

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

**Date of decision: 8<sup>th</sup> August, 2011**

+ **LPA No.610/2009**

**ABHERAJ JASWAL**

**..... APPELLANT**

Through: Mr.Dinesh Chander Yadav and  
Mr. A. S. Rishi, Advocates.

versus

**M/S GODREJ BOYCE  
MANUFACTURING & ORS.**

**.... RESPONDENTS**

Through: Ms. Raavi Birbal, Advocate.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

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

**DIPAK MISRA, CJ**

The appellant – workman, an employee in the respondent – company as a Steel Mechanic, was served with a chargesheet on 12.3.1997 alleging that he diverted the customers of the company to a third party, M/s Krishan

Enterprises, and thereby acted dishonestly in the course of his employment.

The specific incidents of different dates when he had diverted the customers to M/s Krishan Enterprises were disclosed in the chargesheet served on him.

2. Regard being had to the submissions, that have been canvassed before us, we think it appropriate to reproduce the relevant part of the chargesheet that was served on the workman. It reads as follows –

“1. On 22.11.1996 you were allotted a Service call-cum-cash memo (SCCM) No. 1199 dated 18.11.1996 booked by M/s. The East India Carpet Co. Limited, F-45, South Extension Part-I, New Delhi to check handle of the safe. You visited the party on the next day i.e. 23.11.96 and the partial job was done by you. For the said Job Rs.311/- (Rupees Three Hundred Eleven Only) was paid by the party vide their cheque No.914360 dated 27.11.86 drawn on State Bank of India, NDSE Part-I, which you deposited with the company on 28.11.96.

Although, you were not allotted any ervice call-cum-cash memo (SCCM) in respect of the above party i.e. M/s. The East India Carpet Co. Limited, to attend the balance repair work you visited the party again on 30.11.96 and did the balance repair work of the same safe. You submitted a bill for the same for Rs.830/- (Rupees Eight Hundred Thirty Only) in the name of M/s. Krishna Enterprises, 319-320, Apka Bazar, Gurgaon-122001 instead of the company (Godrej & Boyce Mfg. Co. Limited). The party accordingly made payment against your said bill vide their cheque No.914363 dated

02.12.96 drawn on Bank of India, NDSE Part-I in favour of M/s. Krishna Enterprises.

You did the repair work of party's safe on 30.11.96 and raised another bill for Rs.830/- (Rupees Eight Hundred Thirty Only) in the name of M/s. Krishna Enterprises. The said fact has been confirmed by the party and it has also been confirmed that M/s. VXL Ltd. is 100% subsidiary of the East India Carpet Co. Limited.

2. On 02.12.96 you were allotted a Service call-cum-cash memo dated 12.11.96 booked by Central Bank of India, Village Nangal Dewal, near Cargo-termina-II, New Delhi for: -

Mr.Abheraj Jaswal, Salary code – 4360.

- a). Supplying and fixing of one set of lock of 4 drawer card Index Cabinet.
- b). Supplying and fixing of two handles of card Index Cabinet.

You did not visit the party on 01.12.96 and 03.12.96. You were again asked to visit the party on 04.12.96 and again you did not visit the party for the reasons best known to you. Then you were asked third time on 05.12.96 when you visited the party on 05.12.96 it was informed by you that the job has already been done. The Branch Manager of the said Central Bank of India have mentioned on the SCCM itself that "Job already carried out by Krishna Enterprises of Gurgaon on 04.12.96."

Thus it is apparent that you did not visit the party deliberately on 02.12.96 and 04.12.96. You have a vested interest with M/s. Krishna Enterprises of Gurgaon

causing loss to the company and which is against the interest of the company.

3. You have taken two chairs from State Bank of India, Indira Gandhi International Airport, Foreign Exchange Deptt., New Delhi but have not deposited in the company till date. It is on record that NBC/RD NO. 57615 dated 13.05.96 was prepared for replacement of 15 chairs of the said party and the party returned back only 13 chairs at that time and retained 2 chairs. Subsequently, when the branch manager of that State Bank of India, namely, Mr.Sardana was approached to return the balance 2 chairs he has confirmed that the remaining 2 chairs have already been taken away by you, identifying you as the mechanic who usually visits them to attend the service calls booked by them. It is on record that you have attending the party for undertaking various repairs works.”

3. On the basis of the aforesaid chargesheet, the enquiry officer was appointed and eventually, in the domestic enquiry, he was found guilty and faced an order of dismissal from service on 1.7.1998.

4. After an industrial dispute was raised, a reference was made by the competent authority of GNCTD to the Labour Court on 14.6.1999 with the following terms:

“Whether Mr. Abheraj Jaiswal has been dismissed from service illegally and/or unjustifiably by the management

and if so, to what relief is he entitled and what directions are necessary in this respect?”

5. The Labour Court came to hold that the domestic enquiry was fair and proper being held in accordance with the principles of natural justice; that the diversion of work by the appellant to M/s. Krishan Enterprises had caused loss to the management; that the action of the workman was against the interest of the company; that the employee had committed breach of trust; and that the punishment imposed on him was not disproportionate.

