

(1991) 07 OHC CK 0025

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1164 of 1987

I.D.L. Chemicals Ltd.

APPELLANT

Vs

S.R. Tamma and Another

RESPONDENT

Date of Decision : 16-07-1991

Acts Referred:

Evidence Act, 1872 — Section 114

Industrial Disputes Act, 1947 — Section 33(2)(6)

Citation : (1991) 2 OLR 313

Hon'ble Judges : B.L. Hansaria, C.J.;A.K. Padhi, J

Bench : Division Bench

Advocate : S.B. Nanda, N.K. Misra, R.K. Bose, B.K. Patnaik and B. Misra, for the Appellant; P.K. Dhal, A.C. Mohanty, J.K. Das, D.P. Dhal, R.C. Mohanty, R.K. Mohanty and A.K. Das, for the Respondent

Final Decision : Dismissed

Judgement

B.L. Hansaria, C.J.—The petitioner has assailed in this petition the order of the learned Presiding Officer, Industrial Tribunal passed in a proceeding u/s 33(2)(b) of the Industrial Disputes Act, 1947. The law relating to this proceeding is well-settled by now in such a matter, the Tribunal has initially limited jurisdiction only to see whether a prima facie case is made out in respect of the misconduct charged. This is, however, the position only when the domestic enquiry preceding the order of dismissal is free from any defect, that is to say, free from the vice of violation of the principles of natural justice. If, on the other hand, there is violation of the principles of natural justice, the Tribunal will give an opportunity to the employer to produce evidence, if any, and also to the workman to rebut it if he so chooses. In the latter event, the Tribunal will be entitled to arrive at its own conclusion on merits on the evidence produced before it with regard to the proof of the misconduct charged, and the Tribunal then will not be confined merely to consider whether a prima facie case is established against the employee. In other words, in such an event, the employer's finding in the domestic enquiry will lapse and these will be substituted by the independent

conclusions of the Tribunal on merits. This is what has been held in *Bharat Iron Works Vs. Bhagubhai Balubhai Patel and Others*, . We may, however, state that the Tribunal gets jurisdiction in such matters to consider the evidence placed before it for the first time for justification of the action taken only if no enquiry has been held or an enquiry conducted by the employer is found to be defective. It has been reiterated in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, , wherein in paragraph 19, the law laid down in this connection in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, , was cited with approval.

3. In the present case, the Tribunal proceeded to first take up the case whether the domestic enquiry" held by the Management fulfilled the requirement of natural justice. The Tribunal found the question against, the Management as it noted that the enquiry had proceeded ex parte for which there was no justifiable reasons, according to the Tribunal. This view had been taken by the Tribunal because what happened was that the enquiry was once being held from day to day after the workman had participated. After the second Enquiry Officer resigned, the third Enquiry Officer was appointed. The date fixed for further enquiry earlier was 12-9-1982, but as the third Enquiry Officer came and received charge, he wanted to shift the date of enquiry. The case of the Management is that due notice about the date was given to the workman on the address he had supplied to the Management.

4. Two such notices were issued which are Annexures-4 and 5. The notices were, however, received by one Kameswari, As it is not known as to how Kameswari is related to the workman, the Tribunal took the view that the service of notice on Kameswari was not sufficient and so steps ought to have been taken by the Management to serve the notice of the enquiry personally on the workman, which having not been done in the proceeding, the ex parte nature of the enquiry was not approved by the Tribunal.

5 The aforesaid finding of the Tribunal has been seriously objected to before us by Shri Nanda appearing for the petitioner According to the learned counsel, the notices meant for the workman having been sent under registered post at the address supplied by the workman, the Management had nothing else to do and it must be presumed that the notices were duly served on the workman. In this connection, our attention is invited to *Sk. Hyder Ali v. Rajkishore Sahoo* 22 (1954) CLT 605 and *Madanlal Kadia Vs. Union of India (UOI) and Others*, , in which decisions it was held that if a letter properly addressed is proved to have been put in the post office, it is presumed that the letter reached its destination at the proper time according to the regular course of business of the post office and it was received by the person to whom it was addressed. Indeed, this was the view taken by their Lordships in *Gresham House Estate Co. v. Rana Grande Gold Mining Co* 1870 WN 119 which was reiterated in *Harihar Banarjee v. Ramsashi Ray* 45 IA 222 .

6. In countering the submission advanced by Shri, Nanda, Shri Mohanty

appearing for the workman contends that it was not a case of relying on any presumption, because of what has been stated in Section 114 of the Evidence Act. In the present case, it clearly transpired that the notices meant for the workman were received by one Kameswari ; and it being not on record as to how Kameswari was related to the workman, if the Tribunal took the view that the service of notice was not proper, no legal infirmity should be found with the same. In this connection, our attention is invited to the fact that the address supplied by the workman was that of one M. R. Sastry. It is not the case of the Management that the letters were received by this Sastry. The view taken by the learned Tribunal, therefore, that the notices were not properly served and the Management should have taken steps to get the notices served on the workmen personally before proceeding with the enquiry ex parte cannot be taken to be against any provision of law. In this connection, we would also like to point out that the workman was duly participating in the enquiry which had been initiated against him. It was only after the third Enquiry Officer came to the scene that he remained absent. It cannot, therefore, be stated that despite service of notice on him he was trying to avoid the enquiry. On these facts, we hold that the view taken by the learned Tribunal regarding the defect in the enquiry is not such as merits our interference in exercise of our extraordinary power under Arts. 226 and 227 of the Constitution.

7. The law being that if the enquiry be defective, it would be open to the Management to lead evidence before the adjudicating authority and that authority shall thereafter examine the merits of the case, and the Tribunal having done so in the present case subsequent to its finding regarding the defect in the enquiry, it cannot be said that it acted in excess of jurisdiction.

8. It may be pointed out that in the second leg of adjudication, the learned Tribunal went through the evidence led by the parties and came to the conclusion that the charges were not established. It is because of this that the approval u/s 33(2)(b) was not granted to the Management. We cannot find fault with this order of the Tribunal.

9. In view of the above, we are not satisfied if any case has been made out to interfere with the impugned orders. The petition is, therefore, dismissed.

A.K. Padhi, J.

10. I agree.