

**Chief Manager, R. S. R. T. C., Hanumangarh v Labour Tribunal, Sri
Ganganagar and another
Rajasthan High Court
JODHPUR BENCH
17 January 2015
S. B. Civil W.P. No. 6253 of 2007**

The Order of the Court was as follows:

1. By way of the instant writ petition, the petitioner R.S.R.T.C. has approached this Court assailing the award dated 17.8.2005 passed by the learned Judge, Industrial Tribunal cum Labour Court, Sri Ganganagar in Industrial Reference Case No. 10/2005. Whilst accepting the claim preferred by the workman, the fine of Rs. 23000/- imposed upon the workman by the order dated 19.8.2002 passed by the Chief Manager, R.S.R.T.C. was set aside and the workman was also held entitled to reimbursement of the said amount with interest thereupon. Furthermore the workman was accorded the benefits of selection scales upon completing 9, 18 and 27 years of service and was also granted two annual grade increments which were withheld by the Corporation.
2. Facts in brief are that the respondent workman was appointed as a driver in the petitioner Rajasthan State Road Corporation (hereinafter referred to as the Corporation) on 25.6.1968. Whilst he was plying a bus of the petitioner Corporation on 31.12.1997, it met with an accident with another bus of the Corporation due to which the respondent workman and some passengers received injuries. The respondent has claimed that he received 90% disability owing to the injuries suffered in the accident and was rendered unfit from discharging the duties of a driver thereafter. Accordingly, he sought and was granted voluntary retirement from the petitioner Corporation w.e.f. 31.1.2000.
3. The respondent workman was served a charge-sheet for causing the accident by rash and negligent driving and upon conclusion of the enquiry, an order dated 19.8.2002 was passed by the Chief Manager of the Corporation i.e. the Disciplinary Authority imposing upon him a fine of Rs. 23000/- in lieu of the loss caused to the Corporation in the accident. The respondent workman being aggrieved of the aforesaid

order and certain other unfair actions of the Corporation, prayed to the State Government for referring the dispute to the Industrial Tribunal. The State Government by its notification dated 4.2.2005, referred the dispute for adjudication to the Industrial Tribunal, Sri Ganganagar under the provisions of the I.D.Act.

4. The respondent workman filed a claim petition before the learned Tribunal praying for setting aside of the order imposing fine, grant of selection scales and for grant of two annual grade increments. The petitioner Corporation filed a reply to the statement of claim. It was averred in the reply that since the employee did not lead any evidence to prove his innocence, he was justifiably held guilty in the domestic enquiry and THE fine of Rs. 23,000/- was befittingly imposed upon him looking to the material available on record. Regarding the claim for selection scale, a bald averment was made that the services of the workman were not satisfactory and he was not entitled to receive the selection grades on completion of 18 and 27 years of service. Regarding the claim of increments which were withheld for two years, no specific reply was offered by the Corporation. Specific issues for resolution were framed by the Industrial Tribunal as follows:-

"As to whether the order dated 19.8.2002 whereby a fine of Rs. 23000/- was imposed upon the workman was justified. Whether the workman is entitled to receive the benefit of selection scale upon completing 9, 18 and 27 years of service and whether the denial of two annual grade increments to the workman is justified or not.?"

5. During the course of adjudication of the claim, the Corporation failed to produce any record before the Tribunal so as to justify the order imposing fine. The workman's service record was also not produced despite opportunity being granted. Thereupon, the Tribunal drew adverse inference against the employer and held that the enquiry report itself was doubtful and self contradictory. The order imposing fine dated 19.8.2002 was declared to be unjust and illegal. The Tribunal observed that the enquiry officer recorded contradictory findings in the enquiry report inasmuch as at one place it was mentioned that the charge was proved and simultaneously, the enquiry officer recorded that the report

was an interim report because the other driver with whose bus the collision occurred was undergoing a domestic enquiry which was yet to be concluded. The Tribunal examined the enquiry report minutely and was of the opinion that the enquiry officer's conclusion in holding the respondent workman responsible for the accident was not supported by the circumstances narrated in the report itself. The Tribunal held that punishing the workman on the basis of an interim enquiry report was not justified.

It was further concluded by the Tribunal that the workman received 90% disability in the accident and thus he was unable to defend himself in the domestic enquiry as it was proceeded with without providing him any defence nominee. Regarding the issue of grant of selection scale, the Tribunal observed that the bald plea taken by the Corporation in reply to the statement of claim that the services of the respondent workman were not satisfactory was unsupported by any material or document whatsoever. Such assertion could have been substantiated by producing the workman's service record. In absence of the so called adverse remarks in the service record being proved, the benefits of selection scales could not be denied to the employee at the mere ipse dixit of the Corporation and the action in this regard was held to be unjust and arbitrary. The third point of reference regarding the claim of two annual grade increments was also accepted holding that the Corporation took no action against the workman for his so called absence from duty for a period of two years. It was concluded that since the absence of the workman was not acted upon by way of any disciplinary action, the Corporation was not justified in withholding the two grade increments accruing to the workman.

6. Mr. Purohit, learned counsel representing the Corporation attempted to challenge the award passed by the Tribunal with reference to Section 11A of the Industrial Disputes Act and submits that the Tribunal has proceeded beyond the scope of its powers in re-appreciating evidence available on record and setting aside the order imposing penalty. He, therefore, prays that while accepting the writ petition, the impugned award deserves to be set aside.

