

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH****Date of decision: 06.03.2019****CWP No.8952 of 2012 (O&M)**

The Managing Director, Green Roadways Pvt. Ltd., Kotkapura Road,  
Faridkot

...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal, Bathinda & another

...Respondents

**CWP No.8953 of 2012**

The Managing Director, Green Roadways Pvt. Ltd., Kotkapura Road,  
Faridkot

...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal, Bathinda & another

...Respondents

**CWP No.8954 of 2012**

The Managing Director, Green Roadways Pvt. Ltd., Kotkapura Road,  
Faridkot

...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal, Bathinda & another

...Respondents

**CWP No.8955 of 2012**

The Managing Director, Green Roadways Pvt. Ltd., Kotkapura Road,  
Faridkot

...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal, Bathinda & another

...Respondents

**CWP No.8984 of 2012**

The Managing Director, Green Roadways Pvt. Ltd., Kotkapura Road,  
Faridkot

...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal, Bathinda & another

...Respondents

**CWP No.8985 of 2012 (O&M)**

The Managing Director, Green Roadways Pvt. Ltd., Kotkapura Road,  
Faridkot

...Petitioner

Vs.

The Presiding Officer, Industrial Tribunal, Bathinda & another

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. K.S.Kang, Advocate,  
for the petitioner(s).

Mr. Karan Singla and Mr. Puneet Kumar Bansal, Advocates,  
for respondent No.2/workman.

**RAJIV NARAIN RAINA, J.**

1. This order will dispose of the aforementioned six writ petitions arising out of identical awards made by the Presiding Officer, Industrial Tribunal, Bathinda on 31.10.2011 in six separate references instituted in May, 1997 involving the legality of the order(s) dated 26.11.1996, whereby services of the workmen/respondents No.2 were terminated w.e.f. 30.11.1996 following charges of misconduct. The Industrial Tribunal at Bathinda has answered the reference(s) in favour of the workman ordering reinstatement with continuity of service and 50% back wages. The back wages were ordered to be paid within two months from the publication of the award, failing which they were entitled to interest at the rate of 6% p.a. from the receipt of the reference i.e. 21.05.1997. They have also been held entitled to costs of Rs.2200/- in each case from the Management. Aggrieved by the award(s), the Management, a private bus operator, is before this Court for quashing the award(s) urging them to be perverse, misconceived and illegal.

2. Since the issue involved in all these cases is common, they can conveniently be decided by a consolidated order. However, for facility of reference, the facts, which are similar in all the cases, are taken from CWP No.8952 of 2012.

3. The dispute began when the Coordination Committee of All Private Transport Workers Unions, District Faridkot, Ferozepur served a demand notice dated 28.02.1996 on the petitioner-company demanding that management regularize the services with all service benefits of two Mistris; two Conductors and one Adda Service Incharge, who had spent 3-6 years in service. In case, the Management did not wish to negotiate and settle the demand, in such eventuality, the Union will be entitled to resort to direct action by way of agitating the demands through rallies, processions, demonstration, strike, '*gherao*' of buses with the ensuing consequences for which the management would be responsible. Those five persons are not the respondent/s in these six cases. The notice period was 15 days.

4. On receipt of this notice, the Director & General Manager of the petitioning company wrote a letter to their Managing Director on 19.03.1996 to the effect that the notice was received on 01.03.1996, and the members of the Union including the respondent/workmen took a very active part in the agitating at the premises of the petitioner company from 05.03.1996 to 08.03.1996, which led to reduction of bookings to a large extent and these were intentionally induced by adopting 'go slow work'. It was pointed out that on 09.03.1996, the workmen held a big demonstration opposite the company's petrol pump and office with a loud-speaker on one bus through which announcements and speeches were made. A traffic jam was orchestrated by haphazard parking of buses on the main road etc. Even the Police and the Sub Divisional Magistrate reached the spot and within minutes the traffic was resumed and the demonstration discontinued. Due to this, 4-5 rounds of each of the buses were missed. The punishing authority was recommended to serve charge/sheets immediately on the demonstrators.

