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

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Reserved on : 12.10.2022

Pronounced on: 09.11.2022

+ **W.P.(C) 3622/2005**

NATIONAL AVIATION COMPANY OF INDIA LTD

(Erstwhile Air India Ltd)

..... Petitioner

Through: Ms. Padma Priya and
Ms. Akanksha Das, Advocates.

versus

G.V.SHARMA

..... Respondent

Through: Mr. M. A. Niyazi and Mr. Arquam.
Ali, Advocates respondent in
person.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present writ petition has been filed under Article 226 of the Constitution of India to set aside the Award dated 30.07.2004 passed by the learned Presiding Officer, Central Government Industrial Tribunal cum Labour Court II in I.D. No.23/1997, titled as "Sh. G. V. Sharma V/s Air India Ltd" (hereinafter referred to as "impugned award"), wherein the Respondent was reinstated with 100% back wages during his period of unemployment.

FACTS OF THE CASE

2. The Petitioner was a government company at the time the dispute surfaced. The Respondent is a former workman in the Ground Handling Department of the Petitioner. He was appointed as a Junior Operator after undergoing training and a probationary period.

3. On 17.05.1989, while operating Tractor No. 3550, the Petitioner is alleged to have crashed into the pillar between the make-up area and the restroom, causing damage to the tractor and the pillar. The front suspension of the tractor had allegedly broken. The Petitioner management suspected the Respondent to be in a state of intoxication and hence immediately sent the workman to undergo a 'Breathalyser' test, and their surmise was affirmed. Pending further enquiry, the workman was placed under suspension. He was subsequently charged with "Drunkenness whilst on duty" and "Causing damage to the equipment belonging to the Corporation" vide charge sheet dated 25.05.1989.

4. As a consequence of the charge sheet being issued, the respondent/workman was called to appear before the Enquiry Committee. The witnesses before the committee were Mr. P.N. Sinha. Sr. Tech. Officer, Mr. Chanakya, Apron Supervisor, Mr. Brij Mohan, Senior Security Assistant, Mr. U.R Sharma, Head Security Guard and Dr. Manoj.

5. With the examination in chief and cross-examination of the witnesses, the Enquiry Committee concluded the charges to be true. The Disciplinary Authority concurred with the same and ordered the dismissal of service of the respondent/workman on 26.12.1989. To no avail, the

respondent/workman preferred an appeal before the Appellate Authority as well.

6. Aggrieved by the turn of events, the respondent/workman invoked an industrial dispute and a reference was made in 1997. The learned Labour Court, in its findings, concluded that the enquiry proceedings were vitiated, entitling the respondent/workman to reinstatement and full back wages during the period of unemployment. Hence the present writ has been filed.

7. Successively, several applications under Section 17B of the Industrial Disputes Act, 1947 were filed by the Respondent in connection with this writ. With the initial applications being dismissed, this Court has awarded the respondent/workman back wages vide order dated 28.09.2011 for the period of unemployment with effect from 17.09.2007.

SUBMISSIONS OF THE PETITIONER

8. Ms Padma Priya, learned counsel for the Petitioner averred that the respondent/workman approached the learned Labour Court as an afterthought which amounted to an inordinate delay. The order dated 26.12.1989, terminating the service of the respondent/workman has attained finality as no further action was taken by him for nearly 8 years. The Industrial Dispute has been belatedly raised to declare the dismissal order as illegal, unlawful and unjustified. Learned counsel had relied on *Prabhakar Vs Joint Director Sericulture Department & Ors*, reported as (2015) 15 SCC 1 and *Nedungadi Bank Ltd Vs K.P. Madhavankutty & Ors*, reported as (2000) 2 SCC 455 to state that the dispute had gone stale when the reference was made by the Central Government.

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9. It was the case of learned counsel for the Petitioner that the learned Labour Court erred in concluding that the Petitioner failed to produce the original enquiry report. To negate this conclusion, it was asserted that the learned Labour Court had affirmed the receipt of the originals of the inquiry proceedings, which can be evinced in the order dated 20.04.2004. On account of the same, the award must be set aside.

10. The learned Labour Court ought not to have disregarded the 'breathalyser' test, which formed a crucial part of the Petitioner's case. It was contended that the interpolations in the report in no way affected its outcome. Hence such an insignificant interpolation cannot be the inducement to dismiss its authenticity. Such a high threshold or standard of proof for proceedings before the learned Labour Court is akin to criminal proceedings. To this extent, the application of the principle of *Preponderance of Probability* should have been appreciated by the learned Labour Court. Reliance was placed on *State of Haryana Vs Ratan Singh* reported as AIR 1979 SC 1512 to buttress this contention:-

"It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility."

11. It was averred that the learned Labour Court erred in holding that the preliminary enquiry statements and 'Breathalyser' test report were not provided to the respondent/workman, which in turn prevented him from effectively defending himself before the Enquiry Committee and Disciplinary Authority. Be that as it may, it is the duty of the respondent/workman to exhibit that such a lapse has prejudiced his case.

The Hon'ble Supreme Court's judgment in the case of ***Managing Director ECIL Hyderabad and Ors. vs B. Karunakar and Ors.***, reported as (1993) 4 SCC 727 was relied on. In this case, the enquiry officer's report was furnished to the employee during the disciplinary proceedings, and the Court held the following:-

“v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non- furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice.”

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“31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, The Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the

order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present.”

