SUPREME COURT OF INDIA

N. T. C. (WBAB and O) Ltd.

Vs.

Anjan K. Saha

C.A.No.4426 of 2001

(A. Pasayat and D. M. Dharmadhikari JJ.)

24.08.2004

JUDGEMENT

D.M.Dharmadhikari, J.

1. This appeal is preferred by National Textile Corporation (WBAB and O) Ltd. under whose employment the respondent was working on the post of Manager of one of their showrooms.

2. The respondent was charge-sheeted for shortage in stores and manipulation of accounts thereby causing financial loss to the Corporation. After departmental enquiry held by the employer, he was dismissed from service on 22-7-1993. Without resorting to the remedy in industrial law, the respondent filed a writ petition against his dismissal in the High Court of Calcutta. The learned single Judge set aside the impugned dismissal order dated 29-4-1999 and directed his reinstatement with all monetary dues for the period intervening the date of his removal and the date of reinstatement.

3. The writ appeal preferred by the employer to the Division Bench of Calcutta High Court has been dismissed and the order of learned single Judge has been maintained.

4. Both learned single Judge and the Division Bench of High Court set aside the order of dismissal of the respondent on the ground that there were two serious procedural infirmities in the departmental enquiry. Firstly, after conclusion of the enquiry, the report of the Enquiry Officer was not supplied to the respondent before passing order of dismissal. The second ground to quash the enquiry and the dismissal order is that in accordance with the provision in clause 14 (4) (c) of *Industrial Employment (Standing Order) Central Rules, 1946*, no opportunity of hearing against the proposed penalty was granted to the respondent.

5. The High Court came to the conclusion that as in the departmental enquiry, there is not only lapse of non-supply of enquiry report to the employee but there is also denial of opportunity to show cause against the proposed penalty, the procedure indicated by this Court in the case of *Managing Director, ECIL, Hyderabad and Others. v. B. Karunakar and Others.*[1] cannot be directed to be adopted for holding a fresh enquiry. In case of B.

Karunakar and Others (supra), this Court held that in case where enquiry report was not supplied and a prejudice is shown to have been caused to the delinquent thereby, directions can be issued for fresh enquiry from the stage of supply of enquiry report and the dismissed employee is liable to be reinstated for the limited purpose of completing the enquiry. It is only after the result of the enquiry that he may claim reinstatement if he is exonerated of the charge or some punishment other than dismissal is imposed on him. The relevant directions made by this Court in case of B. Karunakar and Others (supra) laying down the above legal position and the procedure to be adopted in case of non-supply of enquiry report read as under :-

> "Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."
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> [Emphasis supplied]

6. The learned single Judge and the Division Bench of the High Court have recognized the above-stated legal position in the case of B. Karunakar and Ors. (supra) of this Court. But in directing grant of full relief of reinstatement with back wages although reserving liberty to the employer to hold a fresh enquiry after following all due procedural formalities, the High Court held that it was so necessary because in the present case there is not merely a serious lapse in not supplying the enquiry report to the employee but there is also non-compliance of clause 14(4)(c) of the Model Standing Order. Clause 14(4)(c) of the Model Standing Order of which non-compliance has been alleged merely requires furnishing of additional opportunity to the employee, after conclusion of the enquiry, to show cause against the proposed penalty. Clause 14(4)(c) of the Standing Order Rules reads thus:-

> "Clause 14(4)(c). If on the conclusion of the enquiry or, as the case may be of the criminal proceedings the workman has been found guilty of the charges framed against him and it is considered, after giving the workman concerned a reasonable opportunity of making representation on the penalty proposed, that an order of dismissal or suspension or fine or stoppage of annual increment or reduction in rank would meet the ends of justice, the employer shall pass an order accordingly."

7. In this appeal, notice was issued on the limited question as to whether directions as contained in the case of B. Karunakar and Ors. (supra) should be issued by setting aside the order of reinstatement with full back wages passed in favour of the employee by the High Court.

8. We have heard arguments advanced by learned counsel on either side.

9. We fail to appreciate the reasoning of the High Court in the instant case that in addition to the procedural infirmity of non-supply of enquiry report, there being non-compliance of clause 14 (4) (c) of Standing Order requiring grant of opportunity of hearing against proposed penalty, the employee has to be granted relief of reinstatement with full back wages and the employer can be given liberty to hold a de novo enquiry.

10. As stated by the High Court, we do not find that the language of clause 14(4)(c) is mandatory. In any case, non-compliance thereof cannot be held to be a more vitiating factor than non-supply of enquiry report. If the Constitution Bench of this Court in cases of non-supply of enquiry report directs the procedure to be adopted by allowing the employer to re-start the enquiry from the stage of supply of enquiry report without reinstating the employee, why such a course should not be directed to be adopted where the other grievance of the employee is denial of opportunity to show cause against proposed penalty. When the Court can direct a fresh enquiry from the stage of supply of enquiry report the next step in the enquiry of giving opportunity against the proposed penalty can also be directed to be taken. After the fresh enquiry is over from the stage of supply of enquiry report, the employee can be granted opportunity against proposed penalty in terms of clause 14(4)(c) of the Model Standing Order Rules. Consequential order, if any passed, shall abide the final result of the proceedings. As held in the case of B. Karunakar and Ors. (supra), if the employee is cleared

of the charges and is reinstated, the disciplinary authority would be at liberty to decide according to law how it will treat the period from the date of dismissal till the period of reinstatement and the consequential benefits.

11. As a result of the discussion aforesaid this appeal preferred by the employer is partly allowed. The impugned orders of the High Court to the extent they direct reinstatement in service of the respondent with full monetary dues are set aside. It is directed that in accordance with the legal position explained in the case of B. Karunakar and Ors. (supra) [in paragraph 31 as quoted above], there would be a formal reinstatement of the employee for the limited purpose of enabling the employer to proceed with the enquiry from the stage of furnishing him with the copy of the enquiry report. The employer can place him under suspension for completing the enquiry. After conclusion of the enquiry in the manner as directed in the case of B. Karunakar and Ors. (supra), if the employee is exonerated, the authority shall decide according to law how the intervening period from the date of his dismissal to the date of his reinstatement shall be treated and what consequential benefits should be granted. If on the contrary, the employee is found to be guilty, before taking final decision he should be heard on the proposed penalty in accordance with clause 14(4)(c) of the Standing Order on the quantum of punishment.

12. Since the respondent is facing this litigation on his dismissal from service since the year 1993, the appellant/employer is granted a period of four months to complete the fresh enquiry, in the manner directed above, from the stage of supply of enquiry report, failing which the respondent shall be reinstated in service with all his monetary dues.

Order accordingly.

[1]*1993 (4) SCC 727*