

CWP-5133-2016
CWP-3211-2016

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211

1. CWP-5133-2016
Decided on : 03.04.2024

Sher Singh . . . Petitioner(s)
Versus

The Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hissar and others . . . Respondent(s)

2. CWP-3211-2016

Ram Chander . . . Petitioner(s)
Versus

The Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hissar and others . . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Rahul Sharma-I, Advocate
for the petitioner(s) (in CWP-5133-2016).

Mr. Manoj Chahal, Advocate
for the petitioner(s) (in CWP-3211-2016).

Ms. Monica Chawla, Advocate and
Mr. Anil Chawla, Advocate
for respondents No.2 & 3 – UOI (in both cases).

SANJAY VASHISTH, J. (Oral)

1. This order shall dispose of aforementioned two writ petitions
i.e. CWP-5133-2016, filed by the workman – Sher Singh, and CWP-3211-
2016 filed by the workmen – Ram Chander, as both the aforementioned writ
petitions have arisen from the similar facts & circumstances and cause of

CWP-5133-2016
CWP-3211-2016

- 2 -

action as well as the controversy involved therein is of same nature.

2. By way of aforesaid writ petitions, both the petitioners i.e. Sher Singh (workman – petitioner in CWP-5133-2016) and Ram Chander (workman – petitioner in CWP-3211-2016), have sought quashing of award dated 18.12.2015, vide which, Reference No.07 of 2015 was answered against the petitioner – Sher Singh, and Reference No.06 of 2015, has been answered against the petitioner – Ram Chander. Basically, two separate awards have been passed by the learned Industrial Tribunal-cum-Labour Court, Hisar (in short, ‘learned Tribunal’) on 18.12.2015, which are almost identical on the facts and the law point involved for its examination through present writ petitions.

3. All the counsel representing their respective parties are in agreement that both the writ petitions can be decided by one and common judgment, therefore, this Court is dealing with the facts and circumstances of the writ petition filed by petitioner – Sher Singh i.e. CWP-5133-2016, and the decision of which would be applicable for the connected petition of petitioner – Ram Chander i.e. CWP-3211-2016.

4. On 10.08.1998, petitioner – Sher Singh was appointed as a ‘Biller’ against a vacant and permanent post and as such was posted at URC Canteen, Narnaul. Action has been taken against him for happening of an incident, while he was posted at Chinkara Canteen, Extension Counter, Badhra.

Similarly, petitioner – Ram Chander was appointed as a ‘Caretaker’ against a vacant and permanent post, and as such was posted at 61, Sub Area Canteen at Mahendergarh. He was transferred to Rohtak, and thereafter at Charkhi Dadri and later on at Chinkara Extension Counter,

CWP-5133-2016
CWP-3211-2016

Badhra, at the time of initiation of action against him.

5. Mr. Rahul Sharma-I, Advocate, representing petitioner – Sher Singh (in CWP-5133-2016) and Mr. Manoj Chahal, Advocate, representing for petitioner – Ram Chander (in CWP-3211-2016), have jointly refered the facts from the case of petitioner – Sher Singh, and stated that a ‘**convening order**’ was circulated to investigate the circumstances, under which a large quantity of liquor (407 bottles) had been issued to the unauthorized persons from Chinkara Canteen, EC, Badhra, and in this regard, already a news was published in the newspapers of Haryana. Said investigation was started with a purpose to pinpoint the responsibility of wrongdoers.

Accordingly, proceedings of Court of Inquiry assembled at HQ 61, Sub Area on 10.06.2014, and thereafter, statements of the witnesses were recorded and during this course, petitioner – Sher Singh got recorded his statement on 13.06.2014, in question answer form as witness No.5. After conclusion of the Court of Inquiry/investigation, findings were recorded (Annexure P-3), wherein, for selling out the 407 bottles of liquor to unauthorized persons for monetary gains, eight officials were shortlisted and allegations against the petitioners – Sher Singh and Ram Chander, were summarized as under:-

Ser. No.	Name	Appointment	Acts of Omission/ Commission/ Neglect
(a)	xx	xx	xx
(b)	xx	xx	xx
(c)	Ex Hav Ramchander	Care Taker	(i) Hiding the facts and failing to report. (ii) Lack of moral and financial turpitude.
(d)	xx	xx	xx
(e)	xx	xx	xx
(f)	xx	xx	xx
(g)	Ex Nk Sher Singh	Salesman	(i) Hiding the facts and failing to report.

CWP-5133-2016
CWP-3211-2016

- 4 -

			<i>(ii) Lack of moral and financial turpitude.</i>
<i>(h)</i>	<i>xx</i>	<i>xx</i>	<i>xx</i>

6. Thereupon, show cause notice dated 11.08.2014 was issued to the petitioner(s) by the respondents, asking therein as to why the disciplinary action should not be initiated against them in terms of para 7(h)(xxxxii) Chapter VII of Canteen Organization Standing Orders, 2006 (COSO – 2006).

It is also pointed out here that initially enquiry was started for sale of 407 bottles of liquor, where it concluded by reaching to the conclusion that there was unauthorized business involving sale of 4664 bottles of liquor

7. Second show cause notice dated 12th September, 2014, was also issued. Petitioner – Sher Singh replied to the first show cause notice through reply dated 25th April, 2014, which is appended as Annexure R-4 with the written statement filed by the respondents also in the present writ petition. The stand taken in the reply, is reproduced as under:-

*“Chairman
Canteen Organization
Jaipur.*

*Nk Sher Singh (Retd.) Biller
Chainkra Canteen
EC Badhra (Bhiwani)*

Subject – In Reference to your Head Office Letter No. 4007 / DISCP/CC-30 dated 11.08.2014.

sir

- 1. Sir I Nk Sher Singh (Retd.) Biller has been working in Canteen Badhra for the Last 3 Years. Sir during the month of April, I was posted on duty on server and at grocery billing in the month of May but my Accident took place on 25.02.2014 in this accident I received so many injuries on hand and legs. So much so that a road was put on my leg and the wrist of my hand has been broken at two places due*

CWP-5133-2016
CWP-3211-2016

- 5 -

- to with my hands.*
2. *Sir, I used to come to my duty but was unable to do my work. Sir, duty used to be given on everyone's number but I was unable to do my duty. So much so that two people used to take me away. Even I was not able to do my work from my left hand.*
 3. *Therefore, sir, I cannot say anything about how this happened, nor have I ever seen anything like this during my job. And sir, still I want to apologize if I committed any such a mistake. I have full faith that you will accept my request.*
 4. *Sir, a photocopy of MLR of my accident and documents related to this accident is attached.*

Thanks

Dated: 25.08.2014

Applicant
NK. Sher Singh (Retd.) Biller
DC Badhra (Bhiwani)"

8. In para 10 of the writ petition (CWP-5133-2016), there is a reproduction of the relevant provision of rules, which are required to be applied in general, wherever, the allegations such as in the present case, are raised against the employees/workmen. Since, it is the prime contention of the petitioner that case of the petitioner was required to be conducted/investigated as per the said rules, it would be apt to notice here the said rules i.e. ingredients under para 7(h) (xxxxii) Chapter VII of COSO – 2006, which are reproduced here-under:-

“Procedure for dealing with cases of misconduct and position of penalties (Punishment)

9. *The procedure to be followed for dealing with cases of misconduct and imposing the penalties is given in the succeeding paras:*

10. **Preliminary Inquiry:** *It is not obligatory in every case to hold a preliminary inquiry or what is known as a fact finding inquiry. However, when a complaint is received against an emp or otherwise some act of commission or omission on the part of the emp comes to notice of the appropriate auth, it may be desirable to know as to how for the imputations or allegations leveled against the emp concerned have some substance and warrant initiation of disciplinary action against him. With this end in view, a preliminary inquiry may be conducted. The sole purpose of preliminary inquiry is to decide whether or not there is a prima facie case against the emp for proceeding against him. This objective can be achieved by either calling for the explanation of the defaulting emp or by ordering preliminary inquiry by an officer of the Canteen*

CWP-5133-2016
CWP-3211-2016

- 6 -

Organisation. The following pts must be borne in mind while ordering preliminary inquiry:

- (a) *There is no punitive element in the preliminary inquiry*
- (b) *The employee's association with this inquiry is not mandatory.*
- (c) *The inquiry should conclude into a report which should contain the finding as to whether there seems to be some substance in all or some of the allegations and to what extent the employee is responsible/involved.*

