

**(2006) 02 DEL CK 0113**  
**In the Delhi High Court**  
**Case No : LPA 701 of 2003**

Indian Refrigeration Industries

APPELLANT

Vs

Ram Rattan Sharma and Others

RESPONDENT

**Date of Decision :** 02-02-2006

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10, 10(1), 33(2)

**Citation :** (2006) 128 DLT 503 : (2006) 2 LLJ 1103 : (2007) 2 SLJ 311

**Hon'ble Judges :** Markandeya Katju, C.J.; Madan B. Lokur, J

**Bench :** Division Bench

**Advocate :** D.N. Vohra, for the Appellant; Suryakant Singla, for the Respondent

**Final Decision :** Dismissed

## **Judgement**

Markandeya Katju, C.J.—This Writ Appeal has been filed against the impugned judgment dated 02.09.2003 by the learned Single Judge, by which he has dismissed the Writ Petition.

2. Heard learned counsels for the parties and perused the record.

3. The facts of the case have been set out in detail in the impugned judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

4. The Respondent was a workman under the petitioner. He raised an industrial dispute, which was referred to the Industrial Tribunal I, Karkardooma, Delhi. The Reference Order u/s 10(1) of Industrial Disputes Act states:-

Whether the termination of service of Sh. Ram Rattan Sharma by the management is illegal and unjustified and if so to what relief is he entitled and what directions are necessary in this respect.

5. Thereafter an enquiry was held in which the respondent was found guilty and dismissed from service. The petitioner filed an approval application u/s 33(2) (b) of Industrial Dispute Act, while the workman raised an industrial dispute which

was referred u/s 10 against the termination of his service (as already stated above). Both the Reference u/s 10 and the Approval Application u/s 33(2)(b) were disposed of by the common award of the Tribunal dated 01.02.2003.

6. It appears that the Enquiry Officer in the domestic enquiry was one Mr. Ramesh Nagpal, Advocate, and an allegation against him was made that he was biased. No doubt, there is no absolute bar to an advocate or an officer of the company being an Enquiry Officer, vide *Saran Motors Ltd. v. Vishwanath* 1964 II LLJ 139; *N. Rarichan v. Venu Nair* 1973 LIC 536, *S. Gopal Kammath v. T. Raghavan* 1979 (39) FLR 60 ; *Delhi Cloth & General Mills Co. Ltd. v. Labour Court* 1970 I LLJ 23 ; *Khandu Krishna Bhogade Vs. Kalyani Steel Ltd. and others*, ; *Mngt. of Sivasakthi Bus Service v. P. Gopal* 1971 (23) FLR 119, etc.

7. However, the facts of each case have to be seen. In the present case, it has been noted in para 19 of the Award of the Industrial Tribunal that Mr. Ramesh Nagpal, advocate had not only been the Enquiry Officer in the enquiry but he was also authorized to represent the management in the hearing of the approval application u/s 33(2)(b), as well as in the industrial dispute referred to the Tribunal on behalf of the management.

8. In our opinion, this clearly shows bias because if an Enquiry Officer himself appears as the advocate for the management in the reference against the termination of service based on the enquiry which he had himself held, this obviously shows bias. This is just like a trial Court Judge who convicts an accused and then appears as a counsel for the prosecution in the appeal against the conviction.

9. For the reasons give above, we see no reason to interfere with the judgment of the learned Single Judge and hence this Writ Appeal is dismissed.