

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

CWP-12650-2017 (O&M)
Date of decision : 13.12.2023

ALIMUDDIN

...Petitioner

Versus

M/S VOITH PAPER FABRICS INDIA LTD.
AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Alok Mittal, Advocate (Legal Aid Counsel)
for the petitioner.

Mr. S.S. Saini, Advocate
for respondent No.1.

HARSH BUNGER, J.

Petitioner (Alimuddin) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of *certiorari* for quashing the impugned Award dated 13.01.2017 (Annexure P-16) passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad (for short 'the Tribunal'); whereby, the reference of industrial dispute regarding termination of services of the petitioner-workman have been answered against him.

2. Briefly, the petitioner was working with respondent No.1- M/s Voith Papers Fabrics India Limited (here-in-after referred to as 'the Management') as 'Labourer' for the last more than 34 years upto the year 2012, when he was placed under suspension vide order dated 30.06.2012 and subsequently, a charge sheet dated 06.07.2012, levelling the following

charges, was served upon him.

Charge No.1	<i>On 24 April 2012, you were on extra time duty during 3rd shift (2300 Hrs. to 0700 Hrs.) and you got the cloth woven without re-setting the weaving and with knots to the warp due to which 3.8 meters of cloth got wasted. When the Shift Officer Shri Kamlesh Kumar Singh asked you regarding this mistake, your reply was that you will explain the same ahead.</i>
Charge No.2	<i>On May 2, 2012, you were on duty during 1st shift (0700 Hrs. to 1500 Hrs.), the shuttle box of weaving was not working properly and you were asked to check it, then you came with the hammer and left from there putting the hammer on the shuttle box and after a short period the plate of shuttle box got broken, which loss has occurred due to your carelessness.</i>
Charge No.3	<i>On 25 June, 2012, you were on duty during 2nd Shift (1500 Hrs. to 2300 Hrs.) and the weaver of Loom No.11 was working and he showed the Shift Officer Shri Ram Chander about something wrong in that felt. Shri Ram Chander advised him to show the same to the Tackler Shri Alimuddin and the weaver asked you to see the aforesaid loom but you did not take it seriously and took 2.5 Hrs for setting of 7 cm. of cloth and when Shri Ram Chander asked you about the loss of production of Company due to wastage of time, you started asking about the schedule of your work and the post given to you by the Company and make complaint with the higher officers as well as started speaking unwarranted words.</i>
Charge No.4	<i>On 27 June 2012, you were on duty during 2nd Shift (1500 Hrs. to 2300 Hrs.), the weaver of Loom No.3 was working and you changed the width of reed according to design of the felt but the width of reed was turned wrong due to which the weaving of felt turned wrong upto 0.5 meter and the same came into knowledge during the 1st shift of next day when the felt came upward from the roller of the loom, Shri Ram Chander told you to do your work carefully then your answer was not correct.</i>
Charge No.5	<i>There is also a charge against you that you misbehave with the Shift Officers and do not obey their instructions and you claim yourself to be a staff member despite that of a labour.</i>

The petitioner replied to the aforesaid charge sheet. Since, the respondent No.1-Management was not satisfied with the afore-said reply; accordingly, an Enquiry Officer was appointed vide letter dated 27.07.2012. It appears that the enquiry proceedings were initiated by the Enquiry Officer, in which, the petitioner participated and thereafter, the Enquiry report dated 15.02.2013 (Annexure P-9) was submitted, which reads as under :-

“Keeping in view the statements of the witnesses and documents produced by both the sides, I have reached at the conclusion that on 24.04.2012, the charged worker was on overtime duty in the shift in which 3.8 meters of cloth has got wasted. The reason of the cloth getting wasted is the carelessness of the charged worker. It is also proved through the witnesses that on dated 02.05.2012, the charged worker was on duty during the 1st shift. He was entrusted the job of removing the fault of the shuttle box. The charged worker came to remove the fault with the hammer. Instead of repairing the shuttle box he broke the shuttle box with the hammer. The charged worker has himself admitted that the hammer was in his hand while there was no need of hammer for repairing the shuttle box. It is also proved through the statements that on 25.06.2012, the charged worker was on duty in the 2nd shift and Shri Ram Chander MW3 was also on duty, and the work, which was given to the charged worker on that day, was only of half an hour, but the charged worker wasted the time by putting two and half hours instead of half an hour. It is also proved through the witnesses that on dated 27.06.2012, in the 2nd shift, the charged worker was on duty at Loom No.3 and the charged worker had changed the width of the reed which was not according to the design due to which lot of cloth got wasted. The charged worker could neither

produced any witness in his defence nor he himself could prove the charges to be wrong through his statements.

