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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 6001/2016**
MADHO SINGH

..... Petitioner

Through: Mr. Anuj Aggarwal, Adv. with Mr.
Ashutosh Dixit, Adv.

versus

M/S SUPER BAZAR THE CO-OPERATIVE STORE LTD

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **28.07.2016**

1. The challenge in this writ petition is to the order dated January 7, 2015 and Award dated October 26, 2015 passed by the Industrial Adjudicator. The order dated January 7, 2015 is a decision on the preliminary issue framed on March 15, 1999 to the extent, *whether the enquiry was conducted in accordance with the principles of natural justice, and if so, its effect?*
2. The Award dated October 26, 2015 is the final Award whereby the Industrial Adjudicator has answered the reference by holding that there is no perversity in the enquiry report and answered the reference and dismissed the claim petition filed by the petitioner herein. It may be stated here that

the petitioner had joined the respondent as Palledar (loader) on May 11, 1984 in the pay-scale of Rs.225-597/-. His last drawn salary was Rs.2,200/-. He was issued a charge sheet dated August 5, 1991 wherein a charge was framed that he was attempting to pilferage one bag of 40kg sugar valued at Rs.386/- in connivance with another employee namely Rama Swamy while loading the vehicle No.DHC-5062. He submitted his reply to the charge sheet on September 23, 1991. An Enquiry Officer was appointed and a joint enquiry was conducted against the petitioner and the co-worker Rama Swamy. The charge sheet resulted in the penalty of dismissal from service on July 6, 1992. The petitioner filed a departmental appeal before the Appellate Authority, which was also rejected on September 19, 1992. He raised an industrial dispute, which ultimately referred by the Appropriate Government to the Industrial Adjudicator vide order dated January 14, 1998, on the following terms:-

“Whether the services of Sh. Madho Singh has been illegally terminated by the Management and if so, what directions are necessary in this respect”

3. The Industrial Adjudicator framed a preliminary issue on March 15, 1999, which has already been reflected above. On this preliminary issue, the Industrial Adjudicator has noted that the petitioner, in order to prove the

enquiry invalid, has tendered his affidavit, Ex.WW1/A and documents Ex.WW1/1 to Ex.WW1/8. The Ex.WW1/1 is an order dated July 20, 1991 (suspension letter), Ex. WW 1/2 is the charge sheet, Ex.WW 1/3 is the reply of the petitioner dated September 23, 1991 to the charge sheet, Ex.WW1/4 is the letter dated October 15, 1991 appointing the enquiry officer, Ex.WW1/5 is the written arguments, Ex. WW1/6 is the enquiry report and Ex.WW1/7 is the demand notice.

4. The Management had also produced two witnesses. The primary stand of the petitioner was that the Management did not supply enquiry report to the petitioner; the petitioner was not allowed to be represented by Defence Assistant; documents were not supplied to him; the enquiry officer was not examined to prove the enquiry proceedings and report.

5. On the issue of enquiry report, the Industrial Adjudicator was of the view that the petitioner was aware of the contents of the enquiry report and if the petitioner was aware of the contents of the enquiry report, there is no violation because knowledge of the contents is equivalent to furnishing the enquiry report. The learned Industrial Adjudicator had noted the fact that the petitioner himself had filed an Appeal Ex.WW1/7 before the President of the Organisation on July 25, 1992. He has reproduced the contents of para 4

of the Appeal. He has also noted that one of the grounds in the Appeal was that the enquiry report was perverse and based on extraneous and oral consideration and the enquiry officer did not take into account material contradictions in the statement of witnesses produced by the Management. Relying on those averments in the Appeal filed by the petitioner, the Industrial Adjudicator has concluded that the knowledge of the enquiry report to the claimant is not less than furnishing of enquiry report to him by the Management, so no prejudice has been caused to him due to non furnishing of enquiry report to the claimant.

