
(1993) 03 DEL CK 0018

In the Delhi High Court

Case No : Civil Writ Appeal No. 1600 of 1990

Delhi Bottling Co. Pvt. Ltd.

APPELLANT

Vs

A.N. Tripathi and Others

RESPONDENT

Date of Decision : 19-03-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)

Citation : (1993) 51 DLT 240 : (1994) 1 LLJ 1207

Hon'ble Judges : S. Duggal, J

Bench : Single Bench

Advocate : D.D. Verma, S.P. Singh, Raj Birbal and K.S. Jaggi, for the Appellant;

Judgement

Santosh Duggal, J.

(1) The question involved in this writ petition, filed by the Management, namely, M/s. Delhi Bottling Co. (P) Ltd. under Articles 226/227 of the Constitution, falls in a very narrow compass, namely, as to whether the Industrial Tribunal, Delhi committed any error or overstepped its jurisdiction by dismissing the application of the petitioner filed u/s 33(2)(b) of the Industrial Disputes Act, (hereinafter referred to as the Act), by order dated 19.2.90.

(2) The facts giving rise to this controversy are that Shri A.N. Tripathi, respondents. No. 1, was employed as a Boiler Operator with the petitioner company, and that some time during March 1982, certain charters of demands were raised by the workmen of the Company through the Trade Union of which respondent No. 1 was also a member, wherein a settlement was arrived at on 10.6.82 between the management and the workmen with the stipulation that the said agreement would remain binding on the parties for a period of three years with effect from 1.1.82. The allegation was that respondent No. 1, as a workman, persisted in his illegal activities of causing obstruction in the smooth functioning of the petitioner company, even after this agreement, and would incite the workers who were willing to work to resort to sit in or go slow or other

mode of striking work, and would also try to sabotage the boiler which was integral part of the manufacturing unit of the company, and that because of this. successive charge sheets were served on him during the months of January, February and March 1983; the first charge sheet being dated 10/12 1983. second being dated 14/17.2.83 and the third dated 1 .3.83. After respondent No. 1 replied to all the charges, which were not found satisfactory by the Management, a decision was taken to hold a detailed enquiry and respondent No. 1 informed accordingly. There are allegations that even thereafter a total strike took place in the factory of the petitioner, in which respondent No. 1 was in the forefront, terrorising and intimidating the workers, willing to join the work.

(3) Eventually an enquiry was instituted by appointing Shri Jagmohan Sharma. Advocate as the Enquiry Officer, to enquire into all the three charges, as noted above, and the first hearing was fixed on 12.6.83, which fact was duly intimated to the workman. He participated in the proceedings on that date, as also on the subsequent dates, namely, 27.6.83, 30.6.83, 2.7.83 and 9.7.83 when the proceedings were adjourned to 12.7.83, on which date respondent No. 1 allegedly absented, and the evidence brought by the Management could not be examined. The Enquiry Officer is stated to have adjourned the proceedings to 16.7.83 and respondent No. 1 duly informed thereof, but he remained absent, whereupon the Enquiry Officer ordered the proceedings to be taken ex parte. It is alleged that after this order was passed, a letter was received at the gate on 16.7.83 in which respondent No. 1 had stated that since his request to allow him to be represented by Shri R.N. Roy, as representative, had been declined by the Enquiry Officer, he would not participate in the proceedings,

(4) According to the petitioner, this R.N. Roy was not an employee of the petitioner company nor a member of the Union recognised by the Management, but claimed himself to be President of the Mercantile Employees Association, and thus he was not competent to represent respondent No. 1 in the domestic enquiry. The enquiry proceedings were, however, held on 23.7.83, 30.7.83, 5.8.83 and 12.8.83, when Management's evidence was recorded, and after conclusion, a detailed report was given by the Enquiry Officer on 31.8.83, holding respondent No. 1 to be guilty of most of the charges leveled against him.

(5) The Management thereafter took a decision in the light of the report of the Enquiry Officer that respondent No. 1 be dismissed from service on account of having committed various acts of misconduct, which order was communicated to him by letter dated 20.9.83 whereby one month's wages, as on that date, amounting to Rs. 850.00 in cash were enclosed, which respondent No. 1 refused to accept, and this amount was subsequently sent by money order, and so also the dismissal letter, which was posted by registered post A.D.

(6) It was in this setting of facts that the Industrial Tribunal was approached, in view of the requirements of the provisions of Section 33 of the Act, for approval of the dismissal order, because of the fact that industrial dispute between the petitioner company and its workmen was pending at the time.

(7) The workman took a preliminary objection in the reply filed to this application that the dismissal order had not been passed in terms of the Standing Orders, and as such the application of the Management was not maintainable, and further that the Management's action amounts to victimisation of the workman for Trade Union activities, and further that the domestic enquiry in the case was conducted against principles of natural justice, inasmuch as his request for being represented by an officer bearer of the Trade Union, of which he was a member, as provided by the Model Standing Orders, under the provisions of Rule 14(4) (ba) framed under the Industrial Employment (Standing Orders) Act, 1946, (hereinafter referred to as the "SO Act"), was disallowed, and that because of this denial of opportunity, which violated principles of natural justice that he had not participated in the enquiry proceedings, and any action taken pursuant to the report given by the Enquiry Officer, as a result of ex parte evidence, was not legally permissible.

(8) After getting replication of the Management, the Industrial Tribunal framed the following issues :

"(1) Whether application filed by the applicant/Mgt. is not maintainable as alleged in preliminary objection No. 1 of the written statement filed by the respondent/workman ? (2) Whether the enquiry was conducted by the Mgt. and if so, whether enquiry conducted by the Mgt. is fair and proper ? If not, its effect ? (3) Relief."

(9) The workman was represented before the Industrial Tribunal by the same very R.N. Roy. The learned Tribunal after recording evidence and due hearing held the preliminary issue against the workman by holding that the allegations enumerating various acts of misconduct need not be confined to, those which are covered by the Standing Orders of the establishment or the company, and that in view of the nature of the alleged acts of misconduct attributed to the workman by means of the charge sheets, it would not be correct to say that an application u/s 33 was not legally maintainable whereby the Management sought approval of the dismissal order passed in respect to the workman.

(10) However, in so far as issue No. 2 was concerned, namely, whether an enquiry was conducted by the Management, and if so, whether such an enquiry was fair and proper, and if not to what effect; the Tribunal held that in view of the established position, that workman's prayer submitted in writing to the Enquiry Officer, for being represented by Shri R.N. Roy, stated to be the President of the Mercantile Employees' Association, was rejected for the reason that Shri Roy was an outsider, and the workman could not be allowed to have his assistance, but could only be represented by an employee of the Management, or any other member of the General Mazdoor Congress, which was a Union recognised by the Management, and of which the workman was a member, and that in face of this denial of opportunity, which the workman had sought by means of a written application dated 10.6.83, made to the Plant Manager of the petitioner-company, with specific reference to Rule 14(4)(ba) of the Model Standing Orders; it was a case where workman's act of boycotting the enquiry

proceedings was justified, and as a result the enquiry report based on ex parte evidence, recorded in the absence of the workman could not form a legal basis for taking action against the workman, namely, that of his dismissal from service.

(11) There is a positive finding by the learned Tribunal based on the enquiry report file, which was exhibited before him as M/19 that an application dated 10.6.83 to this effect was on record, and a copy thereof had been shown to have been endorsed to Shri Jagmohan Sharma, Advocate, as Enquiry Officer, and the order dated 12.6.83 has reference to this application dated 10.6.83, which was also given to the Enquiry Officer on 12.6.83 by the workman, whereupon proceedings were adjourned to 26.7.83. to enable the workman to file Model Standing Orders, and that there was a letter, Ex.WW 1/3 from the Plant Manager of the petitioner company to respondent No. 1, with copy to the Enquiry Officer wherein it was stated that there was no legal provision making the Model Standing Orders applicable to their company, and while asserting that an outsider can be legally appointed an Enquiry Officer, workman's request for being represented in the enquiry proceedings by Shri R.N. Roy could not be acceded to. as said Shri Roy was an outsider, and that his allegation Management's offer to the workman to bring any existing workman of the company as his representative, being motivated or mala fide was not correct.

(12) This letter has been reproduced in the impugned order, which reveals that the Plant Manager had intimated to respondent No. 1 that the Management would strongly plead before the Enquiry Officer for rejection of his request to bring an outsider as his representative inasmuch as the Management had never recognised any Mercantile Employees Association as their recognised trade union, and there was no question of its President being allowed as workman's representative in the domestic enquiry.

(13) The impugned order further reveals that thereafter the Enquiry Officer passed the order dated 30.6.83 whereby while rejecting the objection of the workman as to his appointment as Enquiry Officer, being an outsider by holding that there was no bar in the way of the Management to appoint an outsider as Enquiry Officer, and which course is conducive to the fair conduct of the enquiry without any bias or prejudice, went on to say that".....this being a domestic enquiry, leaves no scope for any interference by an outsider. Neither the Management nor the workman is being represented or assisted by an outsider. The said union of which the workman is the President is Gold Spot Employees Union. This Union is not recognised by the management. In view of the aforementioned reasons, I hereby reject the request of Mr. Tripathi for bringing an outsider to represent him, as it is only a domestic enquiry. However, I allow Mr. Tripathi to bring any person to represent him who is the employee of the management company."

(14) There is also a finding of the learned Tribunal that there is a letter on record of enquiry proceedings as M. 19 in respect to workman's application challenging appointment of the enquiry officer, and further stating that as he had not been

allowed to be assisted by Mr. R.N. Roy, President of the Mercantile Employees' Association, which act was against the principle of natural justice, he did not want to participate in the enquiry proceedings. This application was rejected by the Enquiry Officer by observing that the allegations were repetitive of the objections raised earlier, and these were not maintainable. The learned Tribunal after taking note of the material and documents on record of the enquiry proceedings as well as evidence recorded before him, came to the finding that it is worth noting that nowhere in these proceedings it was stated that Shri Tripathi can be represented by any outsider who may be office bearer of a Union in which Shri Tripathi may be a member. The stand throughout was that this being a domestic enquiry workman can be represented by only existing employee of the company, and further that in so far as the question as to whether the workman was a member of the Union of which Shri R.N. Roy was the President was concerned, there is deposition on oath by the workman dated 30.5.85. before the Tribunal in which he has denied the suggestion that he has no concern with the Union of which Shri Roy was the President.

(15) The learned Tribunal rejected the contention of the Management that since the workman had been shown to be member of General Mazdoor Congress, which was a Union recognised by the Management, there was no reason for him to choose not to be represented by a member of the said Union and his insistence for being represented by Shri R.N. Roy had been rightly declined by the management as well as the Enquiry Officer, and held that the wording of Rule 14(4)(ba) of Model Standing Orders made it abundantly clear that position adopted by the Management and endorsed to by the Enquiry Officer, was not sustainable.

(16) It further observed that the Enquiry Officer while disallowing the request of the workman to be represented by Shri R.N. Roy, nowhere indicated that he went through the Model Standing Order, in order to examine the request of the workman but recorded a general observation that no Standing Orders had been produced before him by the workman to justify the request, for representation by Shri R.N. Roy, This observation is not sustainable, because it is not mentioned that the workman was called upon to do so, and the only reason for rejecting the request of the workman to be represented by Shri R.N. Roy was that the said Shri Roy was an outsider, and could not be allowed to represent the workman in a domestic enquiry.

(17) That reason was not justified for the short reason that there is no such requirement in the Model Standing Orders under reference, namely. Rule 14(4) (ba). Thus insistence of the Management that the representative of the workman should be an employee of the management or that the Trade Union whose officer could represent him should have been a recognised Trade Union, was wholly unjustified, which resulted in violation of the principles of natural justice, inasmuch as it became a case where the Enquiry Officer and the Management put obstruction in the way of the workman in being properly represented in the

domestic enquiry, by insisting upon him to bring an employee of the establishment only, as his representative, and if in this setting the workman refused to cross-examine and later on boycotted the enquiry, he cannot be blamed and as such the ex parte enquiry in the absence of the workman, when he was not allowed to be properly represented could not be a basis for any action against him, the Management's action in terminating the services of the workman, as a result of this enquiry could not be approved.

(18) The learned Tribunal, Therefore, held that it was not a fit case to accord approval to the Management for dismissal of the workman from service. In this view of the matter, he did not feel called upon to further examine the ex pane evidence or the finding of the enquiry officer on merits or to scrutinise the plea of the workman that the action of the management was an act of victimisation.

(19) It is this order which is assailed in the present writ petition by reiterating that since respondent No. 1 was admittedly a member of the General Mazdoor Congress and also spokesman of the workers of the petitioner company, who were members of the said Union, and that if he had any right to be represented by an office bearer of any Union, was only that of General Mazdoor Congress. It is further contended that since the workman himself was an experienced person, well vested in the affairs of the Union, and its workers, he was fully competent to defend himself, and did not need, in fact, any representative to assist him in the domestic enquiry, and that in such a situation certified Standing Orders or Model Standing Orders would have no force, and that, in any case, there was no provision in the Model Standing Orders which entitled respondent No. 1 to be represented by an office bearer of any Union, of which he did not prove himself to be a member.

(20) During hearing of this writ petition, Shri D.D. Verma, Senior Counsel, appearing for the petitioner company, vehemently argued that in the absence of any evidence on record of the enquiry proceedings or before the Tribunal, firstly, that the Mercantile Employees' Association was a recognised Trade Union, and secondly that Shri R.N. Roy was its President, and thirdly that respondent No. 1 was member of that Union; there was no illegality or irregularity or violation of principles of natural justice, and that the enquiry Officer could legitimately reject such a request of the workman.

(21) Mr. Verma, however, conceded that there was no certified Model Orders of the petitioner company, and accordingly in view of the provisions of Section 12A of the So Act, Model Standing Orders including the one under Rule 14(4)(ba) would be applicable in the present case.

(22) That being so, the provisions of the aforesaid Model Standing Orders would exclusively govern the matter, and the contention now being put forward on behalf of the petitioner company that the refusal to grant prayer of the workman to be represented by Shri Roy was justified for the reason that it was not shown that Union, of which Mr. Roy was stated to be a President, was a registered one,

for the short reason that there is no such requirement contemplated in the Model Standing Orders to the effect that the Union whose representative the workman elects to be represented in the enquiry proceedings should be a registered Trade Union or recognised by the Management concerned. All that is required by this rule is that the workman must be a member of the Union whose office bearer or representative nominates to be represented by him.

(23) It is also pertinent to note that not only that the workman was nowhere called upon by the Enquiry Officer to show or establish that he was a member of the Mercantile Employees Association, there is positive evidence before the Industrial Tribunal to the effect that respondent No. 1 was a member of the said Union, and he had stated so in his application dated 10-6-1983, which was on record of the enquiry proceedings, and which finds mention in the order dated 12-6-1983. That being so, it does not now lie in the mouth of the petitioner company to insist that the refusal to grant request of the workman was justified for the reason that there was no evidence that he was a member of the said Union.

(24) The Industrial Tribunal has rightly come to the conclusion on the basis of the evidence on record of the enquiry proceedings as well as adduced before him that there was no such ground as was now being put forward, for disallowing the request, as the same was declined for the short reason that the workman could not be allowed to be represented by an outsider in a domestic enquiry. The learned Tribunal further observed that this was the stand taken by the management, and the Enquiry Officer to the same time, and that there was no requirement that the Trade Union of which office bearer is nominated by the workman should be the Union recognised by the management or registered under the Trade Union Act, and that the only contemplation is that there must be a Trade Union of which the person nominated is an office bearer, and the workman is a member, and that this condition was satisfied when the workman approached the Enquiry Officer to be represented by Mr. R.N. Roy, and that the denial of the request was an act in contravention of the legal provisions of the statutory rules framed under the Act as well as principle of natural justice, and in that situation the workman was justified in declining to participate in the proceedings, and that the action proposed or taken on the basis of the ex parte report of the Enquiry Officer was not sustainable.

(25) I see no reason to take a view different than what the learned Tribunal has taken on the facts and circumstances of this case, inasmuch as there is no error apparent on the face of the record, on any point of law, which calls for interference by this Court in exercise of writ jurisdiction under Article 226 or even Article 227 of the Constitution.

(26) Mr. Verma contended, relying on a Supreme Court judgment reported as Air 1956 231, J.K. Iron and Steel Co., Ltd. Kanpur v. The Iron and Steel Mazdoor Union, Kanpur, that the powers of Industrial Tribunals are not absolute, but circumscribed by the provisions of the Statute that creates them, and that they

have to function with the limits imposed there, and to act according to its provisions. Whereas, there can be no denying this proposition, but it is not clear as to now this principle is attracted to the present case, because the Industrial Tribunal has not, in any manner, overstepped its jurisdiction, and has on the basis of evidence come to a clear finding that the stand taken by the management, and endorsed by the enquiry Officer in denying the workman the right to be represented by an office bearer of the Union of his choice was not correct, and that this vitiated the ex parte proceedings in the enquiry, and the resultant report.

(27) There is, on the other hand, a catena of authorities laying down that the High Court while exercising writ jurisdiction cannot assume the power of an appellate Court with the necessary limitation that findings of facts reached by the inferior Court or Tribunal as a result of appreciation of evidence, cannot be re-opened or questioned in writ proceedings, and only an error of law, which is apparent on face of the record, can be corrected by a writ petition. This proposition was laid down by the Supreme Court very early in point of time, in the case reported as Syed Yakoob Vs. K.S. Radhakrishnan and Others, .

(28) The same proposition has been reiterated in another judgment reported as 1963 I Lj 684 (SC) , Agnani (W.M.) and Badri Das and Others, where again it was emphasized that there can be no interference in writ jurisdiction on a point of fact, and only on error of law, but that too of such a nature as to be apparent on the face of the record. It is further clearly held that if two views were possible on a reasonable construction of evidence, and the Industrial Tribunal has put one interpretation upon certain material placed before it, and the High Court had thought it better to put another, that could not even be a valid ground for interference by the High Court, unless it was a case that the view taken by Tribunal was not, at all, reasonably possible. That being not the case, judgment of the High Court was set aside, and the order of Industrial Tribunal sustained.

(29) In the present case also, the same proposition would apply, because all that the Industrial Tribunal has held is that on a plain construction of the provisions of Rule 14(4)(ba) of the rules, framed under the SO Act, the stand taken by the management and the Enquiry Officer that the representative nominated by the workman to represent him could not be an outsider and must be a member of the Union registered under the Trade Union Act or recognised by the Management, was not correct. It is not even a case where this view was reasonably possible, but on a reading of the relevant provisions, the interpretation put by the learned Tribunal was the only view possible.

(30) It is also not the case where any finding has been arrived at in the absence of evidence because the Tribunal has clearly held, after reference to the documents on record of enquiry proceedings, which were duly exhibited as well as the evidence adduced before him, including the statement of the workman that he had been able to establish that he was a member of the Mercantile Employees' Association, of which Mr. R.N. Roy was the President, and that this

fact had been clearly stated by him in his application dated 10-6-1983. The present is also a case covered by the ratio of the judgment of the Supreme Court in the case reported as State of Haryana and Another Vs. Rattan Singh, , because here also the enquiry officer endorsed the stand as taken by the management through its plant manager that an outsider cannot be allowed to represent the workman in domestic enquiry by passing order on 12-6-1983. The Court clearly held in the reported case that where it was a case of perversity, or arbitrariness, bias or surrender of independence of judgment, the finding arrived at by the domestic tribunal, in such a situation, would not be good.

(31) In view of this and the consistent view of this Court that the High Court in writ jurisdiction cannot constitute itself into an Appellate Court over Tribunals, constituted under special legislation, and certainly not in cases involving findings of facts. One of the leading authorities, enunciating this proposition, is the case reported as 1983 LIC 1516 (SC) , Sadhu Ram v. Delhi Transport Corporation. The same proposition has been highlighted in the case reported as Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, , to the effect that the power of high Court in writ jurisdiction under Article 226 or Article 227 of the Constitution is extended only to seeing that a Tribunal functions within the limits of its authority, and cannot be equated with the powers as exercised in appellate jurisdiction, and that the award given by the Industrial Tribunal can be interfered with in writ jurisdiction only if it was based on complete misconception of law, and not evidence, and that no reasonable man would come to a conclusion, to which the Tribunal had arrived. The impugned order in the present case cannot be faulted on any of these grounds.

(32) That being so, the scope of interference by this Court is very much restricted, and circumscribed by established principles.

(33) All that Mr. Verma argued was that it was for the workman to prove before the Enquiry Officer that he was a member of the Union of which Mr. R.N. Roy was President, and that the Union was a recognised Union or registered one.

(34) These submissions are not legally sustainable, because in so far as the first point is concerned, respondent No. 1 did state so, as already noticed, in his application, and there is a finding of fact recorded by the Tribunal to that effect. The rejection of the request was not on the ground that he had not proved himself to be a member of the Mercantile Employees' Association, but on the ground that Mr. Roy was an outsider. It is a matter of record that the workman was, at no stage, called upon to prove this fact of being a member of the Union. It has been held in the case reported as 1980 LIC 742 (SC), Workmen of Sudder Workshop of Jorehaut Tea Co. Ltd. v. The Management of Jorehaut Tea Co. Ltd., that conclusions which are not based on facts as having neither been pleaded or proved cannot be allowed to be urged in the High Court. The present is exactly such a case.

(35) In so far as the second contention is concerned, it is not even requirement

of the Model Standing Orders. Mr. Verma could not even substantiate his contention that registration under Trade Union Act was essential. He conceded, in fact, that no notification in terms of the amended provisions, has been issued.

(36) The contention of Mr. Verma that the workman was entitled to be represented only by a member or office bearer of a recognised Union, on the basis of the Supreme Court judgment reported as *The Dunlop Rubber Co. Vs. Workmen*, is also not sustainable for the reason that the said decision is based on the finding that the Standing Orders of the company in question provided that in domestic enquiry, only a representative of a Union, which is registered under the Indian Trade Union Act, and as recognised by the company, could assist and in such a situation there is no denial of natural justice if the request of the workman, who insisted to be assisted by a representative of their own unrecognised Union.

(37) The ratio of this judgment is not, at all, applicable to the present case for the twin reasons, namely, that it is now an admitted case, as conceded by Mr. Verma, that there are no certified standing orders formulated by the company, and as such Model Standing Orders issued under the So Act would govern the enquiry proceedings against a delinquent employee on the ground of misconduct, and the Standing Orders, as contained in Rule 14(4)(b) now clearly stipulate that an employee has a right to be represented by an office bearer of a Union, of which he is a member. It is thus no requirement of the statutory standing orders that the Union should be a recognised or registered Union. In fact, the new provision was introduced in Rule 14(4) by inserting Clause (b) by amendment of 1975, and judgment in the *Dunlop Rubber Co. case* (supra) is of a much prior date.

(38) The judgment relied upon by Mr. Verma reported as *Awadesh Kumar Bhatnagar Vs. The Gwalior Rayon Silk Mfg. Weaving Ltd. and Another*, is based on the finding of facts in the said case, which have no bearing on the issue arising in the present case.

(39) Similarly, the ratio of the judgment in the case reported as 1981 LIC 557, *The Managar, Boisahabi Tea Estate v. The Presiding Officer, Labour Court, Dibrugarh and Another*, of the Division Bench of the Gauhati High Court, relied upon by Mr. Verma, is also of no assistance to him, because although on the facts of that case it was held that enquiry had been held and conclusion reached after following procedure wherein the affected workman was fairly dealt with, and had just opportunity to present his case, state his pleas, and the findings recorded were not perverse, but even this authority recognised the need for a substantial compliance with the provisions of the Standing Orders, and observance of the principles of natural justice, with the implication that in case there has been non-compliance with any of the provisions of the Standing Orders, it would be a case where principles of natural justice are to be treated as having been violated, as in the present case.

(40) It was held by the Supreme Court in a case reported as Management of Northern Railway Co-operative Society Ltd. Vs. Industrial Tribunal, Rajasthan, Jaipur and Another, , that where a delinquent employee had not been supplied with copies of the material in support of the charges, and he did not appear on the date fixed for enquiry, for the reason of non-supply of the requisite material, and the enquiry proceeded in his absence, it would be a case where requirements of principles of natural justice were not satisfied. The ratio of this judgment squarely fits in with the present case, because here the workman declined to participate in the proceedings because of refusal of permission to be represented by a person of his choice, which right was conferred on him by Model Standing Orders, and the Tribunal had rightly held this to be a case of violation of principles of natural justice, and on the strength of this judgment, workman's refusal to participate in the enquiry proceedings cannot be faulted with.

(41) I also find no force in the arguments advanced by Mr. Verma that respondent No. 1 was an experienced workman, who himself had been representing workman in various Trade Union disputes, and was thus not in need of any other person to represent or assist him in the domestic enquiry, and was himself competent to look after the enquiry proceedings against him. This argument fails to take note of the ordinary human situations when a person howsoever competent or qualified, may not be in a position to defend his own case, and may need assistance of a third person, who is not personally affected.

(42) I find myself fortified in this view by an observation of the Supreme Court in the case reported as C.L. Subramaniam Vs. Collector of Customs, Cochin, , where it was held that :

"...WHEN a man is charged with the breach of a rule entailing serious consequences, he is not likely to be in a position to present his case as best as it should be."

and that is why Rule 15(5) of the Central Civil Services (Classification, Control and Appeal) Rules, 1967 provided that a Government servant charged with dereliction of duty or contravention of the rules is to be represented by another Government servant and even by legal practitioner.

(43) Reliance was placed by Mr. Verma on Narayan Das Vs. State of Orissa, , that in the case of an employee of the status of a rural welfare inspector, refusal to permit him to engage lawyer in enquiry proceedings would not vitiate the enquiry report.

(44) The ratio of the aforesaid judgment cannot apply to the present case, and it is not a correct stand to take that since respondent No. 1, who had long been a member of the Trade Union, did not require anybody else to assist him; particularly when the statutory Model Standing Orders entitled him to seek such an assistance. It was even held in a case reported as Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, . The

Board of Trustees of the Port of Bombay v. Dilipkumar Ragnavenoranath Nadkarni and Others, that when a person facing a domestic enquiry is pitted against a legally trained officer, by whom the employer was being represented, then request of the employee to be represented by a lawyer should not be refused, and such refusal would amount to denial of reasonable opportunity of hearing to the employee.

(45) The facts of the case reported as Ghanshyamdas Srivastava Vs. The State of Madhya Pradesh, , are also distinguishable because there the delinquent Government servant had failed to appear before the enquiry officer inspire of repeated opportunities granted for which no valid cause had been shown in a challenge to the dismissal order, where as in the present case, the workman boycotted the enquiry proceedings because of refusal of his request to be represented by Mr. R.N. Roy, and the Industrial Tribunal has held it amounting to violation of principle of natural justice, and I do not find any error committed by the Industrial Tribunal incoming to the finding. In such a situation, the workman was justified for non-participation in enquiry proceedings and the enquiry report based on ex pane evidence stood vitiated.

(46) Mr. Verma's next contention that it was for the workman to establish his plea of victimisation is also no relevance, because the learned Tribunal has rightly held that in view of the finding that the enquiry report was liable to be set aside, as being based on ex parte proceedings, which in turn involved infraction of principles of natural justice, there was no need to go into the plea of the workman as to victimisation because that had to be examined only if the enquiry report did not otherwise suffer from any legal defect. This argument, Therefore, based on the aforesaid judgment does not arise in this case.

(47) Lastly, I would like to deal with the plea advanced by Mr, Verma at the fag end of the arguments that in the event of the Industrial Tribunal holding that dismissal order was not sustainable, and no approval for the same could be accorded, then the Management ought to have been given an opportunity to adduce evidence before the Tribunal to substantiate the charges against the workman.

(48) Here also, the petitioner has no case for the short reason that there is not an iota of evidence that any request in writing was made, at any stage, during pendency of the proceedings before the Tribunal for any such opportunity being granted to the petitioner. It has been held repeatedly that if a management wishes to adduce evidence in support of the charges before the Tribunal, then an application for the purpose should be moved before the proceedings come to an end, and consequently, the application that is made after proceedings have come to an end, deserve to be rejected. It has been so held by the Supreme Court in the case reported as 1976(1) LIC 180, Delhi Cloth and General Mills Co. Ltd. and Ludh Budh Singh. Same view was taken by the Supreme Court in the case reported as 1983 LI C 1697 . Shambhu Nath Goyal v. Bank of Baroda and Others.

(49) Similar view has been expressed by a Division Bench of this Court in the case reported as 1982 LIC 1378 Management of Delhi Transport Corporation, New Delhi v. RamKumar and Another, with which I am in respectful agreement, where it was held that the management must ask for an opportunity to adduce additional evidence during pendency of the proceedings before the Labour Court or industrial Court, and there was no duty cast on the said Tribunal to suo moto call upon the management to produce evidence to substantiate the charges, and in the absence of a plea to adduce additional evidence at the initial stage or during pendency of the proceedings, failure of the Labor Court or the Industrial Court to give such an opportunity shall not vitiate the proceedings.

(50) The learned Counsel was asked to show from record as to whether any such application was made before the Industrial Tribunal before the close of the proceedings. He could not give reference of any written application having been made. On the other hand, the statement made at the Bar by the learned Counsel turn respondent No I that only oral request was made during final arguments was not controverted. Mr. Birbal further submitted that there is a statutory form provided is Form "K." in the rules, being Rule 60 read with Section 33(2)(b) of the Act, for moving an application for opportunity to lead evidence before the Tribunal.

(51) Apart from the fact thus that law contemplates written application, and as such an oral request would not suffice, even that came after the close of the proceedings, and at the far end of the final arguments, and in such a case the Industrial Tribunal was not obliged to give opportunity to the petitioner to adduce evidence. Even in the writ petition, all that is stated in ground (xii), is that the Tribunal was bound to ask the petitioner to lead evidence on merits and prove the charges before it. It is thus a case where making of a written application is not even pleaded, much less proved, and as such no duty was cast on the Industrial Tribunal to grant opportunity to the management to produce evidence in support of the charges, after holding that the enquiry report stood vitiated by virtue of violation of principles of natural justice.

(52) I, Therefore, do not find any merit in the writ petition or any case made out for interference. The writ petition is, Therefore, dismissed with costs. Counsel fee Rs. 2000.00.

(53) As a result, respondent No. 1 would be entitled to be treated as an employee of the petitioner company continuously, and he shall be reinstated accordingly, with retrospective effect, if not already allowed to work, but in so far as the question of back wages is concerned, that shall be subject to proof by the workman that during the relevant period, he was not gainfully employed somewhere else.

(54) The order as to reinstatement shall be complied within two months from today.