

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

217

CWP No.26864 of 2015

DATE OF DECISION : 23rd MAY, 2022

Bharat Electronics Panchkula Employees Union 405, Panchkula & Anr.

.... Petitioners

Versus

The Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court-II, Chandigarh & Anr.

.... Respondents

CWP No.25020 of 2015

Bharat Electronics Ltd. Through its Dy. General Manager, Bharat Electronics Limited, Ministry of Defence, Panchkula.

.... Petitioner

Versus

The Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court-II, Chandigarh & ors.

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Ravinder Malik (Ravi), Advocate
for petitioners in CWP-26864-2015 &
for respondents NO.2 & 3 in CWP-25020-2015.

Ms. Deepika Sood, Advocate for
Mr. Amar Vivek Aggarwal, Advocate
for petitioner in CWP-25020-2015 &
for respondent No.2 in CWP-26864-2015.

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RAJBIR SEHRAWAT, J. (Oral)

1. This order shall dispose of two writ petitions, i.e., CWP No.26864 of 2015 filed by and on behalf of the petitioner-workman whereas CWP No.25020 of 2015 filed by the employer, under Articles 226/227 of the Constitution of India seeking issuing an appropriate writ, order or direction for modifying/quashing the impugned award dated

10.07.2015 passed by the Labour Court-II, Chandigarh. The Labour Court had ordered reduction of the punishment from downgrading from Wage Group V to Wage Group IV and reduction of basic pay by 5 stages w.e.f. 01.08.1999 to reduction of basic pay by 2 stages; w.e.f. 01.08.1999. The workman has challenged the award and has claimed that he has wrongly been punished and the Labour Court should have set aside the punishment. On the other hand, the employer has challenged the award by submitting that the reduction of the punishment itself is wrong.

2. The facts, as involved in the present petition, in brief, are that the petitioner-workman is permanent employee of the respondent-employer and at the relevant time was working as Sr. Planner in Wage Group-V. He was performing his duties honestly and efficiently and to the entire satisfaction of the superior authorities. However, one co-employee, namely, Ram Karan made a complaint to the respondent-employer against the petitioner No.2-workman Sultan Singh; alleging therein that he was given beatings by Sultan Singh on 26.08.1998. A report was also made by the security staff that the quarrel had taken place between Ram Karan and Sultan Singh. On the basis of said complaint made by Ram Karan; chargesheet was issued to the petitioner-Sultan Singh along with suspension order; on 27.08.1998. The petitioner-workman replied the chargesheet. However, not finding the same to be satisfactory, the disciplinary authority started enquiry against the petitioner-Sultan Singh. The enquiry officer held the petitioner-workman to be guilty of the alleged misconduct vide its report dated 08.06.1999. Accordingly, the competent authority passed punishment order dated

09.08.1999 vide which the rank of the petitioner was lowered from Wage Group-V to Wage Group-IV at that time with a further punishment of reduction of basic pay upto 5 stages w.e.f. 01.08.1999. Challenging the said order the petitioner-workman had filed a civil suit. However, the same was dismissed by the Civil Court. Aggrieved against the same, the petitioner-workman had approached the District Judge by way of an appeal. However, the appellate Court held the appeal to be not maintainable and granted liberty to the petitioner-workman to approach the appropriate legal forum for redressal of his grievance. Accordingly, the petitioner-workman served a demand notice upon the respondents-employer. The demand having not been met and the conciliation having failed; the appropriate Government made the reference to Labour Court. The Labour Court has answered the reference partly in favour of the petitioner-workman, whereby; though the proceedings of enquiry has been held to be valid, however, the punishment imposed upon the workman has been modified only to the reduction of basic pay by 2 stages w.e.f. 01.08.1999. It is challenging this award passed by the Labour Court that the above said two writ petitions have been filed by the workman and the employer; respectively.

3. Arguing the case learned counsel for the petitioner-employer has submitted that the Labour Court has gone wrong in law in upholding the enquiry held against the petitioner-workman. The workman was not even granted opportunity of proper hearing during the enquiry. The petitioner-workman was not permitted to examine the witnesses, who were the eye-witnesses to the incident. The sole defense witness, examined by the petitioner, has also been discarded without giving any

specific reason. Moreover, the testimony on the part of the respondent-employer is totally motivated and the statements made by the witnesses are discrepant on each and every material aspect. The counsel has further submitted that main reliance of the prosecution is upon the testimony of witness-Rakesh. However, the said witness was highly interested witness; being involved in employees' union politics. Moreover, his statement does not, in any manner, establish guilt against the petitioner-workman. The said witness had even refused to answer the questions in cross-examination. He fails to mention even the date on which the dispute had taken place. In fact, he was a made-up witness. Even the security guard has not named him in his report which was the first version given by any security staff. The said witness has deposed only out of malafide reasons. The counsel has further submitted that earlier also Ram Karan had given beatings to the petitioner-workman. On that account the said Ram Karan was proceeded against departmentally and the punishment of stoppage of one increment for six months was imposed. In the present incident as well, the petitioner-workman was given injuries which are supported even by MLR. The said MLR was also produced before the enquiry officer. However the same has not been considered by the enquiry officer. The petitioner had to initiate a criminal case against the accused Ram Karan. However, as a defense mechanism, even Ram Karan has lodged an FIR against the petitioner-workman. But ultimately the dispute between the petitioner-workman Sultan Singh and Ram Karan was amicably settled and both the criminal matters were compromised. However, the fact remains that the enquiry conducted against the petitioner-workman is without any substance. This

being a case of no evidence. There is the concocted testimony of only the made-up and interested witnesses, therefore, the charge against the petitioner could not have been said to be proved.

