



2024:DHC:4620



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 28th May, 2024**

+ W.P.(C) 20177/2005
D.T.C. Petitioner

Through: Ms. Manisha Tyagi, Advocate.

versus

VIR SAIN Respondent

Through: Mr. Rama Shankar and Mohd. Haris
Taslim, Advocates.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER
CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 226/227 of Constitution of India has been filed on behalf of the petitioner challenging the impugned award dated 12th October, 2004 passed by the learned Presiding Officer, Labour Court No. VII, Delhi ("Labour Court" hereinafter) in an industrial dispute bearing ID No. 166/97.

2. The brief facts relevant for the adjudication of the instant petition are as under:

- a) It is stated that the respondent workman was serving as a bus conductor in the petitioner's organization.
- b) On 3rd December, 1993, the respondent workman was on duty on a bus plying from Delhi to Pushkraj, when the checking took place near a place called Dudu, the respondent workman was allegedly found in violation of the rules of the petitioner entity.



- c) Consequently, on 21st November, 1994, the respondent was removed from his services following a departmental enquiry on 28th January, 1994 and 8th February, 1994.
- d) Thereafter, an industrial dispute was raised by the respondent, contending to the effect that his removal was *mala fide*, unjust and violative of principles of natural justice as neither was he given a copy of the preliminary witnesses nor the list of witnesses. It was further contended that his un-punched tickets were taken away by the checking staff and he had filed a complaint against the same, which was not considered by the enquiry officer.
- e) Thereafter, *vide* award dated 12th October, 2004, the learned Labour Court ruled in favour of the respondent workman, thereby, ordering reinstatement with full backwages.
- f) Being aggrieved by the same, the petitioner has approached this Court seeking quashing of the same.

3. Learned counsel for the petitioner submitted that the respondent workman was caught red handed by the checking staff and was indulged in misconduct for sixteen times in his career. Further, the respondent had also instigated the passengers to not give any statement or address to the checking staff with an intention using the same as a defense during the proceedings.

4. It is submitted that the respondent was duly served with a chargesheet dated 24th December, 1993 and all the charges leveled against the respondent



were duly proved in the domestic enquiry. The respondent failed to submit a reply to the show cause notice issued to him.

5. It is submitted that the learned Labour Court failed to consider that the standard of proof required in a domestic enquiry is *preponderance of probability* and charges need not be proved *beyond reasonable doubt* unlike in a criminal prosecution. Moreover, the charges against the respondent workman were duly proved.

6. It is submitted that learned Labour Court erred in holding that the enquiry was illegal solely on the basis of claim of the respondent workman of non-providing of defence assistant, whereas, the material on record clearly shows the contrary.

7. Therefore, in view of the foregoing submissions, the learned counsel for the petitioner entity submitted that the present petition be allowed and reliefs be granted as prayed.

8. *Per contra*, the learned counsel for the respondent vehemently opposed the instant petition submitting to the effect that the instant petition is liable to be dismissed being devoid of any merit.

9. It is submitted that under Article 226 of the Constitution of India, this Court cannot go into re-appreciation of material on record like a Court of appeal.

10. It is further submitted that the learned Labour Court has rightly held, on the basis of evidence, that the enquiry was prejudiced as the respondent was not given any defense during the enquiry nor was he given any list of witnesses and documents. Further, there was no preliminary investigation



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conducted by the petitioner and the statements of passengers were not recorded by the respondent.

11. Therefore, in view of the foregoing submissions, the learned counsel for the respondent workman submitted that the present petition, being devoid of any merit may be dismissed.

12. Heard the learned counsel appearing on behalf of the parties and perused the material on record.

13. It is the case of the petitioner that the impugned award is bad in law as the learned Labour Court failed to take into account that the respondent was caught red handed by the checking staff and was indulged in professional misconduct previously on several occasions. The petitioner contends that the learned Labour Court failed to take into account that the respondent was served with a copy of the chargesheet dated 24th December, 1993 and all the charges against the respondent were duly proved in the departmental enquiry on 28th January, 1994 and 8th February, 1994. The respondent was duly given the opportunity to appoint a defence assistant on 28th January, 1994, which was rejected by the respondent. Hence, the impugned award is wrong in holding that the departmental enquiry was prejudiced against the respondent and that there was violation of principles of natural justice.

