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

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Reserved on: 05.12.2022
Pronounced on: 12.01.2023

+ **W.P.(C) 8549/2003 and C.M. No. 2867/2004**

NAUBAT RAM

..... Petitioner

Through: Ms. Tripat Kaur Chawla,
Advocate.

versus

DELHI POWER CO.LTD.

..... Respondent

Through: Mr. Sujit Kr. Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J

1. The case at hand is a Writ Petition preferred under Article 226/ 227 of the Constitution of India. The Petitioner in the present case is aggrieved by the Award dated 20.12.2002 passed by the Industrial Tribunal No. II in I.D. No. 17/1993 titled as *The management of M/s Delhi Electric Supply Undertaking Shakti Bhawan, Nehru Place, New Delhi and Shri Naubat Ram through Delhi State Electricity Board Employees Union 626, Natra Neel Delhi* (hereinafter referred to as “**impugned award**”).
2. Vide the impugned award, learned Labour Court has held that a fair enquiry had been conducted against the Petitioner in which he had been found guilty of misappropriation of funds. Consequently, learned Labour Court, upheld the punishment imposed by the Disciplinary

Authority and held that the Petitioner was not entitled for any relief from the learned Labour Court. Being aggrieved by the said decision, the Petitioner has prayed for issuance of a writ in the nature of Certiorari or any other appropriate writ thereby setting aside the impugned award.

FACTS RELEVANT FOR THE CONSIDERATION OF THE PRESENT WRIT PETITION ARE AS FOLLOWS:

3. The Petitioner, Shri Naubat Ram, had joined the services of Delhi Power Company Limited (the erstwhile Delhi Electricity Supply and Undertaking) as a junior clerk on 20.03.1970 and was promoted as a senior clerk on 28.8.1979.
4. During his service, the Respondent management issued a chargesheet dated 03.04.1986 against the Petitioner with the following charges:

"Shri Naubat Ram, Sr. Clerk while working as such on 1.10.83 at Counter No.509, Distt. LWR misappropriated a sum of Rs.200/- out of Rs.750/- paid to him as consumption charges by one Shri A.C. Sharma son of regd. Consumer in respect of electricity Bill pertaining to K.Kos. 736767 and 736651, Thus he failed to maintain absolute integrity and devotion to duty in violation of Rule 3(1) (i) & (ii) of COS (Conduct) Rules, 1964 as detailed in the statement of allegations attached,"

5. The Respondent/Management conducted an enquiry against the Petitioner in accordance with the DESU (DMC) Service (Control & Appeal) Regulations, 1976. The enquiry officer submitted a detailed enquiry report holding that the charges levelled against the Petitioner workman as 'proved'. Disciplinary Authority accepted the recommendation of the enquiry officer and imposed a penalty of reduction in rank of the Petitioner to the grade of Junior Clerk initially

for a period of two years, which was reduced to one year upon an appeal being preferred by the Petitioner to the Appellate Authority.

6. Aggrieved by his demotion, the Petitioner raised an Industrial Dispute. Vide reference No. F.24 (4551)/92-Lab dated 08.01.1993, the Secretary (Labour) Government of the National Capital Territory of Delhi referred the dispute between the management of M/s Delhi Electric Supply Undertaking and the Petitioner for adjudication to the Industrial Tribunal with the following term of reference:

"Whether the penalty of reduction in rank to the grade of Jr. Clerk for a period of one year, imposed upon on Naubat Ram is illegal and/ or unjustified and if so, to what relief is he entitled and what directions are necessary in this regard?"

7. On the basis of the pleadings of the parties, the learned Labour Court framed the following issues on 17.10.1994:

- "(1) Whether the dispute has been validly and properly espoused by the union as alleged in the written statement? If so, its effect?
(2) Whether BSEB Employees Union has locus standi to raise the dispute? If so, its effect?
(3) Whether the employees of DESU are not the members of the Municipal Employees Union? If so, its effect?
(4) As per terms of reference."*

8. Subsequently, on 17.10.1995, the following additional issue was also framed by the learned Labour Court:

"4-A Whether the enquiry conducted by the management was not fair and in accordance with the principles of natural justice? If so, to what effect?"

