
(1994) 10 MAD CK 0085
In the Madras High Court
Case No : W.A. No. 835 of 1993

Brakes India Ltd.

APPELLANT

Vs

Asst. Commissioner of Labour (Conciliation) II and Another

RESPONDENT

Date of Decision : 27-10-1994

Acts Referred:

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

Citation : (1995) 1 LLJ 1232

Hon'ble Judges : K.S. Swami, C.J.;Somasundaram, J

Bench : Division Bench

Advocate : C. Ramakrishna, for the Appellant; K.M. Srirangan, G.A. For 1st Respondent and R. Sankarasubbu, For 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

Somasundaram, J.—This Writ Appeal is filed against the order dated June 29, 1993 dismissing Writ Petition 13773 of 1991. The second respondent who was an employee of the appellant was charge-sheeted by a charge memo dated June 20, 1990 charging the second respondent that while he was on duty on June 28, 1990 abused one Padmanabhan, canteen worker in vulgar language and threw an ever-silver tumbler on his face and caused a bleeding injury on the right forehead, just above the right eye. The second respondent submitted an explanation on July 2, 1990 denying the charges and thereupon an enquiry was conducted on July 10, 1990 and in the said domestic enquiry, though one of the eye witnesses to the occurrence Mr. Ramamurthy was examined, the other witness Santhanam could not be examined as he was threatened by the second respondent. The Enquiry Officer, on an assessment of the evidence both oral and documentary, found the second respondent guilty of the charges. Consequently, the second respondent was dismissed from service by an order dated February 20, 1991. Since the conciliation proceedings were pending before the first respondent, the appellant filed an application in Approval Petition No. 586/91 u/s 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) before the first

respondent for the grant of approval of the order of dismissal dated February 20, 1991 passed against the second respondent. The first respondent by his order dated August 2, 1991 refused to grant approval holding that the findings of the Enquiry Officer are perverse and that no prima facie case had been made out to pass an order of dismissal against the second respondent. As against the order of the first respondent dated August 2, 1991 in Approval Petition 586/91 refusing to grant approval of the order of dismissal passed by the appellant against the second respondent, the appellant filed Writ Petition 13773 of 1991. The Learned Single Judge, who heard the Writ Petition confirmed the findings of the first respondent that no prima facie case has been made out by the appellant for the grant of approval of the order of dismissal passed by the appellant against the second respondent on February 20, 1991. The Learned Single Judge also found that no opportunity need be given to the appellant to lead any additional evidence when the first respondent came to the conclusion that the findings of the Enquiry Officer are perverse and that no prima facie case is made out for the grant of approval of the order of dismissal passed against the second respondent dated February 20, 1991. Consequently, by the order dated June 29, 1993 the Learned Single Judge dismissed Writ Petition 13773 of 1991. As already stated, this Writ Appeal is directed against the order of the Learned Single Judge in Writ Petition 13773 of 1991.

2. Before us, Mr. C. Ramakrishna, the learned Senior Counsel for the appellant, contended that the first respondent is expected to see whether prima facie case has been made out by the appellant for the grant of approval to the order of dismissal passed by the appellant against the second respondent, that the first respondent has no power to sit in appeal over the factual findings arrived at by the Enquiry officer and particularly as to the adequacy or otherwise of the evidence recorded in the course of the domestic enquiry and once when the Enquiry Officer came to the conclusion that the canteen worker Padmanabhan was assaulted by the second respondent with an ever silver tumbler and caused a bleeding injury on the forehead just above the right eye on the basis of the evidence of Mr. Ramamurthy and other materials available on record, it is not open to the first respondent to go into the veracity of the same and come to a different conclusion. The learned Senior Counsel for the appellant further contended that when the first respondent came to the conclusion that the evidence adduced by the appellant is not sufficient to prove the charges framed against the second respondent, that the findings of the enquiry officer are perverse and that the appellant has not made out a prima facie case for the grant of approval to the order of dismissal dated February 20, 1991 the first respondent ought to have given an opportunity to the appellant to lead additional evidence before the first respondent to substantiate the charge of misconduct alleged against the second respondent, particularly when the appellant had raised a specific plea in para 6 of the Approval Petition No. 586/91 seeking permission of the first respondent to lead additional evidence, if on any account the first respondent comes to the conclusion that the domestic enquiry

