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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 19.10.2022
Pronounced on: 23.11.2022

+ W.P.(C) 4471/2003

RAM PHOOL

..... Petitioner

Through: Mr. Anil Mittal and
Ms. Komal Aggarwal,
Advocates.

versus

PO, LABOUR COURT-VII & ORS. Respondents

Through: Ms. Aditi Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The Petitioner in the present Writ Petition, is assailing the award dated 04.09.2002 passed by the Presiding officer, Labour Court VII, Delhi in ID No. 183/1996 (“**impugned Award**”). Vide the impugned Award, learned Labour Court was pleased to uphold the termination of services of the Petitioner.

FACTS RELEVANT FOR THE CONSIDERATION OF THE PRESENT APPEAL ARE AS FOLLOWS:

2. The Petitioner was appointed as a driver with the Delhi Transport Corporation (Respondent No. 3) on 25.03.1976. His services were regularized w.e.f. 23.05.1977. The Petitioner was allegedly

absent from duty without the permission of the competent authority from 01.01.1993 to 30.09.1993. Hence a Charge Sheet dated 25.10.1993 was issued to the Petitioner alleging unauthorized absence. The said Chargesheet finally culminated into penalty of '*stoppage of one increment without cumulative effect*'. The Petitioner never challenged the said punishment and hence the said punishment attained finality.

3. The Petitioner again absented himself from 15.02.1994 without prior permission of the competent authority. The Petitioner was directed for medical checkup vide letters dated 01.03.1994 and 27.04.1994. However, the Petitioner failed to respond to the said letters. Hence second Chargesheet dated 30.05.1994 was issued against the Petitioner. Petitioner failed to respond to the said Chargesheet, and hence enquiry proceedings were initiated against the Petitioner. During the enquiry proceedings the Petitioner admitted his guilt. Based on the findings of the enquiry officer, the Disciplinary Authority vide order dated 16.02.1995, inflicted a penalty of '*removal from service*' on the Petitioner under Para 15(2)(vi) of DRTA (Conditions of Appointment and Service) Regulations, 1952. Appeal filed against the said order dated 16.02.1995 was rejected by the Appellate Authority vide order dated 12.05.1995 as time barred.
4. An industrial dispute was raised by the Petitioner before the conciliation officer. On failure of the conciliation proceedings, the following reference was made by the Central Government to the Labour Court:

“Whether the removal of Sh. Ram Phool from service by the Management is illegal and / or unjustified and if so, what relief is he entitled and what directions are necessary in this respect?”

5. The Petitioner filed statement of Claim before the learned Labour Court alleging that the Respondent illegally terminated his services even though he had sought leave on medical ground. The Petitioner further alleges that the Respondent conducted the enquiry without complying with the principles of natural justice. The Respondent filed the written statement justifying the penalty inflicted on the Petitioner. The Respondent stated that they have terminated the service of the Petitioner after holding a fair and proper enquiry against him. The Petitioner participated in the enquiry and admitted his guilt during the enquiry proceedings.
6. The learned Trial Court, based on the pleadings of the parties, framed the following issues:

*“1. Whether the Management has not conducted a fair and proper enquiry in accordance with principles of Natural Justice.
2. As per terms of reference.”*

7. The learned Labour Court treated Issue No.1 as Preliminary Issue and asked the parties to lead their respective evidence. The Petitioner examined himself as WW-1. The Respondent filed the Affidavit of the enquiry officer, Mrs. Sunita Chauhan as MW-1 and presented herself for cross-examination. However, the Petitioner failed to cross-examine the Management Witness.
8. Since the Petitioner failed to cross-examine the Management Witness, the learned Labour Court by way of the impugned

Award dated 04.09.2002 upheld the decision of the Disciplinary Authority.

9. Being aggrieved by the impugned Award dated 04.09.2002, the Petitioner has filed the present writ petition. By way of this Petition, the Petitioner is making two alternative prayers, (i) to reinstate the Petitioner back in service or in the alternative (ii) to allow the Petitioner to avail the benefit of the Voluntary Retirement Scheme (VRS).

SUBMISSIONS ON BEHALF OF THE PETITIONER

10. Ms. Komal Aggarwal, learned counsel appearing for the Petitioner had averred that the workman was being punished for the same offence twice and two Chargesheets have been issued by the Respondent management for the absence of the Petitioner from duty on 01.01.1993 to 30.09.1993.
11. Ms. Komal Aggarwal, had further averred that despite repeated requests, the enquiry officer failed to provide the documents to the Petitioner during the enquiry proceedings. The learned counsel further points out that the Petitioner issued a letter dated 21.12.1994 to Respondent No 3 urging for the documents to be furnished. However, no documents were provided to him.
12. Learned counsel for the Petitioner further argues that the learned Labour Court erred in dismissing the claim of the Petitioner solely on the failure of the Petitioner to cross-examine the enquiry officer, Ms. Sunita Chauhan. The order dated 31.03.2000 passed by the learned Labour Court stated that the management has not filed the original affidavit of Ms. Sunita Chauhan. After

several adjournments, the original affidavit was filed on 16.04.2001. The matter was again subsequently adjourned on several occasions. On 19.07.2002, when learned counsel for the workman was not present, the opportunity to cross-examine was closed and the case was reserved for passing of an award. This arbitrary decision of the learned Labour Court adversely affected the interest the Petitioner. Learned counsel submitted that the learned Labour Court passed the award bereft of any reasoning or substantiation.

