



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/LETTERS PATENT APPEAL NO. 964 of 2017
 In R/SPECIAL CIVIL APPLICATION NO. 20726 of 2015
 With
 CIVIL APPLICATION (FOR STAY) NO. 1 of 2017
 In R/LETTERS PATENT APPEAL NO. 964 of 2017
 With
 R/LETTERS PATENT APPEAL NO. 965 of 2017
 In
 R/SPECIAL CIVIL APPLICATION NO. 13344 of 2015
 With
 CIVIL APPLICATION (FOR STAY) NO. 1 of 2017 In R/LETTERS
 PATENT APPEAL NO. 965 of 2017
 In
 R/SPECIAL CIVIL APPLICATION NO. 13344 of 2015**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA **Sd/-**
and
HONOURABLE MS. JUSTICE GITA GOPI **Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

RAJKUMAR SITALDAS KESWANI
 Versus
GENERAL MANAGER & ORS.

Appearance:
 MS MEGHA JANI(1028), for
 MR ARJUN JOSHI, ADVOCATE for the Appellant(s) No. 1
 MR ANAL S SHAH(3988) for the Respondent(s) No. 3
 RULE SERVED for the Respondent(s) No. 1,2,4



CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE GITA GOPI
Date : 25/09/2024
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. The present Letters Patent Appeals filed under Clause 15 of the Letters Patent, 1865, are directed against the common judgment and order dated 26.12.2016 passed by the learned Single Judge, wherein and whereby, the learned Single Judge has allowed the writ petition being Special Civil Application No.13344 of 2015 filed by the employer - Western Railways and rejected the writ petition being Special Civil Application No.20726 of 2015 filed by the employee of the Western Railways. In the captioned writ petitions filed by the railways and the employee of the railways had assailed the judgment and award dated 08.12.2014 passed by the Central Government, Industrial Tribunal cum Labour Court, Ahmedabad (in short, "the Tribunal") in Reference (CGITA) No.142 of 2012.

2. As recorded by the learned Single Judge, the employer has challenged the part of award whereby the punishment imposed upon the workman came to be reduced after holding that the charge Nos.(ii) and (iii) were not established and the workman assailed the impugned judgment and award on the ground that the Tribunal ought to have exonerated him having regard to the nature of evidence adduced during the inquiry.

3. The writ petitions were entirely premised on the findings of the inquiry officer and the nature of the evidence adduced during the departmental proceedings.



4. On a query being raised to the learned advocates appearing for the respective parties to point out the findings of the inquiry officer, which are the part of the inquiry officer's report, it is candidly accepted by both the learned advocates appearing for the respective parties that the report of the inquiry officer was not on record before the Tribunal.

5. At this stage, we may refer to the issues framed by the Tribunal in Reference (CGITA) No.142 of 2012 :-

"(i) Is the reference maintainable?

(ii) Has the 2nd party any valid cause of action?

(iii) Whether the departmental inquiry conducted against the concerned workman Shri Rajkumar Keshwani is fair, valid and proper observing the principles of natural justice? Yes

(iv) Whether the finding of the inquiry officer in its report dated 11.03.2009 is perverted? No.

(v) Whether the punishment awarded to the concerned workman Shri Rajkumar Keshwani by N.I.P dated 31.03.2010 is legal, proper and justified or it is disproportionate to the gravity of misconduct under standard form 5 chargesheet?

(vi) Whether the 2nd party/workman is entitled to relief as claimed vide para 11 of S/c?"

6. The issue Nos.(iii) and (iv), as noted hereinabove, will disclose that the Tribunal has categorically framed the issues on the departmental inquiry conducted against the workman and whether the findings recorded by the inquiry officer in its report dated 11.03.2009 is perverted. Such issues could have been delved into and answered, only after the examination of the inquiry officer's report dated 11.03.2009. We failed to understand, how the Tribunal could have recorded any findings



on such issues in absence of the inquiry officer's report dated 11.03.2009. The Tribunal ultimately has recorded thus : -

"12. Thus, considering the oral and documentary evidence discussed above, I am of the considered view that the punishment imposed upon the concerned workman Shri Rajkumar Keshwani is disproportionate to the gravity of Charge no.1 whereas charge no. 2 and 3 have gone as not proved, so the action of the management of western Railway in imposing the penalty of reduction in the same time scale of pay by five stages below for a period of five years without future effect upon Shri Rajkumar Keshwani FCRC vide order dated 31.03.2010 is not at all legal and justified. So this court is competent to invoke the power u/s. 11-A of the I.D. Act to alter, modify the punishment order so imposed on the concerned workman by the D.A. This issue is answered accordingly.

13. ISSUE NO. I, ii & vi:- In view of the findings to issue no. iii, iv and v in the foregoings, I further find and hold that the reference is maintainable and the Union/2nd party have got valid cause of action to raise this industrial dispute. I, further, find and hold that the delinquent Shri Rajkumar is entitled for part relief as to modification in his punishment order as reduction in the same time scale of pay by two stages below for a period of one year without future effect. Accordingly the penalty imposed upon Shri Rajkumar Keshwani is altered/modified to the extent indicated above."

7. The Tribunal has, thus, examined the oral and documentary evidence as mentioned and noted in the judgment and award with regard to the alleged misconduct by the employee. Before arriving at such conclusion in paragraph No.7 of the judgment, the Tribunal has recorded thus : -

"7. On consideration of the materials as discussed above, I find and hold that the departmental inquiry held against concerned workman Shri Rajkumar Keshwani is fair, valid and proper observing the principle of natural justice. I further find and hold that there is no perversity in the findings of the inquiry officer in its report and so inquiry has not vitiated. Issue No.iii is answered in affirmative and issue no iv in negative."



8. The Tribunal has categorically recorded that the departmental proceedings held against the concerned workman was fair, valid and proper, after observing principle of natural justice and it does not find and hold that there is any perversity in the “findings of the inquiry officer in its report and so inquiry is not vitiated.” Such a finding is misplaced in wake of the fact that no inquiry officer report was on record.

9. The learned Single Judge has allowed the writ petition filed by the Western Railways assailing the judgment and award passed by the Tribunal, whereas the writ petition filed by the appellant - workman has been rejected by holding as under : -

“10. Looking to the overall facts and circumstances discussed above, more particularly, when no illegality, perversity or any other infirmity was found by the judicial forums, in the procedure adopted during the inquiry against the workman and in view of positive finding that full opportunity was given to the workman during the inquiry, it was not open for them to reappraise and re-appreciate the evidence on record either for reducing the punishment or reversing the findings of fact recorded during the inquiry on all the three charges.”

10. It is also pertinent to note that the learned Single Judge, in paragraph No.8.4, has in fact held thus : -

“8.4 Assuming that the scope for interference in the findings rendered in the departmental inquiry as also the punishment was made, this Court fails to understand as to how in absence of the findings of the Inquiry Officer, the judicial forum could have found fault with such factual findings without looking at the inquiry report.”

11. Despite the aforementioned observations, the learned Single Judge has rejected the writ petition filed by the appellant-



workman. In our opinion, in absence of the findings of the inquiry officer's report, the Tribunal could not have recorded a specific finding with regard to the findings of the inquiry officer in its report, which was not on record and the learned Single Judge has also committed the same error. The learned Single Judge should have remanded the matter to the Tribunal for appreciating the findings of the inquiry officer in his report.

12. In light of the aforesaid undisputed facts, this Court had opined to the learned advocates appearing for the respective parties that this is a fit case, where the matter has to be remanded to the Tribunal so that the findings of the inquiry officer can be examined, after the inquiry officer's report dated 11.03.2009 is brought on record.

13. Learned advocate Ms. Megha Jani, on instructions, has submitted that in case, the Court is desirous of remanding the matter, then some time limit may be fixed since the alleged misconduct pertains to the year 2005 and the appellant-employee would be retiring in February, 2025.

14. On the substratum of the aforesaid analysis and in light of the undisputed fact that the inquiry officer's report was not on record before the Tribunal, and also having noticed such fact, the learned Single Judge ought to have remanded the matter to the Tribunal.

15. Under the circumstances, both the Letters Patent Appeals stand disposed of. The impugned common judgment and order passed by the learned Single Judge is quashed and set aside.



The matter is ordered to be remanded to the Tribunal. Reference (CGITA) No.142 of 2012 is ordered to be listed to its original file.

16. It will be open for the appellant(s) and for the respondent(s) to bring the report dated 11.03.2006 on the record of the reference proceedings. All the contentions of the respective parties are left open and it will be open for them to raise their submissions with regard to the findings of the inquiry officer's report.

17. It is clarified that this Court has not examined the merits of the case and the matter is solely remanded on the ground of absence of inquiry officer's report. The Tribunal shall examine the contentions of the respective parties on merits and pass appropriate reasoned order. Since the dispute pertains to the year 2005 and the appellant-employee is retiring in February, 2025, we request the Tribunal to dispose of Reference (CGITA) 142 of 2012, preferably within a period of four months.

18. All the connected applications stand disposed of accordingly.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(GITA GOPI, J)

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