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

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Judgment delivered on: 23.08.2016

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W.P.(C) 6193/2014

SUKHDEV

..... Petitioner

Through: Mohd. Nayeemuddin, Adv.

versus

M/S HABITAT WORLD AT INDIA HABITAT CENTRE Respondent

Through: Mr. Alok Bhasin, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This petition impugns the Award dated 02.07.2013 and order dated 14.07.2011 passed by the Labour Court in DID No. 65/11 (Old DID No. 313/2006). It also impugns the petitioner's dismissal from service of the respondent on 12.07.2006 and seeks reinstatement with full back wages, continuity of service and all consequential benefits.

2. It is the petitioner's case that during his employment, he was proceeded against on charges of pilfering. An inquiry was held and ultimately he was dismissed from service. The incident detailed in the chargesheet dated 09.11.2005, reads as under:

“... You are working with the Management as a Boiler Operator. On 7.11.05, your duty hours were from 7 a.m. to 4pm. At about 8.49 a.m. when Mr. Jamal Pervez, Chief

Engineer was taking round of Boiler Room, he found that:

- I. One litre of milk in a stainless steel pot was heating up on a 1000 watt halogen;
- II. Six eggs were found kept on the steam boiler; and
- III. About 8-10 slices of bread were found baking on steam pipeline from where the insulation had been removed to enable you to bake the bread slices.

The Chief Engineer brought the aforesaid items to your notice as well as to the notice of Mr. Tejinder Singh, Supervisor. When confronted by Mr. Jamal Pervez, you admitted in front of Mr. Tejinder Singh that the aforesaid items viz., milk, eggs and bread slices had been pilfered by you from the kitchen.

Apart from the fact that committing theft of milk and other items mentioned above, constitutes misconduct, you by having used 1000 watt halogen for heating up of the milk pot containing one litre of milk and using the steam pipe line by removing its insulation for baking of the breads slices, could have disastrous consequences as the wires connected by you to light up the 1000 watt halogen could not take the load and could result in fire due to short circuiting, and which conduct of yours is totally incompatible with the faithful and diligent performance of your duties as a Boiler Operator. The management, therefore, has reasons to come to the conclusion that you have by our aforesaid conduct rendered yourself unfit to work as a Boiler operator and are a security risk. Even previously, on 12.2.2002, a fire had broken out due to your negligence while carrying out some welding jobs without taking the necessary precautions....”

3. The petitioner participated in the inquiry proceedings before the inquiry officer, an advocate and evidence was led by both parties. The inquiry report was submitted to the management, which after considering it, dismissed the petitioner from service on 12.07.2006. The termination was challenged before the Labour Court which, by way of the impugned order,

was dismissed.

4. Before the Labour Court, the petitioner alleged that although an opportunity was granted to the petitioner to be represented by a co-employee, it was a hollow promise, because no employee would represent the petitioner against the management, in effect negating the very idea of fair representation before any inquiry proceedings. This, according to him, vitiated the principles of natural justice, since he was not granted effective representation for the hearing with proper assistance. The learned counsel for the respondent submits that granting the facility to be represented by a co-employee is sufficient to meet the requirement of principles of natural justice and it would not require for an accused workman to be necessarily represented by an outsider. The Court further notices that clause 16 of the service conditions specifically mentions that a workman accused of misconduct would not be entitled to be defended by an outsider. The Court is of the view that insofar as such right has been specifically circumscribed by the aforesaid covenant, the petitioner cannot seek to bring in an outsider unless the rules so provided for. Hence the argument that he was prevented from being effectively represented is untenable. Furthermore, the Court notes that the petitioner did not put forth the name of any co-employee who could represent him. The contention of the petitioner that no co-employee was ready to represent him for fear of the management is without merit and thus untenable.