6. Insofar as the ground of not allowing the claimant to be defended by the Defence Assistant, it was concluded by the Industrial Adjudicator that enquiry proceedings dated December 21, 1991, show that claimant and co-worker Rama Swamy were present before the enquiry officer. They had requested that Mr. J.S. Bisht be appointed as defence assistant. Mr. J.S. Bisht was also present at that time and he had also given consent. Mr. J.S. Bisht was appointed as defence assistant for them who attended the proceedings on behalf of the workers. On May 8, 1992, the petitioner requested the enquiry officer that he wanted Mr. Surya Narayan Shukla as his defence assistant. The said request was also allowed and Mr. S.N.

Shukla was asked to defend both the workers. On the same day, Mr. J.S. Bisht withdrew as defence assistant and as such the point, which has been taken by the petitioner was baseless.

7. On the issue of non supply of documents, the Industrial Adjudicator has noted that WW 1, the petitioner admitted in his cross examination that charge sheet was issued to him by the Management along with annexure I to IV. He did not explain how he has come into possession of those documents. The possession of the documents show that the said papers were supplied to him. He also refers to an order dated December 21, 1999, wherein the claimant and the dealing assistant confirmed before the Enquiry Officer that they have received copies of all documents attached with statement/articles of charge. On February 28, 1992 the claimant and his defence assistant requested the enquiry officer that procedure for issuance of material from RDC to mini branches be supplied to them. In that regard, the enquiry officer examined one Mr. O.P. Sharma on that procedure. The Industrial Adjudicator notes that Mr. O.P. Sharma was not cross examined by the petitioner. It was his finding that inability to cross examine O.P. Sharma on that point by the petitioner does not mean that the enquiry officer had violated principles of natural justice.

8. On the plea that the enquiry proceedings and enquiry report have gone unproved is concerned, the Industrial Adjudicator has relied upon the affidavit filed by the petitioner, wherein the petitioner has stated enquiry was conducted by the Management and the enquiry officer had prepared the enquiry report on June 19, 1992. He also notes that the case of the petitioner was that the enquiry conducted is not in accordance with the principles of natural justice. He also notes that the petitioner in his cross examination deposed that before he was dismissed from service, enquiry was held by the Management in which he had participated on each and every date. He further admitted that Ex.WW I/MI (collectively) was the enquiry report. The Industrial Adjudicator held it was not the case of the petitioner that the enquiry report and proceedings placed on file were forged and fabricated and as such rejected the plea that the enquiry proceedings and the report have not been proved.

9. On the issue that the enquiry report is perverse, the Industrial Adjudicator, in para 13, has concluded as under:-

“The enquiry officer had recorded statement of 7-8 witnesses. MW Sh. Daya Kishan had deposed before enquiry officer that on 21.05.1991, his duty was on vehicle no. 7526 in which the grocery articles for Badaipur branch were being loaded. He

saw Sh. Rishi Rosh and claimant quarreling with each other on the issue of number of bags. Sh. Rishi Rosh was saying that the claimant had taken more bags whereas claimant was saying that he had not taken excess bags.

Sh. Rishi Rosh deposed before the enquiry officer that he was working as a helper in RDC on INA since 1985. He was loading the grocery articles for Badarpur Branch on 21.05.1991 in a vehicle. Sh. Madho Singh, Palledar was helping in carrying the bags from the store up to the weighing machine and was also recording number of bags which he had helped in carrying up to weighing machine. Four other palledar except Madho Singh were also busy in loading. After weighing 10"" bag sugar, he told Sh. Madho Singh that his quota was over but Sh. Madho Singh insisted that he had taken only nine bags. Thereafter, he checked the bags loaded in the vehicle and found their number as 10. He emptied the bags and found that there were 440 pockets of one kg each instead of 400 packets of one kg each.

Junior Supervisor Sh. P.L. Batra had deposed that Sh. Madho Singh, palledar was responsible for carrying the bags from the store. When 10 bags loaded in vehicle were checked, they were found containing 440 pockets. He further deposed that some times the weighing machine used to remain defective. Due to that reason, some times, the grocery articles showed variations. MW Sh. Puran Lai deposed that he was not present at the time of incident. When he reached to the spot after the

incident, he came to know from Sh. Rishi Rosh and Sh. O.P. Sharma that total number of pockets in 10 bags should be 400 equivalent to 400 kg but when the bags were checked in the vehicle those were found containing 440 pockets. To the same effect was the statement of Sh. Narender Pal and Sh. O.P. Sharma.