On the basis of the statements of witnesses and the documents produced before me, I declare the charged worker guilty of the charges levelled against him and return the original file of the Inquiry along with the documents to the Managers.”

3. The Management issued Show Cause Notice, to which the petitioner submitted his reply. Subsequently, the Management passed an order dated 22.04.2013 (Annexure P-11), whereby, the petitioner was discharged from service. The order reads as under :-

“Sub : Order of Discharge from services.

You had committed certain acts of misconduct during your employment with the Company for which you were placed under suspension vide letter dated 30/06/2012 which was duly received by you. Thereafter a letter of charge-sheet dated 06/07/2012 was also issued to you. The letter of charge-sheet was also duly received by you. You submitted reply to the charge-sheet vide your letter dated 07/07/2012. Your reply to the charge-sheet was duly considered by the management and found to be unsatisfactory. Accordingly it was decided by the management to hold domestic enquiry in the matter of charge-sheet and an order dated 10/07/2012 was issued regarding holding domestic enquiry. This letter was also duly received by you. The management issued another letter dated 27/07/2012 informing you about the appointment of Enquiry Officer. This letter was also received by you. The Enquiry Officer conducted the enquiry. You fully participated in enquiry and full opportunity was given to you to defend yourself in the enquiry. The Enquiry Officer submitted the report holding you guilty of charges. The Management issued a Show Cause Notice to you about the proposed punishment. Copy

of the report of the Enquiry Officer was also supplied to you. You submitted reply to the proposed punishment. The same was duly considered by the management. The charges levelled and proved against you were of serious nature and deserved a punishment of dismissal from services. However, the management took a lenient view in the matter and decided to discharge you from the services instead of dismissal from the services...”

4. It appears that thereafter, the petitioner raised an industrial dispute, which was referred for adjudication to the learned Tribunal below.

5. From the pleadings of the parties, the learned Tribunal framed the following issues :-

“1. Whether the domestic enquiry as got conducted by the respondent against the workman is improper and unfair as alleged? OPW

2. Whether the termination of the services of workman Sh. Alimuddin is illegal. If so, to what relief he is entitled? OPW

3. Relief.”

6. A perusal of the impugned Award dated 13.01.2017 (Annexure P-16), would reveal that while deciding Issue No.1, the learned Tribunal has returned a finding that the petitioner has not been able to lead any cogent and trustworthy evidence to prove that the domestic enquiry conducted against him, was improper and unfair.

As regards the Issue No.2, the Tribunal below has returned the following findings :-

“ISSUE NO.2:

13. Exhibit MW/W2/8 is the copy of the Show Cause Notice, as issued by the respondent to the workman regarding the proposed punishment of his dismissal from the service, as intended to be awarded to him in view of the gravity of the allegations as found by the Enquiry Officer to

have been proved against him and Exhibit MW/W2/9 is the copy of the reply, as submitted by the workman to the same and Exhibit MW/W2/12 is the copy of the order dated 22.04.2013, as passed by the respondent qua the discharge of the workman from the service, instead of his dismissal from the service, while taking a lenient view. A perusal of the copy of the charge-sheet as served to the workman, i.e. Exhibit MW/W2/3, reveals that he was alleged therein to have misbehaved with his seniors and to have caused loss to the respondent because of being careless in performance of his duty. In this report Exhibit M1, the Enquiry Officer has found all these allegations to have been duly proved against the workman. In such circumstances, the punishment of the discharge of the workman from the service, being a lenient/lesser one than the above-proposed punishment, cannot be taken to be disproportionate to the afore-said misconduct on his part and rather, it perfectly commensurates with the above-mentioned misconduct and therefore, the order qua the punishment as awarded to the workman, also does not call for any alternation/interference by this Court. Hence, this issue is also decided against the workman.

RELIEF :

14.As a sequel to the findings as returned by this Court on both the issues under adjudication and as discussed in the preceding paragraphs, the presence reference is hereby answered against the workman and an Award is passed accordingly. File be consigned to the record-room after due compliance.”

7. Being aggrieved against the afore-said Award dated 13.01.2017 (Annexure P-16) passed by the learned Tribunal below, the petitioner has filed the instant writ petition before this Court.

