

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-I, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-I, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 264/2015

Date of Passing Award- 03/06/2022

Between:

Shri Rajesh Kumar,
Billing Operator Taurus Station Canteen,
25 of the Mall, Delhi Cantt-10
R/o House No. D-70,
Madhu Vihar,
Uttam Nagar, (Near Solanki Market)
New Delhi-110059.

Workman

Versus

1. The Dy. G.O.C, COS, HQ Delhi Area,
New Delhi Cantt,
New Delhi-10.
2. Amit Kabthiyal,
Executive Director,
Taurus Station Canteen,
25 of the Mall, Delhi Cantt-10

Management

Appearances:-

Shri Sanjay Sharma
(A/R)

For the claimant

Shri Santosh Kumar
(A/R)

For the Management

A W A R D

This is a claim filed by the aggrieved claimant for the illegal termination of his service by the management.

The claim of the claimant in short is that he was appointed as a billing operator at the Taurus Station Canteen situated at Delhi Cantonment under the management No.2 in the year 1986. Since, then he was discharging his duties honestly and diligently. The service of the workman was terminated on 10.07.2015 by the order of the management No.1. Being aggrieved the workman filed an application before the management No.2 on 13.07.2015 demanding supply of all the documents relating to the inquiry, if any conducted against him before the termination of his service. But no reply was given to the said application by the management No.2. The workman again filed a representation on 31.07.2015 before management no.1 demanding copies of the documents leading to the inquiry and order of termination. But the management again maintained silence on the same. The

claimant workman thereafter raised a dispute before the conciliation officer challenging his illegal termination. Pursuant to a notice issued by the conciliation officer the management appeared and filed a reply to the statement of claim of the workman. After filing of the rejoinder by the workman steps were taken for conciliation. But for the non cooperation of the management conciliation failed and a failure report was supplied to the workman who, then, approached this tribunal for adjudication on the legality of the order of termination. The claimant has stated that the management No.2 while filing reply before the conciliation officer has stated that the documents demanded by the workman being confidential in nature cannot be provided to the workman who was afforded appropriate opportunity during the conduct of the inquiry against him. The claimant has thus, stated that an illegal order of termination has been passed behind his back and since the date of termination he is unemployed and the family is starving. The claimant has further stated that a false allegation was made against him that he had sold 97432/- units of liquor fraudulently on fictitious/unauthorized permit slip. He being a billing clerk only was never involved in the unlawful transaction nor had gained anything out of the same. Describing himself as a victim of the circumstance he has prayed for reinstatement in service and grant of all consequential benefits he is entitled to.

The management filed written statement admitting that the workman was appointed on contractual basis by the management and discharging work as the billing clerk since 1986. The management has also admitted that the complainant was found guilty during an inquiry for generating large no. of unauthorized bills which resulted in illegal sale of 97432/-units of liquor. An FIR was lodged against the claimant at Sadar Bazar Police Station and a domestic inquiry was conducted. The said inquiry was conducted fairly and opportunity was granted to him to setup his defence. Since, the termination is a result of the inquiry, no illegality was committed and the claim petition is liable to be rejected. No rejoinder was filed. On the basis of the pleadings the following issues are framed for adjudication.

ISSUES

1. Whether the service of the workman was terminated illegally and whether he is liable to be reinstated into service.
2. Whether the claim is legally maintainable in view of the objections of the respondent.

The claimant Rajesh Kumar testified as WW1 and filed documents which have been marked in a series of WW1/1 to WW1/8. These documents include the order of termination, his representations demanding supply of documents, the statement of claim filed before the conciliation officer the failure report and the reply filed by the management before the conciliation officer. Similarly the management examined Col Harjit Preet Pal Singh as MW1 and produced the documents marked as WW1 (Colly). This is the

entire inquiry proceeding and the order of termination passed against the claimant.

At the outset of the argument the Ld. A/R for the claimant submitted that it is the settled position of law that a party to a juridical or quasi judicial proceeding has a right to participate and peruse all the documents and evidence proposed to be used against him. But in this case though the management which is a department of army had conducted a fact finding inquiry against the claimant, very surprisingly he was kept out of the scope and was allowed to remain present as a silent spectator. After the inquiry when he was found guilty, his genuine demand was for supply of the copies. But the same were not supplied which has grossly prejudice him. The other argument is that no fair opportunity was granted to defend his cause and an arbitrary illegal order has been passed. In view of the evidence and the argument advance it is to be examined if the order of termination was illegal and unjustified.

FINDING

ISSUE No.1 and 2.

Both the issues are taken up together for convenience. The claimant in his affidavit has stated that he demanded the copies of the memo showcause notice, article of charges, charge sheet, statement of witnesses and the inquiry report including the final order passed by the disciplinary authority but the management refused to grant on the pretext that the documents are confidential in nature. Thereby the claimant has stated that the Principles of Natural Justice were not followed and the order was illegally passed. He has further stated that for the illegal termination his family is starving as he is not gainfully employed. The witness examined on behalf of the management has stated that he is working as the executive director at Taurus Station Canteen and conversant with the facts of the case. He has stated that an independent departmental inquiry was conducted to find out the truth relating to the unauthorized generation of bills for sale of huge quantity liquor from the canteen illegally. During the inquiry the claimant was found guilty for generating the said bills as he was then working as the billing clerk. The FIR was lodged for breach of trust conducted by him. With regard to the departmental inquiry he has stated that full opportunity was granted to the claimant during the inquiry for cross examining the witnesses. While filing the copy of the entire disciplinary inquiry proceeding marked as exhibit MW1/1 Colly the witness has stated that the opportunity of participation was never denied nor the Principles of Natural justice was violated. Thus, the management witness has stated that the claim petition is not maintainable.

During course of argument the Ld. A/R for the management submitted that this tribunal cannot act as the appellate authority for the departmental inquiry. The tribunal is empowered to examine the correctness of the procedure and find out if the Principles of Natural Justice were followed.

The document filed as MW1/1 is voluminous and contains 140 pages. The said documents contain the details of the allegation, the statement of the witnesses etc. The proceeding dated 26.11.2014 reveals that on that day the claimant Rajesh Kumar and Lt Col Baldev Singh facing the inquiry were called and afforded the opportunity to cross examined the witnesses. Accordingly both claimant Rajesh Kumar and Baldev Singh had put question to the witnesses as mode of cross examination. The proceeding dated 26.11.2014 further discloses that the statement of the claimant recorded on that day. But the explanation offered by him was not accepted by the management and ultimately he was found guilty. No infirmity otherwise is noticed in the conduct of the departmental inquiry.

This is a case of loss of confidence by the employer on the employee. This tribunal is not authorized to examine the adequacy or correctness of the finding arrived in a departmental inquiry. Thus, after a careful examination of the entire case file inquiry report evidence adduce it is found that no illegality was ever committed during the conduct of the departmental inquiry. Thus from the totality of the evidence available on record it clearly appears that the service of the claimant was terminated pursuant to a departmental inquiry finding him guilty of breach of trust and misconduct. This tribunal finds no reason to hold that the order of termination was illegal. In view of the same the claimant is held not entitled to a relief of reinstatement as claimed by him. Hence, ordered.

ORDER

The claim be and the same is answered against the claimant and he is held not entitled to the relief sought for. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
3rd June, 2022

Presiding Officer.
CGIT-cum-Labour Court.
3rd June, 2022