

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 8117 of 2013 (O&M)
Date of Decision: August 30, 2017

Jagmal Singh

... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-1, Gurgaon and another.

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. R.K. Malik, Sr. Advocate with
Ms. Rimple Kadyan, Advocate,
for the petitioner.

Mr. P.K. Mutneja, Advocate,
for respondent No.2.

P.B. Bajanthri, J. (Oral)

1. In the instant writ petition, petitioner has challenged the award passed by Labour Court dated 04.02.2013 (Annexure P/7).
2. Petitioner while working as an employee of the respondent-company, petitioner and three others were subjected to disciplinary proceedings on certain allegations relating to assaulting officers of the respondent-company. Arising out of those allegations, respondent-management proceeded to initiate joint disciplinary proceedings against all the four employees. Among four employees, two persons including the petitioner were dismissed from service. In respect of other two employees are concerned, they were awarded lesser punishment. Petitioner raised an industrial dispute before the Labour Court. Award was passed in favour of the petitioner. Consequently, respondent-management preferred a writ

petition before this Court. CWP No. 4972 of 2001 was decided on 06.10.2009 while remanding the matter to the Labour Court. Thereafter, Labour Court passed a fresh order by which order of dismissal was upheld. Thus, the present writ petition.

3. Learned counsel for the petitioner submitted that petitioner and three others were subjected to joint enquiry and it was concluded in dismissing two employees (including the petitioner). In respect of other two employees are concerned, they were imposed lesser punishment than the dismissal. Learned counsel further submitted that there is discrimination in imposing penalty among the employees. Inquiring Officer has not given finding on each individual's role in respect of alleged charge. That apart there is no discussion of evidence to what extent alleged charge got proved. The Labour Court failed to appreciate these issues while deciding reference when one of the issue is “whether the domestic inquiry held by the management is proper or not?” Therefore, award passed by the Labour Court is liable to be set aside.

4. Per contra, learned counsel for the respondent-management vehemently contended that question of discrimination in imposing the penalty do not arise having regard to the role played by each of the employee. Insofar as proportionality of imposing penalty, Labour Court has considered Section 11A of the Industrial Disputes Act at length. Learned counsel for the respondent relied on the following decisions:-

1. ***Mahindra and Mahindra Ltd. vs. N.B. Narawade, (2005) 3 SCC 134 (para no. 20);***
2. ***Muriadih Colliery of Bharat Coking Coal Ltd. vs. Bihar Colliery Kamgar Union through Workman, (2005) 3 SCC 331 (para no. 13).***

The aforesaid two decisions cited to the extent that Labour Court has considered Section 11-A of the Industrial Disputes Act. Thus, petitioner has not made out a case so as to interfere with the Labour Court's award.

5. Heard learned counsel for the parties.
6. Inquiring Officer's report reads as under:-

“FINDINGS OF THE ENQUIRY OFFICER IN RESPECT OF S/SHRI OMPAL SINGH, JAGDISH PRASAD, JAIDEO SINGH AND JAGMAL SINGH.

Following employees had been issued charge sheets as indicated against each:-

<i>Name/Staff No./Level/Deptt.</i>	<i>Dt. of C/s</i>

<i>1. Ompal Singh, 122980, L-4, Weld.Shop</i>	<i>2.8.90</i>
<i>2. Jagdish Prasad, 121819, L-4, PQC</i>	<i>3.8.90</i>
<i>3. Jaideo Singh, 122491, L-4, Paint Shop</i>	<i>2.8.90</i>
<i>4. Jagmal Singh, 125083, L-4, PQC&I</i>	<i>3.8.90</i>

Vide order dated 6.8.90 from DVM (Prodn.) Shri JS Arora, Sr. Manager (VD) was appointed as Enquiry Officer and Shri R. Kharbanda, Dy. Manager (PSD) as Presiding Officer to present the case on behalf of the management before the Enquiry Officer. Sh. JS Arora conducted the enquiry commencing from 24.8.90 and continued till 5.10.90. The proceedings of the Enquiry conducted by Sh. JS Arora on different dates are placed in the file from page no. 1 to 31. Sh. JS Arora, submitted resignation from the service of the company on account of personal reasons and vide letter dated 12.11.90 informed DVM (Prodn.) that he could not conclude the enquiry due to resignation, as such returned the file to him. DVM (Prodn.) then appointed the undersigned as Enquiry Officer vide order dated 6.12.90. I conducted the enquiry from 9.1.91. The proceedings are placed in the register from page 1 to 57.