conducted by the appellant is defective or the finding of the enquiry officer is perverse. The contention of the learned counsel for the appellant is that the order of the first respondent dated August 2, 1991 dismissing the approval petition without giving an opportunity to the appellant to lead additional evidence to substantiate the charge of misconduct alleged against the second respondent and that of the Learned Single Judge in Writ Petition confirming the order of the first respondent dated August 2, 1991 are illegal and liable to be set aside.

3. Per contra, Mr. R. Sankarasubbu, learned counsel for the second respondent, submitted that though the charge against the second respondent is, that the second respondent had caused a bleeding injury on the fore-head of she canteen worker Padmanabhan on June 28, 1990 by throwing an ever-silver tumbler on him Ex.M. 15 the diagnosis slip issued by the Doctor clearly goes to show that the said Padmanabhan had sustained the injury on his forehead due to a fall and therefore, the first respondent and the learned Single Judge have come to the correct conclusion that no prima facie case has been made out by the appellant for the grant of approval of the order of dismissal caused against the second respondent. The learned counsel for the second respondent further contended that the incident dated June 28, 1990 was witnessed by Messers. Ramamurthy and Santhanam, that there are discrepancy in the evidence of Ramamurthy and that the other witness Santhanam was not examined to corroborate the case of the appellant and therefore, the first respondent and the learned Single Judge rightly brushed aside the evidence of Ramamurthy and came to the conclusion that no prima facie case has been made out for the grant of approval to the order of dismissal passed against the second respondent.

4. In the light of the rival contentions of the counsel for the parties, the following points arise for consideration in this Writ Appeal.

(1) In the light of the specific plea raised by the appellant in para 6 of the Approval Petition No. 586/91 filed u/s 33(2)(b) of the Act, seeking permission to lead additional evidence before the first respondent, in case the first respondent comes to the conclusion that the domestic enquiry conducted by the appellant against the second respondent is defective or that the findings of the Enquiry Officer are perverse, is the first respondent justified in not permitting the appellant to lead additional evidence when he came to the conclusion that the appellant has not made out a prima facie case for dismissing the second respondent from service and that the findings of the Enquiry Officer are perverse?

(2) Whether the appellant has made out a prima facie case for the grant of approval to the order of dismissal dated February 20, 1991 u/s 33(2)(b) of the Act, passed by the appellant against the second respondents u/s 33(2)(b) of the Act?

(3) To what relief, if any, the appellant is entitled to?

5. Point Numbers 1 and 3: Let us first examine the backdrop of law on the question relating to the jurisdiction of the Labour Court in the proceedings u/s

33(2)(b) of the Act to permit the management to lead additional evidence to substantiate the charges framed against the employee when it comes to the conclusion that the domestic enquiry conducted by the management is not fair and proper or that the findings at the domestic enquiry are perverse or that the management has not made out a prima facie case for passing an order of dismissal or discharge against the employee.

6. In *Bharat Sugar Mills Ltd. Vs. Shri Jai Singh and Others*, , the matter came up before the Supreme Court questioning an award of the Industrial Tribunal by which the Tribunal declined to grant permission u/s 33 of the Act except in respect of one workman holding that the domestic enquiry was not proper and that the employer was guilty of mala fide conduct and victimisation. Before the Apex Court the workmen contended that once the domestic enquiry was found to be improper, the Tribunal had to dismiss the application and it could not take independent evidence and arrive at a finding of its own as to the guilt of the workman. There was no preliminary issue framed in that case by the Tribunal in regard to the validity of the enquiry. However, the employer had adduced evidence before the Tribunal to substantiate the charges against the workmen simultaneously relying upon the papers of domestic enquiry. Negating the contention of the workman the Apex Court in the above decision observed as under: (p. 648):