6. Being dissatisfied with the said award, the workman approached this Court in W.P.(C) No.7865/2009. The learned Single Judge, upon perusal of the award, found that the charges levelled against the workman have been proven in the domestic enquiry and the concurrence given to the same by the Labour Court cannot be faulted.

7. We have Mr. Dinesh Chander Yadav, learned counsel for the appellant and Ms. Raavi Birbal, learned counsel for the respondent.

8. The learned counsel for the appellant has submitted that the enquiry was in violation of the principles of natural justice and as a proper enquiry

was not held, both the Labour Court as well as Writ Court have fallen into error by expressing the opinion that the same is just and fair. The learned counsel would submit that the learned Single Judge has not given reasons for concurring with the view expressed by the Labour Court but has only observed that there is no perversity of approach. The learned counsel would propound with emphasis that when adequate opportunity is not afforded, the entire proceeding is vitiated and that also makes the award sensitively unsustainable. It is urged by him that the Labour Court has failed to appreciate the import and purport of Section 11A of the Industrial Disputes Act, 1947 (for brevity 'the Act') and erroneously expressed the view that the punishment imposed is not disproportionate. To buttress the aforesaid submissions, the learned counsel has commended us to the decisions rendered in *Phulbari Tea Estate v. Its Workmen*, AIR 1959 SC 1111, *Ramanand v. Divisional Mechanical Engineer, Northern Railway, Bikaner and another*, AIR 1962 Rajasthan 265, and *Sur Enamel and Stamping Works (P) Ltd. v. Their Workmen*, AIR 1963 SC 1914.

9. Ms. Raavi Birbal, the learned counsel for the respondent, resisting the aforesaid submissions, has contended that there is ample material to show

that the domestic enquiry conducted by the employer is absolutely flawless and fair and the principles of natural justice has been followed in entirety. It is urged by her to a case of this nature, the proportionality of punishment does not get attracted. The learned counsel for the respondent has placed reliance on *State of Haryana and Anr. v. Rattan Singh*, AIR 1977 SC 1512, *Cholan Roadways Limited v. G. Thirugnanasambandam*, AIR 2005 SC 570, *Usha Breco Mazdoor Sangh v. Management of Usha Breco Ltd. and Anr.*, (2008) 5 SCC 554 and *U.P. State Road Transport Corporation and Ors. v. Suresh Chand Sharma*, 2010 VII AD (S.C.) 66.

10. Before we advert to the issue of compliance of the principles of natural justice, we think it appropriate to refer to the principles that have been laid down in certain authorities as regards the compliance of the principles of natural justice in cases of domestic enquiry.

11. In *Phulbari Tea Estate* (supra), their Lordships, after referring to the decision in *Union of India v. T.R. Varma*, AIR 1957 SC 882, opined that the rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies; and that the evidence of the opponent should be taken in his presence; and that he should be given

the opportunity of cross-examining the witnesses examined by that party; and that no materials should be relied on against him without affording him an opportunity of explaining them. In the said case, the witnesses in the domestic enquiry who were present at the enquiry were not examined in the presence of the employee, copies of the statements made by the witnesses were not supplied to him before he was asked to question them and the statements which had been recorded were not read over to the employee at the enquiry before he was asked to question the witnesses. Their Lordships took note of the fact that the statements which were recorded were produced on behalf of the company before the tribunal, but the witnesses were not produced so that they might be cross-examined even at that stage on behalf of the employee and in that factual backdrop opined that the conclusion arrived at by the industrial tribunal that the dismissal of the employee was not justified.

12. In the case of *Ramanand* (supra), the Bench, placing reliance on the decision in *State of Madhya Pradesh v. Chintaman*, AIR 1961 SC 1623 wherein it was held that the enquiry officer may have acted bonafide but that does not mean that the report passed by him is final and conclusive, held that

the test is affording of reasonable opportunity and it is the duty of the court to see whether the reasonable opportunity was extended or not.

13. In *Sur Enamel and Stamping Works (P) Ltd.* (supra), it has been held that if an industrial employee's services are terminated after a proper domestic enquiry held in accordance with the rules of natural justice and the conclusions reached at the enquiry are not perverse the industrial tribunal is not entitled to consider the propriety or the correctness of the said conclusions. Their Lordships have further expressed that an enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined - ordinarily in the presence of the employee - in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report.

14. In *K.L. Tripathi v. State Bank of India & Ors.*, AIR 1984 SC 273

while dealing with the concept of natural justice in the backdrop of departmental proceeding, their Lordships have opined thus –

“It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the appellant by the procedure followed.”

15. In *G. Thirugnanasambandam* (supra), their Lordships placed reliance on the decision in *Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi and Others*, (1991) 2 SCC 716, wherein it was laid down that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental

proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof, but inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. There must be evidence direct or circumstantial to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. It had been further stated that the standard of proof is not proof beyond reasonable doubt but the preponderance of probabilities tending to draw an inference that the fact must be more probable. Thereafter, their Lordships expressed as follows:

“17. There cannot, however, be any doubt whatsoever that the principle of natural justice are required to be complied with in a domestic enquiry. It is, however, well-known that the said principle cannot be stretched too far nor can be applied in a vacuum.