14. In rival submissions, the respondent workman submitted that this Court cannot function like a Court of appeal under Article 226 of the Constitution of India and hence, cannot re-examine the evidence. Furthermore, the departmental enquiry was prejudicial as there was no preliminary investigation conducted before proceeding to the regular



enquiry. Further, no list of witnesses or any other documents were furnished to the respondent. Hence, the impugned award passed by the learned Court below suffers from no infirmity in holding the departmental enquiry violative of principles of natural justice.

15. Therefore, the issue that falls for adjudication before this Court is ***Whether procedural deficiencies, such as the failure to appoint a defense assistant or the absence of a preliminary investigation, invalidate departmental enquiry proceedings?***

16. It is pertinent, at this stage, to peruse the impugned award dated 20th December, 2003. The relevant extracts of the impugned award are as follows:

“8. ON the pleadings of the parties, one of the issues came to be framed "whether the management has not conducted a fair and proper enquiry?"

9. IN support of this issue, the workman filed his affidavit Ex.WW1/A and examined himself as WW1. In the affidavit, he deposed about non supplying of list of documents, witnesses and preliminary investigation in violation of official circular of DTC dated 28.5.80 which was filed as Ex.WW1/1. He also deposed about non examination of passengers and non noting down their addresses as laid down in circular of DTC dated 13.10.65 Ex. WW1/2. He reiterated other allegations as stated in statement of claim.

10. As against this evidence, DTC examined enquiry officer Sh. Sumit Mudgal as MW who proved his affidavit Ex.MW1/A and various documents Ex.MW1/1 to Ex.MW1/6.

11. I have gone through the evidence and circulars of DTC placed on record. The question for consideration is whether the enquiry has been conducted fairly and properly in accordance with principles of natural justice? It was essentially required that



enquiry he held in the presence of the charge officer after making him available the ground of charge against him. The documents relied upon by the management and list of their witnesses be supplied to him to meet charges and documents then provide him opportunity to produce evidence in defence.

12. In so far as ground for charge is concerned, same has been admitted by him as he has admitted that he has been supplied charge sheet on 24.12.93 for not issuing the ticket to one passenger and issuing tickets to 4 passengers on seeing the checking staff and for not allowing the statement of passengers to be recorded. He denied the charges. Now the question arises for consideration is whether he was not supplied with the list of documents, witness and copy of preliminary Investigation. In the affidavit of enquiry officer, there is no mention regarding supply of list of witnesses to the workman and in his cross-examination, he admitted that no separate list of witnesses were given to the workman alongwith the charge sheet. He has also stated that no preliminary enquiry was conducted in this case, therefore, copy of the same was not supplied to the workman. The affidavit shows that the charge sheet was issued on the basis of a report. Since reply was not found satisfactory, enquiry was hold which was hold on 2 dates on 28.1.94 and 8.2.94. The enquiry officer did not know whether the DTC has issued circular of 28.5.80 regarding conducting of enquiry. He also admitted that the passengers were not examined in this case.

13. I have gone through the circular of DTC dated 28.5.80 which is Ex.WW1/1 which laid down the procedure for conducting departmental enquiry. This circular calls of identification of preliminary hearing within a period of 10 days of and the workman be asked to intimate name of assistance and only after that, he may fix a calendar of enquiry.

14. It is seen from the enquiry proceedings and enquiry report that enquiry was held on two dates i.e. 28.1.94 and 8.2.94. On 28.1.94, witnesses were examined and cross-examination and the workman was asked whether he wants any assistance by a co-



worker, but he refused to take assistance of any co-worker. On 8.2.94, he gave his statement. It is admitted by the enquiry officer that he has not asked the workman for defence assistance.

15. I have considered the enquiry proceedings and enquiry report in the light of observations taken on record by the workman and the relevant circulars of DTC on record. I find that the only on the date of recording the statement of witnesses on 28.1.94, the workman was asked about taking assistance of co-worker. In terms of DTC circular of 28.5.80, this should have been done much prior to recording of evidence against him. Asking him at the time of enquiry, if he wants assistance of co-worker to assist him, is nothing but it only a formality which cannot be availed by the workman immediately. In his evidence, he has mentioned that he has signed the proceedings without reading and the same were type written. written. MW1 in his cross-examination has also admitted that no list of witness or documents has been given to the workman.

16. In my considered view, the workman has been seriously prejudiced by not giving him opportunity appointing a defence assistant well before the examination of witnesses. I, therefore, hold the enquiry unfair and illegal and consequently, the issue I decided in favour of workman Sh. Vir Sain and against the management.

17. Now to come up on 27.2.2004 for evidence of the parties on gainful employment.”

17. Upon perusal of the above extracts of the impugned award, it is made out that the learned Labour Court had observed that the report of the enquiry officer Ex MW1/A has no mention of list of witnesses being supplied to the workman alongwith chargesheet and the same has been admitted by him during the cross examination. The enquiry officer has also admitted that neither statement of witnesses was recorded nor a preliminary enquiry was



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held, therefore, no copy of the same could be supplied. Further, he admitted that he was unaware of the DTC circular dated 28th May, 1980. Accordingly, it has been contended that there is no illegality in the impugned award and in view of the same, the instant petition may be dismissed.

18. The learned Labour Court on perusing Ex WW/1 i.e., DTC circular dated 28th May, 1980, observed that this circular mandates a preliminary hearing within 10 days and requires that the workman be asked to name an assistant before an enquiry schedule is set. The Court noted that the enquiry was conducted on two dates, i.e., on 28th January, 1994 and 8th February, 1994. On the first day of enquiry, the workman was asked if he wanted assistance from a co-worker, which he declined, however, the enquiry officer admitted that he did not ask the workman about having a defense assistant on the second day of enquiry. The learned Labour Court held that asking the accused for defence assistance on the day of enquiry is a mere formality and contravenes the mandate given in the circular, which provides for appointment of defence assistant much in advance. Hence, the enquiry was prejudiced as the workman was not given the reasonable opportunity to be heard.

19. At this juncture, it is imperative to elaborate the settled position of law with regard to the procedural infirmities vitiating a departmental enquiry. The Hon'ble Supreme Court has established guidelines for conducting domestic enquiries through numerous judgments. These enquiries, held against employees for the alleged acts of misconduct, are crucial in the context of industrial adjudication. Upholding the principles of



natural justice in these proceedings is essential as they ensure fair treatment and due process, thereby, maintaining the integrity and fairness of an industrial dispute resolution.

20. It is an established position in law that the High Court while exercising its jurisdiction under Article 226 of the Constitution of India cannot re-appreciate the evidence to test the veracity and validity of the departmental proceedings. The writ jurisdiction is supervisory, discretionary and extraordinary in nature which implies that it has to be sparingly used.

21. In ***High Court of Judicature at Bombay v. Shashikant S. Patil***, (2000) 1 SCC 416, the Hon'ble Supreme Court observed that the High Court can only interfere with the decision of departmental authorities if the authority had held such proceedings to be violative of the principles of natural justice or of statutory prescriptions of procedure. Relevant extracts of the aforesaid judgment is reproduced as follows :

“...16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority



(in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

17. In State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723 : (1964) 3 SCR 25] this Court has stated so and further observed thus:

“The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence”

22. The principles of natural justice form the cornerstone of any fair proceeding. They are not strict rules of law which are incomprehensible and difficult to observe. In their true essence, they only warrant administration of justice on basis of fair ideals. Hence, the departmental proceedings of quasi-judicial nature are also required to adhere to these principles.

23. The first and foremost principles of natural justice is *audi alteram partem* i.e., all the parties to a dispute must be heard. The said principle has to be reasonable and effectively put to practice. Merely making the



aggrieved a party to the proceedings does not amount to adherence of this principle. Reasonable opportunity to defend is a requirement of fair procedure, and not a formality. The aggrieved should be informed about the charges leveled against him and he should be given reasonable time and opportunity to defend his case. In the case of ***Bhagat Ram v. State of H.P., (1983) 2 SCC 442***, the Hon'ble Supreme Court observed as below:

“..5. The first contention canvassed on behalf of the appellant was that he was denied a reasonable opportunity to defend himself in the enquiry inasmuch as while the Department was represented by a Presenting Officer, till the first three witnesses are examined he was not given an opportunity to seek assistance of an officer in his defence. In para 3(vii) of the special leave petition, the appellant has averred that he was not informed and was not told that there will be a Presenting Officer on behalf of the Department till three witnesses were examined on January 8, 1975. He proceeded to state that the petitioner being a government employee in Class IV service of the level of a Forest Guard, he could not and was not expected to cross-examine witnesses pitted against him and he was labouring under a serious handicap that his own superior who was a co-delinquent, was being defended by another officer Shri Yudhister Lal. In this connection, in para 14 of the affidavit in opposition filed by Shri K.C. Puri, Under-Secretary (Forest) to the Government of Himachal Pradesh has stated as under:

“With reference to para 3(vii), I submit that it was not obligatory on the part of the Enquiry Officer to have asked the petitioner to get appointed a Government servant of his choice to defend his case. On the other hand it was for the petitioner himself to intimate the name of any Government servant whom he intended to use as his Defence Counsel. It may be stated that the petitioner



applied for this purpose on February 27, 1975 and he was allowed to do so. It was for the petitioner to cross-examine the prosecution witnesses during the course of enquiry, but he did not do so.”

What picture emerges from the assertion and counter-assertion? Appellant a Forest Guard belonging to lower echelons of Class IV service, whose educational attainment would not be of a very high order, with this equipment had to face an enquiry jointly held with his superior and in which there was a Presenting Officer, was expected to defend himself without any assistance. The Disciplinary Authority was represented by a Presenting Officer is not in dispute. It is also not in dispute that the co-delinquent Duni Chand had appointed an officer of the Department to defend him. Between these two well represented parties, appellant had to fend for himself. The contention is that the appellant did not apply in time for permission to seek help of another government servant of the Department or a co-worker to defend him and as and when the permission was asked for, it was granted. In our opinion, it is a highly technical approach not conducive to a just and fair adjudication of the charges levelled against the appellant. If the Department had appointed a Presenting Officer, if a co-delinquent had an officer to defend him, in our opinion, to afford appellant, a Class IV semi-literate Forest Guard, reasonable opportunity to defend himself, justice and fair play demand that the Enquiry Officer should have enquired from the appellant whether he would like to engage someone to defend him. Rules permit such permission being asked for and granted in such circumstances. The enquiry was being held according to the provisions contained in Central Civil Services (Classification, Control and Appeal) Rules, 1965 (“Rules” for short). Sub-rule (5) of Rule 15 provides that:

“The Government servant may present his case with the assistance of any government servant approved by the



Disciplinary Authority, but may not engage a legal practitioner for the purpose unless the person nominated by the Disciplinary Authority as aforesaid is a legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case, so permits.”

*The procedure prescribed for the enquiry was devised with a view to affording a delinquent government servant facing a disciplinary proceeding a reasonable opportunity to defend himself. And by a catena of decisions, it is well established that the delinquent has a right to cross-examine witnesses examined on behalf of the Disciplinary Authority and an opportunity to lead his own evidence and to present his side of the case. This is the minimum principle of natural justice which must inform a disciplinary proceeding. To be precise, the provisions contained in 1965 Rules do make adequate provisions for the same. The question is whether it has been substantially complied with, and when we say substantial compliance, we mean that it is too much to presume that a government servant of the level of a Forest Guard would be fully aware of all the intricate rules governing a disciplinary proceeding contained in 1965 Rules that he must seek permission for proper assistance at a proper stage as contemplated by the Rules. **In fact, justice and fairplay demand that where in a disciplinary proceeding the department is represented by a Presenting Officer, it would be incumbent upon the Disciplinary Authority while making appointment of a Presenting Officer to appear on his behalf simultaneously to inform the delinquent of the fact of appointment and the right of the delinquent to take help of another government servant before the commencement of enquiry. At any rate the Enquiry Officer at least must enquire from the delinquent officer whether he would like to engage anyone from the Department to defend him and when the delinquent is a government servant belonging to the lower echelons of service, he would further be informed that he is entitled under the relevant Rules to seek***



assistance of another government servant belonging to Department to represent him. If after this information is conveyed to the delinquent government servant, he still chooses to proceed with the enquiry without obtaining assistance, one can say there is substantial compliance with the Rules. But in the absence of such information being conveyed, if the enquiry proceeds, as it has happened in this case, certainly a very vital question would arise whether the appellant delinquent government servant was afforded a reasonable opportunity to defend himself and if the answer is in the negative, the next question is whether the enquiry is vitiated? In this connection, we would like to refer to a decision of this Court in C.L. Subramaniam v. Collector of Customs, Cochin [(1972) 3 SCC 542 : (1972) 3 SCR 485 : 1972 Lab IC 1049 : (1973) 26 FLR 170 : (1973) 2 SLR 415] wherein it was held that the fact that the case against the appellant was being handled by a trained prosecutor was by itself a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales would be weighted against him. That was the case in which the Disciplinary Authority was represented by a trained prosecutor and the question was whether the delinquent officer was entitled to the assistance of a legal practitioner? And the answer was in the affirmative. The position is slightly different here. The Department was represented by a Presenting Officer, co-delinquent, a superior officer of the appellant was equally represented by an officer of his choice and this Forest Guard had to fend for himself. In such a situation, the view taken by this Court in Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni [(1983) 1 SCC 124 : 1983 SCC (L&S) 61 : (1983) 1 LLJ 1] would govern the situation. This Court said as under: [SCC para 12, p. 132: SCC (L&S) p. 69]

“In our view we have reached a stage in our onward march to fairplay in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained



mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated.”

*The principle deducible from the provision contained in sub-rule (5) of Rule 15 upon its true construction is that where the department is represented by a Presenting Officer, it would be the duty of the delinquent officer, more particularly where he is a Class IV government servant whose educational equipment is such as would lead to an inference that he may not be aware of technical rules prescribed for holding enquiry, that he is entitled to be defended by another government servant of his choice. If the government servant declined to avail of the opportunity, the enquiry would proceed. But if the delinquent officer is not informed of his right and **an overall view of the enquiry shows that the delinquent government servant was at a comparative disadvantage compared to the Disciplinary Authority represented by the Presenting Officer and as in the present case, a superior officer, co-delinquent is also represented by an officer of his choice to defend him, the absence of anyone to assist such a government servant belonging to the lower echelons of service would, unless it is shown that he had not suffered any prejudice, vitiate the enquiry.** ”*

24. In **Sukhen Kanwar v. Assam State Electricity Board, 2018 SCC OnLineGau243**, the Gauhati High Court observed that not providing list of witnesses and defence assistance is in direct contravention of principles of natural justice. Relevant extract is produced below:

“...15. The prejudice to the delinquent is also seen from the fact that he was not furnished the list of documents or witnesses in the Disciplinary Proceeding. Moreover, he was not provided with any defence assistance. On this count also the denial of a fair



opportunity to the charged employee is noticed in the impugned departmental proceeding...”

25. The above cited judicial decisions have laid down with clarity, the significance of a proper and fair department enquiry, which is in consonance with the statutory rules prescribing the due process of law.

26. Now advertent to the merits of the instant petition.

27. The DTC circular dated 28th May, 1980 lays down rules regarding proceedings prior to a regular hearing i.e., a preliminary enquiry. The concerned circular deals with the procedure requiring the accused to be made aware of the charges with documents. A period of ten days is given to the accused to appoint a defense assistant before the date of preliminary hearing is fixed. He is also given five days to inspect the documents adduced for preparation of defense. Only if either party fails to appear for the preliminary enquiry, a date for regular hearing shall be fixed.

28. In the instant case, the petitioner has not only failed to conduct a preliminary enquiry but has also failed to provide a reasonable time and opportunity to the respondent workman to appoint a defense assistant. Only a regular proceeding was held and the petitioner failed to produce any *bona fide* ground for surpassing the procedure of conducting a preliminary enquiry. Further, no passengers were examined in the proceedings. Moreover, the departmental enquiry was held on two occasions i.e., 28th January, 1994 and 8th February, 1994. It was only on the first day, the respondent was asked regarding appointment of defense assistant whereas as



per the circular dated 28th May, 1980, appointment of defense was to be done even prior to the preliminary enquiry.

29. Furthermore, the learned Court also noted that the petitioner entity failed to provide the list of witnesses for cross examination. Hence, the departmental proceedings were in direct violation of principles of natural justice and other statutory rules of procedure.

30. Considering the observations made in the preceding paragraphs, it is held that the petitioner has failed to make out any case in its favour and the learned Labour Court has passed the impugned award after taking into consideration the entire facts and circumstances as well as the settled position of law.

31. In view of the foregoing discussions on facts as well as law, this Court does not find any reasons to exercise its powers provided under Article 226 of the Constitution of India to interfere with the impugned award. Therefore, the impugned award dated 12th October, 2004, passed by the learned Labour Court in I.D. 166/97 is upheld and the instant petition is dismissed.

32. Pending applications, if any, also stand dismissed.

33. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

May 28, 2024
RK/AV/RYP