(emphasis supplied)

12. The Rationale in ***ECIL Hyderabad (Supra)*** can be applied in the instant case as well. The statements taken in the preliminary enquiry were merely for the purpose of establishing a *prima facie* case against the respondent/workman. Thereafter, a fair opportunity to examine and cross-examine the witnesses was provided during the enquiry proceedings, thus causing no prejudice to the respondent/workman. Similarly ***K.L. Tripathi Vs State Bank of India and Ors*** reported as (1984) 1 SCC 43 cited. In addition to this it was averred that no challenge regarding the fairness of the enquiry proceedings were raised during such proceedings.

13. The respondent/workman has categorically admitted to the charges against him. Despite this admission, the competent authority had accorded the respondent/workman with a fair chance to make his case during the enquiry proceedings and had arrived at a decision only after due consideration of the statements and materials on record. It was contended that the learned Labour Court has blatantly ignored such a piece of crucial evidence, which is more than adequate to prove the guilt of the workman. Reliance was placed on the judgement of the Hon'ble Supreme Court in the case of ***Delhi Transport Corporation Vs Shyam Lal***, reported as (2004) 8 SCC 88, which held as follows:-

“7. We find that the Tribunal's conclusions are prima facie not correct. The statement made by the passenger who had paid excess money to the checking officer is not in the nature of hearsay evidence. Additionally, the effect of the admission regarding guilt as contained in the letters dated 13-1-1989 and 24-2-1989 have not been considered in the proper

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perspective. It is a fairly settled position in law that admission is the best piece of evidence against the person making the admission. It is, however, open to the person making the admission to show why the admission is not to be acted upon."

14. It was further asserted that the learned Labour Court had grossly misapprehended the interpretation of 'competent authority' and the powers vested under the Air India Employees Service Regulations, 1982 (hereinafter referred to as "**1982 Regulations**"). A staff notice dated 07.03.1979 brought about the following modification:-

"The Ground Handling Department has been reconstituted as a Group One level department to be known as 'Ground Services Department' and Mr. D.P. Nimkar, Controller Ground Handling has been appointed to head this department with the designation of "Director-Ground Services" with effect from 1st March 1979"

This staff notice must be read along with the Office Order dated 10.11.1987, which provided the following:-

"The Dy. Director-Ground Services is hereby empowered to exercise powers of issuing Chargesheets and orders relating to constitution of Enquiry Committees, arising out of disciplinary cases relating to misconducts as are enumerated under Regulation 42 of the Air-India Employees' Service Regulations, upto the level of Asst. G.S, Manager.

2. With the delegation of authority as cited above; the Dy .Director-Ground Services is also authorised to deal with Orders connected with Regulation 43B of the Air-India Employees' Service Regulations read with Schedule I."

15. It was stated that by means of the staff notice dated 07.03.1979, the Controller-Ground Handling has been merely renamed as the Director-Ground Services. In vindication of the same, learned counsel for the Petitioner refers to Regulation 3(f), which defines 'Head of Department' as:-

"the Commercial Director, Financial Controller, Deputy Managing Director, Controller of Stores & Purchases, Controller of Civil Works

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and Properties, Controller-Ground Handling, Director of Operations, Director of Engineering, Director of Planning and International Relations, Director of Personnel and Industrial Relations, Director of Technical Planning and Chief Personnel Manager or any officer holding a temporary charge for any of them and any other officer so designated by the Corporation generally or for any specific purpose.”

Further, emphasis was laid on the definition of ‘Competent Authority’ under Regulation 3(e):-

*“means in relation to the exercise of any power, the corporation, the Chairman, the Managing Director, the **Head of Department** or any other officer specified in that behalf.”*

16. It was averred that on a reading of the two definitions, it is amply clear that the power to designate any authority has been provided under the definition of ‘Head of Department’ who then constitutes the competent authority under Rule 3(e) of the 1982 Regulations. The Office order dated 10.11.1987 specifically designates the Deputy Director-Ground Handling as the competent authority. The designation is valid as such a power has been vested in the ‘Head of Department’, namely the Controller-Ground Services, who had been renamed as Director-Ground Services. This designation vests the Deputy Director-Ground Handling with the power to create charge sheets, order enquiry proceedings and pass orders. Such a resultant delegation of power is valid as the authority to do so is derived from the Rules.

17. On delving into whether the aforementioned office orders can be cited in the present petition, it was submitted that these documents only countenance the argument that was already made before the learned Labour Court. Thus it does not lead to a new plea.

18. It was submitted that Mr. P.N. Sharma was not an interested witness in the case. The impugned award held that he was unable to throw light on the exact damage caused to the tractor due to the crash. This reason alone cannot affect his credibility.

19. Learned counsel for the Petitioner further contended that the termination of services of the Petitioner was *inter alia* due to his past conduct, which establishes a series of dereliction of duties. The competent authority is obligated to take cognizance of the past conduct of the employee and any other extenuating circumstances. Such a requirement has been provided under Schedule 2, serial number IV (15) of the 1982 Regulations. Thus the past conduct has been referred to in the instant case to show that the punishment awarded is proportionate. The regulation reads as follows:-

*“The competent authority on receiving the report of the Enquiry Committee shall satisfy itself as to the correct-ness of the findings by giving its independent attention to the weightage of evidence both for and against the charges. Where the competent authority agrees with the findings of the Enquiry Committee, it is not necessary for it to give reasons for the acceptance of the report, but where it dis-agrees, it shall record the reasons for such disagreement. **The Competent Authority shall thereafter issue an order of punishment. In awarding punishment, the competent authority shall take into consideration the extent and gravity of the misconduct, previous service record of the person charged and any extenuating or aggravating circumstances of the case.**”*

