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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. CWP-3468-2014
Date of Decision : October 23 , 2018**

M/s Groz Beckert Asia Pvt. Ltd.

.... Petitioner.

Versus

Presiding Officer, Industrial Tribunal & Labour Court,
Union Territory, Chandigarh and another.

.... Respondents.

2. CWP-18212-2014

Ishwar Singh

.... Petitioner.

Versus

Presiding Officer, Industrial Tribunal & Labour Court,
Union Territory, Chandigarh and another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Akshay Bhan, Senior Advocate
with Mr. Abhishek Sanghi, Advocate,
for the petitioner-Management.

Mr. K.L. Arora, Advocate,
for the respondent-workman.

SHEKHER DHAWAN, J.

In the above titled two writ petitions, filed under Articles
226/227 of the Constitution of India, challenge is to the common award
dated 31.10.2013 passed by Industrial Tribunal-cum-Labour Court (for

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short, “learned Tribunal”) whereby respondent – workman (Ishwar Singh) was ordered to be reinstated with continuity of service and 25% back wages. Further, order dated 31.10.2013 (Annexure P/8) passed by learned Tribunal is also under challenge, whereby application filed by the petitioner-management under Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short “**the Act**”) was dismissed. The Management has filed CWP-3468-2014 challenging the above award and order passed by learned Tribunal, whereas the workman has filed CWP-18212-2104 seeking full back wages from the date of termination with continuity of service with all consequential benefits. 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-3468-2014. Facts relevant for the purpose of decision of this writ petition; that the respondent No.2 herein (hereinafter referred to as “the workman”) was employed as Lab Attendant from 12.06.1981. He was placed under suspension by the Petitioner-Management (hereinafter referred to as “the Management”) on 21.02.2004 and he was asked to explain his conduct. The workman filed his reply. However, no charge sheet was given to him and the Management appointed an Enquiry Officer vide order dated 1.3.2004. Allegations, as contained in the explanation letter were that the workman had indulged in sexual harassment with a co-worker, namely, Harsh Bala. As per the workman, he was not supplied copy of the complaint made by said Harsh Bala. The Enquiry Officer was totally biased

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against the workman. The workman had written twice for change of the Enquiry Officer but the said request was turned down and the workman was dismissed from service vide order dated 27.7.2004. Contention was raised that the enquiry was not conducted in fair and proper manner as even the Enquiry Officer himself appeared as Management Witness in the departmental proceedings of enquiry.

3. The Management had taken the stand before learned Tribunal that the workman was suspended and his explanation was called vide charge sheet dated 24.2.2004 to explain his position against the charges. The Enquiry Officer was appointed and due opportunity was given to the workman to defend his case. The workman had received copy of the complaint on 17.3.2004 and then he was given opportunity to explain his position in respect of the charge-sheet and due opportunity was given to him. There was absolutely no cogent reason to change the Enquiry Officer. Copy of the enquiry report was supplied to him and after following the required procedure, the workman was dismissed from service by the Management vide order dated 27.7.2004. As per the workman, the Enquiry Officer was an independent person and outsider. The allegations against the workman were of serious and grave nature and during enquiry, he was found guilty. The Enquiry Officer did not appear himself as Management's witness in the enquiry.

4. On these facts, the reference was decided in favour of the workman by learned Tribunal vide award dated 31.10.2013 holding that the enquiry has not been conducted in fair and proper manner and principles of natural justice have not been followed and the workman was

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ordered to be reinstated with continuity of service and 25% back wages. Vide order dated 31.10.2013, passed by learned Tribunal the application filed by the petitioner-management under Section 33(2)(b) of the Act was dismissed holding that no approval could be granted to the Management for action taken by it in terms of order dated 27.7.2004 vide which services of the workman were terminated.

5. As stated above, the Management has filed CWP-3468-2014 challenging the above award and order passed by learned Tribunal, whereas the workman has filed CWP-18212-2104 seeking full back wages from the date of termination with continuity of service with all consequential benefits.