11. Action on Preliminary Inquiry Report: *The disciplinary auth (appointing auth) should exam the report and decide action to be taken for imposing one of the minor or major penalties. If it is so decided, then a regular inquiry into the allegations against the emp should be held, keeping in view the provisions of Article 311(2) and Rule 7 of the Civil Services Rules ,1987.*

12. Issue of Statement Of Charges and Allegations: *The grounds on which it is proposed to initiate regular inquiry should be reduced in the form of definite charges or charges. The charges should not be vague and should be expressed in a language that is clearly understandable. These should give full details of the incident. The charges should be communicated in writing to the delinquent together with statement of allegations or on which charge is based. The delinquent should be required to submit in writing his explanation of the charge or charges, if any, within a reasonable time (say 15 days) and to state whether he desires to be heard in person. For the purpose of preparation of his explanation, he should be permitted to inspect docus relevant to the inquiry and to take extracts there from provided that such permission may be refused in respect of a document of the disciplinary auth or special reasons considers it against the org interest to allow access thereto. The charge sheet and the statement of allegations will be sent to the delinquent along with the forwarding memorandum.*

13. Reply of the Delinquent and Its Examination: *The delinquent is required to submit his reply within the pd specified by the disciplinary auth unless it is extended in writing. It is not incumbent on the disciplinary auth to wait indefinitely for the reply or to give extension of time whenever requested. The delinquent is required to make statement against each charge if in his opinion the allegations are not correct or otherwise admit his inquiry need be held. If the disciplinary auth decides not to award any penalty, the case will be dropped. If, however, the disciplinary auth decides to the contrary, it would be necessary to give the delinquent a second show cause notice in order to afford him an opportunity to use against the proposed penalty. If in the opinion of the disciplinary auth, the imposition of major penalty is not warranted and that it should meet ends of the justice if some minor penalty is awarded. No show cause notice then is necessary. If the disciplinary auth after considering the explanation of the emp to the charge sheet, however, decides that the imposition of a major penalty is necessary to meet ends of justice, then an inquiry officer should be appointed to hold a regular inquiry in respect of charges which are not admitted and in respect of which a satisfactory explanation is not forthcoming. If the delinquent has requested for personal hearing, it*

CWP-5133-2016
CWP-3211-2016

- 7 -

should be accorded before ordering a formal inquiry.

14. **Appt of Enquiry Offr and the Procedure:** *The following procedure should be followed:*

- (a) *The disciplinary auth may himself conduct the enquiry in which case all the principles applicable to the Enquiry Offr as a tribunal will apply to it or, as is often the case, it may appoint another officer to enquire into the charges. Care should be taken in selecting the enquiry officer so as to avoid any genuine suspicion of bias. The enquiry officer must be an impartial officer.*
- (b) *The disciplinary auth should supply to the enquiry officer a copy of the charge sheet and the explanation of the Government emp. The relevant record should be placed by the departmental representative before the enquiry officer during the course of enquiry in the presence of the delinquent. The enquiry offr should act independently without any interference or instructions or pressure from any quarter.*
- (c) *Due notice of the time, date and place of enquiry should be given to the delinquent. This notice should be communicated atleast one week before the date fixed for the enquiry. It should be made clear in the notice that if the delinquent does not attend at the time and place mentioned in the emp concerned, avoids service, or is not available for service of notice, or refuses to accept notice, then a copy of the notice should be affixed at his permanent address and at his last known address and a notice to both the addresses should also be sent by Registered Post A.D. The enquiry off should, however, satisfy himself that service in the above manner has been affected and an order in writing should be made to that effect. If the official concerned does not appear at the time of the enquiry and due notice has been given as indicated above, the enquiry may be held exparte. If for any reason, the service of the notice is not affected about a week before the date of enquiry it would be expedient to adjourn the enquiry, if the delinquent makes a request in that behalf.*
- (d) *Similarly when a show cause notice at the second stage is issued calling upon the delinquent to show cause, why the proposed penalty should not be imposed, the service of the show cause notice should be affected in the manner indicated above.*
- (e) *It would, however, be the discretion of the enquiry offr to adjourn the enquiry if he deems it proper for any sufficient reason. If the enquiry offr declines to adjourn the enquiry at the request of the delinquent, he should pass an order stating briefly the reasons thereof.*