20. In view of the above submissions, learned counsel further stated that the reinstatement of the Petitioner poses a threat to the other employees of the organisation. The complete recklessness in the past and present conduct of the workman causing damage to the properties and endangering the lives of others is worthy of disdain. The Hon’ble High

Court of Bombay had dealt with a similar question in the case of ***The Divisional Controllers, Maharashtra State Road Transport Corporation Vs Shri Santosh Nivrutti Ghorpade*** reported as 2000 (4) L.L.N. 112 where the following was held:-

“5. In this background, according to me, no reasonable and prudent employer would dare to ask Or permit a driver to sit On the wheels to drive a bus carrying more than 50 passengers. It cannot be forgotten that the petitioners do owe a responsibility to the public at large and they have undertaken to the public to give a safe and reliable transport facility. If the petitioners are to allow such drivers who report to duty under influence of liquor the public safety would always be in danger and in peril. Such persons who are used to have liquor are not at all compatible with the job of driver. The Labour Court, therefore, has committed grave error of law in directing reinstatement of such a driver who was under the influence of liquor when he had reported for work. It is not possible to agree with the reasoning and finding of the Labour Court that punishment of dismissal of the respondent is shockingly disproportionate or in any way otherwise disproportionate. There can be no other punishment than dismissal from employment of such persons as drivers. They can never be tolerated to work as drivers of public vehicles.”

21. There was a similar holding in the case of ***A.K. Dass Vs National Cooperative of Sugar Factories Ltd & Ors***, reported as 1994 Supp (2) SCC 520 where it was observed that the job of a driver is a job of confidence. Once he was caught pilfering petrol, he could not be trusted again with the job. Thus the Petitioner management in the present petition cannot be expected to trust the Respondent with a job that demands high diligence and care.

SUBMISSIONS OF THE RESPONDENT

22. Mr. M.A. Niyazi, learned counsel appearing for the respondent/workman, had premised his rebuttal against the submissions of the counsel for the petitioner on six points: (i) Fraudulent
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representation of an order of the learned Labour Court; (ii) Scope of judicial review under Article 226 of the Constitution of India; (iii) Enquiry is vitiated on procedure; (iv) Limitation period & past conduct of the workman; (v) Enquiry is vitiated on merits and (vi) There is no admission of guilt.

23. The learned Labour Court had arrived at two observations with respect to the materials on record. Firstly, the Petitioner failed to produce the original enquiry report before the learned Labour Court and instead provided a photocopy of the same. The Petitioner has maliciously contended before this Court that the originals have been submitted to the learned Labour Court, which is apparent from the order dated 20.04.2004. The order provides the following:-

*“Photocopy and full enquiry report given to the workman.
Original enquiry report **be produced** at the time of arguments.”*
(emphasis supplied)

24. It was submitted that emphasis must be placed on the phrase “be produced”, which clearly indicates that the Petitioner has failed to produce the originals of the enquiry report despite repeated orders.

25. Secondly, the learned Labour Court observed that there are two contrary enquiry reports, one of which has not been produced before the learned Labour Court. In the second enquiry report which was produced before the learned Labour Court, there were discrepancies in the signatures of Dr. Manoj Pabrai. In the second enquiry report, there are two copies of the statement of Dr. Manoj Pabrai. One copy contains the signature of Dr. Manoj Pabrai and other contains the word ‘Sd/-’. It is the

case of learned counsel for the respondent/workman that the Petitioner ought to have produced the original enquiry report for the perusal of this Court. The Petitioner had no right to withhold this enquiry report from this Hon'ble court as the said document constituted the premise for the observation made by the learned Labour Court. The award deals with this issue in the following manner:-

*“The other witness, Mr. Manoj Pabrai is the doctor who has conducted the breathalyzer test. True copies of enquiry have been filed but the original enquiry papers have not been filed. **From perusal of both the enquiries, it appears that Doctor Manoj Pabrai has put his signatures after his examination in chief but in the other copy at the place of his signature, Sd/- has been written.** It was submitted that the enquiry papers have been subsequently changed and his statement was recorded in his absence but when it was noticed that he has not put his signatures, his signature was obtained and another photocopy was filed with the court and despite demands, the original has not been produced for the perusal of the court. **As such it is doubtful whether the doctor was present at the time of his examination in chief or not as in one copy of the enquiry proceedings, he has put his signature after the cross-examination and in the other copy of the proceedings, he has not put his signature but sd/- has been written. As such, it was submitted that the examination in chief of the doctor has become doubtful.**”*

(emphasis supplied)

26. It was submitted that Petitioner had displayed mala fide manipulation of the facts to make their case. Reliance was placed on the judgement of the Hon'ble Delhi High court in **Satish Khosla vs M/s. Eli Lilly Ranbaxy Ltd. & Anr.** reported as (1998) 71 DLT 1 (DB):-

*“15. In S.P. Chengalvaraya Naidu Vs. Jagannath and Others, it was held that the Courts of Law are meant for imparting justice between the parties. **One who comes to the Court, must come with clean hands.** "It can be said without hesitation that a person whose case is based on false- hood has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. A litigant, who approaches the*

Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party.

16. We are informed that in Suit No. 261/97 the plaintiff had not even filed the plaint of the earlier Suit being Suit No. 3604/96 nor the Court had an opportunity to go through the allegations made in the said plaint. We are, therefore, of the opinion that by withholding the plaint and the application in the earlier suit from the Court and by not disclosing to the Court about the proceedings in the earlier suit and the stay having not been granted to it, the plaintiff/respondent had tried to get an advantage from the Court and was, therefore, guilty of playing fraud on the Court as well as on the respondent.....”

