

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1078/2003**

Judgment reserved on: 11.02.2015

Judgment pronounced on: 03.03.2015

BADARPUR THERMAL POWER STATION Petitioner
Through: Mr.S.K. Taneja, Sr.Advocate
alongwith Mr.Rajesh Gupta, Mr.Sheel
Vardhan and Ms.Kopal Shrivastava,
Advocates.

versus

**CENTRAL GOVT. INDUSTRIAL TRIBUNAL CUM LABOUR
COURT & ANR.** Respondents
Through: None.

CORAM:
HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide this writ petition the petitioner had challenged the award dated 30.10.2002.
2. The workman was served of this writ petition by way of publication yet no one for the workman has attended the court proceedings at any stage. Despite the fact that this court restrained itself from passing any adverse order against the respondents in his absence and continued waiting for him to put up his appearance, none on behalf of the respondent no.1, the

workman had put up any appearance before this court. Finally the court had heard the arguments on behalf of the petitioner.

3. The admitted facts of this case are that respondent no.2, Mr.Y.S.Ramarao (the workman) was working with the petitioner on daily wages/muster roll employee at Badarpur Thermal Power Station, Badarpur, New Delhi as Heavy Duty Mazdoor. On 21.2.1980, as he was caught stealing away company's property. The matter was reported to the police and an FIR No.54/1980 was registered at police station Badarpur, New Delhi. Thereafter, vide letters dated 22.05.1980 and 15.03.1980 he was placed under suspension. The respondent no.2 was chargesheeted for committing misconduct and violation of clause 17 (a) of the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 (hereinafter called as Model Standing Orders). Subsequently, the charges was amended and in place of clause 17 (a), the contravention of clause 14.3 (b) of Model Standing Orders was recorded.

4. On 16.07.1980, respondent no.2/workman filed his reply to the charge sheet. Since reply was not found satisfactory, the enquiry proceedings were initiated. Sh.H.S.Bhattal, Senior Law Officer was appointed as Inquiry Officer. The inquiry was held in accordance with the Model Standing

Order. The petitioner had examined five witnesses who were duly cross examined by the workman. The workman had examined six witnesses in support of his case and his witnesses were also duly cross examined by the petitioner. The parties had also filed their respective documents. The inquiry officer submitted his report to the disciplinary authority. After examining the report, the disciplinary authority issued a show cause notice dated 04.09.1982 asking the workman to submit his explanation qua the proposed punishment. On 25.09.1982, the workman submitted his explanation to the disciplinary authority. The disciplinary authority on 28.12.1982 after considering the inquiry report and reply to the show cause notice and other material on record passed the dismissal order of the workman. Vide order dated 28.10.1983 of the criminal court, the workman in FIR no.54/1980, P.S.Badarpur, New Delhi was acquitted on the grounds of benefit of doubts. On 15.02.1984, the workman filed an appeal to the Chairman-cum-Managing Director against dismissal order who after considering the appeal and all the material on record dismissed it vide its order dated 26.03.1985.

5. In the year 1989, the workman raised the dispute before the Conciliation officer and the same was referred for adjudication to Central

Government Industrial Tribunal, which thereafter was transferred to Central Government Industrial Tribunal-cum-Labour Court, Lucknow for adjudication. The award was passed on 30.10.2002 which is under challenge before this court. Vide this award the dismissal order was set aside and order of reinstatement with full back wages and all consequential reliefs was passed.

6. The petitioner has challenged the award on the following grounds:

(a) That the labour court had erred in holding that the petitioner ought not to have been proceeded with the departmental enquiry, since a criminal case was pending trial and thus the inquiry was not fair. It is argued that there is not bar in law, to simultaneously continue with the departmental enquiry and the pendency of a criminal trial does not automatically stay the continuance of a departmental inquiry and thus the findings of the labour court to this effect are contrary to law.

(b) That the labour court has erred in holding that the enquiry was vitiated and prejudice caused to workman because disciplinary authority/General Manager had already made up his mind to dismiss the delinquent while issuing show cause notice of proposed punishment and had not done an independent assessment of the reply of workman to the show cause notice.

It is submitted that it is a normal practice that the disciplinary authority after considering the report of the enquiry officer, prima facie forms an opinion of the proposed punishment and then issue a show cause notice to the delinquent. Also the finding of the labour court that there was no independent assessment of the disciplinary authority is contrary to the record and thus perverse.

