

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

% *Judgment Reserved on : July 24, 2015*
Judgment Delivered on : July 27, 2015

+ **LPA No.102/2013**

RAJESH KUMAR GANDHIAppellant
Represented by: Appellant in person

versus

SHRIRAM INSTITUTE FOR
INDUSTRIAL RESEARCHRespondent
Represented by: Mr.Rupesh Kumar, A.R. of
respondent

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. The appellant : Rajesh Kumar Gandhi is aggrieved by the impugned decision dated January 23, 2013 passed in W.P.(C) No.4019/2010 filed by the respondent : Shriram Institute for Industrial Research. The grievance of the respondent in the writ petition was to the finding returned in the award dated September 04, 2009 that the appellant's dismissal from service was illegal on account of non-supply of the report of the Inquiry Officer to the appellant. Further grievance was to the finding in the award that since as per the letter of appointment one month notice pay was not given and hence Section 25F of the ID Act, 1947 was violated and lastly to the finding that for the misconduct of

unauthorized absence penalty of dismissal from service was disproportionate.

2. The learned Single Judge has held that mere non-supply of report of Inquiry Officer was no ground by itself to hold that the penalty of dismissal from service was invalid and for which the learned Single Judge has relied upon the observations of the Supreme Court in paragraph 30 of the decision reported as (1993) 4 SCC 727 Managing Director ECIL & Ors. Vs. B. Karunakar & Ors. On the alleged violation of Section 25F of the ID Act, the learned Single Judge has noted the definition of retrenchment as per Section 2(oo) of the ID Act, 1947 to highlight that it being a case not of retrenchment, but of punishment, in view of the law declared in the decision reported as (2005) 12 SCC 422 Maharashtra State Seeds Corporation Ltd. Vs. Vilas, the said finding returned by the Tribunal was illegal. On the issue of proportionality of the punishment the learned Single Judge has held that it was a case where the appellant refused to obey lawful orders passed by his superiors coupled with unauthorized absence. The learned Single Judge has remanded the matter to the Tribunal to consider whether any prejudice was caused to the appellant on account of non-supply of report of the Inquiry Officer to him because in B. Karunakar's case (supra) the Supreme Court held that unless it could be established that non-supply of the report of Inquiry Officer a prejudice was caused to the delinquent employee, on account of mere non-supply of the report of the Inquiry Officer it cannot be said that a punishment inflicted by the Disciplinary Authority after accepting the report of the Inquiry Officer is illegal.

3. The appellant who appeared in person supported the award and urged that the findings returned by the learned Single Judge are contrary to law. An additional point was urged regarding non-compliance with

Section 33(2)(b) of the ID Act, 1947. The appellant relied upon the decisions reported as (1991) 1 LLJ SC 29 Union of India & Ors. Vs. Mohd.Ramzan Khan, (2000) 1 LLJ Gauhati 829 State Bank of India & ORs. Vs. Ralkapzawna, 1982 LAB IC 1378 Management Delhi Transport Corpn. Vs. Ram Kumar & Anr., AIR 2003 SC 195 Indian Telephone Industries Ltd. Vs. Prabhakar H.Manjare, 2002 LAB IC 513 Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Shri Ram Gopal Sharma and 2005 LAB IC 2940 Pandian Roadways Corpn. Ltd. Vs. P.O. Industrial Tribunal, Madras.

4. Before dealing with the contentions urged by the appellant and the case law cited, we need to note a relevant fact of importance which had escaped the attention of the learned Single Judge. The same would bring out a glaring conflict between the order dated April 25, 2009 passed by the Tribunal and the award dated September 04, 2009. On the reference received by the Tribunal from the appropriate Government : *‘whether the dismissal of Sh.Rajesh Kumar Gandhi from his service by the management is illegal and/or unjustified, and if so, to what relief is he entitled and what directions are necessary in this respect?’*; after pleadings were completed two issues were settled by the Tribunal on February 02, 1994 as under:-

(1) *Whether a valid and proper inquiry in accordance with the principles of natural justice was held against the petitioner?*

(2) *As in terms of reference.*

5. Holding that as regards the inquiry, it was properly conducted with opportunity given to the appellant to defend himself, noting that the report of the Inquiry Officer was not supplied to the appellant, the Tribunal noted the decisions of the Supreme Court in

Mohd.Ramzankhan's case and B.Karunakar's case and returned a categorical finding that non-supply thereof by itself was not a ground to hold that the process of law required to be followed till the penalty order was passed was violated. Said order has become final, and in spite thereof we find that in the award dated September 04, 2009 the Tribunal has found the penalty to be illegal on account of non-supply of the report of the Inquiry Officer. Had the learned Single Judge noted this aspect of the matter probably there would be no remand to the Labour Court because between the order dated April 25, 2009 and award dated September 04, 2009 the appellant did not avail the opportunity to show prejudice caused to him by non-supply of the report of the Inquiry Officer. But we leave said aspect of the matter at that because the respondent has not filed any writ petition challenging the impugned order in so far it has kept the issue alive by remanding the matter to the Labour Court to decide the limited issue of whether any prejudice was caused to the appellant by not supplying the report of the Inquiry Officer to him before the penalty was levied.

6. Decisions in Prabhakar H.Manjare's case, Jaipur Zile Sahakari's case and Pandian Roadways' case cited by the appellant are wholly irrelevant because they deal with the issue of a penalty being levied upon a workman during the pendency of either conciliation proceedings or proceedings before an Arbitrator or a Labour Court or a Tribunal, save and except with the approval of the authority before which the proceedings are pending. In the instant case no conciliation or proceedings before an Arbitrator or a Labour Court or a Tribunal were pending concerning the workman of the respondent or the appellant specifically.

7. That leaves us with the decision of the learned Single Judge on the three contentions advanced before him concerning the impugned award.

8. The contention of the appellant that the learned Labour Court rightly held that because one month notice paid was not given to the appellant there was a violation of Section 25F of the ID Act, 1947.

9. Section 25F of the ID Act, 1947 would concededly apply if it is a case of retrenchment. Section 2(oo) of the ID Act, 1947 defines retrenchment as under:-

“2(oo) ‘retrenchment’ means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include –

- (a) voluntary retirement of the workman; or*
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or*
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or*
- (c) termination of the service of a workman on the ground of continued ill-health.”*

10. In view of the law declared by the Supreme Court in Maharashtra State Seeds’ case (supra), duly noted by the learned Single Judge, instant case being one of dismissal from service on account of a penalty levied, it is not a case of retrenchment and thus the question of application of Section 25 of the ID Act does not apply.

11. On the issue of proportionality of the punishment, the findings returned by the Inquiry Officer would reveal that employed as a Junior

Analyst Trainee and after the training transferred to the Polymer Division and thereafter to the Analytical Science Division where he was designated as Junior Analyst, the appellant was assigned work in the Techno Commercial Section where he was promoted as Junior Technical Coordinator and thereafter transferred to the Analytical Science Division. Being on leave from April 25, 1991 to July, 1991 the appellant reported to the Petroleum Laboratory which was a part of the Analytical Science Division on July 24, 1991 but refused to perform the duty assigned to him. The appellant thereafter started absenting himself unauthorizedly from duty with effect from August 24, 1991 and was charge sheeted on September 05, 1991. The refusal to perform the duty assigned to the appellant between July 24, 1991 till he started unauthorizedly absenting himself from August 24, 1991 have been duly noted of in the inquiry report with reference to the evidence led. Under the circumstances, the misdemeanor being twin; refusing to perform the duties assigned coupled with unauthorized absence, the learned Single Judge has correctly held that the error committed by the Labour Court was to proceed on the subject of quantum of punishment by treating the misdemeanor as only of unauthorized absence.

12. On the subject of the penalty being vitiated because report of the Inquiry Officer was not furnished to the appellant, as we have noted above there is a contradiction on said aspect of the matter between the order dated April 25, 2009 passed by the Tribunal and the final award dated September 04, 2009. In the order dated April 25, 2009, while deciding the first issue settled the learned Labour Court has held that non-supply of the inquiry report did not vitiate the proceedings but in the award it has been held to the contrary.

13. As noted above, the learned Single Judge has not noted this hiatus between the order dated April 25, 2009 and the award dated September 04, 2009.

14. In para 30 of the decision in B.Karunakar's case (supra) the Supreme Court had dealt with the effect on a penalty of the report of the Inquiry Officer not being supplied to the delinquent employee. The same reads as under:-

“30. The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an “unnatural expansion of natural justice” which in itself is antithetical to justice.”

15. In paragraph 31 thereafter the Supreme Court observed as under:-

“31. Hence, in all cases where the inquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated

as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.”

16. Thus, the learned Single Judge has correctly remanded the matter requiring the Labour Court to decide whether the appellant could establish any prejudice caused to him by non-supply of the report of the Inquiry Officer.

17. There is thus no merit in the appeal which is dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JULY 27, 2015
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