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

- 1.                                    CWP-21051-2012**  
**Date of Decision : November 02, 2018**

The Doaba District Cooperative Milk Producers  
Union Ltd. Jalandhar.

.... Petitioner.

Versus

Industrial Tribunal, Jalandhar  
and another.

.... Respondents.

- 2.                                    CWP-7604-2013**

B.B.Pandey

.... Petitioner.

Versus

The Presiding Officer, Industrial Tribunal, Jalandhar  
and another.

.... Respondents.

**CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN**

Present        Mr. D.S.Patwalia, Senior Advocate  
                     with Mr. A.S.Chadha, Advocate,  
                     for the Management-Doaba District Coop.  
                     Milk Producers Union Ltd.

Mr. Raj Kaushik, Advocate,  
for the workman.

**SHEKHER DHAWAN, J.**

In the above titled two writ petitions, filed under Articles

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226/227 of the Constitution of India, challenge is to the common award dated 8.12.2011 passed by Industrial Tribunal, Jalandhar (for short, "learned Tribunal") whereby workman (B.B. Pandey) was ordered of the Industrial Disputes Act, 1947 (for short "**the Act**") . Therefore, with the consent of the parties, both these writ petitions are being taken up collectively and are being disposed of by this common judgment.

2. For facility of reference, facts are being taken from CWP-21051-2012. B.B. Pandey, Respondent no.2 (hereinafter referred to as "the workman") was appointed as Boiler Attendant on 25.12.1985 and he was getting salary of Rs.3,100/- per month. As per the petitioner-Management, the workman had committed grave misconduct for which he was issued show cause notice dated 25.5.1991. The workman submitted his reply to the said show cause notice, but the same was found to be unsatisfactory. The workman was issued a charge sheet on 23.7.1991 and domestic enquiry was ordered against him. The Enquiry Officer submitted the report against the workman. As per the petitioner-Management, the workman was habitual offender and on earlier occasion also, he was charge sheeted on the allegations of serious misconduct involving failure to observe the safety instructions installed in the premises of the Plant, thereby causing damage to the Boiler and he was imposed punishment of stoppage of two grade increments with cumulative effect. On the basis of enquiry report, Punishing Authority passed order dated 7.2.1996 (Annexure P/5) thereby terminating the services of the workman.

3. Respondent-workman raised an industrial dispute and on

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having received the reference, learned Tribunal decided the reference while pronouncing the award 8.12.2011 (Annexure P/6), set-aside the termination order dated 7.2.1996 and in lieu of that, passed order for stoppage of two annual increments with cumulative effect. Respondent-workman was ordered to be immediately reinstated in service with all consequential benefits and 50% pay for the suspension period and further 50% salary from the date of termination till the date of award and thereafter full salary was ordered to be paid.

4. Being aggrieved of the said award, the petitioner-Management has filed CWP-21051-2012 and CWP-7604-2013 has been filed by the workman claiming that he is entitled to continuity of service and full back wages.

5. At the time of arguments, learned senior counsel for the petitioner-management contended that most of the facts are not disputed in this case that the workman was charge sheeted on 23.07.1991 on account of serious misconduct and the regular enquiry was conducted by the Enquiry Officer, who had held him guilty and disciplinary authority while considering the report of the Enquiry Officer and keeping in view the previous conduct of the workman, passed the order of termination of services of the workman.

6. Learned senior counsel for the petitioner-Management further contended that learned Tribunal had not appreciated the controversy in its right perspective as learned Tribunal even agreed with the findings recorded in the enquiry proceedings and still passed the award thereby

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setting-aside the termination order and awarded punishment of stoppage of two annual increments with cumulative effect.

7. In such like matter, now the law is settled that the scope of interference by the Courts/Tribunal is restricted one and the Courts are not to function as Court of Appeal and re-appreciate the entire evidence having been led before the Enquiry Officer and it was duly considered by the disciplinary authority as well. Applying the same principles of law to the present set of facts, the case of the workman is not covered in any way. The allegations in the charge-sheet are of misconduct thereby causing loss to the Management and keeping in view that fact and the previous conduct of the workman, that he was charge sheeted for earlier mis conduct also, and that having been proved, punishment of stoppage of increment was awarded.

