

(1995) 08 P&H CK 0075
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 2104 of 1995

Indian Sugar and General Engineering Corpn.	APPELLANT
Vs	
Presiding Officer, Labour Court and Another	RESPONDENT

Date of Decision : 09-08-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1996) 74 FLR 1864 : (1995) 2 ILR (P&H) 515 : (1998) 3 LLJ 483

Hon'ble Judges : M.L. Koul, J;H.S. Brar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.L. Koul, J.—By this writ petition a challenge has been made to the award passed by the learned Presiding Officer, Labour Court, Ambala dated June 14, 1994, whereby Respondent No. 2 Sumer Chand (hereinafter referred to as the workman) has been held entitled to reinstatement and continuity in service with full back wages from the date he has been dismissed from service by the petitioner- M/ s. Indian Sugar and General Engineering Corporation, Yamunanagar, (hereinafter referred to as the "Company").

2. It is an admitted case of the parties that the petitioner was working as a Turner with the management of the Company from July 23, 1982 and on a domestic enquiry conducted by the Company he was dismissed from service on February 8, 1986. On the demand notice of the workman the Government of Haryana referred the dispute between the workman and Company for adjudication to the Labour Court vide notification No. 23673-77 dated June 18, 1987.

3. On the pleadings of the parties the following issue was framed in the matter :--

"Whether the termination of the services of the workman Sumer Chand is valid and justified? If not so, to what relief is he entitled?"

4. On two grounds the dismissal of the workman was vitiated by the Labour Court, firstly that Shri L.C. Lamba, General Manager had not been authorised by the Board of Directors to delegate his power with which he was empowered by a resolution passed by the Board of Directors on September 10, 1985 contained in Annexure P-7 with the writ petition and, therefore, any officer below him was not empowered to conduct enquiry against the workman and secondly the workman was not supplied with a copy of the report of the enquiry to submit his representation before he could be dismissed by the competent authority from service. In nutshell these two points have assumed consideration for adjudication in this petition and on the consensus of learned counsel for the parties this writ petition is disposed of at the motion stage.

5. Heard learned counsel for the parties and have also bestowed our thoughtful consideration over the record on the file.

6. In regard to the first point, we deem it proper to reproduce the resolution No. 18 dated September 10, 1985 in verbatim, which reads as under:--

"In supersession of all earlier resolutions resolved that Shri L.C. Lamba, General Manager (Works), India Sugar and General Engineering Corporation (ISGEC), Yamuna Nagar, unit of the Company be and is hereby authorised:--

(i) to sign and issue show cause letters, chargesheets etc. and

(ii) to take disciplinary action of all kinds including dismissal from the service of the Company;

against any of the employees working at ISGEC unit of the Company at Yamuna Nagar in case it is so warranted.

2. Further resolved that Shri L.C. Lamba be and is hereby authorised to delegate the above authority or part of the above authority to any of the officer/officers of ISGEC unit of the Company at Yamuna Nagar."

7. On the perusal of this resolution it is found that Shri Lamba, General Manager had been authorised by the Board of Directors also to delegate the above authority or power thereof to any of the officer or officers of ISGEC unit of the Company at Yamuna Nagar. It indicates that Shri Lamba with the investment of powers had an authority to delegate the said powers to any officer or the officers junior to him for the purposes of conducting enquiries or for any disciplinary action which in the interest of Company was required to be taken against any workman of the Company, We are astonished that the learned Labour Court has not cared to read the whole resolution in toto and has instead made a cursory remark in the judgment that Shri Lamba was not competent to delegate his power to any of the officers below him and this shows that the enquiry conducted in the matter was illegal. However, on perusal Annexure P-6, it is found that bunch of officers were authorised by Shri Lamba to take disciplinary action against the workmen within the ambit of Resolution No. 18 whereby he himself was empowered to sign and issue show cause notices, charge-sheets and to take

disciplinary action of all kinds including dismissal from service against any employee working in ISGEC unit, Yamuna Nagar in case it so warranted. Therefore, the enquiry conducted against Respondent No. 2 by officer below the General Manager, Shri Lamba was a competent officer to hold enquiry and he has thus held the same in accordance with law. The workman had participated in that enquiry. He cannot now say that the Enquiry Officer was not a competent person to hold the enquiry against him. The workman had fully participated in the enquiry, examined his witnesses, cross-examined the witnesses produced by the Company and had produced the documents before the Enquiry Officer. Hence the argument of the learned counsel for the respondent that the enquiry was not conducted by a competent officer does not hold good and is not sustainable.

8. The only point which now assumes consideration is as to whether the Company was competent to dismiss the workman from Service before an opportunity of hearing was provided to him to make his representation as to why the proposed punishment should not be inflicted upon him. It is well established principle of law that undoubtedly the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute arises Industrial Tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, no doubt the Tribunal does not act as a Court of appeal and substitute its own judgment for that of the management but it can interfere ; (i) when there is want of good faith ; (ii) when there is victimisation or unfair labour practice ; (iii) when the management as beenguilt of a basic error or violation of a principle of natural justice, and (iv) when on the material the finding is completely baseless or perverse.

9. In the instant case it is the admitted position of the parties that on completion of the enquiry the competent authority did not issue second notice upon the workman enabling him to file a representation saying something in his defence and this natural right of hearing was taken away from him.

10. In this behalf, it is relevant to take mention of a decision of the Hon''ble Supreme Court in Union of India and others Vs. Mohd. Ramzan Khan, wherein the Apex Court has held that an enquiry held against a workman by the Enquiry Officer is quasi-judicial in nature for there is a charge and denial followed by enquiry at which the evidence is led and the assessment of the matter before conclusion is reached. It is further held that in a quasi-judicial matter if the delinquent is being deprived of knowledge of the material against him though the same is made available to the punishing authority, in the matter of reaching his conclusion, rules of natural justice would be affected.

11. On the basis of the above observations, the Apex Court had been of the view that the concept of natural justice has existed for many centuries and it has crystallised into two rules, that no man should be Judge in his own cause, and that no man should suffer without first being given a fair hearing. The Courts

have been developing and extending the principles of natural justice so as to build up a kind of code of fair administrative procedure to be obeyed by the authorities of all kinds. They have done once again by assuming that Parliament always intends powers to be exercised fairly.

12. A similar view has been taken by the Apex Court in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, holding that the delinquent employee is entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject. The law-laid down in *Mohd. Ramzan's case (supra)* should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Copy of the report must be furnished to the employee even if he does not ask for the report.

13. In the case on hand, no doubt, there is a denial of the report of the Enquiry Officer, to the workman and this denial has debarred the workman a reasonable opportunity to make a representation before the competent authority with regard to the punishment to be awarded by him and there is a breach of principle of natural justice but in *Mohd. Ramzan's case (supra)* the Supreme Court has held it that this principle shall have prospective operation and no punishment imposed before November 20, 1990 shall be open to challenge on this ground.

14. In the instant case on the basis of the above Supreme Court rulings which hold good in *Commandant, Central Industrial Security Force and others Vs. Bhopal Singh*, as well, the workman is not entitled to the benefit of natural justice especially for the fact that the enquiry held against him was in the year 1986 and he was dismissed from service in that year. Thus the workman has failed to establish that he was entitled to the benefit of natural justice for not receiving the enquiry report before he could be dismissed. Hence the finding recorded by the learned Labour Court is contrary to law as discussed and held above. The writ petition is allowed and the award passed by the learned Labour Court being vitiated is set aside. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs.