

CWP No.17787 of 2011

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

**CWP No.17787 of 2011
Date of decision:21.07.2015**

Pep Singh

...Petitioner

Versus

M/s New Allenberry Works and another

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Ashwani Bakshi, Advocate,
for the petitioner.

Mrs. Abha Rathore, Advocate,
for respondent no.1.

Rakesh Kumar Jain, J.

The petitioner has challenged the order dated 30.04.2009 and award dated 06.01.2010 passed by the Industrial Tribunal-cum-Labour Court-I, Faridabad.

In short, the case set up by the petitioner is that he was employed as an Operator on 10.11.1995 by respondent no.1 and was confirmed on the said post on 01.11.1996. He was served with a charge-sheet dated 08.03.1999 by his employer for allegedly taking part in a violent incident along with 11 other co-workers, which took place in the premises of respondent no.1 on 24.02.1999. He was also suspended from service on 04.03.1999 before the charge-sheet was served. He filed reply to the

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charge-sheet on 11.03.1999, alleging that he did not take any part in the said incident. Respondent no.1 appointed Sh. O.P.Ahuja, Advocate, as the Enquiry Officer on 19.03.1999. The petitioner did not participate in the enquiry proceedings and was formally proceeded against *ex-parte* on 24.04.1999. Vide his report dated 11.06.1999, the charge against the petitioner was proved on the basis of which his services were terminated by respondent no.1 on 29.06.1999. As a result thereof, the petitioner raised an industrial dispute by serving a demand notice dated 19.07.1999, which was referred to the Industrial Tribunal for adjudication vide notification dated 04.05.2000. The Tribunal initially passed an order dated 30.04.2009, deciding the issue regarding fairness of the inquiry in favour of respondent no.1 and ultimately answered the reference against the petitioner on 06.01.2010, sent the award for publication to the State Government and as per practice, a certified copy of the same was given to the petitioner on 21.07.2010.

Counsel for the petitioner has raised two arguments in this case; firstly, the enquiry was not fair because the application filed by the petitioner to allow him to take the help of a lawyer to defend himself in the enquiry proceedings was not considered. In this regard, he has referred to Clause 27(4) of the Certified Standing Orders, which provides that “*a workman against whom an enquiry has to be held shall be given a charge-sheet clearly setting forth the circumstances appearing against him and requiring explanation. He shall be given an opportunity to answer the charge and permitted to be defended by a co-workman except suspended*

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workman or an office bearer of the registered Trade Union of the Company. Except for reason to be recorded in writing by the officer holding the enquiry, the workman shall be permitted to produce witnesses in his defence and cross-examine any witness on whose evidence the charge rests. A concise summary of the evidence led on either side and the workman's plea shall be recorded.”

It is submitted that the petitioner is a semi-illiterate person who could not have defended himself in the enquiry proceedings which has the trappings of Court proceedings, therefore, the petitioner had required the permission of the Enquiry Officer to allow him to be defended by a lawyer.

In this regard, counsel for respondent no.1 has submitted that the petitioner could have been allowed only to produce a co-workman in his defence other than the workman who is suspended or an office bearer of the registered Trade Union of the Company, as provided in Clause 27(4) of the Certified Standing Order, but the petitioner wanted to engage a legal practitioner.

After hearing learned counsel for the parties in this regard, I am of the considered opinion that the petitioner cannot travel beyond the provisions of Clause 27(4) of the Certified Standing Order in which there is no provision for allowing the petitioner-workman to engage a legal practitioner from outside to defend him except for a co-worker or an office bearer of the registered Trade Union of the Company. Thus, there is no error on the part of the Enquiry Officer in not permitting the petitioner to defend him through a legal practitioner.

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The second argument raised by learned counsel for the petitioner is that two witnesses of respondent no.1 did not support the case of respondent no.1 with regard to participation of the petitioner in the violent activities.

In this regard, the Court has found that the enquiry proceedings were just and fair and the petitioner cannot make any kind of complaint because he did not even participate in the enquiry proceedings intentionally. In the enquiry, B.N.Goyal, appeared as MW1 and deposed against the petitioner which has been duly noticed by the Labour Court in para no.12 of its order, while dismissing the reference of the petitioner.

After hearing learned counsel for the parties and examining the available record, I am also of the considered opinion that there is no error in the impugned order dated 30.04.2009 and the award dated 06.01.2010 as the statement of Sh. B.N.Goyal is sufficient to prove the case of respondent no.1 especially when the petitioner chose not to join the enquiry proceedings deliberately.

In view of the aforesaid discussion, I do not find any merit in the present writ petition and hence, the same is hereby dismissed.

July 21, 2015
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(Rakesh Kumar Jain)
Judge