27. It was thus contended by learned counsel for the respondent/workman that learned Labour Court based its finding on the said enquiry report. The said enquiry report cannot be withheld by the Petitioner when they have approached this Court to quash the very same award.

28. It was averred that the scope and powers of this court under Article 226 of the Constitution of India does not allow this Court to revisit the entire evidence and replace the opinion. Thus, interference is only warranted when the perversity of the impugned award is apparent on the face of it. On the contrary, the Petitioner has not brought out any patent illegality in the impugned award. The Petitioner relied on the rationale provided in ***Radhe Shyam and Anr Vs Chhabi Nath and Ors*** reported as (2015) 4 SCC 423 to argue that the own view of the writ court cannot be substituted for the award, which is extracted hereinbelow:

“9. ‘Certiorari’ may lie and is generally granted when a court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceeding or from the absence of some preliminary proceeding or the court itself may not be legally constituted or suffer from certain disability by

reason of extraneous circumstances [Vide Halsbury, 2 Edn. Vol IX]. When the jurisdiction of the court depends upon the existence of some collateral fact, it is well settled that the court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess [Vide Banbury vs. Fuller, 9 Exch 111; R. v. Income Tax Special Purposes Commissioners, 21 QBD 313].

10. A tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice. A writ of certiorari may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision. The essential features of the remedy by way of certiorari have been stated with remarkable brevity and clearness by Morris, L.J. in the recent case of Rex v. Northumberland Compensation Appellate Tribunal [(1952) 1 KB 338]. The Lord Justice says:

“It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for re- hearing of the issue raised in the proceedings. It exists to correct error of law when revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction when shown.”

29. It was the case of the Respondent that a new plea cannot be raised at this stage of the proceedings. The Petitioner has produced two office orders dated 07.03.1979 and 10.11.1987 to submit that the Deputy Director is the competent authority in the instant case to order the termination of service of the workman. The former order reconstitutes the Ground Handling Department and re-designates the Controller-Ground Handling as the Director-Ground Handling. The latter order delegates the power of issuing charge sheets and passing orders to the Deputy Director-Ground Handling. Here it is pertinent to note that these orders were not produced before the learned Labour Court and do not constitute a part of the records before the learned Labour Court. The respondent/workman

had gone the extra mile to write to the learned Labour Court vide letter dated 28.02.2005 urging the supply of the certified copies of the office order dated 10.11.1987. The learned Labour Court responded on 02.03.2005, stating that no such document had been filed in their record. Reliance was placed on the judgement dated 05.10.2007 passed in W.P.(C) 5016 of 1997 titled ***Off. In-Charge (Cazri) Vs Pre. Officer***, where the following was held:-

“The petitioner/management can also not be permitted to improve its case by furnishing better facts at this stage, as the same shall amount to expanding the scope of judicial review under Article 226 of the Constitution of India, which is limited to examining the impugned award from the perspective of perversity, illegality or non-compliance of the principles or natural justice. It has been reiterated by the Supreme Court as also by this Court time and again that the scope of judicial review while examining an award of the Tribunal is fairly limited. The Tribunal alone is the master of facts. The High Court while examining the award is not expected to re-appreciate facts and act as an appellate court.”

(emphasis supplied)

30. It was submitted that the order passed by the Deputy Director-Ground Services of the Petitioner company is without jurisdiction. Learned counsel referred to the maxim *Delegatus non potest delegare* to elucidate on this contention. It was stated that a statutory power must be exercised only by the person or body upon whom it is conferred. The person who issued the charge sheet, the person who authorised the enquiry proceedings and the person who ordered the termination of service is not the person upon whom such powers were conferred. The learned Labour Court was unequivocally clear in its award that the Deputy Director is not the competent authority.

“It was further submitted that Deputy Director, Ground Services is not the competent authority either to serve charge sheet or to constitute the enquiry or to award punishment. In the present case, Deputy Director has done all the three things but from perusal of Air India Service Regulations, 1982, it becomes quite obvious that Ground Controller is the competent authority and the Managing Director is the Appellate Authority. It was further contended that the management has admitted that prior to August, 1990, the Air India Service Regulations of 1982 was in force and was prevalent. It was not replaced any other regulation. As such, it is admitted to both the parties that Air India Service Regulations, 1982 was in force during the course of entire enquiry and it was in force even after the enquiry. As such, the enquiry should be conducted according to the procedure prescribed in the said regulation of 1982. It is quite apparent from the perusal of the said regulation that Deputy Director is not the competent authority. Schedule-I mentions the cadre of the employee and the Competent Authority and the Appellate Authority. The Ground Controller is the Competent Authority for the Ground Handling Department. It is quite clear from sl. No. 10 page 55 that the competent authority and the appellate authority in the matter of the workman applicant are the Controller Ground and Managing Director respectively. The workman applicant comes under 1Q(1) of the ground handling. As such, the Deputy Director, Ground Services is not the Competent Authority but Controller Ground Handling is the Competent Authority and Managing Director is the Appellate Authority. In the present case, the enquiry committee has been constituted by the Deputy Director. Charges have been served by the Deputy Director and punishment has also been awarded by the Deputy Director whereas it is quite clear from Schedule-I of the said regulation that the competent authority is the Controller Ground Handling and the Appellate Authority is the Managing Director.”