8. Learned counsel for the petitioner has submitted that the punishment awarded to the petitioner does not commensurate with the

alleged misconduct. It is submitted that the petitioner has unblemished record for more than 34 years and the respondent-Management as well as the learned Tribunal below has failed to consider the said aspect. It is next submitted that neither any opportunity of hearing was granted to the petitioner nor he was permitted to bring evidence on record; hence, the enquiry proceedings as well as the enquiry report are unsustainable in the eyes of law. It is submitted that the Tribunal below has erred in law and fact in considering the enquiry report, which was biased one at the instance of the Management and the enquiry was conducted in a most unfair manner. It is submitted that Enquiry Officer had not given any finding on Charge No.5, which pertained to misbehaving with the Shift Officers. Learned counsel for the petitioner, while referring to Enquiry Report (page 51-52 of the paper-book), has laid stress on the fact that although the petitioner was suspended on 30.06.2012; however, a complaint dated 05.07.2012 of Shri Kamlesh Kumar Singh, Senior Officer and another complaint dated 06.07.2012 by Shri Ram Chander, Supervisor against the petitioner, are subsequent to the date of his suspension. Learned counsel for the petitioner has submitted that the order of discharge dated 22.04.2013 (Annexure P-11) has been passed with pre-conceived notion of removing the petitioner from the services.

With the afore-mentioned submissions, learned counsel for the petitioner prayed that the impugned Award dated 13.01.2017 (Annexure P-16) passed by the learned Tribunal below be quashed. It has also been prayed that as on date, the petitioner has already crossed the age of superannuation; accordingly, appropriate relief be granted to the petitioner.

9. On the other hand, learned counsel appearing for respondent No.1-Management has opposed the prayer of the petitioner on the ground that the charges levelled against the petitioner were duly proved before the Enquiry Officer as well as before the Tribunal below. It is submitted that the enquiry was conducted in a fair and proper manner and there was no procedural irregularity. It is submitted that the punishment awarded to the petitioner is commensurate with the charge of misconduct levelled against him and therefore, there is no scope for any interference in the punishment as well as the impugned Award passed by the Tribunal below. Accordingly, prayer for dismissal of the writ petition has been made.

10. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

11. As regards the enquiry, it has come on record that the petitioner was served with a charge-sheet, to which he had submitted his reply and subsequently, in the enquiry proceedings also, the petitioner was associated and a show-cause notice was also served upon him. Although, the petitioner submitted that the Show Cause Notice was served without supplying him a copy of the enquiry report; however, it is his own case that the enquiry report was given to him subsequently and he had submitted his reply to the Show Cause Notice and thereafter, the order of discharge was passed against him. Learned counsel for the petitioner has failed to point out any procedural irregularity or infirmity in the conduct of the enquiry proceedings; accordingly, it cannot be held that the enquiry proceedings were not conducted in a fair and proper manner. However, a perusal of the enquiry report would suggest that the following charges are stated to have

been proved against the petitioner :

i) that on 24.04.2012, the charged worker was on overtime duty in the shift in which 3.8 meters of cloth has got wasted. The reason of the cloth getting wasted is the carelessness of the charged worker.

ii) that on dated 02.05.2012, the charged worker was on duty during the 1st shift and he was entrusted the job of removing the fault of the shuttle box. The charged worker came to remove the fault with the hammer. Instead of repairing the shuttle box he broke the shuttle box with the hammer. The charged worker has himself admitted that the hammer was in his hand while there was no need of hammer for repairing the shuttle box.

iii) that on 25.06.2012, the charged worker was on duty in the 2nd shift and Shri Ram Chander MW3 was also on duty, and the work, which was given to the charged worker on that day, was only of half an hour, but the charged worker wasted the time by putting two and half hours instead of half an hour.

iv) that on dated 27.06.2012, in the 2nd shift, the charged worker was on duty at Loom No.3 and he had changed the width of the reed which was not according to the design due to which lot of cloth got wasted. The charged worker could neither produce any witness in his defence nor he himself could prove the charges to be wrong through his statements.

12. Upon perusal of the paper-book, it is found that there is no material on record in support of Charge No.5, which related to misbehavior on the part of the petitioner. Even a perusal of the enquiry report suggests that no finding has been returned in respect of Charge No.5. So far as the other four charges are concerned, it only relates to the wastage of cloth and break-down of machinery and for the said charges, in my considered view, the punishment of discharge from service as imposed upon the petitioner by

respondent No.1-Management and as upheld by the Tribunal, is shockingly disproportionate and the same cannot be sustained.

13. In view of the afore-mentioned circumstances and also considering the fact that the petitioner has already crossed the age of superannuation, I am of the considered view that interest of justice would be met if the respondents are directed to pay a *lump sum* compensation of Rs.3 lacs to the petitioner. The afore-said amount shall be paid by the respondent-Management to the petitioner within a period of three months from the date of receipt/production of certified copy of this order, failing which, the petitioner would be entitled to 6% simple interest on the afore-said amount till its realization.

14. Accordingly, the present writ petition is partly allowed and is disposed of in the afore-stated terms.

15. All pending application/s, if any, shall stand closed.

December 13, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No