4. On the other hand, the counsel for the respondent-employer has submitted that the respondent had no special interest in either of the employees. The respondent-employer had proceeded in the matter as per the complaint received from the said employee Ram Karan and the report received from the security staff. Due enquiry was held. The enquiry officer had found the petitioner to be guilty of the charge. Since the matter pertains to the grave indiscipline, therefore, the appropriate punishment was imposed upon the petitioner. The Labour Court has gone wrong in law in reducing the said punishment. Regarding the arguments raised by the counsel for petitioner-workman qua the witnesses, the counsel for the respondent-employer has submitted that the enquiry officer has duly appreciated the material on record. Hence, the conclusion arrived at by the enquiry officer cannot be questioned in the writ petition. The counsel for the respondent-employer has further submitted that the punishment imposed by the employer is within the scope of standing order No.26.1. Whatever the punishment has been imposed upon the workman, is from amongst the prescribed and permitted punishments; which could have been imposed upon the petitioner-workman.

5. Having heard the counsel for the parties and having perused the case file, this court finds substance in the arguments raised by counsel for the petitioner-workman. It is not even in dispute that the alleged quarrel between the petitioner-Sultan Singh and Ram Karan had

taken place after office hours and outside the premises of the employer, though stated to be dragged inside the gate as well; in the process. However, it is undisputed that the genesis of the dispute is outside the premises of the employer and in presence of several persons standing outside, even as per the report made by the security staff. Therefore, the enquiry officer has committed a grave legal error in not permitting the petitioner to examine the witnesses who are named in the proceedings and whom the petitioner was entitled to examine, merely on the ground that the said witnesses were outsiders. The counsel for the respondent-employer has failed to point out any provision in the standing order, which may have prohibited the charged employee from examining an outsider as a witness during an enquiry in an incident which has taken place outside the premises of the employer and after office hours. In fact the said persons would have been the best witnesses. If they would have tried to depose in favour of one party, the other side could have cross-examined them to extract the truth. However, denying their examination itself has, definitely violated the right of the petitioner to have a fair and impartial hearing. Therefore, the enquiry itself stands vitiated. For another reason as well, the enquiry stands vitiated; because after the evidence of the complainant/employer had been completed; and even the evidence of the defense had been completed and even the enquiry proceedings were closed; the enquiry officer recalled and examined the complainant. This shows an effort on the part of the enquiry officer to fix the petitioner by any means. This also shows that he exceeded his role of impartial enquiry officer; who was supposed to treat both the sides

equally and to record finding of fact; instead of creating evidence in favour of any one side.

6. Furthermore, the sole witness who has been permitted to be examined by the petitioner-workman, has also been discarded without giving any substantive reason. The defence witness has deposed categorically that it was Ram Karan, who started the quarrel. The detail of the incident has also been mentioned. However, enquiry officer has discarded the statement, ostensibly, by giving reason that she could not tell as to whether the complainant Ram Karan was driving the scooter or Kuldeep was driving the scooter. This would otherwise have been a totally irrelevant fact because the issue was not as to who was driving the scooter to reach the place of incident. The issue was as to who started the fight as such. Moreover, the witness of the prosecution has also faltered on all material aspects to such an extent that the witness of the employer, namely, Rakesh is stated to have been disinclined to answer the questions even in the cross-examination. He could not even tell the date as to when the incident had happened, much less to be a witness to the fact as to who had started said quarrel. His testimony also suggests of being interested; because he even failed to explain as to how the petitioner-workman had got injuries which had led to his admission to the hospital. Moreover, it has come on record that the said witness was member of the same employees' union to which the complainant belongs. These contradictions, as reflected in the testimony of the main witness Rakesh, may not have been the sole criterion for discarding his testimony, nor is this court to re-appreciate the said testimony, however, this has exposed the approach adopted by the enquiry officer himself; because when it

came to the defense witness, such type of discrepancies alone have been considered by him as the basis for discarding the testimony of the defense witness Geeta Singh.

7. One more fact; with which the enquiry officer was much impressed to hold the petitioner as guilty is that the petitioner-workman had compromised the criminal matter with Ram Karan, and this shows that he himself was convinced of his guilt. However, this fact also goes in favour of the petitioner-workman only; because it is not only the petitioner-workman who has compromised, it was complainant Ram Karan also who had compromised the criminal matter. On the basis of said mutual compromise only, both the cross criminal cases initiated by the employees against each other, are stated to have been set to rest. Therefore, if the factum of compromise would have been any relevant factor for the guilt or exoneration from the guilt; the said fact would have been made applicable to both sides equally. In that situation the complaint made by the complainant Ram Karan against the petitioner-workman would also have to be taken as false, if the standards adopted by the enquiry officer are taken as correct, and applied equally.

8. In view of the above, since the enquiry against the petitioner-workman was not only in violation of procedure of fairness, rather, the same stands vitiated because of total denial of right of defence to the petitioner-workman, therefore, the enquiry conducted against the petitioner has to be held to be illegal. The enquiry proceedings against the petitioner, as well as, the award passed by the Labour Court, as based upon the said proceedings, are liable to be set aside. Ordered accordingly.

9. Hence, the writ petition filed by the petitioner-workman is allowed with all consequential benefits of pay fixation, arrears of salary arising therefrom seniority and promotions. However, the writ petition filed by the employer is dismissed.

10. It is further ordered that in case the petitioner-workman Sultan Singh becomes entitled to any financial benefit, on account of the present order, then the same shall also be released to the petitioner within a period of three months from today.

23rd MAY, 2022
'raj'

(RAJBIR SEHRAWAT)
JUDGE

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