15. **Appointment of Presenting Offr:** *The disciplinary auth may nominate any person as Presenting Offr to present the case in support of the charges before the enquiry offr.*

16. **Legal Assistance for Defence:** *No person in the service of*

CWP-5133-2016
CWP-3211-2016

- 8 -

the Canteen Organization who is called upon to produce his defence to the charges against him shall be allowed to engage a counsel, provided that if the charge or charges are likely to result in his dismissal, the emp may, with the permission of the enquiry offr, be represented by a counsel. However, if a counsel is engaged on behalf of the Canteen Organization, the employee shall be entitled to engage a counsel.

17. **Attendance and Examination of Witnesses:** *The CC/the nominated 61 Sub Area Canteen will be responsible to make the requisite witness and records available concerning the enquiry. The enquiry officer should ensure that during the enquiry full opportunity is given to the delinquent to inspect the relevant records to cross examine the witnesses and to lead his defence. The enquiry offr should take oral evidence as may be relevant or material in regard to the charges and of the witnesses produced by the delinquent in his defence, his own statement and other relevant material brought on record should be signed by the enquiry off and the delinquent to sign every page of the record. The emp must also be given adequate opportunity of producing his own witnesses and documentary evidence in his defence. He is entitled to ask the enquiry officer to summon the witnesses.*

18. **Reports and Finding:** *After close of the inquiry, the sequence of actions should be as follows:*

- (a) *After the close of the enquiry, the enquiry officer should prepare his report which should, inter alia, indicate the following:*
 - (i) *The statement of the charges and the allegations framed against the Canteen Organization emps.*
 - (ii) *His explanation, if any?*
 - (iii) *The oral and documentary evidence produced in support of the charges.*
 - (iv) *The oral and documentary evidence led in defence.*
 - (v) *Findings on the charges.*
- (b) *The enquiry offr should give clear findings on each of the charges so that the emp should know from the findings on what ground he has been found guilty. Each finding must be supported by evidence and reasons thereof. The findings are in the nature of a report to the disciplinary auth to enable it to pass final orders. Such findings are to assist but do not bind him. He alone has to come to a final decision. However, the enquiry off should not in any case recommend or propose any penalty.*
- (c) *When the disciplinary auth gives a finding on any of the charges contrary to the finding of the enquiry offr, he will give detailed reasons thereof. However, in cases of the agreement with the findings of the enquiry offr, no separate reasons need be recorded unless he wishes to support the findings of the enquiry offr by supplementary reasons available from the record of the enquiry. While concurring with the findings of the enquiry offr, though no reasons need be recorded by the disciplinary auth but his order*

CWP-5133-2016
CWP-3211-2016

- 9 -

should show that he has applied his mind to the matter. It is the disciplinary auth who must be satisfied that the charges against the delinquent are proved and then he must tentatively decide about the penalty to be inflicted on the employee. It is only thereafter that the second show cause notice be issued.

- (d) *When the report of the enquiry offr is received, the disciplinary auth should pass an order after applying his own mind to the whole case and should come to his own independent conclusions un-influenced by any other person. Mere acceptance of the proposal made in the noting by the subordinates will not be sufficient and such an order will not stand the scrutiny of the courts.*

19. **Show Cause Notice:** *Where the disciplinary auth provisionally decides that one of the major penalties i.e. dismissal, removal or reduction in rank, reduction to a lower stage in the time scale of pay or compulsory retirement should be awarded, he should proceed to give the second show cause notice mentioning therein the proposed penalty. A copy of the enquiry report should accompany the show cause notice. Moreover, where the disciplinary auth disagrees with any findings of the enquiry officer recorded in favour of the delinquent should also accompany the show cause notice. So also the additional reasons, if any, given by the disciplinary auth in support of the finding arrived at by the enquiry offr should be communicated to the delinquent. The show cause notice must be issued and signed by the disciplinary auth is to take action against the emp. The emp should be given a reasonable time (say 15 days) to submit his reply. On receipt of the reply to the show cause notice, the disciplinary auth should examine it carefully and if he wishes to inspect any docu or to examine any witness in order to dispose of the explanation effectively he has the power to do so. The delinquent has no right to adduce any oral evidence. However, if he produces any document along with the reply, the disciplinary auth is not precluded from considering it, if it has any relevant.*