5. Charge-sheets were served on 20.03.1996. The misconduct alleged against the workmen was that by adopting 'go slow work' had resulted in reduction in bookings as against daily average booking on different routes. This has caused financial loss to the company. The second charge was that the workmen instigated companion workmen to indulge in deliberate reduction of bookings from 04.03.1996 to 08.03.1996 to compel the management to accept the illegal demands raised by the Union resorting to *dharna* before the office for the four days of agitation. The workmen also demonstrated before the office of the company in the morning of 09.03.1996. During the demonstration, the workmen parked the buses on the middle of the GT road creating a jam while abusing the management. This was done even before the time period fixed in the notice by the Union had elapsed. Their replies were called within 15 days from the date of receipt of charge-sheets as to why disciplinary proceedings should not be initiated against them.

6. The charges were denied by a letter dated 11.04.1996 in the case of Gurcharan Singh respondent 2. The workman was issued notice dated 13.04.1996 stating that the reply submitted by him was not found satisfactory and a regular inquiry is to be conducted for which one Shri J.S.Sidhu, Advocate, District Court, Faridkot was appointed as Inquiry Officer. The inquiry was to begin on 28.04.1996 in the Head Office of the Company. It may be noted that charge-sheet was not accompanied by list of documents and witnesses in support of imputation of misconduct. The worker (Gurcharan Singh) says that he received a registered letter No.1165 dated 23.04.1996 sent by the Management on 01.05.1996 in the afternoon at 2.00 PM, while he was in office. On opening the registered cover, he found

in it a blank paper. Thereafter, on the same day, he wrote a letter (Annex R-1 at pp.134) asking what this empty letter meant. The management by its letter dated 10.05.1996 denied that it had sent the letter with blank paper inside. The letter went on to say that the reply to the charge-sheet was found dissatisfactory and a regular inquiry had been ordered with Shri J.S.Sidhu, Advocate, as the Inquiry Officer. A copy of the notice dated 13.04.1996 was again sent to the workman and he was informed that Shri Sidhu will conduct inquiry on 25.05.1996 at 2.00 PM in the Head Office of the Company at Kotkapura Road, Faridkot. He was advised to prepare his statement of defence to be filed before the Inquiry Officer. One thing is certain that the envelope was received on 01.05.1996 after the first date of inquiry i.e. 28.04.1996. By letter dated 23.05.1996, workman Gurcharan Singh objected to the appointment of Shri Sidhu as an Inquiry Officer because he is a standing counsel of the company and as per his knowledge he also had personal relations with the managing committee and his attitude towards the workmen had never been good, rather he is biased. He apprehended injustice by an Inquiry officer who may not be independent and impartial. He asked for change of Inquiry Officer. The request was declined on 31.05.1996. The zimni order of 25.05.1996 in the inquiry file records that one Shri Dilshad Singh Dhaliwal appeared for the company. The objection regarding appointment of Inquiry officer had also come in. Accordingly, a direction was issued to the representative of the company that after taking decision regarding objections, the workman may be intimated result by registered post. No next date was fixed on that day. No effective proceeding was held on 28.04.1996 or 25.05.1996. Thereafter, the Inquiry Officer took up the matter on 12.06.1996. This was the 3<sup>rd</sup> date of the inquiry. On receiving

notice of the date for inquiry proceedings to be held on 12.06.1996, the workman says that he contacted his representative, namely, Pritam Dass, who advised him that since he will not be available on that date as he would be busy in the office of the Assistant Labour Commissioner, he may request the Inquiry officer to get the date changed. The workman contacted the Inquiry officer for an adjournment, but was told to explain his position to the Managing Director of the company by a letter in writing. This fact that workman approached the Inquiry Officer was specifically mentioned in Para.3 of the affidavit by way of examination-in-chief filed before the Tribunal Ex.WW-1/A. Though the affidavit is not placed on the paper-book, but the assertion was not challenged by the management while cross-examining the workman before the Tribunal. [see Annex P-19 pp.80]

7. As advised by the Inquiry Officer, the workman sent letter dated 10.06.1996 to the Managing Director of the company through registered post with copy to the Inquiry Officer and the Assistant Labour Commissioner, Moga, which was received by a Junior Assistant on duty in the latter's office. The Junior Assistant, namely, Shri Sukhdarshan Lal, who was working in the office of the Assistant Labour Commissioner, Moga, was examined as WW-3 and has identified his signatures on Annex R-2 attached with the written statement. Due to this reason, workman could not present himself before the Inquiry officer through his representative. Still the Inquiry Officer proceeded with the inquiry despite the fact that he was personally aware of the difficulty of the workman. From this, it is argued that the inquiry proceedings held on 12.06.1996 have become central in examining the basic issue which fell for determination before the Tribunal which was

whether the inquiry was fair and proper. The words of the Inquiry officer in the order sheet on the material date read as follows:

“Shri Dilshad Singh Dhaliwal, Advocate alongwith Kushaldip Singh Dhillon representative of company came present but on behalf of workman neither any representative and nor the workman came present in person. Hence the ex parte proceedings are initiated against the workman and the management is asked to adduce evidence to prove the misconduct.”

