

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

**102**

**CWP No. 5885 of 1995 (O&M)  
Date of decision: 11.08.2016**

Karam Singh

.... Petitioner

Versus

Presiding Officer, Labour Court, Bathinda and others

.... Respondents

**CORAM: Hon'ble Mr. Justice P.B. Bajanthri**

Present: Mr. K.S.Chahal, Advocate for the petitioner.

Mr. Kannan Malik, Advocate for respondents No. 2 and 3.

**P.B. Bajanthri, J. (Oral)**

**CM No. 9256 of 2016**

This is an application for placing on record accompanying affidavit. Heard. Allowed.

Affidavit is taken on record.

CM stands disposed of.

**Main case.**

The appellant has questioned the award dated 04.04.1994 passed by the Labour Court, Bathinda.

2. Petitioner was working as a Milk Procurement Assistant, since 02.09.1974. While he was working at Milk Chilling Centre, Bajakhana, his services were transferred to Badal Centre, Badal on 29.02.1988. One Sh. G.C. Bhardwaj, Feed Development Officer served the order of transfer on the petitioner on 02.03.1988. The petitioner refused to accept or receive

transfer order and abused Sh. G.C. Bhardwaj in filthy language. In this

regard, Sh. G.C. Bhardwaj submitted a complaint before the Managing Director on 03.03.1988 (Annexure A1). With reference to the aforesaid complaint as well as petitioner failed to reach the target in procuring milk, on these two allegations disciplinary proceedings were initiated and concluded in imposing the penalty of termination from service on 08.01.1992.

3. Feeling aggrieved by the order of termination he raised an Industrial dispute. The reference was heard by the Labour Court, Bathinda and upheld the order of termination on 04.04.1994. Thus, the petitioner is before this Court.

4. Learned counsel for the petitioner submitted that in the disciplinary proceedings rules have not been followed. Learned counsel further submitted that even though it was an ex parte enquiry it was duty of the enquiring officer to held ex parte enquiry in accordance with the procedure. Perusal of the records, it is evident that only one witness has been examined namely Lekh Raj-Clerk. For the purpose of proving the charges, prime witness namely Sh. G.C. Bhardwaj who is complainant has not been examined. It was further submitted that for not reaching the milk procurement target no target has been fixed. That apart, not reaching target of any work does not amount to misconduct. Therefore, the order of termination is illegal and arbitrary. Consequently, the Award of the Labour Court is contrary to the disciplinary rules which has not been followed by the respondents from the date of initiation of enquiry till passing of termination order.

5. Per contra, learned counsel for the respondents submitted that in so far as non-examination of prime witness Mr. G.C. Bhardwaj is

concerned, though on two occasions summons were issued. He failed to appear and adduce evidence in support of complaint (Annexure A1). Therefore, available witnesses have been examined and their evidence have been taken into consideration. It was further submitted that for the purpose of procurement of milk certain targets were fixed which has been made known to the petitioner, despite that he failed to reach the target in procuring milk. Merely, non-examination of Sh.G.C. Bhardwaj-complainant does not vitiate the enquiry proceedings. Moreover, records are made available in respect of not reaching the target fixed for the purpose of procurement of milk.

6. Heard learned counsel for the parties.

7. The respondents have initiated two disciplinary proceedings. One is on the allegation that petitioner refused to accept the transfer order which was served through one Sh. G.C. Bhardwaj. Thus, he had disobeyed the order of the superiors which is a serious misconduct. Other enquiry is relating to milk procurement Assistance or given certain targets in procuring milk as the same has not been met by the petitioner. The respondents concluded the enquiry and passed a single order arising out of both the disciplinary proceedings by imposing the penalty of termination holding that the charges were proved levelled against him. Learned counsel for the petitioner contended that prime witness Mr. G.C. Bhardwaj-complainant has not been examined or cross-examined. He is author of the complaint in respect of the charge that petitioner disobeyed the order of transfer. In the absence of examining the author of the complaint, the enquiry initiated against the petitioner in so far as refusing to accept transfer order and disobeying the orders of the superiors is liable to be set aside. The other

charge relating to not meeting the target in procuring milk is concerned, the same does not amount to misconduct as held by the Apex Court in case titled as *Union of India versus J. Ahmed*, 1979 SCC (2) 286. Therefore, termination order dated 08.01.1992 is liable to be set aside. The Labour court did not appreciate the fact that complainant-Sh. G.C. Bhardwaj was not examined or cross-examined. Whereas initiation of enquiry is with reference to complaint of the Sh. G.C. Bhardwaj. Thus the Labour Court has erred in upholding the order of termination.

8. In view of the above facts and circumstances, award dated 04.04.1994 is set aside. Respondents are directed to settle the retiral benefits of the petitioner for the reasons that as on this day, he has attained age of superannuation and retired from service. Retiral benefits shall be settled along with arrears of pay and time to time re-fixation of pay and other service benefits if any eligible in accordance with law. Above exercise shall be completed by the respondents within a period of 6 months.

**11.08.2016**

pooja saini

**( P.B.BAJANTHRI )  
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No