5. The petitioner also stated that the list of witnesses, on which the management had relied upon, were not supplied to him and that despite a number of requests to the management to supply him a Hindi copy of the

certificates, the same were not supplied to him. For the management, evidence was led through Mr. Jamal Pervez, Chief Engineer and Mr. Tejinder Singh, Supervisor, who testified in consonance with the articles of charge. The witnesses also deposed that the petitioner had admitted to his guilt apropos pilfering the articles from the kitchen. The petitioner had duly cross-examined the said witnesses. Therefore, as regards the hearing and recording of evidence of only two witnesses presented by the management, no effort was shown by the petitioner to disprove their statements and therefore, no prejudice can be said to have been caused to him. The Labour Court considered the evidence and the admission of guilt by the petitioner in the presence of the two witnesses of the management and found that the said evidence was not weak or insufficient and concluded that the guilt of the petitioner stood established. The Court finds no perversity in this finding of the Labour Court.

6. The petitioner, who relied upon a decision of this Court in *N.K. Sareen vs Punjab National Bank & Anr. 1995 II-LLJ 41* apropos the apprehension of bias, could not make out the case of bias in the present inquiry because he had admitted in the cross-examination that he did not have any grievance qua the manner of the inquiry except that (i) he was not allowed to be represented by an outsider and (ii) that some aspects of the incident were incorrectly recorded by the Inquiry Officer. Accordingly, the Labour Court concluded that insofar no error could be found in the manner in which the inquiry was conducted and the evidence relied upon by the officer to prove the guilt of the petitioner was sufficient, the dismissal could not be revoked.

7. As regards non-supply of Hindi translation of service conditions, the

impugned order records that at the request of the petitioner, the entire proceedings were conducted in Hindi. The next contention of the petitioner is that he was never supplied a copy of either the inquiry report or a copy of the service conditions in Hindi. The Court notes that the non-supply of documents and Hindi translation of the service conditions is not a ground which has been raised in this petition. This ground also seems to have been not pressed before the Labour Court. Therefore, raising the same at this stage would not be permissible. Furthermore, proceedings of the inquiry against the workman on 04.01.2006 records, inter alia, that:

“.....Through the aforesaid letter the charged employee has demanded Hindi translation of charge sheet and standing orders. In this regard, it is the contention of the management's representative that it is on the record that there is no standing order in the establishment. Insofar as service conditions are concerned, the same have been given to the charged employee with the appointment letter and he is well conversant with the same. Management's representative has drawn my attention towards the documents filed on the last date and has said that the documents annexed with the appointment letter is the service "conditions which was given to the charged employee at the time of appointment. Charged employee has confirmed that at the time of appointment, along with the appointment letter, he was provided with the documents annexed with the same. In these circumstances, I am of the opinion that demand of Hindi translation of the service conditions by the charged employee is not justified since it is with him since last five years and he is well aware of the service conditions written in the same. Today, during enquiry proceedings, I am narrating the enquiry to the charged employee in Hindi. Charge sheet has been read over and explained in detail to the charged employee in Hindi. Charged employee has said that now he has completely understood the charges levelled in the charge sheet....”

8. This Court is of the view that whatever be service conditions, they would not be of much assistance to the petitioner in the present case because the inquiry was with respect to the charge of pilferage of eatables which were found in the boiler room and were admittedly pilfered from the kitchen. Upon a query by the Court, the learned counsel for the petitioner states upon instructions, that the petitioner is Class seventh pass. Therefore, it cannot be said that the petitioner did not understand the import of the charge or that he was denied any opportunity to defend himself.

9. The learned counsel for the petitioner further submits that he was not supplied a copy of the enquiry report and that it resulted in the violation of principles of natural justice. He relied upon the ratio of the judgment of the Supreme Court in *Union of India vs Mohd. Ramzan Khan AIR 1991 SC 471*, which held as under:

“.....13. Several pronouncements of this Court dealing with Article 311(2) of the Constitution have laid down the test of natural justice in the matter of meeting the charges. This Court on one occasion has stated that two phases of the inquiry contemplated under Article 311(2) prior to the 42nd Amendment were judicial. That perhaps was a little stretching the position. Even if it does not become a judicial proceeding, there can be no dispute that it is a quasi-judicial one. There is a charge and a denial followed by an inquiry at which evidence is led and assessment of the material before conclusion is reached. These facts do make the matter quasi-judicial and attract the principles of natural justice. As this Court rightly pointed out in the Gujarat case, the disciplinary authority is very often influenced by the conclusions of the Inquiry Officer and even by the recommendations relating to the nature of punishment to be inflicted. With the Forty-