8. Having proceeded ex parte workman on 12.06.1996, the Inquiry Officer proceeded to record the examination-in-chief of Kushaldip Singh Dhillon, General Manager, Green Roadways, Faridkot appearing in the witness box as MW-1. It is recorded in the evidence that ‘none is present for workman’ for which obvious reason, cross-examination of MW-1 could not be conducted. An opportunity should have been given to the workman to cross-examine the company’s witness by adjourning the proceedings, so that workman is available to cross-examine the witness. Surprisingly, on the same day, Kushaldip Singh Dhillon closed the evidence on behalf of the company and a rather long inquiry report was submitted by the Inquiry Officer on the next day i.e. 13.06.1996 holding the workman guilty of the charges. He was accused of reducing passenger bookings on 06.03.1996 and 07.03.1996 without any reason arising from participation in the ‘go slow’ strike from 05.03.1996 to 08.03.1996; causing traffic jam on 09.03.1996 and failing to run 4 buses of the company on the day. Workman was held guilty of demonstration on 09.03.1996 and using derogatory language, abusing, raising slogans and attempting to round up other workmen, frightening and threatening them.

9. It is the contention of the workman and he appears perfectly right in saying so, as it is recorded by the Tribunal that the case was not listed for recording of evidence on 12.06.1996. It may be recalled that after dismissing the objection of the workman regarding appointment of Shri Sidhu, the management fixed 12.06.1996, as the next date for appearance of the workman in the office of the management. It was specifically mentioned in that management letter that the workman could see any document during the inquiry or may want to check any record or want to obtain copies thereof. He can do so during office hours. There was thus only a direction by the management to appear before the Inquiry Officer and that too for the purpose of joining the inquiry alone. If the case was not fixed for evidence and workman had no prior notice of the proceedings likely to be taken on the day, then I have no doubt that the conclusion of the Tribunal is perfectly sound and in order finding that the inquiry has been concluded with undue haste and this shows the mind of the Inquiry Officer was biased.

10. Not only this, the Inquiry officer improperly proceeded against the workman ex parte on 12.06.1996 without notice to him and hurriedly recorded the evidence on behalf of the management and concluded the inquiry by closing management's evidence on the date itself. Even assuming that management evidence was closed and worker was not present, even then the Inquiry Officer should have fixed another date for cross-examination of the witness of the management so that it turns legal evidence.

11. Worse still is that, a further date ought to have been fixed for producing defence evidence by the workman. Manifestly undue haste was shown by the Inquiry Officer despite having knowledge of the fact that

representative of the workman could not be present on 12.06.1996 nor was the date fixed for recording of evidence. Another short date could easily have been provided in order to do justice. Denial of this valuable opportunity has caused grave prejudice to the workman and the result does not show the Inquiry Officer in good light. On this point, the Tribunal has arrived at such a conclusion and I find nothing illegal and arbitrary in the findings recorded.

12. Furthermore, the Inquiry officer has relied on the statement of sole witness Kushaldip Singh Dhillon, General Manager, Green Roadways, Faridkot without adverting to the fact that this witness in his statement has nowhere deposed that he was present on the spot when the alleged strike was held and demonstration conducted. Also Inquiry officer has concluded that on that day 4 buses of the company could not run without adverting to the fact that registration numbers of none of these buses was disclosed in the testimony so as to link the driver with the bus number. Accordingly, the conclusions of the Inquiry Officer are without evidence and are, therefore, perverse.

13. It is argued by the learned counsel for the workman on the issue of Inquiry officer being biased that in the inquiry report he has mentioned certain facts taking them to be the admissions of the workman though no such admission was made by him. Learned counsel is not wrong when he says this and it appears plainly that the Inquiry officer on his own introduced these baseless remarks in his report, which are just figments of his imagination. This adds up to the theory of biasness propounded by the workman with telling effect. Inquiry officer in his report (at pp.55) has mentioned “the workman in his reply to charge sheet has denied all charges

except one that traffic was jammed on national highway”. Also in his report (at pp. 59) the inquiry officer has wrongly recorded “the workman has accepted the strike dated 09.03.1996 and regarding traffic Jam”. However, no such admission has been made by the respondent in his reply (Annex P-4 at pp.35) and the inquiry officer has mentioned these alleged admissions of workman on his own which also shows the biased mind of the inquiry officer.

