that the enquiring officer and the Manager relied upon the evidence of those who loaded the tyres supported as it was by the admission several times repeated by Subramaniam that he had checked the tyres at the time of loading. In other words, the Management refused to believe Subramaniam even though he was supported by Das. This the Management was entirely within its right in doing and the Tribunal was in error in exercising appellate powers by coming to a different conclusion. All that the Tribunal could do was to see that the enquiry was properly conducted. As in our opinion the enquiry was so conducted the decision of the Tribunal cannot be supported.

The appeal therefore succeeds and will be allowed but in the circumstances of the case we make no order about costs. On behalf of the Company it was stated that the amount paid to the workman during the pendency of the appeal as part of the wages will not be asked to be returned.

Appeal allowed.

V.P.S.

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