31. It was further submitted that the Petitioner has categorically admitted that the 1982 Regulations was in vogue at the time of the dispute. For the staff notice dated 07.03.1979 to be considered effective, an amendment to that extent should have features in the notes of the 1982 Regulations where all the amendments until 1982 have been enumerated. In fact, even the reconstituted name of the Ground Handling department doesn't find mention in Schedule I of the 1982 Regulations. This goes on to show that amendments are made only through Notifications and not

office orders. In addition to this, there is no rule in the 1982 Regulations that gives the power to delegate. Had such power been provided in these Regulations, then it could have been done through office order.

32. The counsel then extended submissions on the office order dated 1987 to state that an office order cannot derogate the 1982 Regulations, which are statutory in nature. To fortify this submission, it was brought to notice that the 1992 amendment to the Regulations reconstituted the Ground Handling Department, and this change was made by a Gazette Notification. Since power under the schedule is a quasi-judicial power, it is very rarely delegated only by express provisions or implications.

33. Learned counsel had placed reliance on the cases of *Sahni Silk Mills Pvt. Ltd Vs Employees State Insurance Corporation* reported as (1994) 5 SCC 346, *Director General, Employees State Insurance Corporation and anr Vs T. Abdul Razak* reported as (1996) 4 SCC 708, *B. Rugmini Amma Vs B.S. Nirmala Kumari* reported as (2013) 11 SCC 262 to contend that the power to delegate must arise from the Statute and such a power must be exercised only by the authority upon whom it is delegated.

34. In response to the Petitioner's contention of delay and laches, the counsel for the Respondent averred that Section 10 of the Industrial Disputes Act, 1957 does not stipulate a limitation period for initiating industrial disputes. Learned counsel had referred to the judgement of the Hon'ble Supreme Court in *Prabhakar Vs Joint Director Sericulture Department and Ors* reported as (2015) 15 SCC 1 where the court had indubitably cleared that the Limitation Act, 1963 does not apply to the

disputes under the Industrial Disputes Act, 1947. The only pre-requisite while making the reference is the existence of an industrial dispute. Hence as long as the dispute survives, it is not barred by limitation.

35. With respect to the submission on past conduct, the respondent/workman took the stance that the past conduct of the workman does not fall within the purview of the reference made to the learned Labour Court. It was further stated that the Industrial Tribunal's powers are limited to the reference made by the Central Government. Additionally, the past conduct of the workman has not been adjudicated by the learned Labour Court as the reference made by the Central Government merely pertained to the legality of the termination of service of the respondent/workman. The learned Labour Court had reasoned the same in the following manner:

"It was submitted from the side of the management that there were other occasions when the workman was given warning but those occasions are not under reference"

36. Hence the issue of past conduct cannot be agitated in the present writ. Further, from Schedule 2 (IV) (15) of the 1982 Regulations, it is clear that past conduct can be examined only if the enquiry is deemed valid. Only then will the adequacy of the punishment be examined. Reliance was placed on ***Kuldeep Singh Vs General Manager, Instrument and Design Development Facilities Centre and anr.*** reported as (2010) 14 SCC 176 wherein it was held that the learned Labour court cannot go behind the reference made.

37. It was submitted that after the charge sheet was issued against the respondent/workman, he was not provided with the documents and

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statements collected through the preliminary enquiry. These documents and statements collected from the preliminary enquiry are for the purpose of evincing the *prima facie* case against the respondent/workman. Thus, violating the right of the respondent/workman to reasonably make his case. The enquiry proceedings began in August 1989 and the statement of Dr. Manoj Pabrai and his cross-examination was completed on 20.10.1989. *Per contra*, the respondent/workman was denied a copy of the 'Breathalyser' report by a letter dated 23.11.1989 by the Air India Medical Service Department. In addition to this, the respondent/workman was not provided with a copy of the Mechanical Inspection Report, by virtue of which the likelihood of a mechanical failure and the damage caused can be ascertained. It was hence submitted that the relevant documents were not furnished to the respondent/workman even after the completion of the enquiry, incapacitating him from effectively defending himself. A similar circumstance was determined in the *State of Uttar Pradesh Vs Shatrughan Lal* reported as (1998) 6 SCC 651:-

"2. We have heard learned counsel for the parties. The Tribunal has found as a fact that copies of the documents which were proposed in the charge-sheet to be produced in the department proceedings as proof in support of articles of charges were not supplied to the respondent. This finding was based on the own admission of the appellant in the written statement that the copies of the documents mentioned in the charge-sheet were not supplied to the respondent which could be inspected by him at any time. The Tribunal further found that the copies of the statement recorded during the preliminary inquiry on the basis of which the charges were subsequently framed against the respondent were also not supplied to him. It was, on these two grounds that it was held by the Tribunal that the inquiry proceedings were bad in law.

4. Now, one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge-sheet is

issued and the documents which are proposed to be utilised against that person are indicated in the charge-sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him. (See: Chandrama Tewari v. Union of India, (1987) Suppl. SCC 518; AIR 1988 SC 117; Kashinath Dikshita v. Union of India, (1986) 3 SCC 229; AIR 1986 SC 2118; State of Uttar Pradesh v. Mohd. Sharif, (1982) 2 SCC 376; AIR 1982 SC 937.

*6. Preliminary inquiry which is conducted is invariably on the back of the delinquent employee may, often, constitute the whole basis of the charge-sheet. **Before a person is, therefore, called upon to submit his reply to the charge-sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial.** This principle was reiterated in Kashinath Dikshita v. Union of India, (supra), wherein It was also laid down that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those documents had not caused any prejudice to the delinquent in his defence."*

38. Learned counsel appearing for the respondent/workman had averred that the workman was not only curtailed from effectively making his case before the Enquiry Committee and Disciplinary Authority but also not provided with an opportunity to even appear before the Appellate Authority. Nothing but a letter dated 27.07.1992 from the Deputy Manager-Administration stating that the Director has dismissed the appeal was provided.