It is correct that some of the management witnesses had told the enquiry officer that some times there was variation in the weighing machine. The variation was to the extent of half kg to 1 kg in weighing a bag of 40 kg. So, as per the witnesses, the maximum error in weighing machine was 1 kg for every bag of 40 kg. For 10 bags of 40 kg. each, the variation should be 10 kg and not 40 kg. There was clear cut deposition of Sh. Rishi Rosh and Sh. O.P. Sharma that it was claimant who had insisted that only 10 bags had been loaded and that thereafter he took 11th bag. Sh. Rishi Rosh became suspicious. He checked the bags and he found the number as 10. He got confused and thus emptied the 10 bags which were found containing 440 pockets of 1 kg sugar each instead of 400 pockets of 1 kg sugar each.

14. Co-worker Sh. Rama Swami had sent his statement in writing to the Regional Manager of management on 21.05.1991 itself that Sh. Rishi Rosh had told the claimant that 11 bags have loaded in the vehicle but Sh. Madho Singh had insisted that only 10 bags had been loaded. Thereafter, Sh.

Madho Singh came to him and asked to remove the packets from 11th bag and put 3 to 5 packets in the remaining 10 bags.

He followed his instruction but both were caught red handed by Sh. Rishi Rosh and Sh. O.P. Sharma. That letter is not less than confessional letter. It is very much admissible against the claimant also. So there is no perversity in the enquiry report.”

10. It may be stated here that on the issue of reference, the Industrial Adjudicator has held as under:-

“8. Ld. ARM argued that the claimant has been found guilty of theft of 40 kg. sugar. Such, kind of misconduct has been described as major misconduct in rule no. 69 of the Cooperative Store Ltd. New Delhi, Service and Conduct Rules, dated 23.12.1985. He further submitted that punishment provided under rule 70 for major, misconduct is removal from service and dismissal from service. He argued that in awarding, such kind of punishment, a lengthy procedure has been prescribed in rule 71. That procedure was followed by the management.

9 It is not in dispute that the claimant, being employee of the management, was being governed by the Co-operative Store Ltd. Delhi, Service and Conduct" Rules, dated 23.12.1985. As per rule no. 69(v), theft, fraud or dishonesty in connection with society business or property is a major conduct. Punishment for major misconduct is prescribed in rule no. 70-and it includes removal and dismissal from service.

Allegations against the claimant are that he alongwith co-palldar namely Sh. Rama Swamy, while functioning as palldar in the RDC INA, committed pilferage of one bag of ,40

kg sugar valuing Rs. 386/-, from the store of RDC INA on 21.05.1991, while loading vehicle No. DHG-5062, in connivance with each other. Claimant was holding a position of trust and loyalty. He was expected to behave with discipline, loyalty and maintain fiscal sanctity. But he violated all the expectations. On this score, case of the management is well covered by UPSRTC Vs. Gopal Shukla CA No. 2038/12 decided by the Apex Court on 01.09.2015. In that case, allegations against the workman/conductor were that he was carrying 25 passengers without tickets and in this way, he had caused financial loss to the corporation. The Hon'ble Apex Court upheld the order of his dismissal from service. In the case in hand, the claimant had pilferaged a bag of 40 kg sugar valuing Rs. 386/-. Punishment handed down to him by management is not disproportionate to the misconduct proved against him. His dismissal from service suffers from not illegality or justifiability. This issue is decided in favour of management and against claimant.”

11. When the matter was listed on July 18, 2016, this Court had directed the petitioner to place on record the letter dated May 21, 1991 written by co-worker Rama Swamy wherein Rama Swamy has admitted the factum of pilferage. Mr. Aggarwal had filed the same. Be that as it may, it is his submission that the document of May 21, 1991 has been contested by Rama Swamy stating that he did not know Hindi. That apart, it is his submission,

that the issue is not with regard to weighing machine; the issue is whether there was any pilferage. He would also make a case of discrimination as there were three other workers who had actually loaded the bags in the truck. According to him, if there is a reasonable doubt on the facts, then the same must go in favour of the petitioner, who was working on a lower post of Palledar. He would also state that there was no sufficient material on record to prove the charge. He would rely upon the following two judgments of the Supreme Court in support of his contention.

- (i) ***Roop Singh Negi vs. Punjab National Bank and Ors. Civil Appeal No.7431/2008 decided on 19.12.2008 MANU/SC/8456/2008;***
- (ii) ***The K.C.P. Employees' Association, Madras vs. The Management of K.C.P. Ltd., Madras and ors Civil Appeal Nos.2142-2143/1970 decided on 24.01.1978 MANU/SC/0287/1987.***

12. Having heard the learned counsel for the petitioner and noting both the impugned order/Award, suffice to state that the plea of the petitioner on the preliminary issue that the enquiry has not been conducted in accordance with the principles of natural justice, the finding of the Industrial Adjudicator is to be upheld. The Industrial Adjudicator has by giving cogent reasons has rejected all the contentions. The same does not require any interference. Once the enquiry has been held in accordance with the

principles of natural justice, the only aspect need to be adjudicated by the Industrial Adjudicator on a reference is whether the charges have been proved based on cogent material. I note, from the enquiry report, which portions have been reflected above, respondent had examined 7-8 witnesses. The charges have been proved primarily on the statement of the witnesses like O.P. Sharma, Rishi Rosh, Narender Pal including Rama Swamy. I note from page 66, the enquiry officer's analysis and assessment of evidence was as under:-

“6. Anaysis and Assessment of Evidence

The statement of Shri Rishi Rosh (MW/3) Shri P. L. Batra (MW/7) Shri Narendra Pal (MW/6) and Shri O. P. Sharma (MW/8) testifying that excess sugar packets were found, when the contents of ten sugar bags loaded on vehicle NO. DGG 5062 o 21.5.1991 were checked has not been disputed by the charged officials. Shri Madho Singh (CO) in his letter dated 23.9.91 (MEG) had admitted that sugar packets in excess of 40 pare found in all the bags and even the last bag contained 3 packets in excess and the same facts he admitted in his deposition before me on 25.5.92. Accordingly the statement of the Management witnesses named above that 440 sugar packets instead of 400 sugar packets were found when the contents of ten sugar bags loaded in the vehicle were checked, is accepted as correct.

Since 3 to 5 sugar packets were found in excess of 40 packets in each of the ten sugar bags making a total tally of 40 packets, it lead to the obvious conclusion that one sugar bag had been emptied in the vehicle and its contents were placed in the remaining 10 bags.

6.1 The Palledars named S/Shri Raghuvir Singh (MW/7) Daya Kishan (MW/2) in their statements dated 13.6.1991 (ME/11 and ME/12) and Shri Sarvesh in his deposition before me on 1.5.1992 have stated that Shri Ramaswamy was doing the work of arranging/stacking the goods loaded in the vehicle. Shri Madho Singh in his letter dated 26.5.91 to the GM/Super Bazar had also stated that Shri Rama Swamy was working on the vehicle. Shri P. L. Batra's note dated 23.5.1991 (ME/4) also confirms all the five palledars named S/Shri Madho Singh, Daya Kishan, Sarvesh, Raghuveer and Rama Swamy were present on 21.5.1991 at vehicle No. DHG/5062 for supply of goods to BTPS-I br. Further Shri Rama Swamy in his statement before Shri O. P. Sharma., A.M. (Stores) on 21.5.1992 had admitted both orally and in writing that he was arranging and stacking the goods in the vehicle. In view of such an overwhelming evidence, Shri Ramaswamy's deposition before me that he did not work on that vehicle at all and Shri Madho Singh's statement before me on 25.5.1992 that Shri Rama Swamy had gone to smoke in the Liason Office after loading one or two bags and was not doing the arranging/stocking work in the vehicle, are not found to be tenable. I therefore accept the

statement of Management witnesses as correct and agree that Shri Rama Swamy was performing the work of arranging/stacking of goods inside the vehicle.