8. Even learned Tribunal concurred with the findings having been recorded by Enquiry Officer, still re-appreciated the evidence in its own style and passed the award which is against the spirit of the law laid-down by Apex Court in **Union of India and others Vs. P. Gunasekaran, 2015 (2) SCC 610; Karnataka Bank Ltd. Vs. A.L. Mohan Rao, 2006 (1) SCC 63; Usha Breco Mazdoor Sangh Vs. Management of M/s Usha Breco Ltd. and another, 2008 (5) SCC 554; and Employers Management West Bokaro Colliery of TISCO Ltd. Vs. Concerned workman, Ram Pravesh Singh, 2008(3) SCC 729.**

9. While arguing on this point, learned counsel for the workman contended that there is no dispute that scope of interference in such like

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matters of enquiry is restricted one, but the Court can certainly interfere if the enquiry proceedings are just sham transaction and the Enquiry Officer has travelled beyond the matter in controversy before him as in this case, the Enquiry Officer had returned the finding that one of the charge was not proved against him and “there is only partial liability of the workman for being not alert when the hooter had blown”.

10. Learned counsel for the respondent also contended that learned Tribunal was well within its power to pass the order so as to reduce the punishment while exercising power under Section 11-A of the Act and learned Tribunal had rightly exercised that power and the writ petition filed by the petitioner-Management is liable to be dismissed and the writ petition of workman deserves to be allowed.

11. 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 in such like matters, now the law is settled that the scope of interference by this Court, while exercising writ jurisdiction, is restricted one and the Courts are not to function as Court of Appeal and re-appreciate the entire evidence having been led before the Enquiry Officer as per law laid down by Hon`ble Apex Court in **Union of India and others Vs. 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 disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by

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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:

- (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;

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(vii). go into the proportionality of punishment unless it shocks its conscience.”

12. In **State of Andhra Pradesh and Ors. v. S. Sree Rama Rao** AIR 1963 SC 1723, the Hon`ble Apex Court observed as under:-

“7. .... The High Court is not constituted in a proceeding Under Article 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 Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ Under Article 226 of the Constitution.”

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13. Thus, the Courts can interfere only if it is a case of grave injustice or the workman has not been given due opportunity to defend his case or his defence has not been considered by the Enquiry Officer, but in this case, the workman was given due opportunity to defend his case and he had actually defended his case. The Enquiry Officer had given specific findings that the workman was negligent while discharging his duties thereby causing loss to the petitioner-Management and as such, the charges were proved. Thereafter, there was no scope of interference by learned Tribunal to re-appreciate the evidence and to return the finding that the Enquiry Officer had given the finding regarding partial responsibility for negligence on the part of the workman.

14. This fact assumes relatively much more significance in the light of the fact that previous conduct of the petitioner was also considered by the Management while awarding the punishment. The respondent-workman was earlier charge-sheeted for mis-conduct and the charges levelled against the petitioner vide present charge sheet dated 23.07.1991 were duly proved in the enquiry proceedings and there was nothing wrong in passing the order of punishment by the Disciplinary Authority. Primarily, it was for the Disciplinary Authority to decide the quantum of punishment to be awarded in the matter and in the present case, learned Tribunal was not justified while interfering with the order of punishment while re-appreciating the evidence in its own style.

15. Resultantly, CWP-21051-2102 filed by the Management is accepted and the award dated 8.12.2011 (Annexure P/6) passed by

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Industrial Tribunal, Jalandhar impugned in the said writ petition is set-aside.  
Consequently, CWP-7604-2013 filed by the workman stands dismissed.

(SHEKHER DHAWAN)  
JUDGE

November 02, 2018.  
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| Whether speaking/reasoned? | : | Yes |
| Whether reportable?        | : | Yes |