

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No. 3775/2008**

% Judgment delivered on: 04.02.2010

Mahabir Singh Petitioner
Through: Mr. S.C. Luthra, Advocate
versus

M/s Bharat Hotels Ltd. Respondents
Through: Mr. Amit Bhasin,
Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J. Oral:

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1. By this petition filed under Article 227 of the Constitution of India the petitioner seeks quashing of the enquiry Reports dated 18.03.1994 and 08.03.1994, termination Letter dated 07.04.1994 and order dated 03.11.2006 as well as Award dated 16.04.2007. Petitioner further seeks his

reinstatement with consequential benefits of arrears of salary with interest.

2. Brief facts relevant for deciding the present petition are that:-

The petitioner was appointed by the respondent management as Security Guard on 16.08.1990 and was confirmed on 18.08.1991. As per the petitioner, there was a self adopted procedure in the respondent Management to force its employees to resign from their respective posts after a period of two or three years. It was further asserted that the workman was forced to accept the termination w.e.f. 11.04.1994 followed by a termination letter dated 15.04.1994 which was accepted at the residence of the petitioner/workman. As per the petitioner, before terminating him, the respondent management leveled baseless and concocted charges and served him with a chargesheet letter dated 25.01.1994. In response to the same, the petitioner filed a reply dated 29.01.1994 denying all the allegations in toto. After perusing the reply of the petitioner workman, the respondent

management unilaterally changed the contents of the chargesheet whereafter the petitioner was forced to submit his second reply dated 2.2.1994 wherein also he denied all the allegations leveled against him. Not satisfied with both the replies, the management appointed an Enquiry Officer vide letter dated 3.2.1994. The enquiry culminated with the termination order dated 7.4.1994 against the petitioner workman which was received by the petitioner at his residence on 15.04.1994 despite the fact that he was working in the Hotel upto 10.04.1994. The workman filed the statement of claim before Conciliation Officer which was referred to the Labour Court. The Labour Court vide its order dated 3.11.2008 held that enquiry proceedings were conducted in accordance with principles of natural justice and that his dismissal from service cannot be said to be disproportionate to the charges proved against him and further that he is not entitled to any relief against the management. Feeling aggrieved with the said order, the present petition has been preferred.

3. Counsel for the petitioner submits that the enquiry

was vitiated as the petitioner was not supplied with the statement of the complainant. Counsel further submits that the extraneous considerations prevailed on the management for terminating the services of the petitioner as the management has taken the past record into consideration which in fact was never a part of the chargesheet against the petitioner. Counsel further submits that even the time of the incident was changed by the management when objection to this effect was taken by the petitioner. Counsel further submits that even the incident was reported by the complainant on the next day and not on the same day. Counsel thus submits that these circumstances are good enough to hold that the said enquiry was vitiated.

4. Counsel for the respondent, on the other hand, submits that there is no irregularity in the enquiry proceedings and the petitioner had fully participated in the enquiry proceedings. Counsel further submits that the past record of the petitioner was considered just to examine as to whether the petitioner deserved any leniency or not. Counsel further submits that in the enquiry proceedings strict rules of evidence

are not applicable.

5. I have heard learned counsel for the parties at considerable length and gone through the records.

6. It is a settled legal position of law that unlike any criminal case, charges leveled against the workman in a domestic enquiry are not to be proved beyond reasonable doubt. It is on preponderance of probabilities that if the Labour Court finds that there is some evidence which justifies the findings of the enquiry officer then the same cannot be interfered with in a challenge made to such an enquiry report. It would be pertinent to refer to the judgment of the Apex Court in ***Ajit Kumar Nag vs. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia & Ors. (2005) 7 SCC 764*** where it was observed that:

"The two proceedings - criminal and departmental - are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of

evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'."

7. This court would not ordinarily interfere with the findings of the Labour Court and this has been reiterated by the Apex Court in a number of decisions. It would be relevant to reproduce the relevant para in the judgment of **ONGC vs. ONGC Contractual Workers Union (2008)12SCC275:**

*"8. We have examined the arguments advanced by the learned Counsel. This Court has held time and again that the High Court had the authority to enquire as to whether a finding arrived at by the Tribunal was based on evidence and to correct an error apparent on the face of the record. The observations in **Trambak Rubber Industries Ltd.'s case (supra)** are to this effect and it has been highlighted that the High Court would be fully justified in interfering with an Award of an Industrial Court on account of a patent illegality. In **Seema Ghosh's case (Supra)**, this Court observed that the High Court's interference under Articles 226 and 227 of the Constitution with an Award of the Labour Court was justified as the Award had been rendered contrary to the law laid down by this Court and as a measure of "misplaced sympathy", and was thus perverse. The other judgments cited by Mr. Dave lay down similar principles and need not be dealt with*

*individually. It will be seen therefore that the interference would be limited to a few cases and as already noted above, in the case of a patent illegality or perversity. On the contrary, Mr. Sanyal's reliance on **Sadhu Ram's case (supra)** is more appropriate to the circumstances herein. It has been observed as under:*

The jurisdiction under Article 226 of the Constitution of India is truly wide but, for that very reason, it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate court over tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those tribunals. That the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in interfering. But where the tribunal gets jurisdiction only if a reference is made and it is therefore impossible ever to say that the Tribunal has clutched at jurisdiction, we do not think that it was proper for the High Court to substitute its judgment for that of the Labour Court and hold that the workman had raised no demand with the management.

9. We are therefore of the opinion that in the light of the facts that have come on record we find no perversity or patent illegality in the Award of the Industrial Tribunal and on the contrary must appreciate that it has minutely examined the evidence in arriving at its decision. In this view of the matter, it was inappropriate for the Learned Single Judge to have re-appraised the evidence and come to a different conclusion."

Hence in the present case applying the aforesaid observations of the Apex Court it cannot be lost sight of the fact that the

learned Labour Court has threadbare examined the contentions raised by the petitioner and the same does not call for reappreciation as counsel for the petitioner has not been able to satisfy this Court as to how and in what manner the findings of the learned Labour Court are illegal, perverse or untenable in the eyes of law.

8. The fact that simply because in the show cause notice time was corrected from 2.40 p.m. to 2.20 p.m. it would not lead to an inference that no incident had taken place as was reported by the complainant. In any case, the correction in timing was carried out immediately before the commencement of the enquiry proceedings. The pleas raised by the petitioner that he was not supplied copy of the statement of the complainant, non-supply of the chargesheet in Hindi, recording of enquiry proceedings in English, denial to the petitioner to be represented through legal practitioner or any other agent of his choice before the enquiry officer, non-lodging of a complaint to the police station, non-supply of the copy of the standing order to the petitioner to properly defend himself, denial of principles

of natural justice and grant of disproportionate punishment do not cut any ice in the face of the detailed discussion by the labour Court while deciding issue No. 1 on the question of enquiry and also in the final award. It is not the case of the petitioner workman that he was not granted full opportunity to defend his case before the enquiry officer. It is on record that the workman gave his own evidence. The workman had even cross-examined the witnesses produced by the management. The workman was given a copy of the enquiry report by the enquiry officer and the workman submitted his own comments on the said enquiry report. Learned Labour Court also found that it could not be established on record that the representing officer representing the management was a legally trained person. Once having fully participated in the enquiry proceedings the petitioner cannot be heard to complain that the principles of natural justice were violated by the enquiry officer or reasonable opportunity was not granted to the petitioner workman. Counsel for the petitioner has not been able to satisfy this Court as to how and in what manner the principles of

natural justice were violated during the course of the enquiry proceedings. It would be useful to refer to the judgment of the Apex Court in **P.D. Agrawal V. State Bank of India (2006) 8 SCC 776** wherein it analyzed a number of authorities and dealt with the issue in detail. The relevant paras are reproduced as under:-

"The Principles of natural justice cannot be put in a straight jacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time also undergone a sea change.

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16. Decision of this Court in **S.L. Kapoor v. Jagmohan and Ors.** : [1981]1SCR746 , whereupon Mr. Rao placed strong reliance to contend that non-observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, has undergone a sea change. In view of the decision of this Court in **State Bank of Patiala and Ors. v. S.K. Sharma** : (1996)IILLJ296SC and **Rajendra Singh v. State of M.P.** : AIR1996SC2736 , the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principal doctrine of audi alterem partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principal. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a

*vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straightjacket formula. [See **Viveka Nand Sethi v. Chairman, J. & K. Bank Ltd. and Ors** : (2005)IILLJ1034SC and **State of U.P. v. Neeraj Awasthi and Ors** : (2006)ILLJ721SC . See also **Mohd. Sartaj v. State of U.P.** : AIR2006SC3492 .]*"

9. On the question of disproportionate punishment, I do not find the reasoning given by the learned Labour Court either illegal or erroneous. The alleged utterances made by the petitioner against his superior no doubt constitutes serious misconduct and I fully concur with the findings of the labour Court wherein it has observed that in the hotel industry the employees should maintain a special level of temperamental discipline and should have a tolerance level and sophisticated behavioural pattern irrespective of the position and cadre he works in.

10. Hence in the light of the aforesaid discussion, I do not find any merit in the present petition and the same is hereby dismissed.

February 04, 2010
pkv

KAILASH GAMBHIR,J