39. It was submitted that the clinical examination of the respondent/workman and the 'Breathalyser' test was not conducted in a proper manner. No other signs and symptoms were noted and the doctor failed to give a report of his observations. A breathalyser is merely a preliminary test raising concerns about its accuracy. Thus, the learned Labour Court had rightly disregarded the test.

40. Further, it was the case of learned counsel appearing for the respondent/workman that the workman had never admitted to his guilt of inebriation while riding the Tractor. It was further stated that the statement of the workman was completely misconstrued. A reading of the entire statement of the respondent/workman would indicate that the workman had consumed alcohol the previous night.

41. Under Schedule II (5)(ii) of the 1982 Regulations, the Petitioner company is entitled to award appropriate punishment to the delinquent when there is an admission of guilt. It was contended that the Petitioner refrained from dismissing the service of the respondent/workman despite the presumed admission and instead continued with the enquiry proceedings. This goes on to show that the respondent/workman was unsure if there was an unequivocal admission.

COURT'S REASONING

42. On the basis of the submissions made by both the parties, this Court will address the issues raised in the following manner:-

- (i) Limitation period to invoke an industrial dispute
- (ii) Failure to produce the originals of the enquiry report before the learned Labour Court
- (iii) Error apparent on the face of the record
- (iv) Gross injustice caused to a party
- (v) Enquiry-Void ad initio

(vi) Past Conduct

LIMITATION PERIOD TO INVOKE AN INDUSTRIAL DISPUTE

43. The Court observed that the only requirement under section 10 of the Industrial Disputes Act, 1982 is that an industrial dispute must exist when the reference is made. Section 2(k) of the Industrial Disputes Act, 1982 defines an “industrial dispute” as:

*“means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or **non-employment** or the terms of employment or with the conditions of labour, of any person”*

44. From a perusal of the above provision and the facts of this petition, it is amply clear that the nature of the dispute raised by the respondent/workman before the learned Labour Court is an industrial dispute.

45. Alternatively, learned counsel for the Petitioner had referred to ***Prabhakar (Supra)*** which discusses the meaning of ‘existence of an industrial dispute’ while determining if an industrial dispute raised after 26 years’ delay had gone stale. It holds that an industrial dispute exists only when a demand in pertinence to the difference is raised and such demand is rejected by the employer. In essence, the wrongful termination must be disputed by the workman. It was the case of the counsel for the Petitioner that industrial dispute in the present petition has gone stale over the years as it was left unattended for a period of 8 years. The Respondents had relied on ***Kuldeep Singh (Supra)***, where there existed 22 years’ delay in the reference.

46. The ratio of the Judgement in *Prabhakar (Supra)* can in fact be utilised to fortify the stance of the Respondents. The communication regarding the dismissal of the appeal ordered by the Director was provided to the respondent/workman on 27.07.1992. Subsequently, the respondent/workman filed another representation and vide letter dated 7/9 July 1993, the Petitioner informed the respondent/workman that his case was re-examined and the Department find no reason to interfere with the findings of the Competent Authority. The respondent/workman issued the demand letters dated 08.07.1994/09.07.1994 to the Petitioner. Later the conciliation proceedings for the industrial dispute were initiated on 05.09.1994 and the attempt was concluded on 17.02.1995 and was recorded as a failure. Thus, within less than two years from the conclusion of the conciliation proceedings, the reference was made by the Central Government on 09.01.1997.

47. This court is of the view that the Petitioner finally rejected the case of the respondent/workman on 7/9 July 1993 when the re-examination process was over. The dispute was in subsistence as a consequence of the respondent's periodic attempts to demand his reinstatement. The Central Government was thus well within its bounds in referring the industrial dispute to the learned Labour Court. Hence there is no delay in referring the industrial dispute to the learned Labour Court for adjudication.

FAILURE TO PRODUCE THE ORIGINALS OF THE ENQUIRY REPORT BEFORE THE LEARNED LABOUR COURT

48. From a reading of the order dated 20.04.2004 and the final award of the Tribunal, it is evident that the originals of the enquiry proceedings

were not furnished to the learned Labour Court despite repeated demands. Hence an adverse inference can be drawn against the Petitioner.

ERROR APPARENT ON THE FACE OF THE RECORD

49. Most of the submissions made by the parties pertains to the evaluation of the evidence led by the parties. The parties have raised questions on whether the breathalyser test is an unimpeachable test to gauge the intoxication of the respondent/workman and whether it is a sufficient ground for terminating his services. It was argued by learned counsel for the petitioner that the learned Labour Court had applied the tenets of criminal law while evaluating the evidence in an industrial dispute where the threshold of evaluating evidence is *preponderance of probability*. The principle of *preponderance of probability* allows the Court to accept the occurrence of an event as valid on the basis of the circumstantial evidence around it, despite not having proof beyond reasonable doubt to that effect. According to the learned counsel for the Petitioner, to that extent, it is incorrect approach of the learned Labour Court to pass orders on the inadequacy of ‘breathalyser’ tests in determining the workman’s drunkenness under the guiding principles of criminal jurisprudence. The learned Labour Court’s attempt to re-appreciate the evidence on merits is in excess of their powers and amounts to an interference. Learned Counsel for the Petitioner vehemently submitted that it must be borne in mind that the Industrial Tribunal cannot act as a court of appeal.

50. After the celebrated Judgment of Hon’ble Supreme Court in ***Workmen v. Firestone Tyre and Rubber Co.*** reported in (1973) 1 SCC

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813, it is no more *res integra* that the Industrial Tribunals are now vested with the power to re-appreciate the evidence while adjudicating an industrial dispute with respect to the validity of a domestic enquiry. It will be profitable to reiterate the relevant portion of the said Judgement of the Hon'ble Apex Court:

“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.

41. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under section 11-A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, section 11-A now gives full power to the Tribunal to go into the evidence and satisfy-itself on both these points. Now the, jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by section 11-A.

51. Hence in view of the settled position of law, the Tribunal is well within its right to re-appreciate the evidence to satisfy itself about the validity of a domestic enquiry.

52. In the present case, the learned Tribunal examined the evidence adduced by the parties in detail. It will be useful to quote the relevant portion of the impugned Award which reads, inter alia, as follows:

“It was submitted from the side of the workman that the findings of the enquiry officer are not tenable on factual ground as well as on the legal ground. There are two aspects to ascertain the fairness of the enquiry. The first aspect is that whether the workman applicant was drunken while on duty. It was submitted from the side of the workman that Mr. U.R.Sharma and Mr. Brij Mohan have deposed as preliminary witnesses but when the charge sheet was issued, these papers were not made available to the workman applicant. He had not admitted the charges categorically and unambiguously. As such, the enquiry was conducted, to prove the charges levelled against him. It was further submitted from the side of the workman that in his cross-examination in enquiry proceedings, Mr. Chanakya has categorically admitted that he was not found drunken but he appeared tense. The second witness Shri U.R. Sharma is also of the same view. He has admitted in his cross-examination during the proceedings of enquiry that the workman applicant appeared to be very deep and tense. Since the incident has happened, it is quite natural that the workman would appear disturbed that is why these witnesses deposed that he looked quite tense and upset. The other witness Mr. Manoj Pabrai is the doctor who has conducted the breathalyzer test. True copies of enquiry have been filed but the original enquiry papers have not been filed. From perusal of both the enquiries, it appears that Doctor Manoj Pabrai has put his signature after his examination in chief but in the other copy, at the place of signature, sd/- has been written. It was submitted that the enquiry paper have been subsequently changed and his statement was recorded in his absence but when it was noticed that he has not put his signatures, his signature was obtained and another photocopy was filed with the court and despite demands the original has not been produced for the perusal of the court. As such, it is doubtful whether the doctor was present at the time of his examination-in-chief or not as in one copy of the enquiry proceedings, he has put his signature after the cross – examination and in the other copy of the proceedings, he has not put his signature but sd/- has been written. As such, it was submitted that the examination in chief of the doctor become doubtful. Another witness produced during the course of enquiry was Mr. Brij Mohan. He has stated in his cross-examination that he did not see the reading himself but the doctor read out the readings and it was reduced to writing so none of the witnesses had seen the machine on which breathalyzer was conducted. The Doctor himself saw the reading and he read out and

that reduced to writing. He was a part time doctor and so he was won over.

It is further submitted that there are interpolations and cuttings in the breathalyzer report. I have perused the paper. There is cutting at one place and it appear to have been interpolated and there is cutting regarding timing also and there is no opinion of the doctor that the workman applicant was under a drunken state. In this context, my attention was drawn to Parekh's book on medical jurisprudence. It has been specifically mentioned there that breathalyzer is not a complete test. It is a test to ascertain whether there are symptoms of alcohol in the breath of the drunken person or not and it is not admissible in evidence. In the instant case, only breathalyzer test has been conducted and it has been mentioned in the Parekh's book that the machine should be free from alcohol and the doctor should give a certificate regarding the same that the machine is free from alcohol. It was submitted from the side of the workman applicant that the enquiry officer has fully relied on the evidence of the doctor and Mr. Brij Mohan but he has overlook the evidence of Mr. Chanakya, Mr. U.R. Sharma and the defence witness. The defence witness has stated that the took the workman applicant to his house by Air bus and he was quite fit that night and he was nt a drunken state. His name is Md. Harun and he is an employee of Air India.

Mr. Chankya has stated that the workmen applicant complained of pain in his Shoulder but he completed one flight and the accident took place in the next Flight so according to Mr. Chanakya who was present there, the workmen applicant had already complained a pan in his shoulder and the workman applicant has filed prescription of Air India Clinic and from that prescription, it appears that he was under treatment for almost three weeks prior to the incident and he was X-rayed buy the doctor and he was given brugesic. The incident occurred on 17.51989 whereas the doctor has recommended pain killers on 10.05.1989 for one week. It was submitted that the pain in shoulder has been proved buy the statement of Chanakya and medical prescription of the Air India Clinic and Mr. Chanakya has deposed that while he completed the first flight he was in a drunken state and he was not in a drunken state when the tractor dashed against the pillar. As such, the witness who was present at the spot has deposed that the workmen applicant got down the tractor and only a kingpin was broken. It is apparent from the Inspection Report that front king pin is broken, but Mr. P.N. Sinha has given other two statements that front portion was damaged and that suspension was damaged. This shows that Mr. P.N. Sinha is an interested witness. At one place, he says that king pin was broken and the second place, he said that the front suspension was broken and at the third place he said that the front portion was broken. It appear from

statement of Mr. Sinha that he was not present at the place of occurrence. Mr. Brij Mohan was certainly not present on the place of occurrence and none of the witness have seen the breathalyzer machine. As such, the finding of the enquiry officer that Brij Mohan Sinha and Doctor support the drunkenness of the workman applicant becomes doubtful in the light of the oral evidence of Mr.Chanakya and Mr. U.R. Sharma, and the defence witness Md. Harun.”

