



CWP-758-2014

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

(223)

CWP-758-2014

Date of Decision : 02.09.2025

M/s Carrier Air Conditioning and Refrigeration Ltd.

...Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-
Labour Court-I, Gurgaon and another

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Adarsh Jain, Advocate and
Ms. Amandeep Kaur, Advocate
for the petitioner.

Mr. Lalit Rishi, Advocate for
Ms. Deepali Saini, Advocate
for respondent No.2.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant writ petition, cast under Articles 226 of the Constitution of India, a challenge is thrown to the order dated 11.10.2013 (Annexure P-1), passed by the learned Labour Court concerned, wherethrough, it has answered the preliminary issue in favour of the workman, and it was held that the petitioner/Management, has not conducted fair and proper enquiry.

2. Learned counsel for the petitioner submits that such findings have been recorded, merely, on account of failure of the petitioner/Management, to produce the enquiry report, whereas, the entire enquiry proceedings have been produced as Exh.MW-1/1, and therefore, the learned Tribunal concerned, ought to have examined the above exhibit in its right perspective and merely,



because the final enquiry report has been lost, the adverse inference should not have been taken against the petitioner/Management.

3. He further draws the attention of this Court, towards various documents to submit, that in fact, the enquiry report was made available to the workman, which fact was duly admitted by him, even, in the cross-examination also, and therefore, the learned Tribunal concerned, should have passed a direction upon the workman, to produce it on record. Further, the onus of this issue was upon the workman, to establish that the enquiry was not conducted in accordance with law, and accordingly, it is for the workman to place on record the corroborative evidence, and onus cannot be shift upon the petitioner/Management.

4. He also draws the attention of this Court, towards the second show cause notice, issued on 13.08.2001. The said show cause notice carries a specific mentioning that the enquiry report of 90 pages is enclosed with it, and this fact has never been refuted by the workman, rather, in reply to the show cause notice (supra), the workman has admitted the fact of receipt of the enquiry report, which is clear from the reply (Annexure P-8). He further submits that in the demand notice, as well as, in the claim petition, the workman has never set up a case with the pleadings that no enquiry report was handed over to him. He submitted that the moment he came to know that the petitioner/Management has lost the original enquiry report, he filed an application on 17.10.2006, before the learned Tribunal concerned, for passing a direction upon the petitioner/Management, to produce the original enquiry report. Even, in the replication, the workman though has challenged the findings of Enquiry Officer, but have not pleaded that the enquiry report has not been supplied to him. Finally, he draws the attention of this Court, towards



the cross-examination, wherein he admitted that show cause notice dated 13.08.2001, along with the enquiry report was served upon him. He submits that all the above clinching evidence clearly establish that the workman was duly served with the enquiry report, and since the onus of this issue, as claimed by the learned Tribunal concerned, was upon workman, he should have placed this on record.

5. The submissions as made by the learned counsel for the petitioner has been strongly refuted by the learned counsel for the contesting respondent No.2/workman. He submits that the enquiry report, which he has received, has in fact, been lost and therefore, he cannot be subjected to produce the same, as the custodian of the original enquiry report is the petitioner/Management.

6. In the instant case, the respondent No.2/workman, was engaged with the petitioner/Management, for a period of one year, w.e.f. 04.02.1995, and thereafter, he was kept under training for a period of two years w.e.f. 01.04.1996, and upon successful completion of the training period, the workman was appointed as an 'Operator', vide appointment letter dated 27.03.1998, w.e.f. from the date of appointment letter itself, and his services were confirmed. The last salary, which was drawn by the workman was Rs.9,050/- per month. The workman was placed under suspension by the petitioner/Management, on 22.03.2001, and he was served chargesheet on 02.04.2001. Reply to the said chargesheet was filed by him on 05.04.2001, and thereupon, the Enquiry Officer was appointed by the petitioner/Management, and after conducting the enquiry, the enquiry report was submitted with the petitioner/Management, and finally, the workman was dismissed from his services, vide order dated 27.08.2001. The said dismissal order was challenged before the claim petition was filed, which led to issuance



of reference under Section 10 (1) (c) of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the Act of 1947'). Learned Tribunal concerned has framed the preliminary issue, as to whether, the enquiry conducted by the petitioner/Management was not proper and legal? This preliminary issue was decided in favour of the workman, by drawing an order dated 11.10.2013 (Annexure P-1), which is now under challenged before this Court.

7. This Court has considered the submissions as made by the learned counsel for the parties concerned, and with their able assistance, has gone through the paper book and the available record.

8. The submission made by the learned counsel for the petitioner/Management, that since the workman has been supplied the copy of the enquiry report, therefore, he should have brought the same on record, and in the absence of enquiry report, which unfortunately, the petitioner/Management has lost, no adverse inference should have been taken by the learned Presiding Officer, concerned. This submission is not acceptable to this Court, for the reasons, that the petitioner/Management is the custodian of the original record. In case, the petitioner/Management, took a plea to the effect that due enquiry was conducted, and enquiry report was submitted by the Enquiry Officer concerned, the Management should have substantiated the same by leading cogent evidence, or established it by leading a secondary evidence. The onus of establishing the fact that the enquiry was conducted and enquiry report was submitted by the Enquiry Officer, is upon the petitioner/Management. Therefore, the issue, which is framed by the learned Tribunal concerned, has rightly been answered in favour of the workman. Even if, the petitioner/Management wishes to establish that due enquiry was conducted, it can lead secondary evidence, to establish that the enquiry was



duly conducted, however, the original enquiry report has been lost. The document (Exh.MW-1/1), which is produced before this Court, is vernacular of enquiry proceedings, and also a part of the record of the learned Tribunal concerned, can be used by the petitioner/Management, to establish this fact at the time of final adjudication of the main reference.

9. The petitioner/Management may not solely rely upon the enquiry report, but can also adduce the evidence before the learned Tribunal concerned, justifying their action of imposing the punishment upon the workman, by leading positive evidence, in this regard, and it is always open for the learned Tribunal concerned, to accept such evidence adduced by the petitioner/Management, and to held in his favour even there is a finding against the petitioner/Management regarding validity of the domestic enquiry.

10. This Court, can lend vigour to this observation from the judgment passed by the Hon'ble Supreme Court in ***Civil Appeal No.992 of 1967***, decided on 17.09.1971, titled '***State Bank of India versus R.K. Jain and others'*** 1972 AIR (Supreme Court) 136, wherein, it was held as under :-

"32. From the above extract it is clear that it is open to the management to rely upon the domestic inquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. The management has also got a right to justify on facts as well that its order of dismissal or discharge was proper.

xxx xxx xxx

34. It should be remembered that when an order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and termination the service of the workman concerned and whether the workman is entitled to any relief. In the



present case the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under those circumstances it is the right of the workman to plead all infirmities in the domestic inquiry if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and if the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised, that it is the right of the management to sustain its order by adducing also independent evidence



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before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity.”

11. In view of the above, this Court does not find any merit in the instant petition, which requires any interference of this Court. Consequently, the instant writ petition is **dismissed**.

12. Since the instant petition was pending for over a decade, therefore, a *mandamus* is passed upon the learned Tribunal concerned, to make all endeavours to decide the reference, as expeditiously as possible.

(KULDEEP TIWARI)
JUDGE

September 02, 2025
Manpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No