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

Judgment delivered on: 1st December, 2014

+ W.P.(C) 8446/2014

MOHD. ATIULLAH ANSARI

..... Petitioner

Represented by: Mr. Pratik Batta and Mr. Akarsh
Bhalla, Advs.

versus

M/S. DELHI INSTITUTE OF TOOL ENGINEERING
(FORMERLY KNOWN AS TOOL ROOM AND
TRAINING CENTRE)

..... Respondent

Represented by: NEMO.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CM. No. 19507/2014 and 19508/2014 (for exemptions)

Exemptions allowed, subject to all just exceptions.

Accordingly, the applications are allowed.

+ **W.P.(C) 8446/2014**

1. Vide the present petition, petitioner workman has assailed the award and order dated 22.11.2013, whereby the industrial disputes raised by the petitioner has been dismissed by the Ld. Labour Court.

2. Brief facts of the case are that petitioner had been working with the respondent Management since 21.07.1984. He made a complaint to General Manager of the respondent on 31.03.1986 for unjust and discriminatory

action and another complaint to General Manager on 06.10.1986. Thereafter, the petitioner was served with chargesheet-cum-transfer letters dated 27.04.1987 and 28.04.1987, which was duly replied by him and demanded a translated chargesheet in Hindi to be provided to him, which was rejected by the respondent Management vide letter dated 03.05.1987.

3. The reference before the Labour Court was that “whether the dismissal of Sh. Mohd. Atiullah Ansari, S/o, Rahim Bux from service by the Management vide order dated 05.10.2007 is illegal and / or unjustified; and if yes, to what relief is he entitled and what directions are necessary in this respect?”

4. On the basis of the pleadings of the parties, Id. Labour Court framed the issues vide order dated 11.03.2013 as under:

“1. *Whether the enquiry conducted by the management was conducted in accordance with the principles of natural justice? OPM*

2. *Whether the workman has attained the age of superannuation; if so, its effect? OP Parties.*

3. *In terms of reference? OPW.*

4. *Relief.”*

5. Mr. Pratik Batta, Id. Counsel appearing on behalf of the petitioner submitted that neither the chargesheet was given in Hindi nor place of enquiry was changed as requested by the petitioner. Thus, the enquiry was illegal, improper and by violating the principles of natural justice. The petitioner was not provided the documents as per the procedures and the

laws. Moreover, the enquiry was not conducted at the convenient place. Thus, the enquiry and emanating proceedings thereto is liable to be quashed.

6. The petitioner appeared as WW1. In his cross-examination he deposed before the Id. Tribunal that the first and second chargesheets were handed over to him on 28.04.1987 itself. No warning was ever given to him by the Management for using the abusive language. He did not participate in the enquiry proceedings because he had objected to the place of enquiry proceedings as he wanted it to be held at his working place. He further deposed that he did not remember as to how many reminders were given to him to join the enquiry, however, deposed that he replied to all the reminders. During the enquiry proceedings he had filed a case in the Industrial Tribunal pertaining to his illegal transfer from service. He did not reply to the chargesheet and volunteered, since it was not in Hindi language. However, the Union sent a reply to the chargesheet on his behalf. He admitted that he had been getting his salary from 28.04.1997 till 14.08.1993 during enquiry proceedings.

7. MW1 in his affidavit deposed in terms of the written statement and exhibited certain documents, i.e., Ex.MW1/1, photocopy of chargesheet issued to the petitioner on 01.11.1990, Ex.MW1/2, photocopy of the order of the Central Administrative Tribunal, Ex.MW1/3, photocopy of the complaint filed by the foreman against the workman, Ex.MW1/4, photocopy of order issued by Assistant Manager (Planning) to the workman to comply the order; Ex.MW1/5, photocopy of the enquiry report, Ex.MW1/6, photocopy of dismissal order served on 07.10.2007 and Ex.MW1/7, photocopy of the complaint filed by the workman before the Labour Court

in case bearing no. LCA 20/1994, which was disposed of vide order dated 27.03.2003.

