

**CWP-5572-2015 (O&M)**

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

**CWP-5572-2015(O&M)****Reserved on: 04.12.2025****Pronounced on: 23.12.2025****Uploaded on: 23.12.2025**

Ramesh Chander Bawa

....Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Sector 18,  
U.T., Chandigarh and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. K.K. Gupta, Advocate,  
for the petitioner.

Mr. Pawan Kumar Mutneja, Senior Advocate, with  
Mr. Viranjeet Singh Mahal, Advocate,  
Mr. Sukhwinder Sudan, Advocate,  
Ms. Suverna Mutneja, Advocate,  
for respondent No.2.

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**KULDEEP TIWARI, J.** (Oral)

1. The petitioner-workman, through the instant writ petition, as cast under Article 226/227 of the Constitution of India, has challenged the order dated 09.09.2014 (Annexure P-4), vide which, onus to prove the validity of the enquiry was put upon him, and also the order dated 26.02.2015 (Annexure P-5), whereby, the preliminary issue regarding validity of the enquiry has been decided against him.

2. Learned counsel for the petitioner, at the outset, fairly submitted that the issue regarding shifting of onus to prove the validity of enquiry upon the respondent-Management is no more *res integra*, as the same has already been settled by a Division Bench of this Court in **LPA-**



**723-2011 (Shishu Pal Verma Vs. The Presiding Officer, Labour Court, Patiala and another; decided on 23.07.2024)**. Therefore, he would not press the issue, as regards the legality of the order dated 09.09.2014 (Annexure P-4). Accordingly, the only issue which would be required to be adjudicated by this Court, is with respect to the validity of the order dated 26.02.2015 (Annexure P-5).

3. While commencing his arguments, in context of the issue, he contended that the enquiry was conducted without affording due opportunity to the petitioner-workman to cross-examine the material witnesses, therefore, the entire enquiry proceedings would stand vitiated on this score alone. He submitted that the most important witness, namely Mr. M.P. Baby, was not allowed to be cross-examined by the petitioner-workman, despite he being available. Not only that, even the petitioner was not supplied the requisite documents, because of which, he could not cross-examine PW1 and PW2. Further, it was argued that albeit, the petitioner-workman made repeated requests to the Enquiry Officer to provide him the list of documents, i.e Ex. DD1, but to no avail. In such circumstances, the enquiry is a mere sham and cannot withstand the judicial scrutiny.

4. Taking the submissions ahead, it was contended that the documents referred to above, were germane not only to prove innocence of the petitioner, but also the act of victimization on the part of the respondent-Management. With a view to lend credence to his submissions, he placed reliance upon a decision of the Hon'ble Supreme Court in **Chandrama Tewari Vs. Union of India, 1988 AIR (SC) 117**, wherein, it was held that, if relevant and material documents, including



statement of witnesses recorded during the preliminary enquiry, are not supplied to the delinquent official, such an enquiry would be vitiated on account of violation of principles of natural justice. Likewise, another verdict of the Apex Court in **Brij Bihari Singh Vs. Bihar State Financial Corporation and others, 2016 (1) SCT 138**, was relied upon, vide which, it has been settled that a fair chance to hear the evidence, in support of the charge, and to cross-examine the witnesses who prove the charge, is essentially be given to the person who is put to answer the charges. And, any violation of the right of the delinquent, in this regard, would amount to *ex parte* proceedings.

5. *Per contra*, learned Senior counsel for the respondent-Management, in an endeavour to put a fierce defence, urged that, in fact, the petitioner-workman is consciously trying to create legal infirmities, with an ulterior object to rake up the same at a later stage, and cry foul with regard to the validity of the enquiry proceedings. He vehemently argued that the petitioner deliberately did not cross-examine the witnesses, despite being provided a due opportunity. Further, not only the documents, as relied upon by the respondent-Management to prove the charges, but also the statement of witnesses, including each day's proceedings, were made available to the petitioner. However, he, for obvious reasons, opted not to cross-examine the witnesses on one pretext or the other. To cut a long story short, it was urged that the petitioner-workman resorted to every maneuver to dilly dally and frustrate the enquiry proceedings. While relying upon a verdict drawn by the Hon'ble Supreme Court in **Biecco Lawrie Limited and another Vs. State of West Bengal and another, (2009) 10 Supreme Court Cases 32**, he concluded



by submitting that, in case, the delinquent fails to cross-examine the witness, then he shall be deemed to have waived off his right voluntarily, and consequently, cannot be permitted to cry foul, at any stage, with respect to the issue of legality of the enquiry proceedings.