(c) That the labour court has erred in holding that the order of the appellate authority was mala fide and without application of mind. The order of the appellate authority clearly shows that the appellate authority had applied its minds and thereafter only passed its order.

(d) That the labour court has totally erred in law when it has passed its award on the consideration that subsequent acquittal in a criminal case vitiates the inquiry.

(e) That the order of reinstatement of daily wage workman is in violation of a settled principle of law. A daily wager has no substantive right to hold the post and thus cannot be ordered to be reinstated.

(f) That the workman had lost confidence of the management and thus cannot be ordered to be reinstated.

7. Reliance has been placed on the findings in the cases of ***Laxman Lal***

vs. the State of Rajasthan and Others: 1994 (2) WLC 168, State of West Bengal & Others vs. Sankar Ghosh: 2013 (14) SCALE and Divisional Controller, Karnataka, State Road Transport Corporation vs. M.G.Vittal Rao: (2012) 1 SCC 442.

8. I have given due consideration to the arguments addressed on behalf of the petitioner and perused the record.

9. There is no dispute to the fact that the respondent no.2 has duly participated in the departmental inquiry. He had cross examined all the five witnesses of the petitioner and had also examined six witnesses in support of his defence. This shows that a fair inquiry wherein principles of natural justice which includes giving fair and proper opportunity to the delinquent, had been conducted. Also in its award the labour court has not found any defect in the procedure followed during the inquiry proceedings. It is also a fact that after dismissal order was passed the workman did not challenge the said dismissal order before the appellate authority. He filed his appeal before the appellate authority only on 15.02.1984 after he was acquitted of the criminal charges in FIR no.54/1980 vide order dated 28.10.1983.

10. The findings of Labour Court the labour court that the inquiry was vitiated is based on the ground that the domestic enquiry was conducted

during the pendency of criminal trial which had prejudiced the rights of the workman as he was not required to disclose his defence in a domestic inquiry as that would have adversely affected his defence in a criminal trial. The order of the appellate authority was set aside by Labour Court on the ground that the appellate authority had failed to take into consideration the acquittal of the workman from the charges of theft under Section 381 IPC by the criminal court which were the basis of misconduct.

11. The questions for consideration are if the findings of Labour Court that the inquiry officer had erred in continuing with the inquiry proceedings despite the pendency of the criminal trial against the workman and secondly that the appellate authority had erred in not setting aside the dismissal order on acquittal of workman of the charges of theft in the criminal case are contrary to settled principle of law and thus an error is apparent on face of record.

12. The petitioner has placed on record the copy of the order of the criminal court dated 28.10.1983, acquitting the workman of the criminal charges. The concluding para of the said order reads as under:

“I therefore hold that prosecution has failed to prove its case beyond reasonable doubt. I accordingly acquit the accused.”

13. Thus, on the face of it, it was not an honourable acquittal but the benefit of doubt was given on account of failure on the part of prosecution to prove its case beyond reasonable doubts.

14. It is a settled principle of law that the standard of proof in a domestic inquiry and in a criminal trial is entirely different.

15. The Supreme Court in the case of **Cholan Roadways Limited vs. G. Thirugnanasambadam** (2005) 3 SCC 241 has clearly held as under:-

“15. It is now a well-settled principle of law that the principles of Evidence Act have no application in a domestic enquiry.”

16. The Apex Court has further held on relying on the findings in **Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi and Ors.** [1991]1SCR773 as under:-

“16. It is thus well settled law 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. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take

pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. 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. 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. Standard of proof, however, cannot be put in a strait-jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquires.”

17. In the case supra, the Court has distinguished the standard of proof required in criminal case and in domestic enquiry. The Court has observed as under:-

“19. It is further trite that the standard of proof required in a domestic enquiry vis-a-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.”

18. It is also a settled principle of law that the criminal court has no power to take disciplinary action against the delinquent as the said power vests in the disciplinary authority. It is also settled principle of law that pendency of a criminal case is no bar to continue with the disciplinary

inquiry. The nature of proof required being different in both the proceedings, it cannot be said that right of workman would be prejudiced.

19. In the criminal trial, the prosecution is required to prove its case beyond reasonable doubts and the role of the accused in putting up a defence is minimal. The whole burden to prove the guilt of the accused that too beyond reasonable doubts, is on the prosecution. However, in a domestic enquiry, the department has to prove the charges of misconduct by preponderance of evidence and the delinquent has to disprove it. In the present case as is clear while department has examined five witnesses to prove the charges of misconduct against the workman, the workman had examined six witnesses to prove that he had not committed any misconduct. The fair opportunity was therefore afforded to the workman during the enquiry proceedings. It is apparent that there is no constitutional bar for conducting two parallel proceedings on the same charges and both the proceedings can go simultaneously. Both the proceedings are of independent nature and findings in one proceeding do not in any way affect the findings in the other proceedings.

20. Therefore, the findings of the labour court that continuation of the department inquiry, during pendency of the criminal case against the

workman vitiating the action of the management is not sustainable. The inquiry cannot be said to be vitiated solely on the ground that inquiry was held during the continuation of the criminal trial.

21. The next point for consideration is whether on subsequent acquittal of the workman in the criminal trial, the appellate authority was bound to set aside the dismissal order, since it has not done so, the order of the appellant authority is illegal.

22. There is no dispute to the fact that the dismissal order was passed after a department inquiry and on the basis of findings of disciplinary authority which in turn were on the evidences collected during the course of inquiry. As discussed above, the nature of proceedings in departmental inquiry as well as in a criminal trial are entirely different and so is the principles of appreciation of the evidences. It is apparent that the evidences required to prove the criminal charges, failed to prove the guilt of workman beyond the reasonable doubts but the evidences produced in the departmental inquiry by preponderance proved the fact that the workman had committed the misconduct.

23. It is also apparent in this case that initially the workman has not challenged the dismissal order. He did not exercise his right to statutory

appeal available to him under the Model Standing Order by virtue of clause 6 (a). He only made a representation by way of an appeal after more than a year only on his acquittal in the criminal trial. The workman could have exercised his right to statutory appeal under the Model Standing Order by virtue of clause 6 (a) only within the period prescribed for such appeal. He did not do so. His appeal after more than a year and only on his acquittal in the criminal trial can thus be treated as a representation. Yet the department, treating his representation as an appeal, disposed it off, whereby his request for reinstatement on the ground of his acquittal for criminal charges was rejected. Does this order of appellate authority is illegal? Is the workman entitled to be reinstated in service on his acquittal in criminal case, despite the fact that charges of misconduct in the domestic enquiry stood proved.

24. Now the law on this point is well settled. In ***Deputy Inspector General vs. S.Samuthiram*** : (2013) 1 SCC 598, the Supreme Court had discussed the manner and scope of honourable acquittal. The court in para 26 has held as under:

“26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit

including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.”

25. This judgment was later on followed by the Supreme Court in case of ***Commissioner of Police, New Delhi & Another vs. Mehar Singh***: (2013) 7 SCC. It was further followed in ***Sankar Ghosh’s case*** (supra) wherein in para 16 the court has held as under:

“16. We indicate that the respondent could not lay his hand to any rule or regulation applicable to the Police Force stating that once an employee has been acquitted by a Criminal Court, as a matter of right, he should be reinstated in service, despite all the disciplinary proceedings. In otherwise there is no rule of automatic reinstatement on acquittal by a Criminal Court even though the charges

levelled against the delinquent before the Enquiry Officer as well as the Criminal Court are the same.....”

26. The workman has failed to show any service rule (applicable to him) which required the automatic reinstatement on the acquittal of the workman in the criminal case.

27. The Supreme Court in ***M.G.Vittal Rao’ case*** (supra) in para 11 has held as under:

“Departmental enquiry and acquittal in criminal case

11. The question of considering reinstatement after decision of acquittal or discharge by a competent criminal Court arises only and only if the dismissal from services was based on conviction by the criminal Court in view of the provisions of Article 311 (2) (b) of the Constitution of India, 1950, or analogous provisions in the statutory rules applicable in a case. In a case where enquiry has been held independently of the criminal proceedings, acquittal in a criminal Court is of no help. The law is otherwise. Even if a person stood acquitted by a criminal Court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied.”

28. The Supreme Court in several other pronouncements has held that despite an acquittal in a criminal case departmental inquiry for the misconduct can still be held. Reliance is placed on ***State of Karnataka vs. T.Venkataramanappa*** : (1996) 6 SCC 455 and ***State of A.P. vs.***

K.Allabakash : (2000) 10 SCC 177.

29. The order of the labour court setting aside the appellate order solely on the ground that it failed to take into consideration the acquittal of the workman in criminal case is thus not sustainable in law.

30. The other reason given by the Labour Court for reaching to the conclusion that the inquiry was vitiated, is that the disciplinary authority had prejudged the issue and formed the opinion to dismiss the workman even before issuance of the show cause notice dated 04.09.1982 and the issuance of show cause notice was a simple formality.

31. The attention of this court has been brought by the learned counsel for the petitioner to Section 14 clause 4 (c) of Model Standing Order and argued that pursuant to this order, binding the parties, on conclusion of the inquiry the workman was required to be given a reasonable opportunity for making representation on the penalty proposed, and it is argued that unless an opinion is formulated regarding the nature of penalty to be proposed/imposed upon the workman a show cause notice could not have been issued.

32. Thus, in view of the Model Standing Order, it is apparent that the disciplinary authority on the basis of inquiry report, had to decide about the

nature of penalty it proposes/imposes upon the delinquent and unless it reaches to said conclusion as to the nature of proposed punishment, it would not be possible for the disciplinary authority to issue a show cause notice to the delinquent, calling upon his explanation against the proposed penalty. It therefore cannot be said that the disciplinary authority has acted illegally when it has formulated its opinion regarding the proposed penalty.

33. From the perusal of the dismissal order it is apparent that the disciplinary authority, who is the General Manager in this case, had duly considered the reply of the delinquent to the show cause notice. The dismissal order clearly shows that the General Manager had gone through the proceedings of the inquiry and the report of the inquiry officer again and thereafter only gave its findings that it did not find any justifying reason in the show cause notice for reconsideration of the proposed punishment. The dismissal order also shows that the general manager had considered the contention of the workman that the principle of natural justice had been violated and the charge was not established in the inquiry as not correct. It has been held that from the proceedings of the enquiry the charge was fully established and the charge was found based on the evidences adduced at the inquiry which had been conducted following the principles of natural justice.

He thereafter held that he did not find any reason to disagree to the findings of the inquiry officer and any reason to modify the proposed punishment and also held that the charges being grave and serious justify the proposed punishment of dismissal. He also considered the previous reports of the workman which were of unblemished nature. It is therefore clear that the due consideration was given to the reply to show cause notice. The authority applied its mind and has not passed the order in mechanical manner. The findings of the labour court on this count are therefore perverse.

34. The labour court also find fault in order of dismissal on the ground that the past record of the workman was considered without disclosing it to him and concluded that this had caused prejudice to the workman, hence the action of the management was vitiated. My attention is drawn by learned counsel for the petitioner to Section 14 (5) of Model Standing orders and argued that the disciplinary authority was within its rights to consider the past conduct of delinquent.

35. According to Section 14 (5) of the Model Standing Order, while awarding a punishment the disciplinary authority is required to consider the previous record, if any, of the workman and any other extenuating or

aggravating circumstances that may exist. In the present case the disciplinary authority pursuant to this standing order had considered the past record of the delinquent in order to find out if there was any extenuating or aggravating circumstance in favour or against the workman. In the present case the past record of the workman was although unblemished but this was not found to be extenuating circumstance by the disciplinary authority. Also it is clear that in reply to the show cause notice the workman had himself requested the disciplinary authority to take into consideration his past record. This shows workman was aware that he had an unblemished past record and that is why requested the disciplinary authority to consider it as an extenuating circumstance for reducing the punishment. It thus cannot be said that the rights of workman in any way were adversely affected or the act of disciplinary authority thus vitiated. The finding of the labour court on this count is thus unsustainable.

36. From the above discussion it is apparent that the award of the labour court is not only contrary to the settled principles of law but is also perverse and thus is liable to be set aside. Accordingly, the award dated 30.10.2002 is hereby set aside.

37. It is also prayed by the petitioner that pursuant to the order of this

court dated 18.02.2003, they had deposited a sum of Rs.1 lakh which ordered to be kept in fixed deposit vide order dated 03.08.2004. The registry is directed to refund the said money along with interest to the petitioner within four weeks from today.

38. The writ petition stands disposed of in these terms with no orders as to cost.

**DEEPA SHARMA
(JUDGE)**

MARCH 03, 2015
rb