X X X X

19. It is further trite that the standard of proof required in a domestic enquiry vis-à-vis a criminal trial is absolutely different. Whereas in the former 'preponderance of probability' would suffice; in the latter, 'proof beyond all reasonable doubt' is imperative.”

16. From the aforesaid decisions, it is quite vivid that in a domestic enquiry, the principles of natural justice are to be observed on certain parameters and the enquiry is to be fairly and properly conducted. That apart, the proof in a domestic enquiry stands on a different platform that is required in a court of law.

17. Presently, we shall advert to the facts of the present case whether there has been real violation of the principles of natural justice. For the said purpose, we have perused the findings of the enquiry officer. On a scrutiny of Para 11 of the enquiry report, it is absolutely vivid that the management submitted a list of documents along with the photocopies of the same on 14.04.1997 and, on a request being made by the delinquent employee, submitted the names of three witnesses and additional documents on 25.04.1997. On the other hand, the workman, on being asked for list of

witnesses and documents, paved the path of various subterfuge on many an occasion. It has been recorded by the enquiry officer that the workman was provided with ample opportunities for demanding documents from the management and that the same were duly complied with.

18. On a bare reading of the report, it is graphically clear that the witnesses were duly examined and cross-examined. The enquiry officer has addressed himself to the exchange of communications and various exhibits in a detailed manner. It is worth nothing that the workman, vide letter dated 26<sup>th</sup> November 1977, requested the Enquiry Officer to call for Mr. Manoj Sadavarte, Assistant Manager, Mr. Rajesh Kumar (Puliyani), Service Officer and Mr. Laxman Singh, Warehouse Keeper as defence witnesses. The said request was forwarded to the Management Representative to be put up before the Branch Manager of the Company. It was informed by Mr. Jaswal that the three witnesses are willing to appear as defence witness once they were permitted by the Branch Manager. However, in the enquiry held on 27<sup>th</sup> November 1997, the Management Representative informed that one of the 3 witnesses, Mr. Puliyani, had already appeared as Management Witness and cross-examined and, therefore, was not allowed to appear as defence

witness. The other two witnesses, though permitted to appear, did not finally appear, pleading their inability. The management submitted its written arguments on 18.2.1998. On 26.2.1998, the workman requested for the arrangement of the presence of Shri B.N. Srivastava who is a handwriting and finger print expert who accordingly appeared on 9.3.1998 and was cross-examined by the workman.

19. Be it noted, after the evidence of the management was over, the workman, who was asked to lead his evidence, produced some documents along with oral evidence.

20. From the aforesaid scrutiny of the factual matrix, there can be no iota of doubt that the employee was afforded adequate opportunity to defend himself and there has been no violation of the principles of natural justice.

21. The second limb that is required to be adverted to is whether the labour court has failed to exercise the power under Section 11A of the Act. As is perceptible from the charges levelled against him, it was a case of dishonesty, which has been proven. We have already held that the finding returned by the labour court, which has been concurred with by the learned

Single Judge, that the principles of natural justice have been appositely followed and there has been no violation of the same is absolutely correct. The question that emerges is whether the appellant should have been imposed a lesser punishment by the labour court in exercise of power conferred on him under Section 11A of the Act.

22. In the case of *U.P. State Road Transport Corporation v. Vinod Kumar*, (2008) 1 SCC 115, a two-Judge Bench of the Apex Court has held thus: -

“This Court in a number of judgments has held that the punishment of removal/dismissal is the appropriate punishment for an employee found guilty of misappropriation of funds; and the courts should be reluctant to reduce the punishment on misplaced sympathy for a workman. That, there is nothing wrong in the employer losing confidence or faith in such an employee and awarding punishment of dismissal. That, in such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering with the quantum of punishment.”

23. In *Divisional Controller, NEKRTC v. H. Amaresh*, (2006) 6 SCC 187, it has been ruled as follows: -

“In the instant case, the misappropriation of the funds by the delinquent employee was only Rs.360.95. This Court has considered the punishment that may be awarded to the delinquent employees who misappropriated the funds of the Corporation and the facts to be considered. This Court in a catena of judgments held that the loss of confidence is the primary factor and not the amount of money misappropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of misappropriating the Corporation’s funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment.”

Recently, same principle has been reiterated in the case of *Suresh Chand Sharma* (supra).

24. In the case at hand, the employee had diverted the customers of the company to the third party as a consequence of which the company had sustained loss. It is a dishonest act. A employer is bound to loose faith in such an employee. Regard being had to the gravity of the misconduct, we are of the considered opinion that a lesser punishment could not have been

imposed by the labour court in exercise of jurisdiction under Section 11A of the Act.

25. Resultantly, we do not perceive any merit in this appeal and, accordingly, the same stands dismissed without any order as to costs.

**CHIEF JUSTICE**

**SANJIV KHANNA, J**

AUGUST 8, 2011  
dk