9. In order to prove his case, the Petitioner/Workman stepped into the witness box as WW-1. Mr. Rajiv Aggarwal was examined as WW-2

on behalf of the Municipal Employees Union. On behalf of the Respondent/Management, MW-1/Mr. K.S Mahajan was examined.

10. Upon perusing the material facts and evidence on record, the learned Labour Court vide its Award dated 20.12.2002 answered Issue nos. 1, 2 and 3 in favour of the Petitioner. However, Issue nos. 4 and 4A were decided in favour of the Respondent and against the Petitioner. The terms of the reference were answered in the negative and the learned Labour Court held that the termination of the services of the Petitioner was legal and justified. The Petitioner was thus held not entitled to any relief.
11. Aggrieved by the aforesaid award, the Petitioner has challenged the same in the present Writ Petition and sought setting aside of the impugned award.

SUBMISSIONS ON BEHALF OF THE PETITIONER

12. Ms. Tripat Kaur Chawla, learned counsel on behalf of the Petitioner, challenged the validity of the impugned award and contended that the award rendered by the learned Labour Court was not based on any cogent and reliable evidence. To bolster her contention, the learned counsel further submitted that the learned Labour Court had failed to appreciate that the mere fact of the Enquiry Report being 29 pages in length would not absolve the learned Labour Court from examining whether the findings rendered by the Enquiry Officer were based on any evidence. It was further submitted by the learned counsel that no reasons had been recorded by the learned Labour Court for disbelieving the version of the Petitioner.

13. It was further submitted on behalf of the Petitioner that the learned Labour Court had failed to consider the fact that the complainant in the case, Smt. Suhagwanti, had not stepped into the witness box before the learned Labour Court to prove her case. Learned counsel bolstered her challenge by submitting that although the entire basis of the Departmental Enquiry against the Petitioner was the complaint by Smt. Suhagwanti, the learned Labour Court had ignored the fact that she had not even been examined before the Enquiry Officer and her son had been examined in her place. To conclude this limb of her argument, learned counsel for the Petitioner submitted that an adverse inference was required to be drawn against the Respondent on the ground of withholding the complainant's testimony which was the best available evidence in the present case.
14. Learned counsel for the Petitioner further submitted that entire proceedings before the Enquiry Officer were illegal as adequate opportunity had not been granted to the Petitioner to present his case.
15. With these submissions, learned counsel for the Petitioner prays for setting aside of the impugned Award.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

16. Mr. Sujit Kumar Singh, learned counsel on behalf of the Respondent, submitted that the fact of non-examination of the complainant Smt. Suhagwanti had been adequately explained before the Enquiry Officer and the Enquiry Report also had noted the statement of Shri A.C. Sharma, the son of Smt. Suhagwanti, as being the actual complainant in the aforesaid proceedings before the Enquiry Officer. Learned

counsel further submitted that the complaint had merely been submitted under the name of Smt. Suhagwanti, the mother of Sh. A.C. Sharma as she was the registered consumer.

17. It was further contended on behalf of the Respondent that the scope of enquiry of this Court in Writ jurisdiction was extremely limited and this Court could not re-appreciate the evidence on record in the exercise of writ jurisdiction. To fortify his contention, learned counsel on behalf of the Respondent took this Court through the material on record and submitted that the findings rendered in the Enquiry Report passed by the Enquiry Officer were well-reasoned and based on cogent and reliable evidence.
18. Learned counsel further relied on the documents placed on record before the learned Labour Court to contend that the Departmental Enquiry was held in accordance with the principles of natural justice.
19. With these submissions, learned counsel for the Respondent prays for the dismissal of the present Writ Petition.

LEGAL ANALYSIS BASED ON THE FACTS OF THE CASE

20. This Court has heard learned counsel for the parties and also examined the evidence placed on record and the judgments relied upon by the parties.
21. From a perusal of the writ petition and the evidence placed on record, it can be discerned that the sole point of analysis in this case is the question of the enquiry being conducted in a fair and proper manner and the extent of judicial review of the award rendered by the learned Labour Court.