6. I have heard the rival submissions advanced on behalf of the contesting parties, and have also examined the records.

7. Before embarking upon the submissions, and evaluating the legality of the impugned order, it would be expedient to briefly notice the relevant factual background of the matter in issue.

8. The petitioner-workman was appointed as Junior Assistant (Assistant Grade-II) with the State Marketing Office at Chandigarh, of the respondent-Management on 12.08.1988. While in service, he earned promotions and served at various postings pan India. As an exigency of service, he was, once again, transferred to Bhopal on 24.06.2005, and was even relieved on the same day, so that he could join, at the earliest. But, he did not join at the transferred place of posting. In such circumstances, the respondent-Management had served him with a charge-sheet dated 27.08.2007, for willful absence from duty. In the interregnum, he assailed the said transfer order before the learned Civil Court, Chandigarh, but remained unsuccessful in getting any favourable order. And, then he submitted his response to the charge-sheet (supra). The respondent-Management appointed an enquiry officer to conduct a fair and proper enquiry. Accordingly, the petitioner-workman, post joining the enquiry proceedings, cross-examined some of the witnesses, but refused to cross-examine PW-1 and PW2, on account of non-supply of some documents. So much so, the enquiry officer denied him the



opportunity to cross-examine one of the material witnesses (Mr. M.P. Baby), and when such an opportunity was granted, the petitioner-workman did not turn up. Finally, the Enquiry Officer concluded that the charges stood proved against the workman, and submitted his report. Whereafter, he was afforded an opportunity to file a representation, if any, against the report (supra), which he, duly availed by submitting a response. Eventually, vide order dated 01.04.2008, his services were terminated for not joining at the transferred place of posting.

9. Being aggrieved, he preferred a demand notice dated 28.04.2008, whereupon, a reference was made to the learned Industrial Tribunal to adjudicate upon the validity of the termination order of the petitioner-workman. Upon completion of the pleadings, the learned Industrial Tribunal framed six issues, which essentially revolved around issue No.1, "*Whether the proper opportunity was not given to the workman to defend in the inquiry and inquiry is vitiated?OPW*".

10. In response, the respondent-Management filed an application for treating issue No.1, as preliminary issue, which was declined by the learned Industrial Tribunal, vide order dated 09.06.2011. Fetching grievance therefrom, the respondent-Management had preferred Civil Revision No.5707-2011. Accordingly, this Court, vide order dated 12.11.2013, allowed the abovesaid Revision, thereby passing a direction upon the learned Tribunal concerned to decide issue No.1, as a preliminary issue. In compliance, the learned Industrial Tribunal, vide order impugned, decided the preliminary issue against the petitioner-workman. Hence, the instant writ petition.

11. Upon comprehending the submissions advanced on behalf of



the parties, the following twin issues arise for determination by this Court:-

- 1) Whether, the respondent-Management had supplied all the relevant documents to the petitioner, enabling him to effectively defend his case, during the enquiry proceedings?
- 2) Whether, the petitioner was afforded due opportunity to cross examine the witnesses produced by the respondent-Management?

12. To begin with, it is imperative to refer to the articles of charge against the petitioner, and the same read as under:-

*“Shri R.C. Bawa Sr. Asstt. (P&A), P.No.40509 committed misconduct to the extent that:-*