".. Where there has been a proper enquiry by the management itself, the Tribunal, it has been settled by a number of decisions of this Court, has to accept the findings arrived at in that enquiry unless it is perverse and should give the permission asked for unless it has reason to believe that the management is guilty of victimisation or has been guilty of unfair labour practice or is acting mala fide. But the mere fact that no enquiry has been held or that the enquiry has not been properly conducted cannot absolve the Tribunal of its duty to decide whether the case that the workman has been guilty of the alleged misconduct has been made out. The proper way for performing this duty where there has not been a proper enquiry by the management is for the Tribunal to take evidence of both sides in respect of the alleged misconduct. When such evidence is adduced before the Tribunal the management is deprived of the benefit of having the findings of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct unless the finding is perverse and has to prove to the satisfaction of the Tribunal itself that the workman was guilty of the alleged misconduct. We do not think it either just to the management or indeed even fair to the workman himself that in such a case the Industrial Tribunal should refuse to take evidence and thereby drive the management to make a further application for permission after holding a proper enquiry and deprive the workman of the benefit of the Tribunal itself being satisfied on evidence adduced before it that he was guilty of the alleged misconduct."

7. Dealing with the very same question, the Apex Court, in *Ritz Theatre (P) Ltd. v. Its Workmen* 1992 II LLJ 498 held as follows: p. 502:

".... If the view taken by the Tribunal was held to be correct, it would lead to this anomaly that the employer would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the Tribunal to deal with the merits for itself, because as soon as he asks for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Otherwise, it may have to be held that in all such cases no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need be cited by the employer; if the finding on the said issue is against him, permission will have to be given to the employer to cite additional evidence instead of following such an elaborate and somewhat cumbersome procedure, if the employer seeks to lead evidence in addition to the evidence adduced at the departmental enquiry and the employees are also given an opportunity to lead additional evidence, it would be open to the tribunal first to consider the preliminary issue and then to proceed to deal with the merits in case the preliminary issue is decided against the employer. That, in our opinion, is the true and correct position in this matter."

8. In *Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory*, , the Supreme Court held as follows: p. 169:

"It is now well settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the Tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. The entire matter would be open before the Tribunal which will have jurisdiction not only to go into the limited questions open to a Tribunal where domestic inquiry has been properly held (see *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, , but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified and we may in this connection refer to *Sasa Musa Sugar Works (P) Ltd. Vs. Shobrati Khan and Others*, , *Phulbari Tea Estate Vs. Its Workmen*, and the *The Punjab National Bank Ltd. Vs. Its Workmen*, . These three cases were further considered by this Court in *Bharat Sugar Mills Ltd. v. Jai Singh*, (supra) and reference was also made to the decision of the Labour Appellate Tribunal in *Shri Ram Swarath Sinha v. Belsund Sugar Co.*, (1954) LAC 607. It was pointed out that "the important effect of the omission to hold an enquiry is merely this: that the Tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out. It is true that three of these cases, except *Phulbari Tea Estate's Case*, (supra), were on applications u/s 33 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the Tribunal for approval u/s 33 or an a reference u/s 10 of the Industrial Disputes Act, 1947. In either case, if the enquiry is defective or if no enquiry has been held as required by

Standing Orders, the entire case would be open before the Tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. Phulbari Tea Estate's case, (supra) was on a reference u/s 10, and the same principle was applied there also, the only difference being that in that case there was an enquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the Tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the Tribunal that on facts the order of dismissal or discharge was proper."

9. In *State Bank of India Vs. R.K. Jain and Others*, , the Apex Court while holding that the right to lead additional evidence before the Tribunal to sustain its order of dismissal or discharge in the proceedings u/s 10 of the Act is a right given to the management and it is for the management to avail itself of the said opportunity, observes thus: (pp 613-614)

"37. It should be remembered that when an Order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic enquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under these circumstances it is the right of the workman to plead all infirmities in the domestic inquiry if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised, that it is the right of the management to sustain its order by adducing also independent evidence before

the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

10. In *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh*, , the Apex Court, after exhaustive review of the decisions bearing on the question of right of the management to seek permission to lead additional evidence before the Tribunal in the proceedings either u/s 10 or 33 of the Act, to substantiate the charge of misconduct levelled against the employee, held as follows: pp 198-199:

60. It may be pointed out that the Delhi and Madhya Pradesh High Courts had held that it is the duty of the Tribunal to decide, in the first instance, the propriety of the domestic enquiry held by the management and if it records a finding against the management it should suo motu provide an opportunity to the management to adduce additional evidence, even though the management had made no such request. This view was held to be erroneous by this Court in C.A. No. 992 of 1967 D/ - September 17, 1971 (supra)

61. From the above decisions the following principles broadly emerge:

(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case, no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to

try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the findings on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and there-by ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference u/s 10 or by way of an application u/s 33 of the Act."

11. In *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, , on the question, whether when a domestic inquiry held by the employer was found by the Labour Court as violative of the principles of natural justice there was any duty cast upon that court to give an opportunity to the employer to adduce evidence afresh before it and whether failure to do so would vitiate its award, the Apex Court held as follows: pp 385-386:

"We are therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

12. In *Shankar Chakravarti v. Britannia Biscuit Co. Ltd.* 1979 54 FJR 526, the Apex Court again after reviewing the entire case law on this subject, held as follows:

"Having given our most anxious consideration to the question raised before us, and minutely examining the decision in *Cooper Engineering Ltd. case*, (supra), to ascertain the ratio as well as the question raised both on precedent and on principle, it is undeniable that there is no duty cast on the Industrial Tribunal or the Labour Court while adjudicating upon a penal termination of service of a workman either u/s 10 or u/s 33 to call upon the employer to adduce additional evidence to substantiate the charge of misconduct by giving some specific opportunity after decision on the preliminary issue whether the domestic enquiry was at all held, or if held, was defective, in favour of the workman. *Cooper Engineering Ltd. case*, (supra), merely specifies the stage at which such opportunity is to be given, if sought. It is both the right and obligation of the employer, if it so chooses, to adduce additional evidence to substantiate the charges of misconduct. It is for the employer to avail of such opportunity by a specific pleading or by specific request. If such an opportunity is sought in the course of the proceeding the Industrial Tribunal or the Labour Court, as the case may be, should grant the opportunity to lead additional evidence to substantiate the charges. But if no such opportunity is sought nor there is any pleading to that effect no duty is cast on the Labour Court or the Industrial Tribunal *sou motu* to call upon the employer to adduce additional evidence to substantiate the

charges."

13. The sum and substance of the principles gleaned from the decisions of the Supreme Court referred above may be stated as follows; An employer is entitled to an opportunity to lead additional evidence before the Labour Court to substantiate the charge of misconduct alleged against the employee, when the Labour Court in the proceedings u/s 33(2)(b) of the Act comes to the conclusion that there was no domestic enquiry conducted by the employer against the employee or when the Labour Court comes to the conclusion that the domestic enquiry if any conducted by the employer is defective or that the findings recorded at the domestic enquiry are perverse. If such an opportunity to lead additional evidence is sought for by the employer either in the pleadings in the approval petition filed u/s 33(2)(b) of the Act, or in the course of the proceedings before the Labour Court, it should grant such an opportunity to the employer to lead additional evidence to substantiate the charge levelled against the employee. If no such opportunity is sought for by the employer, in the course of the proceedings u/s 33(2)(b) of the Act, nor there is any pleading to that effect in the petition for approval, the Labour Court is under no obligation to give such opportunity to the employer suo motu.

14. The next question we have to examine is whether the appellant in the present case sought for an opportunity to lead additional evidence in the course of proceedings u/s 33(2)(b) of the Act or whether there is any pleading in the approval petition filed by the appellant seeking permission to lead additional evidence. In para 6 of the Approval Petition 586 of 1991 filed by the appellant u/s 33(2)(b) of the Act, the appellant has specifically asked for an opportunity to lead additional evidence before the first respondent, in the following terms:

"The applicant submits that if on any account this Authority comes to a different conclusion namely that the domestic enquiry conducted by the applicant is defective or the findings of the Enquiry Officer is perverse, the applicant pleads that the applicant may be given an opportunity to prove the charges before this Authority. It is submitted that we have additional witnesses to lead evidence against the opposite party in this regard."

The first respondent, on a consideration of the evidence recorded at the domestic enquiry, came to the conclusion that the finding of the Enquiry Officer is perverse and that the charges framed against the second respondent have not been proved prima facie and consequently dismissed the approval petition filed by the appellant.

When the first respondent recorded such a finding that the finding of the Enquiry Officer is perverse and that the charges have not been proved prima facie, as per the settled position of law in this regard, the first respondent ought to have permitted the appellant to lead additional evidence before him to substantiate the charge of misconduct alleged against the second respondent. However, the first respondent, did not permit the appellant to lead additional evidence to

substantiate the charge of misconduct alleged against the second respondent, in spite of the fact that there is a specific plea by the appellant in the petition filed u/s 33(2)(b) of the Act, seeking permission to lead additional evidence, in the event of the first respondent coming to the conclusion that the domestic enquiry conducted by the appellant against the second respondent is defective or that the finding of the enquiry officer is perverse. The learned Single Judge who disposed of the Writ Petition, also did not countenance the plea of the appellant that the first respondent ought to have given an opportunity to the appellant to lead additional evidence and took the view that an opportunity to lead additional evidence need not be given to the appellant, because, if such an opportunity is given, it will enable the appellant to fill up the lacuna in their case. It is not at all possible for us to accept the above reasoning of the learned Single Judge for refusing to give an opportunity to the appellant to lead additional evidence before the first respondent to substantiate the charge of misconduct alleged against the second respondent, when the first respondent in the proceedings u/s 33(2)(b) of the Act has found that the appellant has not made out a prima facie case to sustain the order of dismissal passed against the second respondent and that the finding recorded at the domestic enquiry is perverse. The Supreme Court in *Delhi Cloth and General Mills Co., Ltd. Vs. Thejvir Singh*, while taking the view that the Tribunal in the proceedings u/s 33(2)(b) of the Act cannot refuse permission to the employer to lead additional evidence on the ground that there is possibility of the management coaching up its witnesses observed as follows: p. 205:

"17. Coming to the second contention which relates to the request made by the management in its application dated March 15, 1966 for being given an opportunity to adduce evidence, if the domestic enquiry is held to be defective, we agree with the Tribunal when it rejected the application; but however, we do not agree with the reasons given by the Tribunal for rejecting the same. In its order the Tribunal has stated that if the management is allowed to adduce evidence, it will mean that it can coach up its witnesses so as to give improved statements before the Tribunal. This is not a proper approach to be made when dealing with such an application. The nature of the evidence to be let in before the Tribunal is entirely a matter for the management and if such witnesses give a version different from the one given in the domestic enquiry, then it will be a matter for the Tribunal to consider these aspects is appreciating their evidence."

15. In the light of the principles laid down by the Supreme Court in the various decisions referred above, we are of the view, that once when the first respondent found that the finding recorded at the domestic enquiry is perverse and that the charges levelled against the second respondent have not been proved prima facie by the appellant, the first respondent ought to have permitted the appellant to lead additional evidence to substantiate the charge of misconduct alleged against this second respondent, particularly when the appellant has asked for such an opportunity in the pleadings in Approval Petition 586 of 1991. Therefore, the order of the first respondent, dated August 2, 1991 straightway dismissing the

Approval Petition 586 of 1991 without giving an opportunity to the appellant to lead additional evidence is clearly erroneous. Equally erroneous is the order of the learned Single Judge, under appeal taking the view that an opportunity to lead additional evidence need not be given to the appellant, because if such an opportunity is given, it will enable the appellant to fill up the lacuna in their case. Therefore, the order of the first respondent dated August 2, 1991 and the order of the learned Single Judge under appeal is liable to be interfered with in this Writ Appeal.

16. Mr. R. Sankara Subbu, learned counsel for the second respondent, contended that the management cited two witnesses Messers. Ramamurthy and Santhanam to prove the charge of misconduct levelled against the second respondent, that during the domestic enquiry, the management after examining Mr. Ramamurthy, closed their side without examining the other witness Santhanam and that the management by closing their side without examining Santhanam as their witness, have given up their right to lead additional evidence before the first respondent, in the proceedings u/s 33(2)(b) of the Act. It is the further contention of the learned counsel for the second respondent that when the second respondent filed counter in the Approval Petition 586 of 1991, the management filed a rejoinder and as the management had not sought for permission to lead additional evidence once over again in the rejoinder, it must be taken that the management had given up their right to lead additional evidence before the first respondent to prove the charge against the second respondent in the proceedings u/s 33(2)(b) of the Act. There is no substance in the above contentions of the learned counsel for the second respondent. The fact that the management in the domestic enquiry closed their side after examining Mr. Ramamurthy alone as their witness and did not examine the other witness Santhanam cited in the charge-sheet as a witness in the domestic enquiry has nothing to do with the management's right to lead additional evidence before the first respondent in the proceedings u/s 33(2)(b) of the Act, particularly, when the management in their Approval Petition itself had sought for permission of the first respondent to lead additional evidence in the event of the first respondent coming to the conclusion that the domestic enquiry was defective or that the finding recorded at the domestic enquiry is perverse. Similarly when the management has sought permission to lead additional evidence, before the first respondent in the pleadings in the Approval Petition 586 of 1991 itself, it is not at all necessary for the management to repeat the request to lead additional evidence once over again, in the re-joinder filed by the management to the counter in the Approval Petition 586 of 1991.

17. Mr. R. Sankara Subbu, the learned counsel for the second respondent next contended that the right of management to lead additional evidence to substantiate the charge leveled against the employee before the Labour Court, inline proceedings u/s 33(2)(b) of the Act is available only in cases where no domestic enquiry is conducted by the management or where domestic enquiry conducted by the management is defective and such a right to lead additional

evidence is not available to the management in a case where the Labour Court in the proceedings u/s 33(2)(b) of the Act finds that the findings recorded at the domestic enquiry are perverse, as in the present case. In support of the above contention the learned counsel relied on the following decisions, in

- (1) The Management of Sundaram Motors Vs. The Presiding Officer 2nd Additional Labour Court, R. Sundaram and Others,
- (2) Hindustan Steel Ltd. v. R.M. Sabha 1970 Lab I.C. 102
- (3) Delhi Cloth and General Mills Co. Ltd. v. Ludh Budh Singh (supra)
- (4) The order in W.P. 11113 of 1988 dated December 1, 1992 (Cholan Roadways Corporation Ltd. v. G. Thirugnanasambandam and Anr.)
- (5) The order in W.P. 1954 of 1988, dated December 9, 1983 (Hindustan Teleprinters Ltd. v. The Presiding Officer, Industrial Tribunal, and Anr.)

We are unable to accept the above contention of the learned counsel for the second respondent. The Supreme Court in *Ritz Theatre v. Its Workmen* (Supra) has categorically held that even in cases where the Tribunal finds that the findings rendered at the domestic enquiry were perverse, an opportunity to the management to adduce further evidence is contemplated. In *India Forge and Drop Stamping Ltd. v. Additional Labour Court, Madras and Anr.* 1986 I LLJ 880 , a Division Bench of this Court repelled a contention similar to the one advanced by Mr. Sankara Subbu, learned counsel for the second respondent in this appeal, that the right of management to lead further evidence before the Labour Court is restricted only to cases of no domestic enquiry or defective domestic enquiry and is not available to cases where the findings recorded at the domestic enquiry are found to be perverse. In *India Forge and Drop Stamping Ltd. v. Additional Labour Court, Madras and Anr.* (supra) the Division Bench Court relying on the decisions in *Ritz Theatre v. its Workmen* (supra) and in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, held as follows:

"According to the learned counsel for the applicant the right of the management to adduce additional evidence even in cases where the Labour Court finds that the findings rendered by the enquiry officer were perverse and that right of the management to adduce additional evidence is not restricted to cases of "no enquiry" or "defective enquiry" at the domestic enquiry. In support of this submission the learned counsel for the appellant refers to the decision of the Supreme Court in *Ritz Theatre v. Its Workmen* (supra). In that case, the Supreme Court dealt with the scope of the management's right to let in additional evidence in support of the order of dismissal besides filing the entire records of the domestic enquiry before the Tribunal. Dealing with that question the Supreme Court observed: (p. 501):

"Where the Tribunal is dealing with a dispute relating to the dismissal of an industrial employee, if it is satisfied that no enquiry has been held or the enquiry

which has been held is not proper or fair or that the findings recorded by the enquiry officer are perverse, the whole issue is at large before the Tribunal. This position is also well settled." (p. 501-502):

The Supreme Court further observed:

"In regard to cases falling under this last category of cases, it is however open to the employer to adduce additional evidence and satisfy the Tribunal that the dismissal of the employee concerned is justified. And in such a case, the Tribunal would give opportunity to the employer to lead such evidence, would give an opportunity to the employee to meet that evidence, and deal with the dispute between the parties in the light of the whole of the evidence thus adduced before it."

It is no doubt true that the above decision was rendered before the Introduction of Section 11-A in the Industrial Disputes Act. The question is whether the principles laid down by the Supreme Court in the said case is applicable after the introduction of Section 11A.

An identical question came up for consideration before the Supreme Court in *Workmen of Firestone Tyre and Rubber Company of India (Private) Ltd. v. Firestone Tyre and Rubber Company of India (Private) Ltd.* (supra). In that case, after tracing the legal position, the Supreme Court expressed the view that the right of the employer and the employee to adduce evidence before the Tribunal has not been affected by the introduction of Section 11A. The following observations of the Supreme Court in the said decision in Para. 35 at page 294 are pertinent:

"If there has been no enquiry held by the employer or if the enquiry is held to be defective, it is open to the employer even now to adduce evidence for the first time before the Tribunal justifying the order of discharge or dismissal. We are not inclined to accept the contention on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal for the first time recognised by this Court in its various decisions, has been taken away. There is no indication in the section that the said right has been abrogated. If the intention of the Legislature was to do away with such a right, which has been recognised over a long period of years, as will be noticed by the decision referred to earlier, the section would have been differently worded. Admittedly there are no express words to that effect, and there is no indication that the section has impliedly changed the law in that respect. Therefore, the position is that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had held no enquiry or the enquiry held by him is found to be defective. Of course an opportunity will have to be given to the workmen to lead evidence contra. The stage at which the employer has to ask for such an opportunity has been pointed out by this Court in *Delhi Cloth and General Mills Company, Ltd.* case (supra). No doubt, this procedure may be time consuming, elaborate and cumbersome. As pointed out by this Court in the decision just

referred to above, it is open to the Tribunal to deal with the validity of the domestic enquiry, if one has been held as a preliminary issue. If its finding on the subject is in favour of the management, then there will be no occasion for additional evidence being cited by the management. But if the finding on this issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence justifying his action. This right in the management to sustain its order by adducing independent evidence before the Tribunal, if no enquiry has been held or if the enquiry is held to be defective, has been given judicial recognition over a long period of years."

Thus the Supreme Court has rejected the contentions advanced on behalf of the employees that Section 11A has brought about a change in the right of the employer to adduce additional evidence before the Tribunal and that after the introduction of Section 11A an employer can adduce additional evidence before the Tribunal only in cases where there is no domestic enquiry or where the domestic enquiry is found to be defective and not in any other cases. According to the Supreme Court in all cases, where the domestic enquiry conducted is defective or the findings rendered at the domestic enquiry are perverse, the employer is entitled to adduce additional evidence to satisfy the Tribunal that the order of discharge or dismissal is justified. In that case, the Supreme Court took note of the wording in Section 11A which gave the Tribunal the power to go into the merits of the order of dismissal and to satisfy itself as to whether the order of discharge or dismissal was justified and that so long as the Tribunal is given power to go into the guilt or otherwise of the workmen concerned u/s 11A, the management must be given the right to adduce additional evidence to satisfy the Tribunal on the guilt or otherwise of the workman concerned. Having regard to the purpose for which the management had been all along given the power to adduce additional evidence, it is not possible for us to hold that after the introduction of Section 11A the management's right to adduce additional evidence has been curtailed. The teamed counsel for the second respondent would contend that even before the introduction of Section 11A the management had the right to adduce additional evidence only in case where there was no domestic enquiry or where the domestic enquiry was not fair. But as already seen, the Supreme Court in *Ritz Theatre v. Its workmen* (vide supra) categorically held that even in cases where the Tribunal finds that the findings rendered at the domestic enquiry were perverse, an opportunity to the management to adduce further evidence is contemplated. It is not possible for us to ignore the said decision of the Supreme Court and to uphold the contention urged by the learned counsel for the second respondent."

We are in entire agreement with the view expressed by the Division Bench of this Court in *India Forge and Drop Stamping Ltd. v. Additional Labour Court, Madras and Anr.* (supra). The decisions relied on by the learned counsel for the second respondent which are referred above, are not at all helpful to the second respondent, because they are clearly distinguishable on facts and the ratio of the above decisions are not at all relevant for deciding the issue involved in this

appeal.

18. For all the reasons stated above, we have no hesitation in holding that the first respondent committed a serious error in not permitting the appellant to lead additional evidence in the proceedings u/s 33(2)(b) of the Act to substantiate the charge of misconduct alleged against the second respondent, when the first respondent came to the conclusion in the Approval Petition 586 of 1991 on the basis of the evidence recorded in the domestic enquiry that the findings of the Enquiry Officer is perverse and that the charges levelled against the second respondent have not been proved prima facie by the appellant, particularly when the appellant in para 6 of the Approval Petition 586 of 1991 itself specifically sought permission of the first respondent, to lead additional evidence in case, the first respondent comes to the conclusion that the finding of the Enquiry Officer is perverse or the domestic enquiry conducted against the second respondent is defective. Therefore, we are of the view that the order of the first respondent, dated August 2, 1991 in the Approval Petition 586 of 1991 is illegal and liable to be set aside. Similarly, we are unable to accept the reasoning of the learned Single Judge in the order under appeal for coming to the conclusion that the appellant is not entitled to lead additional evidence before the first respondent and therefore, the order under appeal is also liable to be set aside. In these circumstances, we are of the view that the matter has to be remanded to the first respondent for fresh disposal with a direction to the first respondent to permit the appellant to lead additional evidence to substantiate the charge of misconduct levelled against the second respondent. It is also open to the second respondent to let in rebuttal evidence after the appellant leads additional evidence before the first respondent. Points 1 and 3 answered accordingly.

19. Point Number 2. in view of the fact that we are remanding the entire matter to the first respondent for fresh disposal in the light of the directions issued in this judgment, it is not necessary for us to go into the question raised under Point No. 2 and that the question is left open for decision by the first respondent on the basis of additional evidence and rebuttal evidence to be let in by the parties pursuant to the directions given in this judgment. Point No. 2 is answered accordingly.

20. In the result, the Writ Appeal is allowed, the order of the first respondent dated August 2, 1991 in Approval Petition 586 of 1991 and that of the learned Single Judge under appeal are set aside and the matter is remanded to the first respondent for fresh disposal according to law and in the light of the observations made in this judgment. There will be no order as to costs.