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

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Date of Decision: March 04, 2015

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LPA 955/2013

SHRI RAJESH KUMAR

..... Appellant

Represented by: Mr.M.K.Gautam, Advocate with
Mr.M.K.Sarna, Advocate

versus

EMPORIUM INCHARGE BHARAT
LEATHER CORPORATION LTD

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. The appellant was a Sales Assistant with the respondent and was also the Vice-President of the union of the employees of the respondent.
2. It was alleged by the management of the respondent that on April 23, 1985 the office bearers of the union, which included the appellant, entered the office of the Chairman-cum-Managing Director as 11.40 A.M. They used abusive, derogatory and unparliamentarily against the Chairman-cum-Managing Director and instigated the employees to create a ruckus, requiring the police to be summoned so that the situation could be brought under control.
3. Initially, a Departmental Inquiry was conducted only against Sh.I.P.Grover, Sh.D.D.Deora, Sh.Vijay Kr.Vohra and Sh.V.K.Kapoor, and

the reason is obvious. There was some confusion regarding appellant's role.

4. During inquiry proceedings against said four persons, it transpired that even appellant was equally responsible and thus, a charge memorandum was issued to the appellant who submitted a reply on July 06, 1987.

5. One Sh.C.L.Kumar was appointed as the Inquiry Officer against whom the appellants made allegations, and the Competent Authority, without going into the issue raised, changed the Inquiry Officer and appointed one Sh.N.V.P.Saxena as the Inquiry Officer, whose appointment was also questioned, and to buy peace, the Competent Authority replaced him by appointing Sh.Prem Prakash as the Inquiry Officer. Appellant raised issues regarding Sh.Prem Prakash conducting the inquiry and finally Sh.Rakesh Chand was appointed as the Inquiry Officer, before whom the appellant appeared at the preliminary stage but abandoned appearances and hence was proceeded against ex-parte.

6. The Inquiry Officer submitted a report, indicting the appellant, and in view thereof the appellant was removed from service. Departmental appeal filed was turned down.

7. The appellant raised an industrial dispute regarding his termination, resulting in a reference being made to Industrial Tribunal No.1.

8. At the heart of the claim of the appellant before the Industrial Tribunal was whether the inquiry was valid and evidence was led in support of the verdict of guilt returned by the Inquiry Officer. Subsidiary issues concerning quantum of the penalty and delay in issuing the charge-sheet were raised. The management raised the issues of the status of the appellant as a workman. The award held that the appellant was a workman, but gave no relief because nothing wrong, illegal and procedurally violative of natural justice emerged.

9. The award would show that though an issue was settled whether the inquiry was conducted in accordance with the principles of natural justice, no finding has been returned on said aspect of the matter. The award would show that after noting the relevant facts and the six issues which were settled, the Industrial Tribunal gave finding on issue No.1 in paragraphs 13 to 19 of the award. Thereafter gave his opinion on issues No.5 and 6, with discussion in para 20. Followed by decision on issue Nos.3 and 4 with the discussion in paragraphs 21 to 34.

10. The reason why there appears to be no opinion on issue No.2: *'whether inquiry conducted by the corporation is proper, fair and conducted in accordance with principles of natural justice and relevant rules?'* is that, there are no pleadings in the statement of claim on any procedural violation and violation of principles of natural justice, and it appears that the issue was settled mechanically.

11. The relevant aspect which emerged from the pleadings was whether there was enough evidence to sustain the verdict of guilt, and the finding would relate to issues No.3 and 4, where the learned tribunal has held against the appellant.

12. In the writ petition filed by the appellants before the learned Single Judge which has been dismissed vide impugned order dated November 01, 2013, we find that the appellant had raised an issue of a report made to the police on April 23, 1985 not being supplied to him. There is no reference to said aspect of the matter in the impugned decision, and it appears from the impugned decision that the only argument advanced was that the delay in issuing the charge-sheet was fatal, a plea which has been rightly negated by the learned Single Judge.

13. Another argument concerning the power of the Assistant Manager to

act as the disciplinary authority was urged, and has been negated by the learned Single Judge.

14. In our opinion, the said finding is correct inasmuch as the grievance of the appellant was that his right of appeal was taken away. As we have noted above, no right of appeal was taken away.

15. At this stage we would be failing not to note that the learned counsel for the appellant is simply plucking rabbits out of the hat to make an argument and there is utter chaos in the manner in which arguments are being presented.

16. From the statement of claim and the impugned award, we find that the actual grievance of the appellant was that the Chairman-cum-Managing Director of the respondent had issued the charge sheet, thus the grievance was that his right to appeal was taken away, because there was no officer above the Chairman-cum-Managing Director. Noting that the Assistant Manager had acted at the Disciplinary Authority and that a right of appeal was thus available, and as a matter of fact was availed of, the contention has been rejected by the learned Industrial Tribunal.

17. We have not permitted learned counsel for the appellant to urge any plea based on Annexures filed either in the writ petition or the appeal unless learned counsel can show to us that the authenticity of these documents is not in doubt i.e. were proved at the trial before the learned Industrial Tribunal. Learned counsel who wanted to urge facts concerning natural justice of the appellant being violated has not been permitted by us to do so because we find that in the statement of claim no such issue was raised regarding denial of documents.

18. It is trite that factual foundations have to be laid before the fora of first jurisdiction. Further, merely to urge that some document was not

supplied is not enough. In what manner prejudice has resulted has also to be shown. There are no pleadings regarding prejudice resulting.

19. The appeal is dismissed but without any order as to costs.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

MARCH 04, 2015

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