The charges against the first three employees mentioned i.e. Om Pal Singh, Jagdish Prasad and Jaideo Singh relate to assault on Shri KK Aggarwal, Dy. DVM (Prodn.) on 31.7.90. The charge against Shri Jagmal Singh, however, relates to the same charge viz assault on Sh. KK Aggarwal on 31.7.90 plus other charges of assault by Shri Jagmal Singh on company officers in the evening of 30.7.91 and 31.7.91. Both Sh. JS Arora and the undersigned have not inquired into the additional assault on Sh. Jagmal Singh. Only, the common charge of assault on Shri KK Aggarwal has been inquired into. The charged employees were allowed to take assistance of the defence counsels during the enquiry.

Opening the management case during the enquiry, the Presenting Officer has clearly brought out that a serious agitation was going at the factory gate during the month of July, 1990 by some workman. The agitation was precipitated because a Union of workmen affiliated to LMS was not getting any encouraging response from the management because the management did not recognize their union. The Union members started fast unto death, slogan shouting and violent activities out of frustration of not getting any recognition from the management. The Presenting Officer has also stated that these 4 charged employees (activists) had assaulted a senior officer of the company, who were active members of the LMS Union.

Subsequently, Sh. KK Aggarwal himself has appeared as a witness. He clearly narrated the incident of assault on him on 31.7.90 at about 5.45 am when he was returning to his house after purchasing milk from the dairy, located near Sector 14, Gurgaon. He has stated that he identified the four assailants viz.the

charged employees. He has drawn a map of the area where he was assaulted and all other documents furnished by him and the presenting officer viz copy of the report lodged with the police etc. establish the veracity of his statement. The case of the management is further strengthened by the fact that the Presiding Officer has produced copies of the documents which indicate that a violent agitation had been launched by activists of LMS Union on account of which the management had also moved a case before the Vacation Judge, Gurgaon to restrain the said employees (activists) from indulging in the act of violence, blocking ingress and egress of officers and other employees from the main gate etc. The Management succeeded in obtaining the injunction order in its favour from the Vacation Judge, Gurgaon, as per the copy of the order placed in the file. He has also produced other documents such as letters addressed to the Distt. Admn. & Police authorities to seek their help. He has also produced the letters of LMS Union which do indicate that some serious agitation had been launched by the union including a fast into death by one Shri Randhir Singh at the factory gate. This fact has also been subsequently admitted by Sh. Randhir Singh himself.

The Management witness has fully stood the test of cross examination and no inconsistency or contradiction has emerged during the cross examination. The witness is highly qualified and Sr. Officer of the company having no prior enmity with any of the charged employees, as such I do not find any reason to disbelieve his statement, especially when the same is supported by all other material on record and no inconsistency has been found during the cross examination of the witness.

On the other hand, the charged employees produced in their witness S/Sh. RG Tyagi, YP Saini, Randir Singh, K.K. Malik and Sukhbir Singh Arya. The defence witnesses have tried to establish that at the time of alleged assault on Sh. KK Aggarwal, Shri Jaideo Singh and Sh. Jagmal Singh were not present at the site of incident rather Sh. Jaideo had been deputed to Faridabad by Sh. RG Tyagi. The defence witnesses have however, miserably failed to establish the veracity of their statements because one of the witnesses viz Sh. KK Malik, who was supposed to have accompanied Sh. Jaideo Singh to Faridabad, has not been able to state the purpose of his visit to Faridabad to meet Sh. Sukhbir Singh Arya even though according to him he along with the charged employee waited for Shri Arya for about 9 hours. Further as per statement of Sh. Sukhbir Singh Arya, he was generally available in his office in Faridabad in the morning for some time and in the night for some time and that the Union People used to meet him often for discussion. In the light of this, the statement of Sh. Jaideo Singh that he had to go to Faridabad at 11.00 a.m. in the morning and waited there for about 9 hours for Mr. Arya is untenable especially when no urgency about the work has been pointed out as has been stated by Mr. Arya himself that he did not even remember as to why Sh. Jaideo Singh had come to see him. The only inference I can draw is that the charged employees had not gone to meet Shri Arya at the time of the incident of assault but all the defence witnesses have tried to escape the charges on grounds that the concerned employees were not present at the time of incident. Had any one of them given the reason of meeting of Mr. Jaideo Singh and Mr. Jagmal Singh with Mr. Sukhbir Singh Arya, perhaps the falsities

of all statements would have been discovered had the witnesses been asked separately about the reasons for the meeting. To avoid this, the witness chose not to give any reasons by stating that it was a Union work. The contradiction in the defence witness is also revealed from the fact that while Mr. Sukhbir Singh Arya himself has stated that he had informed his office that he had gone to Delhi in the morning of 30.7.90, Sh. KK Malik states that his office informed him that Shri Arya was some where in and around the office in Faridabad. Sh. Jagmal Singh was at MUL Main Gate on the morning of 31.7.90. He could have easily gone to the site of assault which is hardly five minutes drive from the factory's main gate. I cannot place much reliance on the statements of defence witnesses also on account of the fact that they are all office bearers/activists of LMS Union which had launched the agitation and they were also the persons against whom the District & Sessions Judge, Gurgaon had passed the orders restraining them from their agitational activities of violence etc. The witnesses are all interested parties and they are also facing charges of assault etc. in other incidents. I cannot give any credence to their statements which seem to be an after thought. Their overall conduct and behaviour in the enquiry also does not go to their favour.

Lastly, the fact that Sh. Om Pal Singh and Sh. Jagdish Prasad who are co accused in all the 4 charge sheets issued to above said 4 charged (persons including Sh. Om Pal Singh and Sh. Jagdish Prasad) have admitted the charges, implies that others i.e. Sh. Jaideo Singh and Shri Jagmal Singh are also guilty. This admission of charges by the two employees out of the four hits a nail on the head of the concocted defence version.

Based on the above, I am of the opinion that the charges alleged against all the four charged employees as stated in the charge sheets have been fully established. In respect of Sh. Jagmal Singh, however, additional charges mentioned in the charge sheet dated 3.8.90 viz assault on Shri Praveen Kr. Gupta on 30.7.90 and on other executive in the evening of 31.7.90 have not been enquired into; those being not common charges. The disciplinary authority may like to refer the same to the other enquiry officers who have been appointed by the management to enquire into similar charges against other employees.”

Perusal of the Inquiring Officer's report, it is not at all enquiry report because evidence has not been analyzed or discussed so as to each individual employees role played in respect of allegations. Further, Inquiring Officer has not assessed to what extent charges are proved against each of the employee. Therefore, Inquiring Officer's report itself is not Inquiring Officer's report. Supreme Court in the case of **Anil Kumar vs. Presiding Officer and others** reported in **(1985) 3 SCC 378** held that Inquiring Officer's report must contain evidence and assessment of evidence and conclusion. Para nos. 5 and 6 of the judgment reads as under:

“5. We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the Enquiry Officer. It is well-settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason

why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In Madhya Pradesh Industries Ltd. v. Union of India, this Court observed that a speaking order will at best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard. Similarly in Mahabir Prasad Santosh Kumar vs. State of U.P., this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order sheet which merely produces the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a gross case of non-application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.

6. *Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the*

evidence is annexed to an order sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable.”

The ingredients of the Inquiring Officer's report are not forthcoming in the Inquiring Officer's report vide Annexure P/4. The Inquiring Officer in his report stated that

“I cannot place much reliance on the statements of defence witnesses also on account of the fact that they are all office bearers/activists of LMS Union which had launched the agitation and they were also the persons against whom the District & Sessions Judge, Gurgaon had passed the orders restraining them from their agitational activities of violence etc. The witnesses are all interested parties and they are also facing charges of assault etc. in other incidents. I cannot give any credence to their statements which seem to be an after thought.”