7. Per contra Mr. R.S.Choudhary, learned counsel for the respondent workman submits that the claim of the workman for two annual grade increments was not contested by the Corporation before the Tribunal because no objection was raised thereto in the reply filed to the statement of claim on behalf of the Corporation. He further submits that so far as the benefits of selection scale upon completing 9, 18 and 27 years of service are concerned, an uncertain and vague reply was given to the said prayer with reference to the alleged unsatisfactory service record of the workman.

However, the service record was not produced before the Tribunal to substantiate the allegation of the alleged unsatisfactory service record. He further submits that even in the present writ petition, there is no averment as to how the services of the workman were unsatisfactory. He supported the findings recorded by the Tribunal while quashing the order imposing fine on the workman and contended that as the record of the enquiry was not produced before the Tribunal, the Corporation is not entitled to lay any challenge to the Tribunal's order. He submits that the respondent workman was totally paralyzed on account of the injuries suffered by him whilst driving the Corporation's bus. Thus, he urged that no interference is called for in the impugned award and the writ petition deserves to be dismissed with heavy cost.

8. I have heard learned counsel for the parties and have gone through the impugned award.

9. So far as the workman's prayer for grant of two annual grade increments is concerned, the said prayer was not even contested by the petitioner Corporation while filing reply to the statement of claim. No justification is shown for the said denial in the instant writ petition as well. Thus, the Corporation is not entitled to challenge the same in the instant writ petition.

10. As the respondent workman admittedly received grave injuries causing 90% disability, the matter is required to be considered in light of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter in short the Act of 1995). As per the Act of 1995, the employer is under an obligation to protect the

rights of the employees who receive disability during service. S. 47 of the Act reads as below_

"47. Non-discrimination in Government employment-(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service;

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability;

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification exempt any establishment from the provisions of this section."

11. By effect of the sub-section (1), the services and emoluments of the employee who acquires disability during his service are protected.

12. As per the second proviso of sub-section of Section 47, if it is not possible to adjust the disabled employee against any post, he is required to be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier. By effect of the aforesaid provision, the Corporation, was required to protect all the rights and service benefits of the workman who admittedly acquired 90% disability while discharging the duties of the Corporation. Even if the respondent workman was unable to perform his duties for a period of two years on account of the disability acquired by him, it was obligatory on the part of the Corporation to pay him all service benefits including the pay and emoluments etc., by effect of the mandatory provision of S. 47 of the Act of 1995. Thus, the order passed by the Tribunal granting benefits of two grade increments to the workman is wholly justified.

13. So far as the question of grant of selection scale is concerned, as has been observed above, a bald reply was filed by the Corporation before the Tribunal taking a plea that the workman's service record was not satisfactory. If at all the employer was desirous of opposing the said claim of the workman then, specific pleading with supporting evidence ought to have been placed before the Tribunal so as to establish the manner in which so called unsatisfactory service record of the workman adversely affected his right to claim benefits of the selection scales. Thus, the finding recorded by the Tribunal in the impugned award while granting selection scales to the workman also does not call for any interference.

14. The third issue before the learned Tribunal was regarding the validity of order dated 19.8.2002 passed by the disciplinary authority whereby a fine of Rs. 23000/- imposed on the workman. As per the Tribunal's findings and as is admitted before this Court, the petitioner employer failed to produce the record of the enquiry proceedings before the learned Tribunal. While the matter was subjudice and if it was intended to defend and justify the order imposing penalty, it was obligatory on the part of the employer to produce the relevant record before the adjudicating forum so that the order could be tested on the basis of the record of enquiry and the available evidence. On the contrary, the Tribunal has observed that even the enquiry report on the basis whereof the fine was imposed on the workman was self contradictory. The enquiry officer himself observed in the enquiry report that the report was interim in nature and yet chose to hold the workman guilty. The report was treated as being incomplete and interim in nature as the enquiry officer had no information regarding the result of a contemporaneous enquiry being conducted against the driver of the other bus with which collision occurred.

Since both the buses involved in the accident were Corporation's buses, in order to ensure a fair and unimpeachable enquiry, it was essential that the conduct of both the drivers should have been examined in a joint enquiry. A fair and just decision was only possible if both the drivers were pitted against each other in a common enquiry so as to

avoid prejudice to either of them and to eliminate the possibility of contradictory findings.

16. So far as the objection regarding the Tribunal not having jurisdiction to entertain the claim is concerned in reference to Section 11A of the Act, this Court is of the opinion that the said objection is without any force. It is not a case wherein the Tribunal has reappreciated the evidence to interfere in the findings of the Enquiry Officer. The Tribunal held that the findings recorded by the Enquiry Officer were not substantiated as record of enquiry was not produced before it. Thus, the said objection raised by the petitioner's counsel is meritless and is rejected.

17. In this view of the matter, this Court is of the opinion that the order passed by the Tribunal does not suffer from any illegality or irregularity or perversity so as to call for any interference in this writ petition.

18. Accordingly, the writ petition being devoid of merit is dismissed. If the impugned award has not been complied with till date, the compliance thereof shall be made within a period of two months thereof. Amount accrued to the respondent workman who admittedly received 90% disability in the accident while on duty and is reported to have totally paralysed shall carry an interest of 6% from the date of accrual till the date of realization. If the payment is not made within two months, the interest shall stand enhanced to 12% p.a. No order as to costs.

Petition Dismissed