Second Amendment, the delinquent officer is not associated with the disciplinary inquiry beyond the recording of evidence and the submissions made on the basis of the material to assist the Inquiry Officer to come to his conclusions. In case his conclusions are kept away from the delinquent officer and the Inquiry Officer submits his conclusions with or without recommendation as to punishment, the delinquent is precluded from knowing the contents thereof although such material is used against him by the disciplinary authority. The report is an adverse material if the Inquiry Officer records a finding of guilt and proposes a punishment so far as the delinquent is concerned. In a quasi-judicial matter, if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice would be affected. Prof. Wade has pointed out:

“The concept of natural justice has existed for many centuries and it has crystalised into two rules: that no man should be judge in his own cause; and that no men should suffer without first being given a fair hearing. They (the Courts) have been developing and extending the principles of natural justice so as to build up a kind of code of fair administrative procedure to be obeyed by authorities of all kinds. They have done this once again, by assuming that Parliament always intends powers to be exercised fairly.”

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15. Deletion of the second opportunity from the scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the

charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 42nd Amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position.....”

10. Apropos non-supply of the copy of the inquiry report, the respondent had dispatched the same through letter dated 27.06.2006, which was returned unserved as the petitioner was stated to be out of station. By the time the petitioner returned back to his postal address, the dismissal order had already been passed and posted by registered post to the petitioner. Therefore, as far as respondent is concerned, they took the right steps for serving the petitioner with the copy of enquiry report and the impugned order. Furthermore, the learned counsel for the respondent has relied upon the judgment of the Supreme Court in ***Haryana Financial Corporation & Anr. vs Kailash Chandra Ahuja (2008) 9 SCC 31***, which has held that if non-supply of inquiry report does not cause any substantive prejudice to the

delinquent employee, then such non-supply of inquiry report would not vitiate the proceedings and the order of punishment cannot automatically be set aside. In the present case, the petitioner has not been able to justify before the Labour Court as to how his rights were prejudiced by the non-supply of the inquiry report. Especially since he was accorded full opportunity to defend himself in the inquiry proceedings.

11. The petitioner contends that the second show cause notice should have been issued to him to make a representation against the proposed punishment in terms of the inquiry report i.e. granting an opportunity of being heard before any adverse order was passed against him. The Court is of the view that insofar terms of employment did not provided for such a procedure, no prejudice is caused.

12. The learned counsel for the petitioner further submits that the impugned orders suffer from perversity insofar it concludes that the charges against the workman stood proved. The learned counsel for the petitioner contends that it was never proved by the management that the food items were found in possession of the workman. Therefore, till such time that material evidence was led against the workman, no conclusion in this regard could have been drawn in the inquiry report. He states that it is not for an accused employee to first disprove something which is yet to be proved. In this regard, he relied upon the judgment in the case of *Ananda Chandra Prusty vs Orissa Mining Corporation Ltd. & Anr. 1996 LA.B. I.C. 2595*. The Court is of the view that evidence was led by the management through two persons, against the petitioner to prove that the food items were found in the boiler room, and it was for the petitioner to have led evidence, if he so

desired, to contend otherwise. The contention that the said food items were brought from the market and kept into the boiler room is not substantiated from the record. Therefore, the petitioner's aforesaid contention too is without basis and is rejected.

13. Lastly, the petitioner's contention that the chargesheet and the order of dismissal were not signed by the authorized person as per the rules. This argument too is untenable because the respondent has shown that there was due delegation of authority to the person who had issued said two documents.

14. In view of the above, no grounds are made out in the present petition to interfere with the impugned order. The petition is without merit and is, accordingly, dismissed.

AUGUST 23, 2016

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NAJMI WAZIRI, J