6.2. It is an undisputed fact that while Shri Madho Singh, Palledar was getting the goods lifted from the store and noting down the same on one of the copies of Demand/issue note, the other three Palledars named Sh. Daya Kishan (MW/2) Shri Sarvesh (MW/1) and Shri Raghuveer Singh (MW/7) were loading them on the vehicle after weightment on the scale of processing centre. It is proved by evidence adduced by the management that Shri Rama Swamy was performing the job of arranging and stacking of goods in the vehicle.

6.3 In regard to Shri Madho Singh is plea of innocence, on the grounds that neither the sugar bags were weighed before loading in his presence nor were reweighed despite his request after the detection of discrepancy and that the weighing machine often remained out of order, the analysis of facts and circumstances does not reveal anything to the benefit of Shri Madho Singh, even if for arguments sake his statement is accepted as correct. The undisputed detection of excess 40 sugar packets in ten bags confirms in unequivocal terms that one sugar bag was overdrawn from the store. Even assuming that the scale was out of order at that time, the maximum difference in weight could have been between 5 to 10 kg in all the 10 bags (1/1 to kg per 40 kg as stated by the Management witnesses and not disputed by the charged officials) and not 40

kg as actually found. Hence the plea of Shri Madho Singh has been found to be untenable.

6.4 On the basis of anal and circumstances evidence adduced before me, the only conclusion that can be drawn is, that there was a pre-planned conspiracy among the palledars to draw, one sugar bag in excess from the store, in pursuance of the conspiracy while Shri Ramaswamy (who was performing the work of arranging/stacking of goods inside the vehicle) emptied one sugar bag containing 40 packets and placed 3 to 5 packets in each of the remaining ten bags, Shri Madho Singh (who was getting the goods issued from the store and noting down the number of bags issued from the store, helped Shri Ramaswamy by creating a confusion that only 9 bags had been issued while ten bag had been actually issued till then and thus succeeded in getting the eleventh bag issued. The other three palledars named S/Shri Raghuveer Singh, Daya Kishan and Sarvesh, who were performing the duties of lifting of goods from the store, weighing them on the scale and loading it on the vehicle (Which was just near to the weighing machine) could well see what Shri Ramaswamy was doing in the vehicle and as such the probability of innocence of these three palledars is related very low.

7. On the basis of evidence adduced before me and in view of the reasons given above I hold that S/Shri Ramswamy and Madho Singh Palledars attempted to pilferage one bag of sugar containing 40 kg. indigenous sugar valued at Rs. 386/- from

RDC INA on 21.5.91 and thus committed misconduct under Rule 69 (V) of the Service and Conduct Rules of the Cooperative Store Ltd.”

13. The aforesaid conclusion of the enquiry officer show sufficient evidence against the petitioner for proving the charges. The nature of evidence required in departmental proceedings is of preponderance. It is not a case, that there is no evidence at all. The conclusion arrived at by the Industrial Adjudicator cannot be faulted. Insofar as the judgments relied upon by Mr. Aggarwal are concerned, the same are not applicable to the facts of this case, inasmuch as there is sufficient evidence against the petitioner in the enquiry for holding the charges against him as proved. That apart, the Enquiry Officer, Disciplinary Authority, Appellate Authority and Industrial Adjudicator have all held, the charges have been sustained against the petitioner.

14. I note for benefit, the position of law as propounded by the Supreme Court on the scope of judicial review under Article 226 of the Constitution of India in the case of *State of A.P v. S. Sree Rama Rao AIR 1963 SC 1723:-*

“7. ...The High Court is not constituted in a proceeding under Art. 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry

against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent Officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art. 226 to review the evidence and to arrive at an independent finding on the evidence.”

15. On similar lines is the judgment of the Supreme Court in ***SBI vs. Ram Lal Bhaskar 2011(10) SCC 249***, wherein the Supreme Court in para 13 held as under:-

“13. Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has re-appreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated

by any material on record and the allegations leveled against the respondent no.1 do not constitute any misconduct and that the respondent no.1 was not guilty of any misconduct.”

16. The present petition is without any merit. The same is dismissed.

V. KAMESWAR RAO, J

JULY 28, 2016/ak