20. **Consideration of the Past Record:** *The disciplinary auth while passing a final order imposing a penalty on a delinquent after the charges have been proved, sometimes makes a reference and takes into consideration his past record in order to justify the awarding of a severe penalty.*

21. **Penalty (Punishment):** *The disciplinary auth should consider the whole matter before determining the actual penalty to be imposed. It is the discretion of the disciplinary auth to award any penalty but a graver penalty cannot be awarded than proposed in show cause notice. Where the disciplinary auth decides to do so i.e. to impose a graver penalty the emp will have to be served with a fresh show cause notice.*

22. **Final Order:** *The order of penalty is struck down by courts many a time for not being a speaking one i.e. not supported by reasons. This is necessary as the delinquent may file an appeal or revision before the higher administrative auth. This is also necessary for proper disposal of an appeal or revision against the*

CWP-5133-2016
CWP-3211-2016

- 10 -

order because the appellate auth or the revisional auth should be able to find out by reading the orders the grounds on which the order is based, in the reply to the show cause notice, the delinquent may put forward some explanation or point out some defects in the enquiry causing prejudice to him. All such objections should be disposed of by the disciplinary auth by a process of reasoning so that it is clear that the auth had fully applied his mind to the case. It should be possible to find out from the order the approach and mind of the disciplinary auth and the grounds on which the impugned order was passed. The basic idea is that from perusal of the order it should be obvious that the disciplinary auth had applied its own mind fully to all the aspects of the case.

23. **Speaking Order:** *If it appears that it would be inconvenient to record a self contained order, a brief order awarding the penalty may be passed but it should be accompanied by a note giving detailed reasons in support of the order.*

24. **Disciplinary Auth. to Award Penalties:** *Disciplinary auth will be the competent auth for awarding maj penalties. However, in the absence of the disciplinary auth, a subordinate offr appointed to officiate in place of the disciplinary auth, while exercising the powers of the disciplinary auth can award all penalties except the "termination of services."."*

9. Counsel submits that initially, the proceedings were started by apprising the workmen through show cause notice dated 11.08.2014, that it would be conducted as per the terms of para 7(h) (xxxxii) Chapter VII of COSO – 2006. However, without adopting the due course, abruptly the charge-sheet was issued and punishment was awarded.

All the proceedings required from Rule 13 to 24, were given go by. Thus, he submits that said aspect has neither been noticed by the learned Tribunal nor by the authorities. Further submits that award is liable to be set-aside, same being not maintainable, because the proceedings, which were against the rules, have been upheld vide impugned award passed by the learned Tribunal.

10. On the other hand, learned counsel representing respondents No.2 & 3, refers to the statement of the workman and submits that undoubtedly, workman appeared as witness, but from the statement given by him, it is broadly clear that he is involved in the illegal sale of the liquor.

CWP-5133-2016
CWP-3211-2016

- 11 -

However, this Court is not in agreement with the submissions addressed by counsel for respondents No.2 & 3, for the reason that the contents of the statement or even the reply dated 25.08.2014 of the workman – Sher Singh, nowhere suggest that there is a clear admission of guilt with his own free will and wish.

11. Counsel for respondents No.2 & 3 also argues that in view of Rule 31 of Chapter VIII of the Code of Conduct and Discipline, the dispute could not have been declared ‘industrial’ requiring its adjudication through the Labour Court, rather, the order of punishment is appealable under the said rule.

Broadly speaking, counsel for respondents No.2 & 3 (Management) indirectly argues that impugned award itself is without jurisdiction, as the dispute was not of the industrial nature, warranting its adjudication under the provisions of ID Act. Moreover, dismissal of reference by the learned Tribunal by declining to give any relief to the workman, fortifies the termination orders passed by the Management.

12. Further, counsel for respondents No.2 & 3 submits that the lengthy procedure pointed out by the petitioner – workman is not required in the cases in hand, because, it is clear-cut case of admission of guilt by both the workmen. Therefore, seeking response to the charge-sheet is enough and the other procedures prescribed and referred by the petitioner – workman, are not required to be followed mandatorily.

13. To strengthen his argument of necessity of adopting complete procedure of inquiry, counsel for petitioner(s) relies upon the judgment of Hon’ble Apex Court rendered in *State of Uttarakhand and others vs.*

Sureshwati, 92021) 3 Supreme Court Cases 108 and reads out para Nos. 18

CWP-5133-2016
CWP-3211-2016

- 12 -

to 21, which says as under:-

“19. *A four Judge Bench of this Court in Workmen of the Motipur Sugar Factory Private Ltd. v. Motipur Sugar Factory: AIR 1965 SC 1803, held that :*

“11. It is now well settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been properly held (see Indian Iron & Steel Co. v. Workmen: AIR 1958 SC 130) but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to Sana Musa Sugar Works (P) Limited v. Shobrati Khan: AIR 1959 SC 923, Phulbari Tea Estate v. Workmen: AIR 1959 SC 1111, and Punjab National Bank Limited v. Workmen: AIR 1960 SC 160. These three cases were further considered by this Court in Bharat Sugar Mills Limited v. Jai Singh: (1962) 3 SCR 684, and reference was also made to the decision of the Labour Appellate Tribunal in Ram Swarath Sinha v. Belsund Sugar Co.: AIR 1965 SC 1803. It was pointed out that “the important effect of omission to hold an enquiry was merely this: that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out”. It is true that three of these cases, except Phulbari Tea Estate case, were on applications under Section 23 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the tribunal for approval under Section 33 or on a reference under Section 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. Phulbari Tea Estate case was on a reference under Section 10, and the same principle was applied there also, the only difference being that in that case there was an inquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper.”

20. *Subsequently in Delhi Cloth and General Mills Co. v. Ludh Budh Singh: (1972) 1 SCC 595, this Court held that :*

“60. ... (1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does

CWP-5133-2016
CWP-3211-2016

- 13 -

not rely upon any domestic enquiry that may have been held by it, it is entitled to straightway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

* * * *

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.”

21. *Reliance is also placed on the judgment of this Court in Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd. v. The Management of Firestone Tyre & Rubber Co. of India (P) Ltd and Others: (1973) 1 SCC 813, wherein the broad principle regarding holding of the enquiry were spelt out as:*

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

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

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

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

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

CWP-5133-2016
CWP-3211-2016

- 14 -

contra.

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

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

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

(8) *An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.*

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

(10) *In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in Management of Panitole Tea Estate v. Workmens¹⁰ within the judicial decision of a Labour Court or Tribunal.*

* * * *

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

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*

CWP-5133-2016
CWP-3211-2016

- 15 -

accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. 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 re-appraise 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.'."

14. This Court has examined the pleadings of the parties, appended documents, impugned award and heard the submissions and recorded the same and reaches to the conclusion that at the first instance, the procedure prescribed under the law was required to be followed by respondents No.2 & 3 (Management) for developing the belief and faith that the required procedure under the settled law was followed before reaching to final conclusion and then taking action.

In the absence of following of the legal procedure, the basic element for imparting of true justice gets missed out, and that erodes the faith of the subjected person also, giving a negative impact over the civilized society.

15. Thus, on the basis of the submissions addressed and taking note of the admitted position, that the complete set of procedure, as reproduced and indicated herein-above, was not followed by respondents No.2 & 3

CWP-5133-2016
CWP-3211-2016

- 16 -

(Management), I deem it appropriate to **set-aside** the award dated 18.12.2015, as well as the orders of termination dated 24.10.2014, impugned before this Court.

16. However, at this stage, this Court does not deem it appropriate to apply its mind whether the subject matter can be examined under the provisions of the Industrial Disputes Act, 1947 or not ?

It is left open to the authorities concerned/respondents No.2 & 3 (Management), to initiate necessary inquiry by following due process of law and may proceed further for action afresh thereafter, if so required under the rules i.e. COSO – 2006.

Accordingly, both the writ petitions are hereby allowed.

(SANJAY VASHISTH)
JUDGE

April 03, 2024
J.Ram

Whether speaking/reasoned: ✓ Yes/~~No~~
Whether Reportable: ✓ Yes/~~No~~