

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.12657 of 2007
Date of decision : 29.07.2015

P.C. Bungar

...Petitioner

Versus

Union of India and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present: Mr. H.K. Sharma, Advocate for the petitioner.

Mr. Puneet Jindal, Sr. Advocate with
Ms. Sakshi, Advocate for the respondent Nos.1 to 3.

AMIT RAWAL, J. (Oral)

Challenge in the writ petition is to the award dated 27.07.2006 passed by the Presiding Officer, Central Government Industrial Tribunal cum Labour Court-II, whereby reference sought by the petitioner-claimant has been declined and it has been found that before imposing the punishment of reduction in scale by one stage for a period of 24 days, delinquent employee was issued charge-sheet and having found dissatisfied with the reply, Enquiry Officer was appointed and Enquiry Officer after examining the witness proved the charges.

Mr. H.K. Sharma, learned counsel for the petitioner submits that Labour Court has committed the illegality and perversity in not noticing the fact that enquiry was not conducted by the Enquiry Officer in accordance with law as no opportunity of hearing was given to the petitioner to lead evidence in defence, much less, his own statement was not accorded. He further submitted that Labour Court has committed illegality & perversity in noting that copy of the enquiry report had been received by petitioner but has not gone into the enquiry report and the procedure followed by the Enquiry Officer.

He further submitted that no show cause notice was issued by the Disciplinary Authority/Punishing Authority which is also against the principles of natural justice.

He further submitted that as per Rule 9 sub-Rule 21 of the Railways Servants (Discipline and Appeal) Rules 1968 (hereinafter to be referred as 1968 Rules), the Enquiry Officer has not followed the procedure as envisaged in the aforementioned Rules and inasmuch as that no question has been put to the delinquent employee i.e. the circumstances appearing against him as evidence is for enabling him to explain circumstances against him. In support of the aforementioned contention, he relies upon judgment of Hon'ble Supreme Court in *Moni Shankar Vs. Union of India and another* 2008(2) RSJ 554.

Mr. Puneet Jindal, learned Senior Counsel assisted by Ms. Sakshi, Advocate for the respondent Nos.1 to 3 submits that compliance of the Rules have been made by the Enquiry Officer which is evident from the copy of the enquiry report (Annexure R-2), whereby the Enquiry Officer

himself asked the question to the Charged Officer/petitioner and, therefore, the judgment of Hon'ble Supreme Court (supra) would not be applicable in this case. He further referred to Rule 10(5) of 1968 Rules that in case the disciplinary authority found that charges have been proved by the Enquiry Officer, Punishing/Disciplinary Authority is not obliged to issue show cause notice in respect of punishment specified in Clause 5(ix) of Rule 6.

He further submits that workman had failed to explain the period of absence to the Enquiry Officer and as well as before the Labour Court and he remained absent for almost three years i.e. 03.04.1989 to 19.05.1992 and, thereafter he retired on 30.06.1994. Thus, the punishment imposed by the Punishing Authority is the minimum of the harsh punishment and, therefore no prejudice has been caused, & sought dismissal of the writ petition.

I have heard the learned counsel for the parties and appraised the paper book.

The foremost question which is to be determined by this Court is as to “whether the petitioner has been given a copy of enquiry report dated 29.04.1994 by the Disciplinary Authority or not.”

Mr. H.K. Sharma, learned counsel for the petitioner in support of the aforementioned question/submission has cited the Full Bench judgment of Hon'ble Supreme Court in *Managing Director, ECIL, Hyderabad Vs. B. Karunakar 1994(1) LLJ 162..* From the perusal of copy of the enquiry report (Annexure R-2), it is evident that there are no signatures of the workman/petitioner. However, Mr. Puneet Jindal, learned Senior Counsel during the course of arguments, passed a photocopy of the

Annexure R-2, which bears the signature of the workman/petitioner.

The Labour Court has found that copy of enquiry report was given to the petitioner on the date of conclusion of the enquiry by the Enquiry Officer whereas principles of natural justice provides that since Enquiry Officer is not Disciplinary Authority, it is the Disciplinary Authority who before imposing the punishment has to supply a copy of the enquiry report. No such procedure has been followed in this case. As far as the contention of the learned counsel for the petitioner, there is no compliance to the Rule 9 sub-Rule 21, such submission does not carry any weight as from the perusal of Annexure R-2, the compliance of the aforementioned Rule has been done and delinquent Charge Enquiry has put the evidence sought to be taken into consideration by the Enquiry Officer.

On perusal of the order of the Disciplinary Authority (Annexure P-17) dated 07.06.1994, it is borne out that before imposing punishment of reduction in by one stage in the time-scale from 07.06.1994 till the date of superannuation i.e. 30.06.1994, there is reference that delinquent employee had been supplied the copy of the Enquiry report alongwith notice before imposing the punishment.

As per provision of sub-Rule 5 of Rule 10 that before imposing the punishment, delinquent employee is not supposed to be given any show cause notice, much less, any representation is required to be sought to be permitted, therefore, the contention of Mr. H.K. Sharma, learned counsel for the petitioner that no such notice has been served by the Disciplinary Authority before imposing a punishment falls flat.

The Labour Court has failed to take into consideration the

another aspect of the matter that enquiry report has not been provided by the Disciplinary Authority as Enquiry Officer was not the Disciplinary Authority and, therefore, supply of enquiry report by the Enquiry Officer does not confirms to the compliance and the ratio descendi culled out in Hon'ble Supreme Court in judgment cited (supra).

In view of what has been observed above, the award of the Labour Court dated 27.07.2006 is hereby set aside and imposition of punishment of reduction in scale by one stage from 07.06.1994 to 30.06.1994 is also hereby set aside.

Writ petition is allowed.

The aforementioned order of mine shall not prevent the management in taking recourse to the procedure as culled out by the Hon'ble Supreme Court, much less, in accordance with law.

29.07.2015

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**(AMIT RAWAL)
JUDGE**