8. In his cross-examination, MW1 deposed that he was not aware of the fact whether the copy of the complaint dated 27.04.1997 was given to the petitioner or not. He denied the suggestion that complaint dated 27.04.1987 was never served upon him, but admitted that he never participated in any domestic enquiry on any date and volunteered, he was not posted in that particular department at that time. He further deposed that he did not read the enquiry report of the enquiry officer in detail and admitted that enquiry report did not contain any date and again volunteered, it was there in the note sheet dated 12.09.1995.

9. The fact remains that the petitioner was appointed with the Management in 1984 and chargesheet was served upon him on 28.04.1987, which was duly replied by him and he demanded the same in Hindi language, which was rejected by the Management on 02.05.1987. He again wrote a letter dated 03.05.1987, which was duly replied by the Management on 14.05.1987. Thereafter, the enquiry officer was appointed on 01.02.1991.

10. The petitioner cannot take a plea at this stage that the chargesheet was not in Hindi language. His request was firstly rejected on 02.05.1987 and thereafter on 14.05.1987. Moreover, the enquiry officer was appointed on 01.02.1991. The order passed by the Management was never challenged by the petitioner before this Court, thus, at this stage, this plea is not available to the petitioner.

11. The petitioner received a notice from the enquiry officer thereby informing him the place of enquiry and various letters continued to interchange up to 21.06.1993. There was no correspondence between the workman and the Management from 26.05.1991 to 12.04.1993, however, the petitioner again wrote letters dated 13.04.1993, 27.04.1993, 16.05.1993 and 21.06.1993 to the Management thereby asking the respondent Management to proceed the enquiry in accordance with the law and ultimately the enquiry officer submitted its report, where after notice was issued to the petitioner.

12. On receiving the report from the enquiry officer, the petitioner demanded the complete statement and enquiry report, which was given to him and he filed his reply thereto, which was subsequently dismissed on 06.10.2007.

13. It is pertinent to mention here that the chargesheets were served to him on 28.04.1987, which took around 20 years for coming to logical end. Meanwhile, the petitioner had been doing the correspondences with the Management, however, did not appear before the enquiry officer.

14. As far as the contentions of the petitioner workman that the venue of enquiry was not shifted on his request is concerned, the place of the enquiry was at Kashmere Gate, Delhi, which was not far away from the place of posting of the workman at Wazirabad, Delhi.

15. On the above issue, here the case of Chhaugur Pal v. M/s. Sawhney Rubber Industries in W.P.(C) 8648/2009 is relevant, wherein the proceedings were held at Faridabad and the workman had not appeared

before the enquiry officer and ultimately this Court held that the enquiry cannot be held to have been vitiated merely on this ground. Moreover, the workman has a right to ask the establishment as to where the enquiry has to be conducted. The only fact which is to be taken into consideration for the purpose of choosing a place of enquiry is that it should be at such a place where the workman may approach conveniently. It must be where no party be got influenced by men-force of either side. It must be a place where the workman may object lawfully on his defence without pressure and coercion and it may be a place where there is no outside pressure upon the enquiry officer, delinquent employee and the witnesses.

16. The petitioner, apart from writing formal letter to change the place of enquiry, has not explained any fact as to why the place of enquiry, i.e., Room No. 28, at CPO Building, Kashmere Gate is not suitable. The Enquiry Officer was holding the post of Joint Director of Industries and having his Office at Room no. 28 at CPO Building, Kashmere Gate, New Delhi. It would rather more inconvenient to Enquiry Officer to hold a enquiry at the place of working of the petitioner and rather it would be more convenient to both the parties to conduct the enquiry in his office where the enquiry officer was holding a public office. There was no threat or inconvenience to the petitioner at the place of enquiry.

17. Be that as it may, the petitioner did not participate in the enquiry proceedings. Thus, the plea of violation of principle of natural justice is not available with the petitioner.

18. It is not the case of the petitioner that the enquiry officer was biased or was prejudiced to the rights of the petitioner.

19. In view of above discussion, I find no perversity in the order dated 22.11.2013 passed by the Labour Court.

20. Accordingly, the present petition is dismissed *in limine*.

CM. NO. 19509/2014

With the dismissal of the present petition, instant application has become infructuous and dismissed as such.

SURESH KAIT, J

DECEMBER 01, 2014

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