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

+ **Date of Decision: 18.02.2013**

% **W.P.(C) 21/2012**

MGT. OF M/S DELHI TRANSPORT CORPORATION

..... Petitioner

Through: Ms. Arti Mahajan Shedha, Advocate

versus

KISHORI LAL THROUGH LEGAL HEIR SMT. OMWATI

..... Respondent

Through: Mohd. Farrukh, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (ORAL)

1. The petitioner-management has preferred the present writ petition to assail the order dated 04.10.2010 as well as the final award dated 02.04.2011 passed by the Labour Court-XII in ID No. 215/2008 on a reference made by the appropriate government on 08.10.2003 in relation to the punishment of removal from service imposed by the petitioner on the respondent-employee.

2. The respondent was a conductor with the petitioner with batch No. 16065. He was lastly posted at A.N. Depot. He was chargesheeted on 17.01.1989 with the allegation that he had not issued tickets to a group of 13 passengers with luggage after taking the fare from them. It was also alleged

that cash with him was found short by Rs.51.50. He was alleged to have committed misconduct in terms of Para 4, Para 19(b), (f), (h) and (m) of the standing orders. A domestic enquiry was held after issuance of chargesheet. The charges were held to be proved. The disciplinary authority i.e., the Depot Manager after considering the enquiry report; the gravity of the offence and the past record of the respondent proposed the punishment of removal from service. After considering the reply of the respondent the Depot Manager imposed a punishment of removal from service on 04.05.1990 upon the respondent. The respondent then raised an industrial dispute which, eventually, was referred by the appropriate government, as aforesaid, to the Labour Court.

3. The Labour Court dealt with the issue with regard to the legality and fairness of the departmental enquiry conducted by the petitioner vide impugned order dated 04.10.2010. Though the said departmental enquiry was held to have been conducted in accordance with the principles of natural justice, *inter alia*, on the basis that: the enquiry officer has dealt with the evidence of the management in a single sentence but the evidence of the respondent had been discussed in detail; the enquiry officer has not discussed the aspect of non-production of the complainant passengers, though they were material witnesses and they were “*sine qua non*” for proving the charge against the respondent, the departmental enquiry was set aside. The Labour Court held that the enquiry officer was influenced by the weakness of the defence’s evidence rather than the strength of the department’s case. The Labour Court found error in the approach of the enquiry officer and, therefore, even though the enquiry was found to be in

compliance with the principles of natural justice, it was held that the report of the enquiry officer calls for review or re-appreciation of the material on record in the enquiry proceedings.

4. The matter then proceeded before the Labour Court for final consideration and by the impugned award dated 02.04.2011, the Labour Court granted an interim relief of Rs. 1 lac to the widow of the deceased workman and directed the petitioner-management to review or re-appreciate the enquiry report in the light of the order dated 04.10.2010 within three months.

5. Learned counsel for the petitioner points out, firstly, in respect of the order dated 04.10.2010 that the same proceeds on an entirely wrong premise in law, since it has been held that the production of the complainant passengers is a must to establish the charge of the conductor not issuing tickets after pocketing the fare from them. In this regard, it is pointed out that even though notices were issued to the passengers, they did not appear and the respondent-delinquent did not produce the said passengers of his own accord. Learned counsel places reliance on the decision of the Supreme Court in ***State of Haryana & Anr. vs. Rattan Singh***, (1977) 2 SCC 491, whereby the Supreme Court held as follows:-

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and could not glibly swallow what is strictly speaking not relevant under the Indian

Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come and in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence-not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