*By Office Order No.HO/19/M/E/40509 dated 24.6.2005 issued by the Competent Authority Shri T.Viojayan, then JGM (P&A)-Mktg., Shri R.C. Bawa, Sr. Asstt. (P&A) P.No.40509 was transferred from State Marketing Office (Haryana) Chandigarh to State Marketing Office (MP), Bhopal with immediate effect in accordance with the terms and conditions of his appointment as stipulated in his letter of appointment dated 30.6.1988/Rule 11.1.0 and 11.2.0 of Service Rules for Employees of KRIBHCO. Consequent upon his transfer, Shri R.C. Bawa was released from SMO-Haryana in the afternoon of 24.6.2005 to report to Sr.SMM (MP) Bhopal for further assignment of duty. A reminder dated 2.8.2005 was sent to Shri R.C. Bawa at this last recorded address to comply with the Transfer Order latest by 10.8.2005, but he failed to comply. Subsequently, reminders dated 3.10.2005 and 21.6.2007 were sent to him to comply with the Transfer Order but till date, he has not report from duty at SMO (MP), Bhopal.*

*By his aforesaid act, Shri R.C. Bawa has disobeyed the said order of transfer and wilfully and unauthorizedly absented himself from duty. These acts on his part constitute misconduct under the Rule 33.7.2 and 33.7.69 of Service Reules for Employees of KRIBHCO.”*



13. What vividly emerges from a careful analysis of the abovesaid extracted contents, is that the petitioner was transferred and relieved on the same date, but he did not join at his new place of posting, i.e. Bhopal, even after a couple of reminders. Further, it is a conceded position on record, and as has also been specifically recorded by the learned Industrial Tribunal, that the petitioner-workman was supplied all the relevant documents, which were relied upon by the respondent-Management to prove the charges levelled against him, and the same were received by him. However, the petitioner, throughout the enquiry proceedings, insisted upon providing him the documents recited in Ex.DD1, which, the Enquiry Officer, by passing a formal order, had declared irrelevant vis-à-vis the charges framed against him. Rather, the Enquiry Officer advised him to produce those documents in his defence, in the event, he wished to rake up the plea of victimization.

14. Since the petitioner-workman was insisting upon furnishing of the documents contained in Ex.DD1, it is imperative to refer to the same:-

- “1. Entire proceedings/correspondence etc. exchanged between the management and the then SMM-HR Sh. S.L. Garg, regarding my representations (1) dated 20/21.4.1992 addressed to the then Managing Director, Kribhco, (2) dated 2.11.1992 addressed to the then Managing Director, Kribhco (3) dated 3.6.1993 addressed to the then Chief Manager (P&A), Complaint dated 14.2.1995 addressed to then ED (Vigilance) Kribhco and representation dated 3.5.2005 addressed to the then Managing Director, Kribhco.*
- 2. Record pertaining to purchase of 5 racks, for which request to seek approval/budget for Rs.20,000/- was made by Sh. G.S. Katarya to JGM (P&A) vide his letter dated*



*9.6.2005 i.e. the record showing the correspondence exchanged between the management and H.O. and SMO-HR with regard to aforesaid purchase etc.*

*3. Action taken by the management seeking comments/clarification etc. on my letter dated 20.6.2005 addressed to the managing Director, Kribhco and copy endorsed to the then Sr. SMM-Haryana, requesting therein to not to allow our office to weed out the old record and consequent upon the receipt of which, I was transferred to SMO-Bhopal.*

*4. My Personnel File being maintained by the P&A Deptts. Of Kribhco.”*

15. *Ex facie*, the documents, as sought by the petitioner, time and again, have no nexus with the charges framed against him. However, if the petitioner still wished to prove the same to establish that his transfer was the outcome of the victimization, he could have placed reliance thereupon, during his defence. Pertinently, the petitioner-workman was, indeed, seized of the said documents, as he himself brought the same on record as Ex. W1 to W5, before the learned Industrial Tribunal. Not just that, the witnesses produced by the respondent-Management, in any way, did not relate to the defence, which the petitioner sought to prove. Rather, the witnesses were examined by the Management only to establish that the petitioner, despite being transferred, willfully opted not to join at Bhopal for about two years. Therefore, this Court has no hesitation to conclude that the Enquiry Officer committed no error of law, while not acceding to the request made by the petitioner with regard to furnishing the documents listed in Ex.DD1, being irrelevant to the charges framed against him. Moreover,





the learned Industrial Tribunal has considered this issue in extenso, and, as demonstrated above, rightly concluded that, in fact, most of the sought for documents were produced by the petitioner himself in his defence. But, he failed to establish any prejudice, which might have been caused to him, at any stage, due to non-supply of the documents.