53. The learned Tribunal took note of the discrepancy in the signatures of Dr. Manoj Pabrai in two copies of the same document i.e. the statement of Dr. Manoj Pabrai before the Enquiry Committee. The failure on the part of the Petitioner to submit the originals of his statement, despite repeated orders, justifies the interference in this case. The perversity in the statement of Dr. Manoj Pabrai due to the discrepancy in signatures further casts doubt on the legitimacy of the ‘Breathalyser’ test as none of the witnesses saw the readings of the test. When the statement of the doctor cannot be taken into consideration due to the apparent discrepancy, the same will apply to the ‘breathalyser’ report issued by the very same doctor. Since there is no report to show that the tractor was devoid of mechanical faults, the conclusion arrived out of the aforementioned apparent error can by no means be disregarded. It cannot be disregarded that there existed apparent inconsistencies in the documents of the enquiry report.

54. With respect to the contradictions in the witness statements of Mr. Brij Mohan, Mr. U.R. Sharma and Mr. P.N. Sinha, the contents of such statements and the conclusion thus arrived cannot be reappreciated by this Court in a writ petition. In the event there arise two or more reasonable outcomes deducible from the evidence and the Tribunal has relied on one such reasonable outcome and this Court while exercising writ jurisdiction

is not expected to interfere with the findings of the learned Tribunal. Hence, this Court is of the considered view that there is no error apparent in the impugned Award which warrants the interference of this Court while exercising jurisdiction under Article 226 of the Constitution.

GROSS INJUSTICE CAUSED TO A PARTY

55. The right to natural justice is an indispensable element of any judicial or quasi-judicial proceedings. With that being said, the opportunity to adequately present one's case is the logical extension of the right to be heard.

56. The Petitioner had placed reliance on *ECIL Hyderabad (Supra)* to state that it was not a requisite to furnish the evidence collected in the preliminary enquiry to the Respondent, as the same does not put the respondent/workman in a position of disadvantage while defending his case before the Enquiry Committee. The attendant question is whether the evidence collected in the preliminary enquiry had any bearing on the decision of the Enquiry Committee.

57. Here, it is conspicuous that the 'Breathalyser' test report was one of the prime considerations of the committee to corroborate with the witness statements. The legitimacy of that very test report is under challenge before this Court. Hence non supply of such vital document will definitely cause great prejudice to the respondent/workman. The stance taken by the Petitioner is thus far from plausible. Hence this Court is of the view that the preliminary enquiry evidence ought to have been furnished to the respondent/workman to enable him to defend his case.

ENQUIRY-VOID AB INITIO

58. The Petitioner has produced two office orders dated 07.03.1979 and 10.11.1987 to submit that the Deputy Director is the Competent Authority in the instant case to order the termination of service of the respondent/workman. The two office orders relied on by the Petitioner are new documents and do not form part of the records filed before the Tribunal. These new documents have rekindled the question of jurisdiction or competence of the Authority who issued the charge sheet, ordered the initiation of enquiry proceedings and ultimately passed disciplinary orders. Counsel for the Respondent relied on *Off. In-Charge (Cazri) (Supra)* to state that new facts cannot be introduced at the stage of judicial review. While rejecting the new plea the Court in *Off. In-Charge (Cazri) (Supra)* acknowledged that it is not permissible to raise such a plea at this stage as it is a mixed question of law and fact.

59. It can, however, be noticed that the new fact referred to in *Off. In-Charge (Cazri) (Supra)* pertains to the new plea on the petitioner/management not being an 'Industry' under the Industrial Disputes Act, 1947. *Per contra*, the present petition deals with a plea previously raised before the learned Tribunal with the support of new documents. Though a contention was previously raised regarding the competence of the Deputy Director-Ground Services, these office orders dated 07.03.1979 and 10.11.1987 were never brought to the attention of the Tribunal.

60. It is the duty of the Petitioner to produce sufficient evidence in support of their case. It is an inescapable surmise that the said documents

were well within the knowledge of the Petitioner company during the proceedings before the Tribunal, as it is their very own management which has passed them. Yet there has been a failure on their end to produce these office orders before the Tribunal. By virtue of this fact, this court has no obligation to reagitate the pleas that have been adjudicated by the Tribunal solely due to the failure on the part of the Petitioner to adduce appropriate evidence at that point in time.

61. Thus the decision of the Tribunal cannot be considered erroneous in the light of the fact that these documents were never brought to its attention during the proceedings.

PAST CONDUCT

62. It was the case of the Petitioner that the Tribunal turned a blind eye towards the past conduct of the respondent/workman, where the reinstatement of such a person would do nothing but pose a threat to the other employees and resources of the Petitioner company. As held herein above by this Court, the charges levelled against the respondent/workman in the chargesheet have not been proved even under the touchstone of 'Preponderance of Probability'. Hence this Court is of the considered view that the past conduct of the respondent/workman will have no ramifications in the outcome of the present petition. Therefore, this Court finds no reason to examine the past conduct.

63. In view of the detailed discussions herein above, this Court finds no infirmity or perversity in the impugned Award dated 30.07.2004 passed by the learned Tribunal. Hence while exercising jurisdiction under Article

226 of the Constitution, this Court finds no reason to interfere with the impugned Award.

64. The present Writ Petition is dismissed. No order as to costs.

GAURANG KANTH, J.

NOVEMBER 09, 2022

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