6. Learned counsel for the petitioner submits that present was a case which was completely proved to the hilt before the enquiry officer. The checking squad consisted of three officers. All three were examined in the enquiry. The statements of all the three officers were consistent. They recorded the statements of the passengers-complainants, which were countersigned by the respondent. The respondent also gave his own

statement admitting his lapse by stating that he had received Rs. 25 in total, but forgot to give the tickets to the passengers. Learned counsel points out that the respondent-delinquent had produced two witnesses, namely, Sh. Mohanlal and Sh. Suresh Kumar, who were allegedly passengers in the bus at the relevant time. Pertinently, they were not the complainants. Their cross-examination showed that they were inconsistent and that they were not able to produce any evidence to show that they were even present in the bus as passengers at the relevant time. Learned counsel points out that while one of the passengers, namely, Mohanlal stated that the driver of the bus was not feeling well at Tughlakabad railway station, the other defence witness Sh Suresh Kumar gave the name of the place where the driver was not feeling well as Lal Kuan. While Sh Mohanlal stated that there were about 60 passengers in the bus at Red Fort when the bus was checked, Sh Suresh Kumar stated that the number of passengers were 12-13 at the time of checking of the bus. It is also pointed out that there is inconsistency with regard to the time of the bus being checked in the statements of the two defence witnesses. Learned counsel for the petitioner submits that the inconsistencies in the statements of these defence witnesses led the enquiry officer to disbelieve their statements. It is further pointed out that the cash with the respondent-delinquent was also checked in the present case. Ms. Shedha submits that the scope of the examination before the Labour Court, in respect of the domestic enquiry, is only to consider whether the enquiry has been conducted in accordance with the norms and the principles of natural justice. It is the decision making process, and not the decision itself, which can be called in question in judicial review. Moreover, it could not be said that the present was a case of no evidence. Appreciation of evidence

validly brought on record is a matter which concerns the employer and not the Labour Court. If more than one view could be formed on the basis of the same evidence, both of which are plausible, the Court cannot substitute its own view with the view taken by the enquiry officer/disciplinary authority. She submits that the Labour Court while passing the order dated 04.10.2010 had itself quoted an extract from ***UCO Bank vs. Presiding Officer & Anr.***, 2000-1- LL-J-1 187 (Delhi) which reads as follows:-

“If it is held that the enquiry conducted is proper then the court is expected to see whether the findings of misconduct is a plausible conclusion flowing from the evidence adduced at the enquiry. It has no jurisdiction to sit in judgment over the decision of employer as an appellate body. It can interfere with the findings only if the said findings are perverse or the management is guilty of victimisation, unfair labour practice or malafides....”

7. She submits that the Labour Court has failed to apply the said law to the facts of the present case.

8. So far as the impugned award is concerned, the submission of learned counsel for the petitioner is that if the matter required re-appreciation of evidence, as held by the order dated 04.10.2010, there was no occasion for the Labour Court to pass an interim award for Rs. 1 lac in favour of the widow of the respondent-workman. By doing so, the Labour Court had presented a fait accompli to the petitioner. If, after re-appreciation of the evidence the removal from service is again reiterated, there would be no way available to the petitioner to recover the amount of Rs.1 Lakh from the widow of the workman. She submits that the reference made to the Labour Court was with regard to the punishment of removal of the respondent.

Even if the enquiry against the respondent were held to be bad on any account, the Labour Court ought to have proceeded to consider the matter independently on its own.

9. On the other hand, the submission of learned counsel for the respondent is that in the present case the enquiry officer himself acted as the prosecutor and submits that no prosecution officer was appointed and the cross-examination of the defence witnesses was conducted by the enquiry officer himself. However, the witnesses produced by the management were not cross-examined by the enquiry officer which shows his malafides and bias.

10. Learned counsel submits that merely because the enquiry was held in compliance with the principles of natural justice, it does not mean that the enquiry report can be said to be valid. The report of the enquiry officer must proceed on the basis of the evidence brought on record after duly appreciating the same, and if the appreciation of evidence is laconic, the Labour Court should set aside the enquiry report.

11. Learned counsel for the petitioner in her rejoinder has submitted that merely because the enquiry officer may have put questions to the defence witness it does not follow that the enquiry gets vitiated. She places reliance on the decision of the Supreme Court in *Workmen in Buckingham and Carnatic Mills, Madras vs Buckingham and Carnatic Mills, Madras*, 1970 LLJ 26, followed by this Court in *Ramesh Chand vs. DTC*, 2007(96) DRJ 399(DB).

12. A perusal of the impugned order dated 04.10.2010 passed by the

Industrial Adjudicator shows that there are serious infirmities therein. The non-production of the passengers in the departmental inquiry has been treated by the Industrial Adjudicator as fatal to the departmental inquiry by observing that “the complainant passengers being the material witnesses were *sine qua non* for proving the charge against the delinquent workman. What has been the effect of their non-production has not been discussed at all”. The aforesaid observation made by the Industrial Adjudicator are in the teeth of the judgment of the Supreme Court in **Rattan Singh** (supra) and a string of other decisions on the same aspect which have been considered by the Division Bench of this Court in **Ishwar Singh v. DTC**, LPA No.2269/2006 decided on 19.01.2007. The relevant extract from **Rattan Singh** (supra) stands quoted hereinabove.

13. I may quote hereinbelow the relevant extract from the said decision in **Ishwar Singh** (supra) after excluding the quotation from **Rattan Singh** (supra) as the same already stands quoted hereinabove:

“8. It is established from the records that the aforesaid passengers who have made the allegations were sought to be produced in the inquiry proceeding and summons were issued to them. The order sheet maintained during the domestic inquiry clearly indicates that the concerned passengers were called to be present in the inquiry by issuing summons on several dates. The records disclose that the concerned passengers were summoned on 28.1.1993, 11.2.1993 and again on 9.3.1993. But the said passengers did not appear in the inquiry nor did they send any information. Therefore, it is established from the records that every effort was made by the management and the inquiry officer to examine the aforesaid passenger witnesses but despite best efforts, the passengers witnesses did not appear in the inquiry proceeding to depose

and establish the allegations made by them. It is, however, an admitted position that the three checking staff were examined. There is no evidence on record to show that any of them had any animosity against the appellant at any stage. There is no reason as to why any of the said witnesses would depose falsely against the appellant. The appellant had also admitted his fault, though he also stated that there was rush. Besides, it is also established from the records that the statements of the passengers witnesses were recorded by the checking staff at the time of the incidence. These statements were placed before the learned Industrial Tribunal for consideration, which were, however, totally ignored.

9. *In this connection, we may refer to several decisions of this court and also of the Supreme Court, which deal with similar pleas as raised before us. Delhi Transport Corporation v. Om Pal and another is a decision rendered by a Single Judge of this court and reported in 113 (2004) DLT 307. In the said decision, this court referred to the decision of the Supreme Court in State of Haryana v. Rattan Singh reported in (1977) 2 SCC 491. Three contentions raised in the said decision of the Supreme Court are as follows:*

- (1) None of the passengers travelling without tickets were examined in the domestic inquiry.*
- (2) The checking inspectors had violated a departmental instructions by not recording the statements of the passengers.*
- (3) The co-conductor in the bus had affirmed the innocence of the conductor.?*

10. *In paragraph 4 of the said judgment the Supreme Court had held that a domestic inquiry can take into consideration all materials logically probative for a prudent mind and that there is no allergy to hearsay evidence, provided it has reasonable nexus and credibility. It was also held in the said decision that passengers are not required to be chased and brought before the domestic tribunal. On the scope of*

permissible interference with the conclusions in a domestic inquiry, the Supreme Court said in the same paragraph that what has to be seen is whether there was some evidence or was it a case of no evidence. The Supreme Court further held that as long as there was some evidence, sufficiency thereof in proof of a finding by a domestic tribunal is beyond scrutiny. The Supreme Court found that there was some evidence before the inquiry officer and, therefore, the order passed in the domestic inquiry was not invalid. The following passage from the decision of the Supreme Court is worth quoting which is as under:-

x x x x x x x x x x

11. In Shyam Sunder v. Delhi Transport Corporation (CWP No.922/1976, decided on 5th February, 1996), this Court held that since the enquiry officer had based his findings on the examination of the checking staff, there was independence evidence to link the petitioner with the charges levelled against him, and consequently it was held that the statement of the passengers, not being the sole material against the petitioner, the domestic inquiry was not vitiated. The aforesaid decision of this Court as also the decision of the Supreme Court in Rattan Singh (supra) and many other decisions were noticed by this Court in the decision in Delhi Transport Corporation v. N.L. Kakkar and another reported as 110 (2004) DLT 493. After noticing all the judgments, this Court held that consistent view of the courts over the last few decades has been that non- production of passenger witnesses is not fatal to the domestic inquiry and that findings of fact arrived at in a domestic inquiry should not be interfered with so long as they are based on some evidence. In the said judgment this court also noted the law laid down by some other High Courts and thereafter it was held that the production of passengers either in a domestic inquiry or before the Labour Court in an industrial dispute is not at all necessary. This Court was of the view that in most cases this would be highly impractical because it would mean that passengers would have to be traced out, chased and brought before the inquiry

officer or the Labour Court causing them unnecessary inconvenience. We are of the considered opinion that all the aforesaid decisions are fully applicable to the facts and circumstances of the present case.

12. Reference can be made to the decision of Delhi Transport Corporation v. Sree Kumar and another reported in 113 (2004) DLT 505, which was also decided almost on similar lines.

13. We may also refer to the decision of the Supreme Court in the case of Cholan Roadways Ltd. and G. Thirugnanasambandam reported as (2005) 3 SCC 241. In paragraph 31 of the said decision, the Supreme Court has observed that the lower fora had misdirected themselves in law. It was held that the Tribunal had wrongly failed to apply principle of res ipsa loquitur, which was relevant for the purpose of that case and that it took into consideration irrelevant facts not germane for determining the issue.

14. It is, therefore, clearly established that it is not mandatory that passenger witnesses should depose to establish guilt. In the present case, the inquiry officer made several attempts and left no stone unturned for appearance of the passenger witnesses in the domestic inquiry, but despite best efforts, they did not appear to depose in the domestic inquiry. Inquiry report cannot be dismissed in its entirety only because the passenger witnesses did not appear. There was enough evidence and material before the inquiry officer to establish the guilt of the appellant. The checkers had no personal axe to grind and were independent witnesses. We are of the considered opinion that the learned Tribunal did not appreciate the issues in the right perspective and on improper interpretation of law had arrived at an erroneous finding. The present case cannot be said to be a case of no evidence. There is no perversity as was sought to be argued by the counsel for the appellant. Guilt of the appellant was established by the inquiry officer.” (emphasis supplied)

14. On this short ground, the impugned order dated 04.10.2010 cannot be sustained. Pertinently, the effort to summon the passengers was made by the Inquiry Officer. The inquiry report records that *“The passengers had been called in the inquiry but the passengers did not appear in the inquiry.* ”.

15. It was not, as if, the petitioner management had prevented or obstructed in production of the said passengers as the witnesses by the respondent workman

16. The observation in the impugned order dated 04.10.2010 that the Inquiry Officer had dealt with the evidence of the management in a single sentence, apart from being patently incorrect, is meaningless. The evidence of the management has been taken note of extensively in the inquiry report. Only thereafter the evidence of the workman has been discussed in the inquiry report and the discrepancy in the statement of the two witnesses produced by the workman, namely Sh. Mohal Lal and Sh. Suresh Kumar has been discussed on the basis of the evidence produced by the witnesses. The Inquiry Officer observed as follows:

“All the prosecution witnesses have supported the report given by them by their statements. The witnesses Shri Mohan Lal produced by the accused has stated the place of the driver not feeling well at Tughlakabad Railway Station whereas the second witness Shri Suresh Kumar produced has stated the place of the driver not feeling well at Lal Kuan whereas both the witness were travelling in one bus and on same trip. Statements of both these witnesses in this regard are difference and Shri Mohan has stated the number of passenger about 60 while checking the bus at Red fort while Shri Suresh Kumar has stated the number of passenger 12, 13 at the time of checking

of the bus, which is certainly very much contradictory with each other. Apart from this the accused had been given full opportunity to produce his defence but he could produced any vital evidence in this regard. Therefore it is clear that all the charges against the accused are found fully proved.”

17. The fact that the evidence of the delinquent workman has been discussed in detail shows that the Inquiry Officer has applied his mind and given his reasons for making the report holding that the charge against the delinquent workman stands proved. I fail to appreciate as to how the said factor can lead to any inference of a defective approach on the part of the Inquiry Officer. The Industrial Adjudicator has also crossed the boundaries within which he could have examined the inquiry report. In paragraph 37 of the impugned order dated 04.10.2010, the Industrial Adjudicator has undertaken the exercise of appreciating the evidence which does not fall within his domain. While noticing the contradiction in the evidence of the two witnesses produced by the workman namely, Sh. Mohan Lal and Sh. Suresh Kumar, the Industrial Adjudicator observes that both may not be untrustworthy of reliance, as it is possible that one of them stated the correct fact while the other may be incorrect. Contradiction between the two witnesses does not mean that the testimonies of both the witnesses ought to be rejected.

18. It is pertinent to note that the Industrial Adjudicator appreciates that there is weaknesses in the defence evidence. So far as the case of the petitioner management was concerned, the same was proved to the hilt by the three officers who comprised the raiding team. The respondent workman had also admitted his own lapse in writing. While doubting the

correctness of the inquiry report, the Industrial Adjudicator does not give any reason as to on what basis the said inquiry report is vitiated and why it calls for a review or re-appreciation of material on the record of the inquiry proceedings. It is startling to note that without any basis the Industrial Adjudicator has arrived at a finding that the inquiry report suffers from bias and prejudice. Without stating as to which material aspect has not been dealt with in the inquiry report, the Industrial Adjudicator observes that *“material aspects, which could have been instrumental in the definite findings, have not been dealt with in the report”*.

19. Normally, this Court refrains from labelling an order passed by a subordinate Court or Tribunal as perverse but if there could be one instance of perversity it is the present case and particularly the order dated 04.10.2010 passed by the Industrial Adjudicator.

20. Since the impugned order dated 04.10.2010 formed the backbone of the impugned award dated 02.04.2011, and the order dated 04.10.2010 is patently laconic and unsustainable, on that short ground the impugned award cannot be sustained and is liable to be set aside. Apart from the aforesaid reason, the approach adopted by the Labour Court while passing the impugned award dated 02.04.2011 also appears to be laconic. The labour Court did not conduct an independent inquiry before itself into alleged misconduct of the respondent workman. On the basis that the Industrial Adjudicator had observed that the report of the Inquiry Officer calls for review or re-appreciation of the material on record of the inquiry proceedings, the Labour Court directed the petitioner management to review or re-appreciate the inquiry report within three months. While doing so, the

Court granted interim relief of Rs.1 Lakh to the legal heirs of the deceased workman. From a perusal of the impugned award, it appears that the same was passed more out of sympathy on account of the demise of the workman during the pendency of the reference before the Labour Court than on any legal basis. The Labour Court is obliged to answer the reference as made to it. In case if found that the inquiry report was vitiated on account of bias or mala fides (which, it was not in the present case) the said inquiry report should have been quashed and an independent inquiry undertaken by the Labour Court. It does not lie within the jurisdiction of the Labour Court to remand the matter back to the Inquiry Officer to re-appreciate the evidence or review the inquiry report. The Inquiry Officer merely conducts a fact-finding inquiry and gives his report on the basis of the evidence led before him, supported by his reasons. The Inquiry Officer is not a quasi-judicial officer, much less a judicial officer. He has no power to review his inquiry report. It is for the Disciplinary Authority whether, or not, to accept the inquiry report and to take further action in the matter. Consequently, the direction to the Inquiry Officer to review the inquiry report by re-appreciation of the evidence was wholly without jurisdiction and beyond the scope of the reference made to the Labour Court by the Appropriate Government. Not only that, since the matter was still at large, grant of interim relief of a large amount of Rs.1 lakh in a case like the present, where the respondent workman was alleged to have misconducted himself in a manner which involved moral turpitude, was uncalled for. Compassion for the heirs of the deceased workman can be displayed only within the bounds of legality. Particularly in the facts of the present case there was no justification for making a direction for grant of interim relief of Rs.1 Lakhs

to the legal heirs of the deceased workman.

21. The Labour Court was expected to pass a final award. There was nothing interim about the award passed by it. On the one hand the award has been termed as “interim award”, while on the other hand the reference is finally disposed of.

22. The submission of learned counsel for the respondent that the Inquiry Officer himself cross-examined the defence witnesses and that no prosecution officer was appointed in the present case and on that account, the departmental inquiry was vitiated, also has no merit. I have had occasion to consider a similar submission in ***DTC Vs. Hanumant Kumar***, W.P.(C.) No. 717/2011 decided on 17.01.2012, wherein I relied upon the decision in ***Buckingham and Carnatic Mills, Madras*** (supra) and a few other cases. The relevant extract from the decision in ***Hanumant Kumar*** (supra) may be usefully quoted hereinbelow.

*“8. I may at this stage take note of the judgment of the Supreme Court in **The Workmen Employed in B & C Mills, Madras vs. The Management of B & C Mills, Madras**, (1970) ILLJ 26 SC : 1969 (1) UJ 494, wherein the workmen impugned the award of the Labour Court, whereby it had held that the Inquiry proceedings leading to dismissal against the delinquent employee were valid. In this case, a Senior Labour officer had been authorised to record the evidence and collect necessary materials. Also, no presenting officer had been appointed by the Management. The workmen, inter-alia, raised an objection that the Senior Labour Officer had acted as a Prosecutor in as much, as, he had very severely cross-examined the workman. Dismissing the said objection, the Supreme Court observed that, no doubt, there was no officer separately appointed for conducting the prosecution on the side of the Management, but*

what the Labour Officer had done was to put questions to the witness and elicit answers and allow the worker to cross-examine those witnesses. Similarly, he had also taken the statements of the worker and asked for clarification from him wherever necessary. Therefore, the inquiry proceedings, as held by the labour Court, were completely fair and impartial.

9. The aforesaid view was followed by the Supreme Court again in **Mulchandani Electrical and Radio Industries Ltd. vs. The Workmen**, (1975) ILLJ 391.

10. Similarly, the Karnataka High Court in **Bharat Electronics Ltd. vs. K. Kasi**, (1987) ILR NULL 366: (1987) IILLJ 203 Kant, took the view that there is no legal compulsion that the Presenting Officer should be appointed. It was observed that the mere fact that the presenting officer was not appointed is no ground to set aside the Inquiry. Commenting upon the role of the Inquiry Officer, it observed that it is common ground that if the Inquiring Authority plays the role of a Prosecutor and cross-examines the defence witnesses or puts leading questions to the prosecution witnesses clearly exposing a biased state of mind, the inquiry would be opposed to principles of natural justice. However, it is also well settled that an Inquiring Authority is entitled to put questions to the witnesses for clarification wherever it becomes necessary and so long as the delinquent employee is permitted to cross examine the witnesses after the Inquiry Authority questions the witnesses, the inquiry proceedings cannot be impeached as unfair.

11. The High Court of Kerala in **M. Rama Warriar & Ors. Vs. Coir Board**, ILR 1989 (1) Kerala 596, and the Bombay High Court in **Sukhadeo Vishwanath Garaje v. Food Corporation of India**, (1989) 2 LLJ 277 Bom., have also taken a similar view. In **Sukhadeo Vishwanath Garaje (supra)**, the Bombay High Court held as under:

“13. Very often there is no separate management representative to conduct inquiry proceedings on

behalf of the management and only the witnesses are sent to the Inquiry Officer to depose regarding the incident. In such cases, the questions to such witnesses are put by the Inquiry Officer. This procedure does not violate the principles of natural justice. If the Inquiry Officer examines the witnesses without the assistance of the management's representative, then it does not show that he himself was a Prosecutor when the record shows that a bona fide inquiry was held. When the Inquiry Officer himself examined and questioned the witnesses, it is not objectionable so long as due opportunity is given to the delinquent to cross examine them. It is competent for the Inquiry Officer to put questions to the witnesses to ascertain the real incident."