16. Before parting with the issue under deliberation, the decision in **Chandrama Tewari (ibid)**, as relied upon by the learned counsel for the petitioner, also needs to be dealt with. There is no quarrel with the legal proposition culled out therein, but the same is not applicable to the peculiar facts and circumstances of the matter at hand. For, all the relevant documents, including the statement of witnesses, and day to day enquiry proceedings, were duly supplied to the petitioner. Suffice it to say, the respondent-Management has adopted a legally valid and transparent procedure.

17. In this view of the matter, the first issue, as carved out above, is answered against the petitioner-workman, and in favour of the respondent-Management.

18. Adverting to the second issue, it is a matter of record that the respondent-Management had produced as many as four material witnesses. As narrated above, PW1 and PW2 were not examined by the petitioner-workman, on the premise that he would cross-examine them, only upon receipt of the documents listed in Ex.DD1. Surprisingly, he cross-examined PW3 (Mr. Zile Singh), in the absence of the said documents, which, in no uncertain terms, indicates that he voluntarily waived off his right to cross-examine PW1 and PW2, despite being afforded opportunities in this regard.



19. As demonstrated above, much thrust of the petitioner was founded upon the plea that he was denied the opportunity to cross-examine Mr. M.P. Baby, one of the witnesses of the respondent-Management.

20. A bare analysis of the impugned order indicates that evidence of Mr. M.P. Baby was fixed on 06.12.2007. At this stage, it is essential to take note that the place of enquiry was Chandigarh, whereas, the witness in question was posted at Bhopal, thus, he had to travel from Bhopal to Chandigarh, to partake in the enquiry proceedings. However, instead of joining the proceedings on the abovesaid date, the petitioner sent a request for deferment on medical grounds. In fact, a day prior, an authorized representative of the respondent-Management visited the petitioner's home to inform him about the date of examination of Mr. M.P. Baby. It is a matter of record that the medical certificate of the petitioner was of 05.12.2007, still he did not convey to the said authorized representative that he would not attend the enquiry proceedings. Therefore, since the petitioner did not inform the respondent-Management well in time, the said witness reached Chandigarh. Accordingly, the Enquiry Officer examined the said witness and recorded his chief, and adjourned the proceedings for next date for his cross-examination. On that very date, Mr. Zile Singh (PW3) was also present, but the Enquiry Officer, in all fairness, did not examine him, by recording that since he was a local witness, his evidence could be recorded on a subsequent date, enabling the petitioner-workman to cross-examine him for the defence, and as such, the proceedings were deferred to 17.12.2007. However, on the adjourned date too, the petitioner did not



come present at the given time, i.e. 11:30 AM, instead he telephonically requested to undertake the proceedings at 12:15 PM. Accordingly, his request was acceded to, and the enquiry proceedings were adjourned till 12:15 PM, but, the petitioner again did not turn up to join the proceedings even at the time chosen by him. Having been left with no other option, the Enquiry Officer recorded and signed the proceedings at 1:00 PM.

21. All the abovesaid factual matrix of the matter constrains this Court to reach a conclusion that the petitioner, since beginning, was deliberately avoiding cross-examination of the abovesid witness, for the reasons best known to him. At this stage, it is important to note that what could be more important for a person who is facing charges of major penalty, than earnestly joining and pursuing the enquiry proceedings, specifically, when according to the petitioner himself, Mr. M.P. Baby, being a material witness, had to come all the way from Bhopal, and had to return on the same day. In such circumstances, this Court is of the affirmed view that the workman himself did not choose to cross examine the witness, hence, he voluntarily waived off his right, in this regard.

22. At this juncture, the observations recorded by the Hon'ble Supreme Court in **Biecco Lawrie Limited and another,** assume significance, and the same are extracted hereinbelow:-

*“Fair hearing also calls for a right to rebut any evidence that necessarily involves essentially two factors namely, (a) cross examination; and (b) legal representation (State of J & K vs. Bakshi Ghulam Mohammed [AIR 1967 SC 122]. In S.C .Girotra vs. United Commercial Bank [(1996) 2 LLJ 10], the Bank obtained certain reports prepared on which the charges were based and these reports were submitted by bank officers who were examined by the*



*16 Enquiry Officer. On the basis of the report an employee was dismissed and the court held that there was violation of the principles of natural justice as the employee was not allowed to cross-examine the officers who deposed orally before the Inquiry Officer.*

*In the present case, the Inquiry Officer had sent due notice and postponed the date of hearing various times with an intention to permit the respondent to present his case, nevertheless the respondent did not present himself except on three days and ultimately the Enquiry Officer conducted the inquiry ex parte. Therefore, this was not a case where the respondent was not afforded a chance to cross examine the witnesses done by the prosecution witnesses rather it seems to be a case where the respondent, had waived his right to cross examine by absenting himself from the inquiry on the grounds that he was not permitted legal representation nor was furnished with the documents or list of evidences upon which the management was relying.”*

23. In the light of the position outlined above, the answer to the second issue is also returned against the petitioner-workman. Albeit, no further discussion is required on the matter in issue, but this Court deems it apt to emphasize the crucial observations recorded by the learned Industrial Tribunal to the effect that the petitioner-workman, while stepping into witness box, had admitted that he was afforded due opportunity to cross-examine the witnesses:-

*“Further when the workman examined himself in defence a specific question was put by the Presenting Officer and answer given by the workman is as under:-*

*“PO to CO*

*Q) Although learned EO had given full opportunity to you to cross examine Sh. Mohan Singh and Sh. R S Rawat*



*but you did not cross examine them under the garb of so called relevant documents demanded by you for the case and similar situation was with Sh.Zile Singh also but in the absence of those documents why you had chosen to cross examine Sh. Zile Singh.*

*CO to PO*

*A) It is evident from the relevant enquiry proceedings that I never denied from cross examining any of the witnesses rather prior to cross examining Sh. Zile Singh I had expressed my willingness to cross examine the rest of the two witnesses which was not acceded to for the reasons best know to the IO. Even at this stage I am ready to cross examine these witnesses to falsify their statements if opportunity is given to me.*

*PO to CO*

*Q) Exigency of work at SMO MP had fully elaborated by the management witness Sh.MP Baby but you also did not opted to cross examine him and did not come to the enquiry in time. It means that you fully agree to the pointview of Sh. MP Baby.*

*CO to PO*

*A) Again it will be wrong to say that I denied to cross examine Mr. MP Baby to falsify his statement. Whether a person intends to avoid to cross examine a management or not, in such cases inference is always drawn from the intentions of the employee. My intentions were very much bonafide and I was very keen and willing to cross examine the management witness to falsify his statement but in spite of my asking the IO to allow me to cross examine this witnesses my request was turned down straightway. Had I remained absent on that day in that eventuality it could be said that I did not avail the opportunity to cross-examine the management witnesses. My bonafide intentions can also be gauged from the fact that due to genuine reasons ie. being*



*held up in RTI matter, where I was required to be present before the RTI Commissioner Punjab at 10 AM I reached there and duly informed the 10 that I shall be coming late to attend the proceedings which clearly shows my bonafide intentions. If required, copy of the order passed by the RTI Commissioner on 31 Dec. 07 can also be supplied in support of it wherein my presence was also duly marked by Commissioner. It was only a coincidence that both dates le. the date of proceedings in the RTI Commission's Office as well as the enquiry proceedings in hand clashed since I was required to attend both the proceedings I requested the EO to kindly adjourn the proceedings for sometime and also assured that I must attend the proceedings today which I duly did after attending the same. I still am at my wits end as to why I was not allowed to cross examine the management because there was no prejudice being caused to anyone had I been allowed to cross examine the management witness on that day. Taking advantage of my delay by not allowing me to cross examine the management witness inspite of calling him from Bhopal to this office clearly shows that even on that date the intentions of the management were not bonafide. "*

24. In conspectus of the position, as sketched out above, this Court has no reason to interfere with the well reasoned order passed by the learned Industrial Tribunal. Accordingly, the instant writ petition, being devoid of any merit, is **dismissed**.

(KULDEEP TIWARI)  
JUDGE

December 23, 2025  
Ak Sharma

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes    |
| Whether reportable        | Yes/No |