22. Before examining the facts of the present case, it is important to examine the power of the learned Labour Court and the High Court in the matters of domestic enquiries.
23. It is a well settled principle of law that the jurisdiction of the High Court to issue a writ of Certiorari is a supervisory jurisdiction. The scope of interference by a Court under the exercise of Writ Jurisdiction is extremely limited. The power of judicial review is meant to ensure that the parties concerned receive fair treatment and not to ensure that the findings recorded by the court below align with the view held by the writ court. The conclusion reached by the court below need not necessarily be correct in the eyes of the Court. Judicial review is not an appeal from a decision but is merely a review of the manner in which the decision has been made. The Court is entrusted with the power only to examine as to whether the inquiry was held by a competent officer, whether rules of natural justice were complied with and whether there was some evidence on the record to support the findings arrived at by the court below.
24. However, the power conferred on Industrial Tribunals/ Labour Courts, under the Industrial Disputes Act, 1947 (hereinafter referred to as the “**I.D. Act**”) is far wider than the power exercised by the High Court in its Certiorari jurisdiction, more so, after introduction of Section 11-A of the I.D. Act. Pursuant to the amendment made to the I.D. Act, by incorporation of Section 11-A, Labour Courts/ Tribunals are now clothed with the power and jurisdiction to re-appreciate the material available on record and substitute its own findings for that of the Disciplinary Authority. The power exercised

by the learned Labour Court is akin to that of an Appellate Authority and even in cases where the domestic enquiry is held in accordance with principles of natural justice, Labour Courts /Tribunals are now entitled to interfere with the findings arrived in the domestic enquiry, substitute its own findings on the very same evidence, reach conclusions different from that of the Disciplinary Authority and even hold that the charge of misconduct is not established. Even in cases where Labour Courts/Tribunals find that the evidence and material available on record justifies the finding of misconduct arrived at by the Disciplinary Authority, it is still entitled to hold that the order of punishment imposed is not justified under the circumstances and impose a lesser punishment.

25. It is no more *res integra* that the finding of fact recorded by the Industrial adjudicator, as a result of appreciation of evidence, cannot be reopened or challenged on the ground of insufficiency or inadequacy of evidence. The adequacy or insufficiency of evidence led on a point and the inference of fact to be drawn therefrom is within the exclusive jurisdiction of Industrial adjudicator. The finding of fact, recorded by a Labour Court/Industrial Tribunal, can only be interfered with, if it is shown that the said finding of the learned Labour Court/Industrial Tribunal is patently illegal.
26. Based on the above stated legal principle, this Court proceeds to examine the facts of the present case. At this stage, it will be pertinent to note the findings of the enquiry officer regarding the charges levelled against the Petitioner:

“The stub portion Ex. PW-1/C and the receipt portion Ex. PW-1/A when put together show that the amount of Rs.750/- in blue ink which should have been on the receipt portion had been scored out and the portion of remaining writing on the receipt portion tallies with the portion on the stub part which shows that the amount of Rs. 750/- was actually scored out when the stub portion had not been detached. It appears that this amount of Rs. 750/- and that of the previous total had been scored out and a fresh total in red ink put showing the total amount of Rs. 550/- as an advice to the Jr. Cashier for issue of receipt and a receipt for Rs. 550/- has been issued. From the evidence of Shri AC Sharma and the totaling on the receipt and the bill I am satisfied that a sum of Rs. 750/- had been paid by Shri AC Sharma and a receipt for Rs. 550/- had been issued to him.”

27. The learned Labour Court examined the Enquiry Report in detail on the issue pertaining to the terms of reference before it. The relevant portion of the award reads as hereunder:

“15. To appreciate the case, I have gone through the enquiry proceedings and the report available on the record. The enquiry officer has given a detailed report. It is evident that management produced MW-1 Sh. A.C. Sharma who stated before the enquiry officer that there was electricity connection in the name of his father Sh. Girdhari Lai Sharma and on 1.10.1983 he has gone to pay the bill Ex. PW 1/A in DESU Cash office where the cashier told him to pay Rs.750/-. He paid the sum of Rs.750/- and he was issued a receipt Ex. PW 1/A. The receipt was issued in the hands of respondent. When he received the next bill he saw the amount of Rs.200/- shows to be arrear then he saw the earlier receipt. He enquired about it and gave a written request to adjust the earlier amount. He was cross examined by Sh. M.L. Saini, defence assistant in detail. The next witness produced before the enquiry officer was Sh. S.C. Gaur. He was also cross examined by the defence assistant in detail. Thereafter, third witness PW-3 Sh. J.P. Gupta was recorded and last witness PW—4 S.C. Julka was recorded. All the witnesses were cross examined at length. The workman produced DW-1 Sh. M.K. Jain, DW-2 N.S. Behl and DW-3 Shadi Ram and then made the defence statement. The argument was advanced on behalf of the workman which was discussed in four pages and after considering the entire material, a detailed report of 29 pages was prepared by the enquiry officer. The perusal of enquiry shows that due opportunity was given to

