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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15228-2014

Date of Decision : August 10, 2018

The Pepsu Road Transport Corporation and others

.... Petitioners.

Versus

Presiding Officer, Industrial Tribunal, Ludhiana
and another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Anil Kumar Sharma, Advocate
for the petitioners.

Mr. Parvez Akhtar, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari to quash the impugned award dated 30.1.2014 (Annexure P/1) passed by learned Industrial Tribunal, Ludhiana (for short, "the Tribunal"), whereby the reference has been answered in favour of the workman-respondent No.2 and he has been held entitled to reinstatement with continuity of service and 50% back wages.

2. Facts relevant for the purpose of decision of this writ petition; that the respondent-workman was appointed as a Driver by the petitioner-Management on 4.9.1986 . For his certain lapses, he was issued charge-sheet on 19.07.2000, to which the workman duly responded and thereafter

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departmental enquiry was conducted against him. His services were terminated vide order dated 22.05.2001. The appeal preferred by the workman was dismissed by the Appellate Authority on 28.11.2001. The allegations against the respondent-workman was absence from duty with effect from 2.6.2000 and as per the workman, his absence was because of injuries caused to him in the accident during the course of his employment, on 15.05.1999. Subsequently, he was recommended light duties, but the workman was not given any light duty and his absence was not intentional.

3. Industrial dispute was raised and the learned Tribunal pronounced the award in favour of the workman, which is under challenge before this Court in the present writ petition.

4. Learned counsel for the petitioner-Management contended that the Tribunal has not considered the correct facts because on account of certain lapse of respondent-workman, charge sheet was issued to him and departmental enquiry was conducted for which, the respondent workman was issued notice. The workman was responding to the notice, but still he had chosen not to appear before the Enquiry Officer and the Enquiry Officer was left with no other option except to order ex-parte proceedings. Thereafter, the Punishing Authority passed the order while relying upon the enquiry report and passed the order dated 22.05.2001. The appellate Authority applied its judicious mind and dismissed the appeal vide order dated 28.11.2001. Learned Tribunal has completely ignored these facts while pronouncing the impugned award in favour of the workman.

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5. On this point, learned counsel for the respondent-workman contended that learned Tribunal has rightly pronounced the award holding that the workman could not participate in the enquiry and no such reliance could be placed on such enquiry report. In fact, he had met with an accident and he was not appearing before the Enquiry Officer and his absence was due to accidental injuries. In fact, no proper enquiry was conducted against the workman and the orders dated 22.05.2001 and 28.11.2001 are against the principles of natural justice.

6. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is no dispute on the fact that the charge sheet containing allegations of willful absence from duty was issued to the workman, to which he had duly responded on 27.7.2000. The Enquiry Officer had issued notice on 21.09.2000 and 6.10.2000, but the respondent-workman failed to join the enquiry proceedings. Even the workman had responded to the notice dated 21.9.2000 on 1.10.2000 (Annexure A/1) that he was not provided with any duty and no body appeared before the Labour-cum-Conciliation Officer, Ludhiana and made request to stop the enquiry proceedings. Another letter (Annexure A/2) was written by him on 14.10.2000 to the Enquiry Officer taking the plea that he had already taken up the matter with the General Manager and the action taken by the Enquiry Officer shall not be binding upon him and again made a request for stopping the enquiry proceedings. The letters, Annexure A/1 and A/2 dated 1.10.2000 and 14.10.2000 respectively addressed to the Enquiry Officer

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establish that the respondent-workman was fully aware of the enquiry proceedings, but intentionally he did not associate with the same. Law on the point is settled that the workman/delinquent official is to be given opportunity to associate and defend his case, but if he chooses not to appear or defend his case, then he cannot take the benefit of that. Learned Tribunal, in the case in hand, has completely ignored this fact while pronouncing the impugned award.

7. The scope of interference in such like disciplinary matters by the Courts is to a limited extent especially when the domestic enquiry has been conducted and due opportunity has been given to the delinquent official. Certainly, the Court can look into the points whether the enquiry was conducted in fair manner and principles of natural justice were followed, but in the given set of facts, the petitioner has not been able to establish that in fact, he had not been given due opportunity before the Enquiry Officer or that he was not heard during the departmental proceedings and the plea taken by the petitioner is just an after-thought. Courts are not supposed to perform the duties of appellate authority to scan the evidence, but the role of the Courts is limited to the extent that the Court is to see whether domestic enquiry was conducted in a fair manner and due opportunity was given to the delinquent official. Such a view was taken by Hon`ble Supreme Court in **Union of India and others V. P. Gunasekaran**, 2015(2) SCC 610, where the Hon`ble Apex Court observed as under:-

“13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the

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disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether :-

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

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- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.”

8. In the present case, the departmental proceedings having been conducted by the Enquiry Officer wherein the workman was given due opportunity to defend the same, but he chose to remain away from the said proceedings and on that account, he cannot take the plea that no proper enquiry was conducted in his case. The Tribunal has pronounced the award without taking into consideration the material available on the file and as such, the impugned award is set-aside.

9. Resultantly, the present writ petition filed by the Management is allowed and the impugned award dated 30.1.2014 passed by learned Tribunal is set-aside.

(SHEKHER DHAWAN)
JUDGE

August 10, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes