
(1968) 09 PAT CK 0003
In the Patna High Court

Industry West Ena Colliery

APPELLANT

Vs

Central Government Industrial Tribunal and Others

RESPONDENT

Date of Decision : 20-09-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311
Industrial Disputes Act, 1947 — Section 10
Industrial Employment (Standing Orders) Act, 1946 — Section 6

Citation : (1969) 2 LLJ 239

Hon'ble Judges : U.N. Sinha, J;B.N. Jha, J

Bench : Division Bench

Judgement

B.N. Jha, J.—This is an application under Articles 226 and 227 of the Constitution to quash the award of the Central Government Industrial Tribunal, dated 19 October 1966 (annexure D), directing the reinstatement of Dr. M. Hazra (respondent 3) and granting other consequential reliefs.

2. Dr. M. Hazra who was the medical officer of the employer-petitioners" company, was charge sheeted on 9 August 1963, for granting a false certificate to a colliery worker named Budhan Mandal, miner, and allowing him to resume his duties on 7 August 1963, after a period of two months when he was absent from his duty by making him Bick for the above period (annexure A). He was further charged for getting the sick register manipulated through Sri G. Mazumdar, trainee-compounder, by compelling him to enter the name of Budhan Mandal in the sick register. Thereafter, he replied to the management on 10 August 1963 (annexure B), denying the charges and stating therein that Budhan Mandal reported himself sick on 5 June 1963, and periodically he took medicines from the dispensary as per his prescription and he was advised to take rest. He also repudiated the fact that he snatched away the sick register from the compounder and compelled him to enter the name of Budhan Mandal in the register. The management entrusted the enquiry of the charges against the doctor to Sri V.N. Pathak, labour welfare officer, who held the enquiry in the presence of Dr. Hazra, the concerned workman, and recorded the statement of

Dhanpati Dutta, compounder, Gangadhar Mazumdar, the trainee-compounder, Muslim Mian, Bupan Turl and Budhan Mandal. Dr. Hazra did not cross-examine the witnesses save and except Budhan Mandal. He also made statement reiterating his previous statement which he made in his reply dated 10 August 1963. It may be noted here that he never objected to the enquiry being held by Sri Pathak on any ground whatsoever. After enquiry Sri Pathak found the concerned workman Dr. Hazra guilty of the charges levelled against him and as such he held that he was guilty of misconduct, Hence, he recommended for the termination of the services of Dr. Hazra in his enquiry report dated 30 August 1963. Thereafter, the manager of the petitioners' company sent a letter to the director of the company stating therein that the charges against Dr. Hazra had been proved and recommended for termination of his service with wages in lieu of one month's notice instead of dismissing him from the service as a special case and sought for approval of the same. The director approved the recommendation of the manager terminating the services of Dr. Hazra by his letter dated 10 October 1963. The manager wrote a letter on 11 November 1963 to Dr. Hazra informing him that his services had been terminated with immediate effect and that he was requested to collect all his dues from the company.

3. The Colliery Mazdoor Sangh, Dhanbad (respondent 2), took up the cause of Dr. Hazra and raised an industrial dispute. An abortive conciliation proceeding followed which led to the present reference (being Reference No.36 of 1964) by the Central Government u/s 10(1)(d) of the Industrial Disputes Act, 1947. The question referred for the decision of the Central Government Industrial Tribunal, Dhanbad, was as follows:

Whether the management of Industry of West Ena Colliery (East Industry Colliery Company) (Private), Ltd. was justified in terminating the services of Dr. M. Hazra, medical officer of the colliery, by their letter dated 11 November 1963? If not, to what relief is the workman entitled?

4. Before the tribunal the case of the petitioners was that Budhan Mandal, the miner, absented himself for a long time and appeared in the colliery to resume his duties on 7 August 1963, with a certificate from Dr. M. Hazra that the workman was sick and was under his treatment from 5 June 1963 to 6 August 1963 and was fit for duty from 6 August 1963. In order to verify it the manager of the company sent for the sick register but on getting scent of this fact, the medical officer, Dr. Hazra, intercepted the register on the way and got false entries of sickness entered in it by compelling trainee-compounder Gangadhar Mazumdar. Thereafter, a chargesheet was issued to Dr. Hazra on 9 August 1963, to which he replied on 10 August 1963. Domestic enquiry was held to ascertain the charges by Sri Pathak, the welfare officer, in the presence of Dr. Hazra. The charge of conduct against Dr. Hazra was established. Thereafter, the management terminated the services of Dr. Hazra by offering him one month's wages in lieu of notice. Hence, the service of Dr. Hazra was rightly terminated and he was not entitled to any relief.

5. On the other hand, the case of the concerned workman, Dr. Hazra, who also filed a rejoinder before the tribunal, was that he had a blameless record of service in the company for fourteen years, but without any fault on his part, he was arbitrarily and mala fide dismissed. The charges against him were false and concocted and there was premeditated conspiracy to remove him from the service. It was never mentioned in the charges as to under what standing orders he was alleged to have committed the misconducts. He had repudiated the charges made against him but after three months he received a letter from the management terminating his service on the basis of the enquiry held on 22 August 1963. He was never given an opportunity to explain thereafter, and, as such, the principles of natural justice had been violated by the management. Hence, he prayed for the setting aside of the order of removal from service and for the payment of his back-dues and other emoluments. It was never contended by Dr. Hazra that he was prejudiced in the enquiry by the welfare officer, Sri Pathak and that he had not got fair opportunities to defend himself at the enquiry. The sole basis of this contention was that before imposing the penalty of terminating the service, he should have been called upon to show cause.

6. The petitioners after filing their written statement received notice on 3 October 1966 from the tribunal informing them that the enquiry before the tribunal would start from 11 October 1966. Before the tribunal the parties did not examine any witness. Both parties filed documents before it which were admitted in evidence by the tribunal. The management also filed domestic enquiry papers before the tribunal.

7. On a consideration of the facts and circumstances of the case the tribunal held that, in its opinion, the enquiry before Sri Pathak, the welfare officer, was not impartial, fair, proper and free from prejudices inasmuch as Muslim Mian had reported the fact of the entry in the sick register by the trainee-compounder at the instance of Dr. Hazra. According to it, Sri Pathak should have been a witness in the case as Muslim Mian, who was returning from the house of the compounder where he had gone to bring the sick register, met the welfare officer on the way and narrated to him about the incident of false entry regarding the sick of Budhan Mandal in the sick register. Hence, it held that the enquiry was invalid and consequently it set it aside. Thereafter, the tribunal examined the various entries made in the sick register and after scrutiny it came to the conclusion that the Book register (Ex. M.30) did not inspire any confidence and, as such, there was absolutely no reliable evidence on which Dr. Hazra could be said to be guilty of any misconduct. In its opinion, statements from persons like Budhan Mandal or Muslim Mian or the like could be taken under pressure and as such no reliance could be placed on their testimony in the absence of documentary evidence. The specific clause of the standing orders in terms of which Dr. Hazra committed the offence was not stated and as such, in the opinion of the tribunal, it could not be said that the services of Dr. Hazra were terminated in terms of the standing orders. In the result the tribunal held that the termination of the services of Dr. Hazra, medical officer of the colliery, was

not justified and, therefore, the termination order was set aside and Dr. Hazra was directed to be reinstated with effect from 11 November 1963, with full back-wages and other emoluments to which he might be entitled with continuity of service. Being aggrieved by this order of the tribunal, the management has come up in this Court.

8. Sri Lai Narayan Singh, learned Advocate-General appearing for the petitioners, contended that the tribunal exceeded the scope of enquiry before it in this case. He submitted that the tribunal was not sitting as a Court of appeal against the findings arrived at the domestic tribunal, and it was not competent to review and reconsider the evidence adduced before the domestic tribunal. The management was quite competent to terminate the services of Dr. Hazra for misconduct in terms of its standing orders after the doctor was found guilty in the domestic enquiry held by the management. The tribunal was, therefore, not justified in setting aside the order of termination of the services of the doctor and directing his reinstatement with other consequential reliefs. He also attacked the findings of the tribunal that the welfare officer, Sri Pathak, was not competent to hold the domestic enquiry in the circumstances of the case and the domestic enquiry was not fair and proper and without prejudices.

9. Sri Ranen Roy, on the other hand, contended that when the tribunal had found that the domestic enquiry was not fair and proper, the entire matter was before the tribunal to look into the evidence whether the action of the management in terminating the services of Dr. Hazra was justified or not. According to him, the finding of the tribunal that the enquiry was not fair and proper is a question of fact arrived at by the tribunal. Hence he supported the judgment of the tribunal and the conclusions arrived at by it.

10. It is now well-settled that an industrial tribunal will not interfere with the action of the management in dismissing its employee after holding an enquiry into his alleged misconduct unless it is shown that the management has not acted in good faith or that the dismissal amounts to victimization or unfair labour practice or where the management has been guilty of a basic error or violation of a principle of natural justice or when, on the materials, the finding is completely baseless or perverse [see the case of *Indian Iron and Steel Co. Ltd. and Anr. v. their workmen* 1953 I LLJ 260. It is also well-settled that the tribunal does not sit in appeal on the judgment of the domestic tribunal. The tribunal has no power to review the evidence adduced before the domestic tribunal or to examine the sufficiency of evidence of the findings given by the domestic tribunal. The law on this point has been succinctly laid down by the Supreme Court in *J.K. Cotton Spinning and Weaving Co. Ltd. v. its workmen* 1965 II LLJ 153 where Mudholkar, J., has observed as follows at p. 156:

...This Court has pointed out time and again that an industrial tribunal to which a dispute arising from dismissal has been referred for adjudication is not an appeal Court having the power to examine the correctness of the conclusions of fact arrived at by a domestic tribunal. Where the Industrial tribunal finds that there

was nothing improper or unfair in an enquiry conducted by the domestic tribunal and where the action taken against workmen was not actuated by any ulterior motive and where the principles of natural justice have not been infringed, it is beyond the powers of an industrial tribunal to set at nought the action taken by the management which lay within its competence under the standing orders. Whether the material before the domestic tribunal was adequate or not or whether the particular witnesses upon whom reliance was placed by the tribunal should have been believed or not was entirely a matter for the consideration of the domestic tribunal. The industrial tribunal, while adjudicating upon an industrial dispute referred to it, does not possess the power of reviewing the evidence adduced before the domestic tribunal or of taking fresh evidence before it except in the limited class of cases

11. Placing reliance on the aforesaid decisions of the Supreme Court, the Advocate-General contended that the tribunal committed an error of law which is apparent on the face of the record in rejecting the evidence in support of the charges against Dr. Hazra, led before the domestic tribunal. Hence, he contended that that infirmity was sufficient to quash the award, *Sd Ranen Roy*, however, did not dispute the proposition that the tribunal had no power to review the evidence led before the domestic tribunal but his contention was that the tribunal has found that the domestic enquiry was defective and unfair and hence, in such circumstances everything was open before the tribunal. He further contended that defective enquiry was no enquiry in law. In such circumstances, according to him, the tribunal could take evidence or decide the case on the materials already placed before it as to whether the action of the management in terminating the services of the workmen was justified or not. In the present case, in the opinion of the tribunal, the action of the management in terminating the services of Associated Cement Co. Ltd. Vs. The Workmen and Another, and *Khardah Co. Ltd. Vs. Their Workmen*, . These two cases, no doubt, support the contention of *Sri Roy* that once the tribunal finds that the enquiry was defective or unfair, it had power to decide itself, independently of the findings of the domestic tribunal, whether the action of the management in terminating the services of the workman was justified or not. He strongly relied on the observation made in the case of *Workmen of Motipur Sugar Factory (Private) Limited Vs. Motipur Sugar Factory*, which read as follows at 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 enquiry has been properly held... but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified?

12. Therefore, the question arises in the present case whether the enquiry before Sri Pathak was defective or unfair. Sri Pathak was the welfare officer In the colliery. Nothing was pointed out by Sri Roy to suggest that the welfare officer as an officer was not competent to hold domestic enquiry. The tribunal was of the opinion that Muslim Mian had informed Sri Patbak about the action of Dr. Hazra regarding the interpolation made in the sick register by the trainee-compounded on the pressure of Dr. Hazra. Therefore, he was not competent to hold the enquiry as he could have been cited as a witness in the enquiry. The Advocate-General contended that a similar complaint about the manipulation In the sick register had been made to the manager of the colliery. When a complaint is received by the manager, nothing in law prevents him to enquire into the matter of charges against the concerned workman himself or to get it enquired into regarding the truthfulness or otherwise of the complaint by some other competent persons. Nothing was found by the tribunal to indicate that Sri Pathak was biased in the enquiry against Dr. Hazra. it was further contended by the Advocate-General that no objection at the domestic enquiry was ever taken by the concerned workman regarding competency of Sri Pathak to hold the enquiry. No such objection was also taken before the tribunal by the concerned workman. But the tribunal itself discovered the point that Sri Pathak was not competent to hold the enquiry in this case. The most important point In this case was whether Budhan Mandal was sick during the alleged period of two months and during that period he was under the treatment of Dr. Hazra Sri Pathak did not know whether Budhan Mandal was sick or not. In the domestic enquiry the truth of the charges had got to be established by production of necessary evidence before the domestic tribunal. The two charges against Dr. Hazra, namely, when he had granted false certificate to Budhan Mandal and whether he had compelled the trainee-compounder to enter in the sick register the name of Budhan Mandal, had got to be established. Sri Pathak had to make enquiry about the two charges. He had no personal knowledge regarding the truthfulness or otherwise of the two allegations made against Dr. Hazra. Therefore, learned Advocate-General submitted that the tribunal was not justified in coming to the conclusion that Sri Pathak was not competent to hold the enquiry in the case. He relied on Queen's Bench Division decision in *R. v. Nailsworth Licensing Justices* (1953) 2 ALLER 658 where a question arose whether one of the three justices, Alice Waine, who had signed the petition in favour of the licence was competent to sit in the licensing committee as a justice. An application for the issue of a writ of certiorari was filed to quash the decision of the licensing committee on the ground that Alice Waine had previously signed the petition in favour of the licence. Their lordships refused to grant the prayer on two grounds, viz.:

(i) because they did not think it was established that there was any real bias on the part of this Justice or that there was anything done which would make It appear improper, and not merely undesirable for her to sit (and they had no reason to suppose that she would have signed this petition if she had known she was going to sit):

(ii) because they thought that there was ample opportunity for any objection to have been made before the decision was given.

13. The Advocate General also drew our attention to a decision of the High Court of Madhya Pradesh in *Balkishan Chaturvedi Vs. The Chief Secretary, Govt. of Bhopal and Another*, . In that case there was a departmental enquiry proceedings under Art. 311 (2) of the Constitution in regard to the misconduct of a public servant. It was pointed out in that case that an objection on the ground of prejudice to the holding of the departmental enquiry by an officer who first detects the alleged misconduct or irregularity must be raised as soon as the public servant receives the notice about enquiry. Where the public servant actually acquiesces and assists in the enquiry and raises the objection for the first time after the report of enquiry turns out to be adverse, the objection cannot be taken into consideration. A Bench decision of this Court in *Anil Bihari Saran Vs. State of Bihar*, held that in an enquiry against a public servant, if the enquiry officer prior to enquiry, had seen the papers concerning the public servant on the basis of which disciplinary proceedings were initiated and expressed an opinion on them, It does not necessarily follow either that he ought not to have conducted the enquiry or that his conclusions after the enquiry will be in any way influenced by what he has seen or written when he saw the papers. When the enquiry is conducted with scrupulous regard to fair-play and maximum latitude is shown to the public servant, no principle of natural justice is contravened in such case. In the present case, nothing has been pointed out to suggest that Sri Pathak was in any way biased or the enquiry held by him was not fair and it violated the principles of natural justice. In fact, the concerned workman Dr. Hazra never thought like that. Besides, no objection was ever taken by Dr. Hazra regarding the competency of Sri Pathak to hold the enquiry either before the enquiring officer or before the tribunal. In such circumstances it is not possible to hold that Sri Pathak was not competent to hold the enquiry.

14. On the other hand, Sri Roy relied on the decision in the case of *Associated Cement Co. Ltd. Vs. The Workmen and Another*, referred to above, in support of his contention that because the enquiring officer had knowledge about the incident, therefore, the enquiry held was defective and the tribunal had the right to examine itself whether the action of the management in terminating the services of the workman was justified or not. In that case the enquiry was conducted by the manager, the assistant manager and the chief engineer. The enquiry officers claimed that they themselves had witnessed the alleged misconduct of the concerned workmen. In such circumstances, it was held that the enquiring officers should not have imported their personal knowledge and should not also have relied on the reports received from their witnesses. There were other infirmities in the domestic enquiry also in that case, and, therefore, the action of the tribunal was held to be justified in reviewing the matter itself and coming to the conclusion that the action against the concerned workman was not justified. Here, nothing has been pointed out in the present case to indicate that Sri Pathak had any personal knowledge in the matter and as such

he was quite competent to hold the enquiry. Sri Roy also contended that the departmental proceeding under Article 311(2) of the Constitution could not be considered at par with the proceeding before the domestic tribunal under the Industrial Disputes Act and as such, the principles laid down in the Madhya Pradesh and Patna cases could not be applied to the facts of the present case. I see no difference in principle so far as the question of prejudice in the two kinds of enquiries is concerned. Therefore, in my opinion, there is no force in this contention of Sri Roy. The finding of the tribunal that he was not competent to hold the enquiry is erroneous in law and cannot be sustained. Therefore, in my opinion, the tribunal could not derive jurisdiction to deal with the merits of the dispute itself.

15. The Advocate-General submitted that when the tribunal found that the sick register was not a reliable document, he was not justified in holding that there was no reliable evidence to hold that Dr. Hazra could be said to be guilty of any misconduct. The tribunal was not justified in brushing aside the oral evidence adduced before the domestic enquiry simply saying that it was very easy to get the statements under pressure from persons like Budhan Mandal or Muslim Mian or the like and, therefore, no reliance could be placed on their evidence in the absence of documentary evidence. There was no evidence before the tribunal that Budhan Mandal or Muslim Mian or other witnesses had deposed under the pressure of the management. The observation of the tribunal is unwarranted in law. Since I have held that the domestic enquiry was proper enquiry in the case, the tribunal had no jurisdiction to enter into the merits of the case and to review the evidence before the domestic tribunal, it is not necessary to examine the findings of the tribunal in detail on this point.

16. The question is whether Dr. Hazra was guilty of misconduct. The tribunal was of the opinion that the management never stated under what specific clause of the standing orders Dr. Hazra had committed the offence. The tribunal in Para. 9 itself observed:

It is a very serious offence for a doctor to forge or to get forged the medical register and to show a man sick although he is not sick because if his misconduct is proved MB name would be struck off by the Indian Medical Association, and therefore, such a charge should not be lightly levelled against a doctor.

17. Therefore, if the allegation in the charges that Dr. Hazra granted a false certificate to Budhan Mandal and got the sick register manipulated, there could not be any doubt that he was guilty of misconduct. We have examined the standing orders for the coalmining Industry as certified by the Chief Labour Commissioner (Appellate Authority) on 8 April 1950, u/s 6(2) of the Industrial Employment (Standing Orders) Act (20 of 1946) read with rule 7 of the Industrial Employment Standing Orders (Central) Rules, 1946, which was filed before us by the petitioners. It was not disputed before us by the respondent that the standing orders did apply in the present case. Standing order 27 provides that an employee may be suspended, fined or dismissed without notice or any

compensation in lieu of notice if he is found to be guilty of misconduct, provided that suspension without pay, whether as a punishment or pending an enquiry, shall not exceed ten days. The following shall denote misconduct:

(2) Theft, fraud or dishonesty in connexion with the company's business or property,

* * *

(4) Habitual late attendance and habitual absence without leave or without sufficient cause,

* * *

(18) Leaving work without permission,

* * *

(20) Abetment of, or attempt at abetment of any of the above acts of misconduct.

18. Therefore, in terms of standing Order 27(2), the doctor is guilty of fraud and dishonesty in connexion with the company's business or he is guilty of abetment by allowing Budhan Mandal to leave work without permission by granting false certificate to him. If the charges are proved against Dr. Hazra, he is certainly guilty of a gross misconduct and liable for the punishment under standing order 27. The management was justified in terminating the services of Dr. Hazra for misconduct after holding proper domestic enquiry. No case of victimization, unfair labour practice or violation of the principles of natural justice was made out or that the findings of the domestic tribunal were perverse was suggested by Dr. Hazra in the present case. In these circumstances, the tribunal had no jurisdiction to interfere with the action of the management in terminating the services of Dr. Hazra after holding domestic enquiry and finding Dr. Hazra guilty of the charges levelled against him. Therefore, the award given by the tribunal is invalid in law and must be quashed.

19. In the result, the application is allowed. Let a writ of certiorari issue quashing the award made by the presiding officer. Central Government Industrial Tribunal, Dhanbad, on 19 October 1966, In Reference No. 36 of 1984.

20. In the circumstances of the case, there will be no order as to costs.

U.N. Sinha, J.

21. I agree.