Reason for acceptance of evidence by the witnesses with reference to their conduct and drawing inference that their statements cannot be accepted is extraneous material to the case. Therefore, reason assigned by the Inquiring Officer is arbitrary. Further, the Inquiring Officer has recorded that

“Lastly, the fact that Sh. Om Pal Singh and Sh. Jagdish Prasad who are co-accused in all the 4 charge sheets issued to above said 4 charged (persons including Sh. Om Pal Singh and Sh. Jagdish Prasad) have admitted the charges, implied that other i.e. Sh. Jaideo Singh and Shri Jagmal Singh (petitioner) are also guilty.”

The reasons for holding Sh. Jagmal Singh is also guilty is with reference to

the admission of the charges by Sh. Om Pal Singh and Sh. Jagdish Parshad. Drawing inference admission of Sh. Om Pal Singh and Sh. Jagdish Parshad would lead to Sh. Jagmal Singh and Sh. Jagdish Parshad is also guilty. Such reasoning is unheard. The present case is relating to holding of a joint enquiry, unless and until each of the employee's role is particularized in the charge-sheet so also proving each individual's lapses or allegations to what extent they have committed misconduct or misdeed report of the Inquiring Officer is farce. Therefore, further proceedings from the submission of Inquiring Officer's report are liable to be set aside.

5. Supreme Court in the case of ***State of A.P. vs. N. Radhakishan*** reported in ***(1998) 4 S.C.C. 154*** held that in a joint enquiry each individual's role is to be particularized. Extract of the judgment reads as under:-

“20. In the present case we find that without any reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, all in verbatim and without particularizing the role played by each of the officers charged. There were four charges against the respondent. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor did it choose to appoint any inquiry officer even assuming that action was validly being initiated under 1991 Rules. There is no explanation whatsoever for delay in concluding the inquiry proceedings all these years. The case depended on records of the Department only and Director General, Anti Corruption bureau had pointed out that no witnesses had been examined before he gave his report. The Inquiry Officers, who had been appointed one after the other, had just to examine the

records to see if the alleged deviations and constructions were illegal and unauthorised and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that respondent at any stage tried to obstruct or delay the inquiry proceedings. The Tribunal rightly did not accept the explanations of the state as to why delay occurred. In fact there was hardly any explanation worth consideration. In the circumstances the Tribunal was justified in quashing the charge memo dated July 31, 1995 and directing the state to promote the respondent as per recommendation of the DPC ignoring memos dated October 27, 1995 and June 1, 1996. the Tribunal rightly did not quash these two later memos."

6. Learned counsel for the respondent submitted that this Court on an earlier occasion has upheld Inquiring Officer's report in CWP No. 4972 of 2001. Said contention is incorrect for the reasons that this Court specifically held as follows:-

"The workman shall be entitled to urge all the contentions relating to the findings of the Enquiry Officer and urged to his own benefit that he had been victimized as alleged by him."

Thus, the petitioner – workman was given liberty to urge all the contentions relating to the findings of the Inquiring Officer. Hence, the respondent's contention that this Court has upheld the Inquiring Officer's report is hereby rejected. Further relying on the decisions by the respondent cited supra are relating to Section 11A of the Industrial Disputes Act. When the Inquiring Officer's report itself is not in accordance with law, question of proportionality in imposing penalty under Section 11-A of the Industrial Disputes Act and its appreciation by the Labour Court cannot be gone into

when the root of the matter itself is illegal and arbitrary. Therefore, Labour Court award dated 04.02.2013 (Annexure P/7) is set aside. The petitioner is entitled to reinstatement and consequential service and monetary benefits. The same shall be calculated and disbursed within a period of four months from today.

6. Accordingly, instant writ petition stands allowed.

August 30, 2017

vkd

[P.B. Bajanthri]

Judge

Whether speaking / reasoned : Yes

Whether reportable : Yes