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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 23.08.2017

\+ LPA 604/2016 & CM No.40875/2016

MADHO SINGH ..... Appellant

Through: Mr. Anuj Aggarwal and Ms. Aarushi Agarwal, Advs.

versus

M/S SUPER BAZAR THE CO-OPERATIVE STORE LTD ..... Respondent

Through: Ms. Monika Garg, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SUNIL GAUR

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The appellant is aggrieved by a judgment of the learned Single Judge who had rejected his petition under Article 226 of the Constitution of India and upheld the award of the Labour Court dated 26.10.2015 heard upon a reference. The decision was preceded by an order dated 07.10.2015, on a preliminary issue as to whether the inquiry conducted before the appellant's dismissal was in accordance with the principles of natural justice.

2. The appellant was charge sheeted for a misconduct i.e. allegation of theft and subsequently found guilty of the charges. His grievance – which formed the subject matter of the reference in the Labour Court was that the management did not, before removing him from service vide order dated

06.07.1992, supply him with a copy of the enquiry report that had held the charges to have been proved. Apparently, the enquiry report and the removal order were served together upon him. The appellant's complaint of violation of principles of natural justice was on two accounts i.e. failure to give sufficient opportunity by way of engaging a defense assistant and the substantive part of denial of natural justice on account of failure to supply the enquiry report. It was urged that if the enquiry report had been furnished, the appellant could have possibly pursued the management either not to award the penalty of removal, or award a lesser penalty.

3. Both the Labour Court and the learned Single Judge concurrently have held that the complaint with respect to denial of natural justice is unfounded.

4. It is argued on behalf of the appellant that the grievance with respect to omission to supply the copy of the enquiry report had been made from inception and even taken in the appeal. The learned counsel took the Court through the contents of the appeal made to the concerned authority of the Super Bazar where the workman/appellant had clearly complained that opportunity of representation against the removal order had not been given. It was urged furthermore that the rulings in *Union of India v. Mohd. Ramzan Khan* (1991) 1 SCC 588 and *Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors.* (1993) 4 SCC 727 are clear that where a domestic inquiry is held, the delinquent employee has to be furnished with the adverse report before an adverse disciplinary order is made and that if this procedure is not followed, the principles of natural justice are deemed to have been violated. Learned counsel for the Official Liquidator submitted that the appellant was in the know about the enquiry report as can be inferred from

the appeal where he did not take a clear position about the non-supply of the report (since the Super Bazar has since been directed to be wound up). Learned counsel urges that the appellant/workman was in the know about the contents of the enquiry report as is evident from the appeal itself and that the latter does not articulate a specific grievance with respect to the document not being furnished. The judgment in *B. Karunakar* (supra) states as follows:

> *"30. Hence the incidental questions raised above may be answered as follows:*
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> *[i] xxxx xxxx xxxx*
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> *[ii] xxxx xxxx xxxx*
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> *[iii] xxxx xxxx xxxx*
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> *[iv] In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case 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. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly."*

B. Karunakar (supra) also specifically held, that inquiries and adverse disciplinary orders made prior to the decision in *Mohd. Ramzan Khan*

(supra) i.e. on 20.11.1990 were immune from challenge. *B. Karunakar* (supra) states as follows:

> *"43. xxxx xxxx xxxx xxxx*
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> *It will, therefore, have to be held that notwithstanding the decision of the Gujarat High Court in N.N. Prajapati case and of the Central Administrative Tribunal in Premnath K. Sharma case and of the other courts and tribunals, the law was in an unsettled condition till at least November 20, 1990 on which day the Mohd. Ramzan Khan case was decided. Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the disciplinary authority after 20.11.1990."*

5. From the above, it is apparent that in all inquiries concluded after 20.11.1990, the report had to be mandatorily furnished to the delinquent officer or employee. This was based upon the salutary principle that regardless of the demand of the employee for access to the report, this principle was based on public policy that one facing proceedings likely to adversely impact him should be made aware of the tentative findings to enable him to impugn them or make his representation. In the present case, the findings of the enquiry report were reported to the management, on 06.07.1992. It appears that the order of removal was made simultaneously and both the enquiry report as well as the removal order was supplied to the delinquent employee i.e. the appellant. Thus, the employee was denied the opportunity of representing against the management to possibly secure a lighter penalty. In these circumstances, this Court has no manner of doubt that the principles of natural justice, recognized as such to be part of the law of the land were violated.

6. The question then is what relief should be granted having regard to the circumstances of the case. The original management i.e. Super Bazar Cooperative Store Ltd., was directed to be wound up in July, 2002. It was thereafter sought to be revived when a new management was given charge. Subsequently, that management withdrew from the affairs of the Super Bazar. In these circumstances, the Store faces liquidation and is represented by the Liquidator. Having regard to all these circumstances and the passage of time, it would be appropriate that the appellant's right to entire back wages may be justified.

7. This Court hereby declares that the appellant is entitled to three years back wages calculated on the basis of the average annual emoluments that he would have drawn for the period 1992-2002. In the event of the Super Bazar being revived in any manner whatsoever, it is open to its management to take the proceedings further, to the logical extent and pass appropriate orders in accordance with law after giving notice to the appellant to make his representation. The impugned order of removal as well as the award of the Labour Court and the Single Judge are hereby set aside.

The appeal is allowed on the above terms with no order as to costs.

S. RAVINDRA BHAT, J

SUNIL GAUR, J

AUGUST 23, 2017
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