
(1969) 08 CAL CK 0031
In the Calcutta High Court

Bowreah Cotton Mills

APPELLANT

Vs

Sixth Industrial Tribunal and Others

RESPONDENT

Date of Decision : 07-08-1969

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 33, 33(2)

Citation : 74 CWN 426

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : M. Sen and P.C. Borooah, for the Appellant; R.P. Bagchi and P.K. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Mr. D. Basu, J.—This Rule is directed against an order of the 6th Industrial Tribunal, dated 6.6.66 (Ann. J to the petition) by which he rejected the application of the Petitioner company for approval of the action of the Petitioner dismissing their employee, opposite party No. 3 hereinafter referred to as "Mukherjee")

2. The facts stated in the petition as to the dismissal are: On 19.12.65, a co-employees of Mukherjee, named Tapser Ali noticed Mukherjee to put a small cloth bundle inside the "dynamo light" of his bicycle and Tapser Ali informed Head Time Keeper who, in his turn, instructed the Jamadar at the gate and at 5.20 p.m. when Mukherjee was going out of the gate, he was caught red-handed with four pieces of bearings concealed in the dynamo light of his cycle. A charge u/s 14 (c) (iii) of the Standing Orders was drawn up (Ann. B) and served upon Mukherjee and he was suspended. Mukherjee submitted his defence on 18.12.65 (Ann. C).

3. An inquiry was thereafter held by the Asstt. Manager of the Company on the said charge of "theft" which is a "misconduct" under the Standing Orders and at the inquiry, Mukherjee was found guilty of the charge (Ann. E) and by the letter

of 18.1.66 (Ann. F) the Company served the notice of dismissal and made the application u/s 33(2) of the Industrial Dispute Act, 1947, to the Tribunal, for approval of the dismissal, after having paid one month's salary to Mukherjee, as required by the Act, because at that time an industrial dispute was pending between the parties.

4. The Tribunal took evidence afresh and then made the impugned order, rejecting the application of the Petitioner on the ground that "the charge of stealing has not been established at all" and also on the ground that there has not been a fair hearing owing to bias, throwing of onus upon the employee and the like.

5. The Tribunal held that he was entitled to take evidence on the charge inasmuch as it was proved from the report of the Inquiry Officer that there had been no fair and proper inquiry by the management before the order of dismissal had been made. In this conclusion, the Tribunal relied on the observations of the Supreme Court in *Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory*, . In that case, the Supreme Court held, following its earlier decisions that whenever a matter comes up before a Tribunal regarding the discharge of a workman, whether u/s 10 or Section 33 of the Act, the Tribunal has first to see whether there has been a proper inquiry into the charge brought by the management, so that it could be said that the discharge was proper. Where it is found by the Tribunal that there has been no such inquiry or that the inquiry was so defective as to constitute no inquiry at all, the Tribunal was to go into the evidence itself to find whether the charge was proved on the evidence laid before the Tribunal itself. This principle has been evolved by the Supreme Court in order to avoid a fresh domestic inquiry by the management, according to law, which would involve further delay.

6. Following the above principle, the Tribunal in the instant case, took evidence on the charge, after finding that there had been no proper inquiry. Now, as held by the Supreme Court in the cited case and others, the finding of the Tribunal on the charge upon the fresh evidence is a finding of fact, which cannot be set aside by this Court under Article 226 except where the finding is perverse or based on no evidence or similar exceptional circumstances exist, justifying a reversal of a finding of fact in this extraordinary jurisdiction ((1) *Union of India (UOI) Vs. H.C. Goel*,).

7. The Petitioner may, however, succeed if it can show that the finding of the Tribunal that there had been no proper inquiry, was without foundation, in which case, it would cease to have jurisdiction to withhold its approval from the order of dismissal, not to speak of entering into evidence on the charge, because his jurisdiction to decide whether the charges had been proved is dependent upon the finding that there had been no proper inquiry (2) *Imperial Tobacco Co. v. Workmen*, AIR 1960 SC 1348 (1350).

8. It is to be noted that the case of the Motipur Sugar Factory dealt with in

Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory, was one of no inquiry at all having been held upon the charges before the order of dismissal was made (vide paras. 3, 11). Though the Court also held that "a defective inquiry . . . stands on the same footing as no inquiry" (para 11, *ibid*), the grounds upon which an inquiry may be held to be so defective were not analysed in that case, so that we are led to examine other decisions of the Court on that point. Such examination leads to the proposition that the Industrial Tribunal may strike down the finding at the domestic inquiry as defective in the following cases -

(i) Where the inquiry has violated the principles of natural justice (3) *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, , e.g. -

(a) the employee in question has not been informed of the charges against him;

(b) no evidence has been taken in support of the charges;

(c) the witnesses in support of the charge have not been examined in the presence of the employee (4) *Kesoram Cotton Mills Ltd. Vs. Gangadhar and Others*, ;

(d) the employee has not been given a fair opportunity to cross examine the witnesses examined by the management;

(e) the employee is not given a fair opportunity to examine witnesses including himself in his defence, if he so wishes, on any relevant matter;

(f) the Inquiry Officer does not write a report, giving his findings with reasons - *Sur Enamel Co.*, para. 4, *ibid*;

(g) the dismissal is founded on a ground which was not included in the charge-sheet upon which the inquiry was held (5) *Lakshmi Devi Sugar Mills v. Ram Sarup*, AIR 1957 SC 916;

(h) the dismissal is founded on the interrogation of the workman, without examining any witness in support of the charge (6) *Meenglas Tea Estate Vs. Its Workmen*, .

(ii) Where the inquiry has not been held in accordance with the relevant standing orders of the establishment (7) *The Punjab National Bank Ltd. Vs. Its Workmen*, ; (8) *Imperial Tobacco Co. v. Workmen*, AIR 1962 SC 348 .

(iii) Where the Inquiry Officer was biased against the employee (9) *P.H. Kalyani Vs. Air France Calcutta*, , e.g. where the Inquiry Officer had given evidence against the employee in another proceeding (*ibid*).

9. In the instant case, it is patent on the face of the report of the Inquiry Officer as well as the impugned order of punishment that the Petitioner did not, in awarding the punishment, take any account of the past records of Mukherjee, which is imperatively required by Standing Order No. 14(f). The Inquiry Officer found that "the past record admittedly is a very good record for an employee

who has put in 30 years of service." Looking at the past record is required by the Standing Order as an extenuating or mitigating circumstance. There is no knowing whether the Petitioner would have awarded the extreme penalty of dismissal had the past record been looked into. The Inquiry Officer, of course, did not found his decision on this omission but relied upon the other ground that the Inquiry Officer had thrown the onus upon the workman. The Inquiry Officer thought that the omission to comply with S.O. 14(f) might not be evidence of bias but might be a case of simple omission. But, apart from bias, the omission to comply with S.O. 14(f) was an independent ground upon which the Tribunal was entitled to reject the application according to the cited decisions.

10. In view of the above conclusion of mine, the impugned order is no liable to be set aside in this Rule under Article 226.

11. The Tribunal, of course, entered into the evidence after turning down the report of the Inquiry Officer on the ground that he had thrown the onus upon the workman. It is true that the Inquiry Officer also held that the charges were proved by the prosecution witnesses. But he, more than once, observed that the delinquent had failed "to establish his innocence in the matter". This is against the principles of natural justice and, accordingly, the Tribunal was justified in enter into the evidence independently, to see whether the workman was guilty of the charge.

12. The only thing that remains is to determine whether the finding of the Tribunal that the charges had not been established can be said to have been perverse. The Tribunal has analysed the evidence carefully and come to the conclusion that the prosecution evidence was not reliable. Sitting under Article 226, we cannot make a fresh assessment of the evidence and nothing has been shown to establish that the conclusion of the Tribunal was unreasonable or perverse.

13. The petition must, therefore, fail. The Rule is discharged but I make no order as t costs.

As prayed for on behalf of the Petitioner, the operation of this order will remain stayed for a period of four weeks from this date.