14. Taking his case further on the issue whether inquiry was fair and proper and punishment of dismissal justified, it is argued that in the present case Inquiry Officer and Punishing Authority were different persons. Inquiry officer was Shri Jagtar Singh Sidhu, Advocate and the Punishing Authority was Managing Director of the Company. That after the submission of the inquiry report to the management, copy thereof was not supplied for comments on the findings recorded by the Inquiry Officer, the management accepted the report/findings of the inquiry officer holding employee guilty of all charges as true and, thereafter, show cause notice was issued. No opportunity was given to the workman to rebut the findings of the inquiry officer and to prove his innocence. It is only after agreeing with the findings of Inquiry Officer, copy of Inquiry Report was supplied along with Show Cause Notice (Annex P-12 at pp.62). This is in violation of the principles of natural justice because without hearing the workman, management cannot come to the conclusion that charges against workman are proved and it agrees with report of Inquiry officer. The findings of the inquiry officer can be based on evidence, wrong appreciation of evidence or no evidence at all. So before relying upon the said report, workman should have been given opportunity to explain circumstances and deny the report

and conclusions reached by Inquiry officer. But in the present case, no such opportunity has been given to the workman to explain the circumstances alleged against him. This procedure adopted by management is in grave violation of the principles of natural justice. Reliance in this regard is placed upon Jitender Singh Vs. State of Haryana 2006(3) SCT 352; Ramesh Kumar Vs. State of Haryana & others 2006 (3) SCT 799; H.P.State Electricity Board Ltd. Vs. Mahesh Dahiya 2017 (1) SCT 1 and Union of India & others Vs. Mohd. Ramzan Khan 1991 (1) SCT 111. Thus, the act of management in agreeing to findings in the report of inquiry officer without hearing the version of the workman shows a biased mind of the management.

15. It is further urged that in the 1<sup>st</sup> show cause notice (Annex P-12 at pp.62) itself, the management has shown its biased mind wherein it has been mentioned that management has decided to dismiss the workman. In these circumstances, calling for any explanation from workman cannot be considered to be giving of opportunity of being heard and the whole process clearly and on the face of it seems to be an eye wash and an empty formality. Thus, the findings to this effect recorded by the Industrial Tribunal in its award are factually correct as well.

16. It is also urged that bias of the management is further apparent from the fact that it decided to dismiss the workman from service with effect from 31.07.1996 and also from letter dated 22.08.1996. In these circumstances giving of any opportunity of personal hearing vide letter dated 14.11.1996 is meaningless, an empty formality and only an eye wash.

17. It is pointed out that the petitioner-management has relied on the booking chart (Annex P-21) to support loss in bookings due to activity of

the workmen. In this regard, it is submitted that the author of the said document/ Booking Chart is one Nirmal Kumar-Cashier, as deposed by General Manager in his statement in the departmental proceeding but he has not been examined either in departmental proceedings or before the Industrial Tribunal. In the absence of testimony of the author of the document, no reliance can be placed upon the alleged Booking Chart.

18. Besides, no permission was sought by the management-petitioner before the Tribunal to lead additional evidence through Section 11-A of the Act and now the petitioner-management cannot raise grievance that the Industrial Tribunal should have considered the case on merits. It is well settled law that if the management does not reserve the right to lead evidence, it cannot raise the grievance before the High Court for the first time. Reliance in this regard has been placed on State Bank of India Vs. R.K.Jain & others AIR 1972 SC 136.

19. Apart from all the above infirmities, it has been also pointed out that no list of witnesses and list of documents were given to workman which were used against the workman either at the time of issuing the charge sheet or at any the prior thereto or at any time later. Only vague statement was made that workman can inspect the documents. Thus, workman was never aware as to what documents or oral evidence will be used against him in the inquiry. Also the workman was not aware as to the witnesses that will be examined against him and for what purpose. Thus in no circumstances workmen could ever inspect the requisite documents so as to present his version in an appropriate manner. It also deprived the workman of

presenting his case in proper manner and also deprived him of a fair and reasonable opportunity to defend himself case.

20. The infirmities pointed out above are incurable facets of the defective inquiry and the same cannot be countenanced. An inquiry which suffers from bias, which has been conducted with undue haste or biased mind and without adhering to the basic principles of natural justice, is no inquiry in the eyes of law. It is, therefore, a case of no inquiry and no evidence to substantiate the charges.

21. Learned counsel for the petitioner has been at pains to defend the inquiry from the point of view of a reasonable person. Hammering demonstration, 'go slow work' and traffic jam alone is not enough in law to sustain the charges. What may have happened on those 5 days in March, 1996 is not backed by evidence, either ocular or documentary which qualifies as legally material evidence. Even on the preponderance of probabilities. It has been recorded by the learned Tribunal that neither Nirmal Kumar, Cashier has been examined nor Shri Sidhu, Advocate, to prove either the inquiry report or the proceedings and the documents. MW-1 has been examined by the management, who had no personal knowledge about the inquiry proceedings. The witness admitted that he never appeared before the Inquiry Officer during the proceedings. Whether Shri Sidhu was a standing counsel of the company or has personal relations with the management is neither here nor there and all that the court is confined to examine is the conduct of inquiry and whether it was fair and proper. The Tribunal noticed that the proceedings were not fixed for 12.06.1996 by the Inquiry officer on any previous date. On the other hand, the Inquiry Officer

had issued a direction to the Managing Director to consider the workman's request for change of Inquiry Officer. The Tribunal holds that the question of recording evidence on 12.06.1996 was not justified when inquiry was not fixed for the said purpose. The Tribunal has concluded that this hastiness shows nothing but the biased mind of the Inquiry Officer.

22. There is another facet, which has been touched by the Tribunal which is against the management is that it decided to dismiss the worker from service w.e.f. 31.07.1996, but his dismissal was deferred as permission of the Labour Reconciliation officer, Moga was required before passing the order of termination of the workman as dispute between the parties was pending in Labour Court. This finding has been challenged by the management, but there is no need to go into this aspect as it will not change the ultimate conclusion arrived at that the inquiry was neither fair nor proper and its legal effect is for anyone trained in the law to imagine. But what is more astonishing than permission and approval is that a letter was issued to the workman to appear for personal hearing before the Management and the workman was ultimately dismissed by order dated 26.11.1996 w.e.f. 30.11.1996 after having decided to dismiss the worker and then deferred it to obtain approval. Then affording personal hearing ex post facto is nothing but an eye-wash as the order of dismissal was already passed by the management. Post decisional hearing has no place in these circumstances and alone invalidates the action as hearing would only be a lip service offered with the order of dismissal in hand only to be served on the workman.

23. It has been argued by the management that the learned Tribunal was not justified in its observations on compliance of Section 25-F of the Industrial Disputes Act, 1947. In a case of inquiry, the provisions of Section 25-F of the Act have no bearing and it is only to this extent, I would not agree with these observations. But it hardly makes a difference on the relief awarded and can easily be separated from rest of the award.

24. In my considered view, the Tribunal has committed no error after reviewing the inquiry file and the evidence before the Inquiry officer and the evidence led before it that the inquiry was not conducted in accordance with law nor a proper opportunity was offered to the workman to defend his case. The adverse order has been passed with biased mind and is thus in violation of the principles of natural justice. The Tribunal has moulded the relief and denied 50% back wages, which is striking a just balance to the advantage of the management, which partly goes in its favour.

25. It is well settled that a writ of certiorari is issued for correction of an error of jurisdiction. Jurisdiction is a supervisory one and in exercising it, the High Court is not entitled to act as a court of appeal. This necessarily means findings of fact arrived at by the Labour Court or the Industrial Tribunal are not to be disturbed unless they are based on no evidence or are perverse, irrational, illegal and arbitrary. The scope of interference in awards of Tribunals is guided by the Supreme Court in Syed Yakoob Vs. K.S. Radhakrishnan & others, AIR 1964 SC 477: 1964 SCR (5) 64.

26. For what has been said before, these petitions are held to be devoid of merit. The petitions fail and are dismissed. The awards of the

Industrial Tribunal are maintained.

27.           The judgment reserved on 18.01.2019 is pronounced.

**06.03.2019**  
Vimal

**[RAJIV NARAIN RAINA]**  
**JUDGE**

|                                   |               |
|-----------------------------------|---------------|
| <i>Whether speaking/reasoned:</i> | <i>Yes</i>    |
| <i>Whether Reportable:</i>        | <i>Yes/No</i> |