
(1998) 01 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11362 of 1988

Ghanshyam Dass

APPELLANT

Vs

Presiding Officer, Labour Court, Ambala and another

RESPONDENT

Date of Decision : 12-01-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (1999) 2 LLJ 28 : (1998) 119 PLR 105

Hon'ble Judges : K.S. Kumaran, J;G.S. Singhvi, J

Bench : Division Bench

Judgement

G.S. Singhvi, J.—This is a petition by the workman to quash the award dated February 22, 1998 passed by the Labour Court, Ambala, upholding the termination of his services.

2. The facts necessary for deciding whether or not the impugned award should be quashed on the ground that it suffers from an error of law are that while he was working as conductor and was posted under the respondent No. 2 a departmental enquiry was initiated against the petitioner on the allegation of allowing 4 passengers to travel from Panipat to Haridwar without tickets and thereby causing loss of Rs. 45.60 to the Government. On the basis of the finding recorded by the Enquiry Officer holding him guilty of mis-conduct alleged against him, the respondent No. 3 ordered the petitioner's dismissal from services. This gave rise to an industrial dispute which was referred to the Labour Court, Ambala for adjudication. The petitioner challenged his dismissal from service on the ground of violation of the principles of natural justice and the provisions of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. The Labour Court rejected both the grounds and upheld the action of the employer.

3. Shri Sarjeet Singh assailed the finding recorded by the Labour Court on the issue of violation of the principles of natural justice and the Rules of 1970 and argued that the enquiry proceedings should have been quashed solely on the

ground that the Enquiry Officer failed to ask the petitioner whether he was desirous of seeking assistance of a co-worker. Learned counsel submitted that Rule 8 of 1970 Rules is mandatory and non-compliance thereof is sufficient to vitiate the proceedings of enquiry. He relied on the decision of the Supreme Court in Bhagat Ram Vs. State of Himachal Pradesh and Others, and the decisions of this Court in Hans Raj Gupta v. State of Punjab 1992(1) S.L.R. 455, Dr. Harbhajan Singh Greasy v. State of Punjab 1992(2) S.L.R. 135 and Kehar Din v. The Presiding Officer, Labour Court, Chandigarh and another, 1992(2) R.S.J. 281, Shri S. M. Sharma countered this submission of Shri Sarjeet Singh and argued that the finding recorded by the Labour Court about the lack of prejudice to the petitioner due to alleged non-compliance of rules of natural justice should not be interfered with by the High Court in exercise of its jurisdiction under Article 226.

4. On the issue of denial of reasonable opportunity of hearing to the petitioner, the Labour Court recorded the following findings :

"After hearing both the parties and on perusal of entire material, I find no merits in the above contentions of learned representative of the workman. The record of enquiry proceedings comprising in M/1/1 to M-1/8 shows that the workman at no stage during the course of enquiry had made any request to the enquiry officer that he may be allowed to be represented by a co-worker. To me, it is clear that the contention of the workman is after-thought. Admittedly, he had not mentioned about his such prayer in his reply which he had submitted in response to the show cause notice of the proposed punishment. Workman has himself produced copies of enquiry proceedings and it is clear that he was given copies of those documents on which the management had relied upon. The workman has failed to point out as to copy of which specific document was not supplied to him. He has failed to convince that non-supplying of any such document had caused prejudice to him. It was not at all necessary for the management or for the reporting inspector to produce those four passengers during the enquiry for their evidence."

5. A careful reading of the above extracted findings of the Labour Court shows that during the course of enquiry, the petitioner did not make any grievance about non-compliance of Rule 8(8) or denial of assistance of co-worker. In fact, he participated in the proceedings of enquiry without any difficulty or handicap. Before this Court also, it has not been shown as to how the petitioner was prejudiced due to failure of the Enquiry Officer to ask him to avail the assistance of a co-worker. A look at the record of the case shows that the petitioner was charged with a simple allegation that he has caused loss to the government by allowing four passengers to travel in the bus from Panipat to Haridwar without charging fare. He did not express any difficulty in defending himself without the assistance of a co-worker. The petitioner did not complain to the Enquiry Officer that without the help of a co-worker he will not be able to defend himself. Shri Sarjeet Singh has not been able to show that the allegation levelled against the

petitioner was so complicated and intricate that he could not defend himself effectively without the assistance of another workman. Therefore, we do not find any cogent reason to upset the finding of the Labour Court that the enquiry proceedings are not vitiated due to violation of the principles of natural justice.

6. Rule 8(8) of 1970 Rules, on which reliance has been placed by Shri Sarjeet Singh, reads as under :

"8(8). The Government employee may take the assistance of any other Government employee to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the punishing authority is a legal practitioner, or the punishing authority having regard to the circumstance of the case, so permits".

7. In *Bhagat Ram v. State of Himachal Pradesh* (supra), the contention urged on behalf of the appellant was that the order of punishment is vitiated due to violation of Rule 15(5) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 because he was not given opportunity of being defended by a co-employee. This was rebutted by the respondents on the ground that the appellant did not apply for permission to seek help of another government servant to defend himself. While rejecting the plea of the respondents, their Lordships held as under :

"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 Presiding 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 Inquiry 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 Inquiry 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 the 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 unless the Disciplinary Authority, having regard to the circumstances of the case, so permits". The procedure prescribed for the inquiry was devised with a view to affording a delinquent Government servant facing a disciplinary proceeding a reasonable opportunity to defend himself. 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 proceedings. 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 Forest Guard would be fully aware of

1965 Rules that he must seek permission for proper assistance at a proper stage as contemplated by the Rules. In fact, justice and fair play 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 inquiry. At any rate the Inquiry Officer at least must enquire 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 inform that he is entitled under the relevant rules to seek assistance of another Government servant belonging to department to represent him."

8. In Hans Raj Gupta's case (supra), the learned single Judge quashed the proceedings of enquiry on the following grounds :

(a) The charge sheet itself mentioned that the charge is proved and the enquiry was not held in a fair and impartial manner.

(b) Non-supply of the copy of the preliminary enquiry report caused prejudice to the petitioner, inasmuch as he could not defend himself effectively.

(c) the Enquiry Officer relied on the evidence recorded in the course of preliminary enquiry without giving copy of the statement of the officials and such officials were not produced during the course of enquiry.

(d) The enquiry officer did not ask the delinquent to seek the assistance of a co-employee.

9. The learned Judge made reference to the observations made in Bhagat Ram's case (supra) and held that due to the violation of Rule 8(8) of the Punishment and Appeal Rules, which is mandatory, the order of punishment is liable to be quashed.

10. In Dr. Harbhajan Singh Greasy's case (supra), the learned single Judge quashed the order of punishment on the ground that the charge sheet was not served upon the delinquent and the enquiry was held in utter so violation of the principles of natural justice.

11. In Kehar Din v. The Presiding Officer, Labour Court, Chandigarh (supra), the learned Single Judge relied on Bhagat Ram's case (supra) for holding that the denial of the opportunity of defence had adversely affected the petitioner.

12. A careful reading of the decision of Bhagat Ram's case (supra) shows that their Lordships of the Supreme Court interfered with the order of punishment because they felt that the appellant, who was a Class-IV employee, could not defend himself effectively without the assistance of a co-worker. The other factor which considerably influenced the verdict of the Apex Court was that the appellant had not been given permission to seek assistance of co-employee,

although the co-delinquent was given permission to seek assistance of another employee. In our view, that decision cannot be read as laying down a proposition that the disciplinary proceedings and the punishment order will be liable to be invalidated in all those cases in which the Enquiry Officer does not give an offer to the delinquent employee to seek assistance of a co-employee/co-worker. We are also of the opinion that in each case in which the order of punishment is challenged before the Court on the ground of violation of Rule 8(8) or similar other provision, the Court must take into consideration the nature of allegation, the evidence produced during the course of the departmental enquiry and other records to find out whether violation of the rule has resulted in denial of effective opportunity of defence to the delinquent. If it is found that the charge levelled against the employee is plain and simple and delinquent does not face any difficulty or handicap in defending himself, then the order of punishment will not be invalidated only on the ground that the Enquiry Officer did not ask the employee to seek assistance of a co-employee/co-worker. In this regard, we may refer to Rule 19(2)(a) of 1970 Rules which contains provision for consideration of appeal filed by delinquent employee against the order of punishment. The same reads as under :

xx xx xx xx (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 5 or enhancing any penalty imposed under the said rule, the Appellate Authority shall consider :

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice;

xx xx xx xx

13. A bare perusal of the above-quoted rule shows that the appellate authority will not set aside the order of punishment simply because the delinquent employee succeeds in proving that the enquiry has been held in violation of the rules or the principles of natural justice. Rather, the appellate authority will have to consider whether the violation of the rules or the principles of natural justice has caused prejudice to the delinquent. If it finds that no prejudice has been caused to the delinquent, then the appellate authority may not interfere with the order of punishment. If this be the limitation on the exercise of power by the appellate authority, we are unable to agree with the learned counsel for the petitioner that in exercise of Jurisdiction under Article 226, this Court must nullify the order of punishment, as a matter of course, only on the ground of violation of Rule 8(8).

14. In the conclusion, we broadly agree with the proposition that there should be substantial compliance of Rule 8(8) of 1970 Rules and the delinquent should ordinarily be called upon to seek assistance of a co-employee, the order of punishment passed cannot be invalidated only on the ground of violation of that rule.

15. On the basis of the above discussion, we hold that :

(a) The Enquiry Officer should ordinarily give an opportunity to the delinquent employee to seek assistance of a co-employee.

(b) However, non-compliance of Rule 8(8) or similar other provisions do not ipso facto result in the invalidation of enquiry proceedings and the order of punishment. In each such case, the Court will have to examine the record of the case to find out whether the violation of the rules or the principles of natural justice has caused prejudice to the delinquent employee. If it finds that the delinquent was not handicapped in defending himself without the assistance of co-employee, then the order of punishment will not be nullified. On the other hand, if the Court finds that the violation of the Rule 8(8) and the principles of natural justice has prejudiced the defence of the delinquent, then the order of punishment will be liable to be quashed.

16. So far as the present case is concerned, we do not find any justification to quash the order of punishment only on the ground of non-compliance of Rule 8(8) because if the petitioner has failed to show that he could not defend himself without the assistance of a co-worker.

17. We also do not find any error in the finding recorded by the Labour Court that the employer has rightly held the petitioner guilty of the charge of having allowed four passengers to travel in the bus without charging fare.

18. However, there is substantial force in the argument of Shri Sarjeet Singh that the Labour Court has failed to exercise its jurisdiction u/s 11-A and, therefore, the impugned award should be set aside. No doubt, the Presiding Officer has referred to the provisions of Section 11-A giving an impression that he was conscious of the ambit and scope of the jurisdiction of the Labour Court to interfere with the punishment awarded by the employer, but a careful reading of paragraphs 15 and 16 of the impugned award shows that the learned Presiding Officer misdirected himself in examining the issue of punishment. He assumed that the petitioner has been found guilty of the charge of embezzlement and that he has been proved to be a dishonest person. This assumption appears to be the basis of his conclusion that a person found guilty of embezzlement does not deserve any indulgence. To our mind, this approach of the Labour Court is clearly erroneous because the petitioner was not charged with the allegation of embezzlement nor the Enquiry Officer recorded a finding that he has been proved to be dishonest. In fact, no evidence was produced by the department to show that the petitioner had embezzled the funds of the Roadways or that he had secured pecuniary gain at the cost of the employer. We, therefore, hold that the refusal of the Labour Court to interfere with the punishment imposed by the employer is based on a totally erroneous premise and, therefore, the impugned award deserves to be set aside with a direction to the Labour Court to reconsider the issue of punishment in the light of Section 11-A.

19. In the result, we allow the writ petition and quash the award Annexure P-7.

The case is remanded to the Labour Court, Ambala, for fresh decision in the light of the observations made herein above.

20. Registry is directed to send a copy of this order to the Labour Court for deciding the matter afresh within 4 months of the receipt of a copy of this order.