13. It was contended that other workmen, who were faced with a similar situation as the Petitioner, were granted voluntary retirement despite such workmen being subjected to disciplinary proceedings. The Petitioner also applied for VRS on 26.11.1993 and 30.11.1993. Petitioner's applications were rejected by the management citing the pendency of disciplinary proceedings as the reason. However, other similarly situated workmen were permitted to avail the benefit of VRS Scheme.

14. With these submissions, learned counsel for the Petitioner prayed for setting aside of the impugned award.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

15. Ms. Aditi Gupta, learned counsel appearing for the Respondents, advertent to the Petitioner's contention on the two Chargesheets had clarified the position. The Chargesheet dated 25.10.1993 was issued in pursuance of his absence from duty from 01.01.1993 to 30.09.1993. Vide order dated 03.01.1994, the said Chargesheet dated 25.10.1993 culminated into punishment of 'the stoppage of

one increment without cumulative effect'. The Petitioner never challenged the said punishment. The second Chargesheet dated 30.05.1994 was issued for unauthorized absence for the period from 15.02.1994 onwards and the same finally culminated into punishment of 'removal from service' vide order dated 16.02.1995.

16. Learned counsel for the Respondents casts aspirations on the Petitioner's contention apropos the withholding of enquiry documents. Ms. Aditi Gupta had drawn the attention of this court to the letter dated 04.01.1995 issued by Respondent No. 3 to the Petitioner asking him to come and inspect the documents within 24 hours of receipt of the letter.

17. It was the submission of learned counsel for the Respondents that the absence of the workman from duty from 15.02.1994 is incontrovertible by virtue of his own affidavit before the learned Labour Court in Annexure 'L' where the following has been stated:-

"3. That the Deponent tried to avail facility for voluntary retirement was which was applicable to all the category of the Management employee and the Deponent is also covered under the scheme. The Deponent submitted the application on 26.11.1993 and 30.11.1993. Copy of the application are placed on record and are exhibited WW.1/7 & 8. As per normal practice, the Management allows the worker not to attend the office after filing the application for voluntary retirement and the necessary benefit of voluntary retirement will be extended to them. Under this impression the workman proceeded on leave without pay with effect from 15.2.1994. This facility was extended to the employee of the Management placed under the same category and doing the same job like Shri Bharat Singh Driver No. 12633 and Shri Ali Ahmed Driver Badge No.

8033, copies of the letters are placed on record and are exhibited WW.1/9 and 10.”

18.It was also the case of the learned counsel for the Respondents that the Petitioner vide his statement had admitted the charges against him to be true and had also conceded that he was given a proper opportunity to present his witnesses and defend his case.

19.With these submissions, learned counsel for the Respondents prays for the dismissal of the present Writ Petition.

LEGAL ANALYSIS

20.This Court had heard the arguments advanced by learned counsels for both the parties and perused the documents on record and Judgments relied upon by the parties.

21.The Petitioner failed to cross-examine MW-1, the enquiry officer Ms. Sunita Chauhan and hence the learned Labour Court decided the preliminary issue No.1 regarding the validity of the enquiry conducted by the Respondent in favour of the Respondent/Management.

22.This Court had the benefit of examining the learned Labour Court record (LCR). On perusal of the LCR, it shows that MW-1, Ms. Sunita Chauhan, the enquiry officer who conducted the enquiry against the Petitioner stepped into the witness box as MW-1. MW-1 produced the complete record of the enquiry proceedings.

23.From the perusal of the enquiry file, it reveals that the enquiry officer asked the Petitioner to appear before her for recording of the evidence on 11.07.1994, 29.07.1994 and 12.08.1994.

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However, the Petitioner failed to appear before the enquiry officer. Hence final notice was issued for his appearance on 27.11.1994. On the said date, the Petitioner appeared before the enquiry officer and his evidence was recorded.

24. In the present case, the Chargesheet and the enquiry proceedings were recorded in Hindi Language. The enquiry proceedings bear the signature of the Petitioner, who signed the said document in Hindi. Hence, it is presumed that the Petitioner signed the said enquiry proceedings after reading the same. As per the record of the said enquiry proceedings, the Petitioner chose to defend his case himself and did not take the assistance of a Defence Assistant. It was further recorded that the Chargesheet was read over to him and was explained to him. After explaining the charges levelled against him, the Petitioner was asked whether he is admitting his guilt or not. Without any pressure from anyone, the Petitioner admitted his guilt and stated before the enquiry officer that he took leave without permission because of certain circumstances, and he will not repeat the same. The Petitioner was asked whether he would like to lead any evidence by presenting his own witness, the Petitioner answered in negative. The Petitioner was asked to give his final statement. He has given his final statement in his own handwriting. In the said final statement, he admitted his guilt and deposed that he and his wife were unwell during the period of his unauthorised absence. Copy of the duly signed final statement was handed over to the Petitioner and its original was placed in the enquiry file. The

said enquiry proceedings bear the signature of the Petitioner at 5 places.

25. From the records of the enquiry proceedings, it is evident that the Petitioner never asked for any document from the enquiry officer. The Petitioner duly signed the enquiry proceedings without even recording his protest. This itself shows that the Petitioner was satisfied with the enquiry proceedings.

26. Learned counsel for the Petitioner vehemently argued that vide letter dated 21.12.1994, the Petitioner had asked for the documents, however, the same was not provided. A perusal of the enquiry file reveals that the Petitioner vide letter dated 21.12.1994 sought the inspection of his personal file, service record and all other relevant documents related to his case. This Court notes that the enquiry officer recorded the evidence of the Petitioner on 27.11.1994 and submitted her report in the month of November 1994 itself. Hence the Petitioner requested for the inspection of the file post enquiry. It is not the case of the Petitioner that the enquiry was conducted without providing the relevant documents. In any case, the competent Authority, vide letter dated 04.01.1995, permitted the Petitioner for the inspection of the file. Hence, it cannot be said that the Petitioner had denied access to the relevant documents.

27. After examining the enquiry proceedings file, this Court is satisfied that the Respondents conducted the enquiry in accordance with law. The Petitioner was given ample opportunity to defend himself. The Petitioner admitted his guilt in his own

handwriting during the enquiry proceedings. The enquiry officer herself appeared before the learned Tribunal as MW-1, however, the Petitioner failed to cross-examine her. Hence, the learned Trial Court rightly upheld the enquiry proceedings.

28. There were 2 Chargesheets against the Petitioner. First Chargesheet was dated 25.10.1993 which culminated into penalty of 'stoppage of one increment without cumulative effect'. Petitioner never challenged the same. The present proceedings emanate from the 2nd Chargesheet dated 30.05.1994. The periods of unauthorised absence in both the Chargesheets were different. Hence, it cannot be said that the Petitioner was chargesheeted twice for the same period of unauthorised absence. Hence, the contention of the learned counsel for the Petitioner in this regard is hereby rejected.

29. The bottom line of this case revolves around the fairness of enquiry proceedings and ascertaining whether the findings of the Disciplinary Authority and the learned Labour Court are substantiated by proper facts and evidence. In this regard, it is pertinent to reiterate the law laid down by the Hon'ble Supreme Court in ***Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd. Vs Management & Ors***, reported as **(1973) 1 SCC 813**, which states as follows:

"32. From those decisions, the following principles broadly emerge :-

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) *Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.*

(3) *When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.*

(4) *Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.*

(5) *The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.*

(6) *The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.*

(7) *It has never been recognised that the Tribunal should straightway, without anything more, direct reinstatement of a dismissed or discharged employee once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.*

(8) *An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an*

opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate v. The Workmen, 1971-1 SCC 742 within the judicial decision of a Labour Court or Tribunal.”

“40. Therefore, it will-be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under section 11 A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.”

30.The Respondents conducted the enquiry in accordance with law after affording opportunity of hearing to the Petitioner. Hence, in view of the law laid down by the Hon'ble Supreme Court as herein above, the impugned award does not call for any interference.

31.The Petitioner by way of this writ petition sought for the reinstatement of the workman or alternatively his voluntary retirement in terms of the scheme published by Respondent No 3. The dismissal of the Petitioner is mainly based on Petitioner's own admission of guilt during the enquiry proceedings. Further the evidence of the enquiry officer, Ms. Sunita Chauhan, remains

uncontroverted. Hence, the Petitioner is not entitled for the reinstatement. Regarding the prayer of granting VRS, the same is beyond the scope of reference. Hence this Court refrains from examining the issue related to non-grant of VRS.

32. In view of the detailed discussions herein above, this Court is of the considered view that there is no perversity or infirmity in the impugned Award. The Respondent conducted the enquiry in accordance with law and there is no violation of principles of natural justice. In view thereof, this Court, while exercising its jurisdiction under Article 226 of the Constitution, is not inclined to interfere with the impugned Award. Hence the present Writ Petition is hereby dismissed. No order as to costs.

GAURANG KANTH, J.

NOVEMBER 23, 2022