6. Learned senior counsel representing the Management contended that charge sheet dated 24.2.2004 (Annexure P/2) was issued in this case and the workman has taken the stand, which is against the factual position that no charge sheet was issued to him. The allegations in the charge sheet were regarding sexual harassment and the workman was to file reply and for all purposes, letter dated 24.2.2004 (Annexure P/4) was in fact, charge-sheet and it was just because of inadvertence that it was mentioned that charge sheet was to follow. Even subsequently, the Management had issued clarification vide letter dated 17.03.2004 (Annexure P/4) that the communication dated 24.2.2004 contained all the charges and was to be treated as charge-sheet.

7. Learned senior counsel for the Management further contended that even in the enquiry proceedings, on 11.3.2004, the workman had admitted that there was no ambiguity about the charges and even if the

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workman is not aware of the charges against him, the proceedings are not liable to be set-aside that formal charge sheet had not been issued. Reliance was placed on this point upon the judgment from Hon`ble Apex Court in Delhi Cloth and General Mills Co. Ltd Vs. Ganesh Dutt and others, (1972) 1 LLJ 172. On the same point, reliance was placed on the judgment from Hon`ble Kerla High Court in High Range Estate Employee's Association (CITU) and another Vs. Industrial Tribunal and another, (2008) LLR 475.

8. While arguing on the point that the enquiry was not conducted in fair and proper manner, learned senior counsel representing the Management contended that as the Enquiry Officer himself visited the spot and prepared the site-plan of the occurrence, that does not mean in any way that the enquiry was conducted in a biased manner or that he himself had appeared as a witness in the enquiry proceedings, rather the Enquiry Officer in the case was an outsider and an independent person and the enquiry was conducted in completely fair and proper manner and as per the principles of natural justice. Due opportunity was given to the workman and in fact, he had availed the same and as the allegations were of very serious and grave in nature, no leniency was required to be taken in this case. On this point, reliance was placed upon the judgment from Hon`ble Karnataka High Court in G.V. Vishwanath Vs. The Managbement of M/s Himalaya Drug Co. (2006) LLR 311.

9. While arguing on these points, learned counsel representing the workman contended that the Enquiry Officer was biased and that fact

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is established from the statement of MW-1, Prem Swaroop Saini who has admitted in the cross-examination that he was known to the management of GBA (Groz Beckert Asia) even prior to his appointment as Enquiry Officer in this case. He was knowing Col. Dhariwal, who was the personnel Incharge about six months prior to the entrustment of enquiry to me and he knew him when the enquiry was entrusted to him and he had been conducting enquiry in the Company and he could have conducted 8-10 enquiries of the Management-Company.

10. Learned counsel for the workman also contended that Ex. M-2 was not accompanied by any list of witnesses or documents relied upon by the Management and the document mentioned at page No. 19 of the enquiry file was produced during the enquiry only and the said document was referred to in his enquiry report even. On these facts, it is established that the Enquiry Officer was not an independent person, rather he was biased and had not conducted the enquiry proceedings in an independent, fair and impartial manner and as such, the enquiry proceedings are liable to be set-aside and learned Tribunal has rightly pronounced the award and the present writ petition filed by the Management deserves to be dismissed and the workman is entitled to full back wages with continuity of service.

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 the dismissal order was passed against the workman on the basis of departmental proceedings by way of issuance of charge-sheet and departmental enquiry having been conducted in the matter. The contention raised on behalf of the workman is

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to the extent that the letter dated 24.2.2004 was in fact, not a charge sheet and it was mentioned in the said letter itself that the charge sheet was to follow. So, the very basis of departmental enquiry proceedings goes and as such, the order passed on the basis of such departmental proceedings is liable to be set-aside and the same has rightly been done by learned Tribunal.

12. In the present case, there is no dispute on the fact that letter dated 24.2.2004 (Annexure P/2) was issued to the workman and the said letter is complete description of allegations about the incident of sexual harassment of co-worker and thereby, the workman was asked to explain his position as to why disciplinary proceedings be not initiated against him. More so, vide Annexure P/3, the workman had submitted his reply. Further vide Annexure P/4 dated 17.3.2004, communication of the workman dated 11.3.2004 was duly responded and it was clarified that the communication is itself explanatory and contained the description of charges in clear terms. For ready reference, relevant portion of letter dated 17.3.2004 (Annexure P/4) is extracted below :-

“..... This communication is self-explanatory and contains the description of charges in clear terms.

