

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

CWP-4934-1999 (O&M)

Date of Decision:07.02.2018

Food Corporation of India

... Petitioner

Vs.

Presiding Officer and Central Government Industrial Tribunal-cum-Labour
Court, Chandigarh and others

... Respondents

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

Present : Mr. Manav Bajaj, Advocate for
Mr. Sumeet Goel, Advocate for the petitioner.

Mr. G.S. Bal, Sr. Advocate with
Ms. Manjeet Kaur, Advocate for respondents No.2 and 3.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the award passed by the Labour Court dated 3.12.1998.

2. Respondents No.2 and 3-workmen were subjected to disciplinary proceedings with reference to their conduct in the petitioner-corporation. After holding disciplinary proceedings, they were dismissed from service. Thus, they raised an industrial dispute. Labour Court proceeded to pass award in favour of the respondents-workmen. Hence, the present petition.

3. Learned counsel for the petitioner submitted that each of the regulation of Food Corporation of India (Staff) Regulation 1971 (for short “Regulation 1971”) has been followed upto the stage of issuing the penalty order of dismissal of the respondents-workmen from service. Labour Court has erred in not appreciating to the extent in the inquiry ample opportunity has been given to respondents-workmen. Further relevant regulations have

been followed. It was also contended that before imposing the penalty of dismissal from service, show cause notice and furnishing of copy of the inquiry report is not permissible under the Regulation 1971. Therefore, the contentions of the respondents-workmen as well as issue considered by the Labour Court is contrary to sub clause 4 of Regulation 59 the Regulation 1971. It was further contended that respondents-workmen's conduct has been taken into consideration for the purpose of imposing the penalty. Moreover, they were union leaders. Their behaviour with the staff was not in accordance with the instructions issued by the corporation insofar as meeting of higher officers in their chambers. Thus, respondents have violated instructions given to the staff. In view of these facts and circumstances, Labour Court's award is liable to be set aside.

4. Per contra, learned counsel for the respondents-workmen submitted that after framing of charge-sheet, it was bounden duty of the petitioner to furnish list of documents for the purpose of making effective reply to the charge-memo. The same was not furnished. They had requested for change of inquiry officer as he was biased. No action has been taken either to accept the respondents' plea for change of inquiry officer or rejected the plea so also no communication or decision on their plea relating to change of inquiry officer has been issued. It was also contended that respondents were not permitted to cross examine the relevant witnesses by the inquiry officer. Thus, Labour Court has appreciated legal issues relating to issuing of show cause notice before imposing the penalty and other issues raised by the respondents. Therefore, there is no infirmity in the award passed by the Labour Court.

5. Heard learned counsel for the parties.

6. It is undisputed that petitioner has not furnished copy of the preliminary inquiry alongwith charge memo. Thus, there is denial of principle of natural justice. The very object of issuing of charge-sheet and obtaining explanation from an employee is defeated. In other words, employee has been disabled in making effective reply to the charge-memo and for its consideration before proceeding further whether to hold inquiry or not? Rightly or wrongly respondents presumed that inquiry officer would be biased against them. In this regard, respondents have submitted application/representation for change of inquiry officer. Petitioner/Disciplinary authority has not taken any decision either to accept the pleas of the respondents in changing of inquiry officer or rejected. Further there is no communication. In other words, there is no decision taken by the competent authority to change of inquiry officer. Insofar as furnishing of copy of the inquiry report alongwith second show cause notice and its waiver under sub Rule 4 of Regulation 59 of Regulation 1971 is concerned, it is to be noted that even though there is prescription for not furnishing show cause notice; copy of the inquiry report while imposing the penalty by the disciplinary authority. However, Supreme Court in the case of Managing Director, ECI, Hyderabad and others v. B. Karunakar and others; AIR 1994 SC 1074, it is held that even though regulation do not provide for furnishing of inquiry officer report where inquiry officer is different from the disciplinary authority, in that event, principle of natural justice are required to be complied to the extent of furnishing show cause notice alongwith inquiry officer report and seeking explanation. Therefore, sub regulation 4 of Regulation 59 of Regulation 1971 is redundant in view of the principle laid down by the Supreme Court in the case cited supra. In

view of these facts and circumstances, petitioner has not made out a case so as to interfere with the award passed by the Labour Court.

7. Accordingly, petition stands dismissed.

07.02.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No