(emphasis supplied)

12. Before a Division Bench of the High Court of Bombay in **Municipal Corporation of Greater Bombay v. Vishnu Sakharam Pingle**, W.P.(C) No. 2554 of 1993 decided on June 27, 1996, one of the submissions was that the Inquiry Officer had acted more as a Prosecutor because he had cross examined the undertaking's witnesses. The Division Bench relying on the Judgment of the Supreme Court in **Workmen in Buckingham and Carnatic Mills, Madras** (supra) and **Mulchandani Electrical and Radio Industries Ltd.** (supra) held as follows:

"It may also be pointed out that there is no bar on an Inquiry Officer seeking clarification from witnesses as long as he permits the cross examination of witnesses from whom clarification has been sought. This proposition finds support in the Judgment of **Mulchandani Electrical and Radio Industries Ltd.** (supra). Similarly, the Supreme Court in the case of **Workmen in Buckingham and Carnatic Mills, Madras** (supra) has laid down that merely because in a domestic

inquiry the management was not represented by any Officer separately did not prevent the Inquiry Officer from putting questions to the delinquent worker and the witnesses and such a conduct on the part of the Inquiry Officer would not vitiate the domestic inquiry.”

(emphasis supplied)

13. In view of the aforementioned observations of the Supreme Court as also the consistent view taken by the Various High Courts thereafter, the observations made in the case of **DTC vs. Maha Singh**, W.P.(C) No. 2228/2004 (wrongly written as W.P. (C) 2228/94 in the impugned award) decided on 28.04.2005, appear to be per incurium. The position that emerges from the aforesaid discussion is that the mere absence of a presenting officer representing the management does not vitiate the departmental proceedings. The Inquiry Officer is appointed by the Disciplinary Authority only to hold a fact finding inquiry in compliance of principles of natural justice, and to make a report on the basis of the said inquiry. He is not the Disciplinary Authority or the Punishing Authority.

14. The Inquiry Officer does not act as a judge. He merely conducts a fact finding inquiry at the instance of the Disciplinary Authority. It is for the Disciplinary Authority to accept, or not to accept, the Inquiry Report made by the Inquiry Officer. It is the Disciplinary Authority who judges the conduct of the delinquent on the basis of the Inquiry Report - if he accepts the same.

15. So long as the delinquent has had opportunity to fairly deal with the evidence/materials produced by the management and to put forward his own evidence on record, there can be no valid grievance to the Inquiry Officer functioning without a Presenting Officer. The aforesaid position would obviously be different if the Disciplinary Authority also functions as the Inquiry Officer.”

23. In *Ramesh Chand* (supra), the Division Bench took note of earlier decision in *DTC Vs. Shyam Singh & Another*, CWP No. 1420/2002 decided on 29.09.2004, wherein the circular of the DTC requiring the Inquiry Officer to ask the delinquent, on each date of proceeding - whether he needs the assistance of any other workman, was held as merely recommendatory and not a mandatory direction, non-compliance of which would invalidate an inquiry. The Court by placing reliance on *Buckingham and Carnatic Mills, Madras* (supra) also held that the principles of natural justice are not violated when the Presiding Officer asks questions, elicits answers and clarifications from the witnesses.

24. For all the aforesaid reasons, the impugned order dated 04.10.2010 as also the impugned award dated 02.04.2011 passed by the labour Court-XII stands set aside. The parties are left to bear their respective Costs.

VIPIN SANGHI, J

FEBRUARY 18, 2013

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