There is no requirement in Industrial law to supply memorandum and article of charges and statement of charges. You are, therefore, advised that for all intents and purposes, communication dated 24.02.2004 containing the charges against you is a charge sheet in respect of which the present enquiry is being conducted by Sh. P.S.Saini, Enquiry Officer.”

13. In the light of complete description in letter, Annexure P/2, and

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further clarification by the Management in Annexure P/4, there is no scope for doubt that charges against the workman were of sexual harassment and letter Annexure P/2 was charge sheet for all intents and purposes.

14. Identical matter was before Hon`ble Kerala High Court in **High Range Estate Employee's Association's case (supra)**, where the dispute was with regard to scope and concept of charge-sheet and the relevance of the same during enquiry proceedings and the Hon`ble Kerala High Court observed that very purpose of issuing the charge sheet is that the person who is facing charges in the enquiry proceedings must be clear that what is against him. If the same has been made clear to him before the enquiry proceedings, the workman cannot take a plea that there was no charge sheet and on that basis, the enquiry proceedings do not vitiate. Hon`ble Kerala High Court while deciding the controversy on this point, observed as under:-

“7. Regarding the 2nd contention, the petitioner Unions have no case that no charge sheets have been issued to the workmen in question. They also do not dispute the fact as deposed by the enquiry officer that the charges were read out to the workmen at the beginning of the enquiries and they denied those charges. They could not prove that the enquiry was conducted on charges other than those charges. They could not prove that any findings other than in respect of those charges read out to the workmen on which the enquiries have been conducted, have been entered by the enquiry officer. That being so, the mere facts that the charge sheets have not been marked or do not find a place in the enquiry proceedings, do not vitiate the enquiries in so far as the petitioners have not been able to show any prejudice caused to the workmen in this regard also. In such circumstances, I cannot countenance this contention also.”

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15. As regard to the contention raised by learned counsel for the workman that he was not supplied list of witnesses and list of documents alongwith Annexure P/2, the same also does not appear to be tenable because the list of witnesses/documents were supplied to the workman during the enquiry proceedings and that is the requirement of law. Such a view was taken by Hon`ble Apex Court in **Delhi Cloth and General Mills's case (supra)** wherein, it was held in para No.24 as under:-

“24. Nor are we impressed with the reason given by the Tribunal that the enquiry proceedings are vitiated because the list of witnesses to be examined on the side of the company was not furnished to the workmen. In this case, when the copies of the reports Exs. M32 to M34 were given to the workmen concerned, it was abundantly clear that the workmen, who were working in the same department, must have known very well about the persons who had made the said reports and who were to give evidence before the enquiry officer.”

16. The next contention raised by learned counsel for the workman that as the Enquiry Officer had prepared the site-plan and he was known to the Management earlier, as such he was not an independent person to hold the enquiry, this is not the valid ground to set-aside the departmental proceedings because if for appreciation of correct facts, the Enquiry Officer visited the spot and prepared the site-plan, there was nothing wrong in it. At the same time, if the Enquiry Officer was known to the Factory Manager of the Management and even had conducted some other departmental proceedings , the same does not make out a case that

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the Enquiry Officer was biased against the workman and the enquiry report is liable to be set-aside on this account alone. However, the above facts have been completely ignored by learned Tribunal while pronouncing the award.

17. 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. 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 that interference in the departmental proceedings on the basis of regular enquiry can be in following cases only:-

- 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

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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.

18. In **State of Andhra Pradesh and Ors. v. S. Sree Rama Rao** AIR

1963 SC 1723, the Hon`ble Apex Court observed as under:-

“.....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.”

19. However, in this case, learned Tribunal has acted as a Court of appeal and re-appreciated the entire evidence, which is not within the domain of the Tribunal even. In such like matters of departmental enquiries and action taken on the basis of such proceedings, the scope of interference by the Courts is restricted one as discussed above, but learned Tribunal has completely ignored this principle of law and passed the award, which is liable to be set-aside. So ordered.

20. Resultantly, CWP-3468-2014 filed by the Management is accepted and the award dated 31.10.2013 (Annexure P/7) and order dated 31.10.2013 (Annexure P/8) passed by Industrial Tribunal-cum-Labour

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Court, impugned in the said writ petition is set-aside. Consequently, CWP-18212-2104 filed by the workman stands dismissed.

(SHEKHER DHAWAN)
JUDGE

October 23, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes