



2024:DHC:3292



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

% **Date of order: 4th April, 2024**

+ **W.P.(C) 3239/2006 & CM APPL. 2784/2006**

GM N.T.P.C BADARPUR THERMAL PS Petitioner

Through: **Mr. Rajesh Gupta and Mr. Utsav
Kumar Gupta, Advocates**

versus

SUBAL SIL Respondent

Through: **Ms. Manupriya Verma, Advocate
(Through VC)**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 226 read with Article 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“(I) Call for the records of case bearing I.D.No. 127/1997 titled Shri Subal Sil, Mazdoor Versus The General Manager, National Thermal Power Corporation/Badarpur Thermal Power Station, adjudicated by Central Government Industrial Tribunal Cum Labour Court, New Delhi by passing the impugned award dated 22.11.2005;

(II) Issue a writ of certiorari or any other appropriate writ, order or direction of like nature thereby, quashing the impugned award dated 22.11.2005 passed by Central Government Industrial Tribunal Cum Labour Court, New Delhi in I.D.No.127/1997 titled Shri Subal Sil, Mazdoor Versus The



*General Manager, National Thermal Power Corporation/
Badarpur Thermal Power Station;*

(III) Pass an ex-parte ad interim stay Order thereby staying the implementation of the award dated 22.11.2005 passed by Central Government Industrial Tribunal Cum Labour Court, New Delhi in I.D.No. 127/1997 titled Shri Subal Sil, Mazdoor Versus The General Manager, National Thermal Power Corporation/ Badarpur Thermal Power Station;

(IV) Pass such other and further orders, which this Hon'ble court may deem fit and proper under the facts and circumstances of the case."

2. The petitioner/Badarpur Thermal Power Station is a power plant, wholly owned by the Government of India and managed by the National Thermal Power Corporation Ltd. under a management agreement.

3. On 19th September, 1984, two children and a relative of an employee of the petitioner suffered a fatal accident with a bus near a gate of the petitioner's establishment. This event sparked a wave of unrest, leading to a riotous mob forming at the spot and subsequently, the aggrieved employees engaged in slogan shouting, alleging that the petitioner's General Manager is responsible for this unfortunate incident and it led to *Gherao* and assault on the General Manager of the petitioner.

4. Pursuant to the said incident, on 19th March, 1985, the enquiry officer sent notice to the respondent stating that an enquiry will be held pertaining to the above said incident and summoned the respondent workman to appear for the initial hearing scheduled for 30th March, 1985.

5. Thereafter, the Union representing the respondent workman, vide letter dated 23rd March, 1985, explicitly declared their intention to boycott



the enquiry at all stages.

6. On 30th March, 1985, a notice was sent to the respondent by the enquiry officer stating that proceedings to be held 13th April 1985. On 4th April 1985, a notice dated 30th March, 1985 calling upon the respondent while he was on duty to receive summons. However the respondent could not be served despite the attempts having been made to serve the respondent either in person or through registered post. The respondent also did not appear before the enquiry officer in the inquiry convened on 13th April, 1985.

7. Consequently, the enquiry officer adjourned the proceedings to 4th May, 1985. Thereafter, since the petitioner abstained from attending the proceedings, the enquiry was proceeded *ex-parte*. On 4th May, 1985, the enquiry officer concluded the proceedings and the enquiry report were released on 27th May, 1985.

8. Based on the enquiry proceedings and the above said report, the Disciplinary Authority found no reason to differ with the findings of the enquiry report and imposed the punishment of dismissal from service on the respondent workman. Accordingly, the respondent was terminated from his services vide dismissal order dated 20th July, 1985.

9. Aggrieved, the respondent workman filed a departmental appeal dated 9th August, 1985. The appellate authority granted a personal hearing to the respondent workman, pursuant to which the appeal was decided vide order dated 4th June, 1986, holding that the charges levelled against the respondent workman were established and that the dismissal order was rightly passed.



10. Vide (a) letter dated 16th April, 1988, the respondent workman requested the Secretary, Ministry of Labour, Government of India to refer this dispute for statutory adjudication. However, the dispute could not be referred for adjudication since a criminal case arising out of FIR No.231/1984 against the respondent workman in respect of the riotous incident in question was pending before a Court of Metropolitan Magistrate, Delhi.

11. The said order of non-referral of the dispute by the Secretary, Ministry of Labour, Government of India was challenged before this Court in WP (C) No. 3452/1987, which was dismissed vide order dated 9th December, 1987.

12. The criminal case against the respondent workman arising out of FIR No.231/1984 was decided vide judgment dated 31st October, 1994, whereby, upon failure of prosecution to produce any witnesses, the respondent was acquitted of the charges.

13. The Ministry of Labour vide letter bearing no. L-42012/178/87-IR (DU) Central Government dated 1st September, 1997 referred the dispute to the learned Industrial Tribunal for adjudication, with reference being:

“Whether the action of the management of Badarpur Thermal Power Station, in terminating the services of Shri Subal Sil, Mazdoor is legal and justified? If not, to what relief the workman is entitled to?”

14. The said dispute was registered by the learned Industrial Tribunal as the industrial dispute bearing No. 127/1997 pursuant to which the trial commenced in the matter.



15. Accordingly, the above said industrial dispute was decided in favour of the respondent workman as the learned Industrial Tribunal was of the view that the enquiry conducted by the petitioner management was not fair and proper, and it did not adhere to the principles of natural justice. Therefore, vide award dated 22nd September, 2005 it was held that the respondent workman was entitled to reinstatement with 50% back wages.

16. Aggrieved by the impugned award dated 22nd September, 2005, the petitioner has filed the instant petition seeking quashing of the same.

17. Learned counsel appearing on behalf of the petitioner submitted that the impugned award dated 22nd September, 2005 is bad in law as the same has been passed without taking into consideration the entire facts and circumstances.

18. It is submitted that the learned Industrial Tribunal failed to provide any reasoning or justification for its conclusion regarding the alleged non-observance of the principles of natural justice in the departmental proceedings and holding the enquiry proceedings was conducted in purportedly hasty manner. There exists no evidence or rationale on record to support such findings.

19. It is further submitted that the learned Industrial Tribunal's decision to award reinstatement with 50% back wages to the respondent workman, portraying them as an innocent labourer influenced by union leaders lacks justification given the established facts of the respondent workman's active involvement in assaulting project officials, damaging project property, displaying gross insubordination and engaging in serious misconduct.



20. It is submitted that the learned Industrial Tribunal erred in failing to recognize that the principles of natural justice were duly adhered to by the petitioner. The respondent workman was duly notified of the proceedings, and there is clear evidence to suggest that he had full knowledge of the proceedings throughout. However, the respondent workman consciously, voluntarily, and deliberately chose to avoid participating in the proceedings.

21. It is further submitted that the learned Industrial Tribunal overlooked various documents on record which demonstrate that due notice was sent to the respondent workman at all stages of the enquiry, which the respondent workman knowingly and intentionally refused to acknowledge.

22. It is submitted that the Tribunal failed to appreciate the principle that no person can take advantage of their own wrongs. Despite being duly notified and possessing adequate knowledge thereof, the respondent workman failed to appear before the enquiry officer.

23. It is further submitted that during the appeal before the appellate authority, wherein, the findings of the departmental proceedings were under scrutiny, the respondent workman was afforded full and adequate opportunity for hearing, including a personal hearing. Additionally, the respondent workman was also permitted to raise any additional points which he wished to address in his defence. Thus, there was no violation of the principles of natural justice in any instance, and the question of any prejudice to the respondent workman does not arise.

24. It is submitted that there is no evidence on record to indicate that the respondent workman lacked knowledge of the departmental proceedings or



that he suffered any prejudice due to an alleged violation of the principles of natural justice. The act for which the respondent workman was charged constituted gross misconduct and was duly proven against him.

25. It is submitted that in cases of established misconduct, particularly of such a serious nature, where the incident in question is admitted and the respondent workman's involvement therein is established, adherence to the principles of natural justice may not be requisite.

26. It is submitted that the holding of enquiry proceedings was a widely known fact, and the respondent workman was expected to participate in the said proceedings. Therefore, there is no justification for the respondent workman's failure to participate in the proceedings, especially given the serious nature of the alleged misconduct and the established facts surrounding the incident.

27. It is submitted that the learned Industrial Tribunal committed a grave error in concluding that the enquiry proceedings were conducted in undue haste. There exist no justifications or reasons to support such a conclusion.

28. It is submitted that the proceedings were concluded after providing due notice and ample opportunities to the respondent workman to appear and defend himself. The appointment of the enquiry officer took place on 28th February, 1985, and the enquiry report was finalized on 27th May, 1985.

29. It is further submitted that evidently concluding the enquiry within a span of three months cannot reasonably be deemed as being conducted in undue haste. Furthermore, Clause 14(4)(bc) of the Model Standing Orders specified in Schedule I of the Industrial Employment (Standing Orders)



Central Rules, 1946, stipulates that enquiry proceedings should be completed within a period of three months. Hence, the conclusion drawn by the learned Industrial Tribunal lacks merit, as the proceedings were conducted in accordance with established norms and timeline.

30. It is submitted that the findings of the learned Industrial Tribunal, asserting that the respondent workman is an innocent labourer who acted under the influence of union leaders and thus should be reinstated with 50% back wages, lack any rationale, justification, and are fundamentally flawed.

31. It is submitted that the learned Tribunal appears to have overlooked the fact that the respondent workman was involved in an act of gross misconduct, intimidation, and physical assault against superiors. Such egregious conduct poses a serious threat to the administration of management and cannot be condoned or taken lightly. The decision to reinstate the respondent workman with back wages disregards the gravity of the misconduct and fails to uphold the principles of maintaining discipline within the workplace. Therefore, the conclusions drawn by the learned Industrial Tribunal are untenable and liable to be set aside.

32. It is submitted that the learned Tribunal erred in mechanically awarding back wages to the respondent workman without due consideration of relevant factors. The awarding of back wages should not be conducted in a mechanical manner instead be based on a comprehensive assessment of various factors, including the respondent workman's qualifications, length of service, nature of job, training and expertise, availability of alternate employment, age, and likelihood of securing alternative employment.



33. It is further submitted that the respondent workman in question was not a passive individual but an active participant, capable of securing alternate employment. Moreover, there is no finding to suggest that the termination of the respondent workman was either illegal or unjustified. Therefore, the unilateral awarding of back wages to the extent of 50%, without any discernible basis is untenable and unlawful.

34. It is submitted that the acquittal of the respondent workman by the Criminal Court holds no relevance to the present proceedings. The respondent workman's acquittal in the Criminal Court stemmed from the absence of prosecution evidence, particularly due to the non-appearance of the General Manager, who was a pivotal prosecution witness. However, it is crucial to note that the General Manager did appear as a witness in the departmental proceedings, wherein, the charges against the respondent workman were duly proven. Therefore, the learned Industrial Tribunal should not have considered the respondent workman's acquittal in the criminal charges, as the acquittal was not based on the merits of the case but rather due to procedural inadequacies in the criminal proceedings. The charges against the respondent workman were substantiated in the departmental proceedings, and thus, the acquittal by the Criminal Court should hold no bearing on the present matter.

35. It is submitted that the learned Industrial Tribunal erred in its observation that the case involved grave and sudden provocation, and further, that the order of punishment of dismissal was deemed harsh and shocking. The respondent workman was found guilty of the charges framed



against him in the disciplinary proceedings. Specifically, he was found to have committed serious acts of indiscipline and misconduct, including assaulting the General Manager and other officers, causing damage to the company property, and engaging in intimidation.

36. It is further submitted that the above said charges were duly established during the enquiry process. The punishment of dismissal was warranted and proportionate to the gravity of the misconduct committed by the respondent workman. It cannot be deemed harsh without justification, particularly when the proven charges against the respondent workman involved severe misbehaviour, riotous conduct, and assault on the head of the project. Therefore, the learned Industrial Tribunal's characterization of the punishment as harsh lacks merit, as it was appropriate given the seriousness of the misconduct.

37. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed, and the reliefs be granted as prayed for.

38. *Per Contra*, the learned counsel appearing on behalf of the respondent workman vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed being devoid of any merit.

39. It is submitted that the petitioner management conducted an *ex-parte* enquiry against the respondent workman in violation of the principles of natural justice. The enquiry was conducted in a biased manner and with malice, aimed to victimize the respondent workman. Furthermore, both the petitioner management and the prosecution purportedly failed to substantiate the alleged charges against the respondent workman before the learned



Court of Metropolitan Magistrate.

40. It is submitted that the respondent workman was not afforded any opportunity to defend himself in the departmental enquiry. There is no evidence to suggest that the respondent workman was aware of the *ex-parte* enquiry conducted against him.

41. It is further submitted that the petitioner management failed to produce any document to prove that the respondent workman deliberately or voluntarily avoided receiving notices related to the enquiry and departmental proceedings. Moreover, the respondent workman was not informed of the dates fixed for the enquiry, as no notice of enquiry was sent to the respondent.

42. It is submitted that it was the duty of the enquiry officer to serve notices of enquiry and inform the respondent workman of the dates fixed therein, regardless of whether the holding of enquiry proceedings was a commonly known fact or not. This failure to provide adequate notice deprived the respondent workman of the opportunity to participate effectively in the enquiry process.

43. It is further submitted that even the prosecution witnesses 1 and 2, who were purportedly eyewitnesses, appeared but did not support the case put forth by the prosecution. This lack of support from key witnesses underscores the weakness of the prosecution's case and raises doubts about the veracity of the allegations against the respondent workman.

44. It is submitted that the impugned award was passed after considering all the facts and circumstances of the case.



45. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

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

47. It is the case of the petitioner that the respondent workman was granted various opportunities to appear before the enquiry officer to present its case, however, the respondent did not appear. It is further submitted that the respondent vide letter dated 23rd March 1985 stated that enquiry proceedings will be boycotted by him. Consequently, the petitioner proceeded ex- parte with enquiry proceedings.

48. In rival submission, it has been contended on behalf of the respondent that the petitioner wrongly conducted enquiry proceedings *ex-parte* and did not grant an opportunity to the respondent, hence the petitioner acted in violation of principles of natural justice. It is further submitted that the impugned award is well- reasoned and has been passed after taking into consideration the entire material on record.

49. Now the question which falls for adjudication before this Court is whether the impugned award suffers from illegality or any error apparent on the face of it.

50. Adverting to perusal of the impugned award, the same has been reproduced herein below:

“Evidence of both the parties has been taken.

The management has not pressed for decision of the fairness of the inquiry as preliminary issue. Heard arguments from



both the sides. It seems essential to narrate in brief the incident and the proceedings of the inquiry. The incident took place on 19.09.1984 and two children of the employees and a relative of an employee were crushed to death by a bus on 19.09.1984 and his sparked off riotous mob. The employees of the respondents assembled at one place and they started slogan shouting and instigated the workmen to bear the General Manager as he was allegedly responsible for the unfortunate and tragic killing of two children of the employees and a relative of an employee. Subsequent to the incident an inquiry was constituted and notices were issued dated 19.03.1985 for the first dated of inquiry on 30.03.1985 but despite the services of the notice by registered post and by personal service the workman did not participate in the inquiry on 13.04.1985. The Union of the workman by letter dated 23.03.1985 addressed to the Inquiry Officer stated that no employee would attend the inquiry and that the inquiry will be boycotted at all the stages as none appeared on 13.04.1985. However, the Inquiry officer in the interest of justice adjourned the inquiry to 04.05.1985 and notice dated 20.04.1985 was issued to the workman but the workman did not appear on that date and the inquiry proceeded ex-parte and the inquiry was concluded on 04.05.1985 by taking ex-parte evidence of the witnesses and the Inquiry Officer gave his findings on 27.05.1985. From the admitted facts it becomes quite obvious that inquiry was held on two dates i.e. on 13.04.1985 and 04.05.1985 and ex-parte evidence was taken on 04.05.1985.

It was submitted from the side of the workman that the management was predetermined to punish the workman so the inquiry was completed on 04.05.1985. It was further submitted from the side of the workman that there was no need of such hottest haste. It is true that the Union has written letter dated 23.03.1985 to the effect that the inquiry



will be boycotted at all the stages. It is also true that the workman has authorized the union to represent him in the inquiry proceedings. The case of the management is that two notices were sent to the workman one on 30.03.1985 and other on 20.04.1985. The notices were sent by registered post and they were also served personally. On the inquiry proceedings there is no proof that notices have been sent by registered post. There is no receipt of the registered posting of the notices. The workman refused to receive the notices and put his signature before the witness as alleged by the management. The management was duty bound to serve the workman by registered post regarding the two hearings of the inquiry proceedings but there is no receipt of sending the notices dated 30.03.1985 and 20.04.1985 on the proceedings of the inquiry. The Union has decided to boycott the inquiry at all the stages but the chargesheet has not been served on the Union. The workman is admittedly a Mazdoor. The union was bent upon inciting the innocent mazdoor.

In the circumstances it was justified that the management should send registered notice to the workman. The first date of inquiry was 30.03.1985. The second date was 13.04.1985 and the third date was 04.05.1985. The entire inquiry was concluded between 30.03.1985 and 04.05.1985 so exactly' 35 days for the entire inquiry was given and within these 35 days the inquiry was concluded and the Inquiry Officer gave his findings on 27.05.1985. There is indeed the fault of the Union and the workman was unduly influenced by the Union not to participate in the inquiry. Nevertheless registered notice to the workman should be sent. There is no bar for concluding the entire inquiry proceedings within 35 days. The management can do so but the circumstances of the case warrant that sufficient opportunity should be given to the workmen. The workmen has been found guilty of misconduct. The workmen has replied to the chargesheet but



he did not appear on 30.3.1985, 13.4.1985 and 04.5.1985 in the inquiry proceedings.

It was further submitted from the side of the workmen that an officer was appointed to give a report regarding the circumstances which sparked off mob behaviour and slogan shouting. The GM has decided for converting the route of the bus but his decision was not implemented urgently. Excess time was taken. The fact-finding officer has stated in his report that the decision to change the route of the bus proceeded in routine manner. In case the bus would have started plying as decided by the GM because of provocation may not have occurred at all. After the event everyone is wise. He has further stated that their lapses on the part of the management which led to the unfortunate Incident. So there is a representation from the side of the employees to divert the route of the bus to avert the incident and in case the decision of the GM has been implemented by the officers the incident would have been averted. There were lapses on part of the management and this led to the unfortunate incident of killing of two children of the employees and one relative of an employees.

The fact-finding officer has further mentioned that the GM tried to explain to the people that he had recently passed orders for bus to start from temporary colony but nobody was in mood to listen to him. This was the immediate cause of the incident. The Preliminary Investigation Officer has reported that the persons who directly took part in inciting are Shri Subal Sil, Shri Kaushik, Shri NakChand, Shri Ram Avtar, Shri Manawar Ali, Shri N.B.Rao Chaudhary and the persons incite are Shri Kishan Chand, Shri Inder Singh, Shri Baldev Singh, Shri Subhash Sharma. According to the Preliminary Investigation 10 employees of the respondents were involved in inciting and subsequent



action but the three workmen Shri Subal Sil, Shri Kaushik, Shri NakChand have been picked out and the others have been let off.

FIR has been registered against 10 persons and all the 10 persons have been acquitted as none sported the case of the prosecution. The two witnesses who have deposed in the inquiry proceedings stated in Court that they had no knowledge of the case. The GM the complainant did not appear during the trial however, he sent a letter that incident was unfortunate but he did not like to give evidence in criminal case as such the court acquitted all the chargesheeted employees as there was no evidence worth the name.

It was submitted to the side of the workmen that the GM was the victim of the incident but he did not appear in Court thinking that he was assaulted due to employees.

It was further submitted from side of the management that principles of natural justice are incapable of any exact definition. They are to be ascertained the facts and circumstances of the case. The union leaders instigated the innocent mazdoor to retaliate against the killings have two children and one relative by bus. The GM has also admitted that he has ordered for diversion of the bus. Had his order been implemented within time this incident would not have occurred? So the workmen thought that these three killing are due to inaction of the GM and the angry mob attacked the GM. The behaviour of the 10 chargesheeted employees is no doubt subversive of discipline and constituted grave misconduct and a criminal offense as well. The management should have initiated inquiry against all the 10 employees who have been accused on the basis of the FIR lodged by the management but the management had recourse to pick and choose policy and to make discrimination. The union leaders



are mainly responsible for provoking the innocent mazdoors but they have got scot-free. The management did not initiate inquiries against them as they would resort to further strike and demonstration. Is the principal criminals are let loose then the innocent should not be picked up and punished.

It was further submitted from the side of the workmen that there was grave and sudden provocation and the workman lost their power of self control though their behaviour is condemnable and depreciable but none the less it has been caused by the grave and sudden provocation. Even in c ' criminal offense where and act is caused in grave and sudden provocation minimum punishment is given. The sudden fights or sudden quarrels are occasioned by sudden and grave provocation. The disciplinary authority 1- should have taken into account this aspect of the case but it has not been dealt with as is evident from the order of imposition of punishment of dismissal on the workmen to conclude the inquiry was conducted in the hottest haste and in the circumstances bias is inferred. Sufficient abortion. at opportunity also implies that proper time should be given for a person to cool down, in that case the workmen would have participated in the inquiry but the entire inquiry has been conducted on only three dates. It was further submitted from the side of the workmen who gave statement before the inquiry committee resiled in the criminal court and they did not support the prosecution case. The trial was held at the same set of charges on which domestic inquiry has been conducted. The sophisticated rules of the Evidence Act are not applicable in departmental inquiries and even the workman can be held guilty of misconduct on preponderance of possibility. In the instant case the workmen caused hurt to the GM under grave and sudden provocation. This aspect should have been considered by the disciplinary authority and particularly in view of a layman



or Mazdoor who has been instigated by the union leaders for dis-criminal offence.

It was submitted from the side of workman that though proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Standard of proof in department proceedings are different from the criminal proceedings but the case is quite different. If both the proceedings are based on same set of facts and the evidence in both the proceedings are common without there being any variance. In |i the instant case the evidence in the department inquiry was the same as in the criminal proceedings. The facts are also the same i.e assault by the workman on the GM. The witnesses who supported the chargesheet against the workman resiled in the criminal Court. The complainant thought it better not to appear in evidence. In the circumstances it has been held in JT 1999 (2) SC 456 - if departmental proceedings and criminal proceedings are on the same set of facts and if the employee is acquitted in a criminal trial it would be unfair and unjust to allow the findings of the inquiry proceedings to stand.

There are two aspects of this case. Principles of natural justice have not been observed and the inquiry has been concluded in the hottest haste. So the principles of natural justice have not been followed and if the case is taken to its worst side and if the inquiry is held fair the punishment is shockingly disproportionate and the workman should not be given their full wages as they have been indulged in serious misconduct and they have subverted discipline but they are innocent mazdoors and labourers and they have agitated on the instigation of the union leaders so he should be reinstated on only 50% wages in view of his misconduct. The law cited by the management are not applicable in the facts and circumstances of the present case.



The reference is replied thus:

The action of the management of Badarpur Thermal Power Station in terminating the services of Shri Subal Sil Mazdoor is neither absolutely legal nor justified. The workman applicant is entitled to be reinstated in service with 50% back wages. The management should reinstate the workman and pay him the arrears of wages as aforesaid within two months from the date of publication of the award."

51. Upon perusal of the impugned award it is made out that an incident occurred on 19th September, 1984, which involved the tragic death of two children and a relative of an employee crushed by a bus, which incited a riotous mob. Subsequently, an enquiry was initiated, but the respondent workman failed to participate despite notice. The union declared a boycott, further hindering the enquiry. However, the said enquiry proceeded *ex-parte* and was concluded on 4th May 1985 against the respondent workman.

52. The respondent workman alleged that the management rushed the enquiry to a predetermined punishment, highlighting procedural flaws such as lack of proper notice service etc. The learned Tribunal while acknowledging the union's boycott was of the opinion that registered notices should have been sent. It further opined that despite the urgency claimed by the management, adequate opportunity for participation should have been ensured.

53. It was further submitted by the respondent before the learned Tribunal that an officer was appointed to give a report regarding the circumstances



which sparked off mob behavior and slogan shouting and the said report revealed management lapses, including delayed implementation of bus route changes, which could have potentially averted the incident. Hence, there were lapses on the part of the management which led to the unfortunate incident.

54. The petitioner submitted that there is no exact definition of the principles of natural justice and the same has to be ascertained from the facts and circumstances of the case.

55. The learned Tribunal opined that the petitioner management should have initiated inquiry against all the 10 employees who are accused in the FIR lodged by the petitioner management but the petitioner management discriminated and conducted enquiry against 3 workmen including the respondent. Moreover, no action had been taken against the union leaders who were mainly responsible for provoking the innocent workmen. The management did not initiate inquiries against them as they would resort to further strike and demonstration.

56. In light of the aforesaid facts and circumstances, it was held that principles of natural justice had not been observed in conducting the enquiry and the said enquiry was conducted in a hurried manner. The learned Tribunal further held that in case the principles of natural justice have not been followed and the case is taken to its worst side as well as the enquiry is conducted in a fair manner, the punishment is disproportionate and as the respondent being an innocent *mazdoor* and labourer and they might have agitated on the instigation of the union leader. Accordingly, it was directed



that the respondent workman should be reinstated with 50% backwages.

57. Before adverting to adjudicate the instant petition on merits, this Court finds it germane to refer to the judgments titled ***General Manager, Badarpur Thermal Power Station v. Presiding Officer, 2006 SCC OnLine Del 1607*** passed by the Coordinate Bench of this Court and ***Surinder Kaushik v. General Manager, Badarpur Thermal Power Station LPA no. 108/2007 dated 9th February 2010*** passed by the Division Bench of this Court. The legal issues as well as the factual matrix in the aforesaid judgments pertain to the workmen who were terminated alongwith the respondent herein by the petitioner regarding the incident discussed in the instant petition.

58. The Coordinate Bench of this Court in the judgment titled ***General Manager, Badarpur Thermal Power Station(Supra)*** while adjudicating upon the issue whether in a situation wherein the workman have themselves abstained from appearing in the enquiry proceedings can assert that there is violation of principles of natural justice. The relevant extracts of the judgment is reproduced herein below:

“13. It is apparent from the order of Tribunal that the Tribunal did not consider the facts showing that the workman Surender Kaushik along with other workmen deliberately refused to participate in the enquiry by writing letters. The observation of the Tribunal that fair opportunity was not given was contrary to the record. It was a conscious decision of the workman not to participate in the enquiry and boycott the same. No fault can be found with the management for holding ex parte enquiry. In Appointing Authority, GBP Spl. S.I. v. R.K. Singh, (2005) 10 SCC 131, the Supreme Court justified act of petitioner in



proceeding ex parte against workman in enquiry proceedings when it was proved that workman himself chose not to participate in enquiry proceedings. The enquiry concluded on 7-5-1985 by submission of the report by enquiry officer while the respondent Surender Kaushik was in Jail from 16-7-1985 to 24-7-1985 in respect of another unconnected separate incident of ESMA. During 16-7-1985 to 24-7-1985 only a notice dated 16-7-1985 along with copy of enquiry report was issued by the disciplinary authority, proposing the punishment of dismissal of services. The service of this notice was effected in Jail because accused Surender Kaushik was in Jail and it was not known to the petitioner as to how long he would remain in Jail. Even in Jail Surender Kaushik received notice but refused to give receipt of the same. No reply to the notice was sent deliberately. Moreover Badarpur Karamchari Sanyukt Morcha had espoused the cause of respondent No. 2 and this Morcha had categorically written that the respondent Surender Kaushik and other workmen would boycott the enquiry. Serving of notice in jail, therefore, caused no prejudice. After coming out from the jail, the respondent No. 2 was given opportunity to be heard by appellate authority. At all steps respondent Surender Kaushik has been refusing to participate in the enquiry and all this was evident from the documentary evidence placed on record.”

59. The Division Bench of this Court while dealing with the same factual scenario wherein an appeal was preferred by one of the workmen who was dismissed from services along with the respondent herein held that in case the workmen themselves boycotted the enquiry proceedings they cannot assert that the enquiry proceedings conducted was in violation of principles of natural justice later on.

60. The aforesaid point of law was also discussed in the judgment of ***Surinder Kaushik v. General Manager, Badarpur Thermal Power Station***



LPA no. 108/2007 dated 9th February 2010. The relevant extract of the judgment is reproduced herein below:

“10. The first question that falls for our consideration is whether the dismissal of the appellant was in violation of the principles of natural justice. The learned Single Judge came to the conclusion that the findings recorded by the Industrial Tribunal on the issue of violation of natural justice are clearly perverse and suffers from error apparent on the face of the records. We are inclined to agree with finding of the learned Single Judge. The Tribunal failed to appreciate that inquiry proceedings were not concluded in 4 or 5 days while the appellant was in jail. The Tribunal totally also failed to consider the record of the inquiry proceedings before it which clearly demonstrated that the inquiry proceedings were held over a period of five months from January 30, 1985, that is the date of issuance of notice and was concluded on May 27, 1985, that is the date of submission of the inquiry report, during which period the appellant was not in jail. The case of the appellant was that he was in jail from July 6, 1985 to July 22, 1985. It is seen from the records that the notice of the inquiry proceedings was given by the inquiry officer on March 19, 1985, March 30, 1985 and April 20, 1985. This notice was sought to be delivered by hand which the appellant refused to accept after reading the same. Such refusal, evidenced by the witnesses, was duly recorded. These notices were also sent registered post to the office of the Union as well as the residential address of the appellant. Notice dated March 19, 1985 was duly delivered by the postal authorities to the appellant. However, notice dated March 30, 1985 and April 24, 1985 were returned, undelivered by the postal authorities indicating refusal/avoidal on the part of the appellant to accept the same. The appellant had full knowledge of the inquiry proceedings which he intentionally boycotted. The appellant and the other charged workmen had appointed BKSM as their



authorised representative to represent them in the inquiry proceedings. The said Union had also replied to the charge sheet on their behalf on February 14, 1985, which was not found satisfactory. After issuance of notice the Inquiry proceedings dated March 19, 1985" by the Inquiry Officer, which was duly served on the appellant, the Union responded to the same vide its letter dated March 23, 1985 to the Inquiry Officer wherein the Union stated as follows:

It is a matter of great regret that in spite of responding to our letter in this regard by the Management, you have issued the enquiry notices to the employees....

We have already stated that no employee will attend the enquiry and the enquiry will be boycotted at all stages. So, you are requested that not to serve any notices of enquiry again and again to harass the employees.

11. It is in line with the above stand of the appellant and other charged workmen refused to accept further notices of the inquiry proceedings and boycotted the proceedings, it is in these circumstances that inquiry proceedings had to be conducted and concluded ex parte. The appellant was in jail only after the conclusion of the inquiry proceedings by the inquiry officer who had submitted his report on May 27, 1985. The appellant was in jail from July 16, 1985 to July 22, 1985 during which period only notice dated July 16, 1985 along with copy of the inquiry report was issued by the Disciplinary Authority agreeing with the report of the Inquiry Officer proposing punishment of dismissal. Since the appellant was in jail the management was constrained to serve the notice on the appellant in jail. The notice was duly served in the presence of the Assistant Jail Superintendent. The appellant received notice but refused to give acknowledgment for the same. This fact of delivery or notice dated July 16, 1985 and refusal to give acknowledgment was duly confirmed in the report of the Assistant Jail Superintendent. The finding of the Tribunal that principles of natural justice were violated is thus, clearly



erroneous and perverse.”

61. In view of the aforesaid judgments, it is a settled position of law that the workers, who have boycotted the enquiry proceedings on an earlier occasion, cannot later on plead that the said enquiry proceedings were conducted in violation of the principles of natural justice.

62. This Court is of the view that the learned Industrial Tribunal has been duly acknowledged the fact that there is fault on the part the respondent workman who was unduly influenced by the Union and did not participate in the enquiry.

63. Moreover, the act of boycotting of the enquiry proceedings has been done by the respondent workman out of his free will and the same is evident from the letter dated 23rd March, 1985 which states that the respondent workman alongwith other workmen would boycott the enquiry proceedings. Therefore, despite various opportunities granted to the respondent workman to participate in the enquiry proceedings, he intentionally boycotted the same.

64. In view of the aforesaid discussions, the respondent workman who himself boycotted from appearing in the enquiry proceedings, at this stage, cannot contend that there was violation of principles of natural justice.

65. As per the facts and circumstances of this case, it is crystal clear that the respondent workman was granted ample opportunities to represent his case, which he did not availed of and hence, now he cannot assert that there was violation of principle of natural justice as the respondent workman of



his own will did not participate in the enquiry proceedings.

66. It is held that in case, such kind of behavior is allowed, then the same will lead to employees firstly abstaining from attending the enquiry proceedings and then later on contending that the enquiry proceedings should be quashed as the same is in violation of principles of natural justice.

67. In light of the above, it is further held that the learned Tribunal erred in appreciating the law as well as the facts of the case and wrongly concluded that the respondent workman is entitled to be reinstated along with 50% backwages. There are errors apparent on the face of the impugned award which merit the interference of this Court under Article 226 of the Constitution of India.

68. In view of the observations made by this Court in the foregoing paragraphs, the instant petition is allowed and the impugned award passed by Central Government Industrial Tribunal Cum Labour Court, New Delhi dated 22nd November 2004 in ID no. 127/1997 titled *Shri Subal Sil, Mazdoor v. The General Manager, National Thermal Power Corporation/ Badarpur Thermal Power Station* is quashed.

69. Accordingly, the instant writ petition stands disposed of along with pending applications, if any.

70. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 4, 2024/gs/db/ryp

Click here to check corrigendum, if any