respondent/workman and there is no violation of principles of natural justice. The workman has failed to point out anything in the enquiry proceedings which lead to the inference that his right to defend has been curtailed by the enquiry officer. He was given full opportunity to defend case. He produced witnesses in defence. Moreover, the workman has not denied the receipt of money and non-issuance of receipt for full amount of Rs.750/-, claiming it to be a clerical error. Consequently, it is held that workman has failed to establish that domestic enquiry was not proper. Issue is decided against the workman and in favour of the management.”

16. ISSUE No. 4

As per finding on issue No. 4-A, a fair enquiry was conducted against the workman in which the workman has been found guilty of misappropriation. The disciplinary authority ordered to reduce his rank to Jr. Clerk for the period of two years already reduced to one year. So the workman is not entitled for any relief. Award is passed accordingly...”

(emphasis supplied)

28. From the perusal of the impugned Award, it is evident that the learned Labour Court examined the enquiry proceedings with minute details and arrived at the conclusion that the enquiry conducted by the Respondent/Management is in accordance with law. Learned Labour Court vide impugned Award also examined the aspect of ‘Quantum of punishment’ and held that the same requires no interference.
29. Learned Labour Court exercised the jurisdiction vested in it by virtue of Section 11-A of the I.D. Act and this Court while exercising jurisdiction under Article 226 of the Constitution of India is not acting as an Appellate Authority to re-appreciate the evidence. Only in very exceptional cases, to meet the ends of justice, this Court can substitute its own decision on merits for that of the authority concerned or the Tribunal.

30. The allegation against the Petitioner was that he misappropriated a sum of Rs.200/- which was paid to him by a consumer towards the consumption charges. The allegation against the Petitioner was very serious in nature. The enquiry officer conducted a detailed enquiry and held that the charges are proved against the Petitioner. The enquiry officer recorded a finding of the fact based on evidence to the effect that *‘From the evidence of Shri AC Sharma and the totaling on the receipt and the bill I am satisfied that a sum of Rs. 750/- had been paid by shri AC Sharma and a receipt for Rs. 550/- had been issued to him. Learned Labour Court examined the enquiry conducted by the enquiry officer and held that ‘workman has failed to establish that domestic enquiry was not proper’.*
31. It is the case of the Petitioner that Smt. Suhagwanti was the complainant, however, she was not produced as a witness before the enquiry officer. On examination of the enquiry report reveals that the enquiry officer has considered this objection and recorded the finding as follows:

“If the case of shri Naubat Ram that the payment had been correct of the bill was made by Smt. Suhagwanti he would have at least requested for recording of her statement in defence since she was not produced by the PO. During investigation the statement of Shri AC Sharma was recorded who had stated that he had made the payments of the bill and that is why he was examined by PO. If Smt. Suhagwanti had made the payment her statement would have been there but in the face of the statement of Shri AC Sharma it was not considered necessary to record her statement though she was the complainant.”

In view of the said finding recorded by the enquiry officer, which was based on facts and evidence, this Court finds no reason to interfere with the same.

32. This Court finds no such exceptional circumstances which necessitate interference with the impugned Award. Learned Labour Court exercised the jurisdiction vested in it under Section 11-A of the I.D. Act and examined the evidence with minute precision. There is no perversity or infirmity in the decision of the Learned Labour Court. Hence this Court is not inclined to interfere with the impugned award(s) while exercising the jurisdiction vested in it under Article 226 of the Constitution of India.
33. Accordingly, the present Writ Petition along with the accompanying application is dismissed. There shall be no order as to costs.

JANUARY 12, 2023
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GAURANG KANTH, J.

