

**(1967) 11 MP CK 0005**  
**In the Madhya Pradesh High Court**

|                                                |            |
|------------------------------------------------|------------|
| Karam Chand Thapar and Bros. (Private), Ltd.   | APPELLANT  |
| Vs                                             |            |
| Workmen of North Chirimiri Colliery and Others | RESPONDENT |

---

**Date of Decision :** 09-11-1967

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Industrial Disputes Act, 1947 — Section 10, 11, 7A

**Citation :** (1971) ILR (MP) 439 : (1968) JLJ 221 : (1968) 2 LLJ 261 : (1968) 13 MPLJ 104

**Hon'ble Judges :** P.V. Dixit, C.J;R.J. Bhawe, J

**Bench :** Division Bench

---

## Judgement

R.J. Bhawe, J.

By this petition under Articles 226 and 227 of the Constitution, the petitioners seek a writ of certiorari for quashing certain orders passed by Sri G.C. Agarwal, presiding officer, Central Government Industrial Tribunal, Jabalpur.

The petitioners, Karam chand Thapar & Bros, work as managing agents of United Collieries, Ltd. The present petition relates to a dispute regarding a workman, namely, Gyan Chand Sharma, who was in the employment of the petitioner at the North Chirimiri Colliery. It is alleged by the petitioners that the duties of Gyan Chand Sharma were of a managerial nature and sometimes he worked as a manager as well. By an order dated 10 February 1965, Gyan Chand Sharma was transferred to another unit, namely, Sounda Colliery, situate in district Hazaribagh in the State of Bihar. The order of transfer was not carried out by Gyan Chand Sharma. Hence, the management Initiated disciplinary action against him and he was ultimately dismissed. The workmen of the North Chirimiri Colliery, through the secretary, Madhya Pradesh Colliery Workers' Federation, raised a dispute and at their Instance the Central Government, acting order Section 10(1) of the Industrial Disputes Act, 1947, referred the dispute to the Central Government Industrial Tribunal, Bombay. The dispute was referred in the following terms:

Whether the dismissal from service of Gyan Chand Sharma with effect from 19 July 1965, was Justified? If not, to what relief is the workman entitled?

The reference was, however, withdrawn from the Bombay tribunal and was transferred to the Jabalpur tribunal under the orders of the Central Government, dated 17 September 1966. On the said transfer, the Jabalpur tribunal fixed the case for further proceeding on 17 October 1966. On that date certain issues were framed and the parties were directed to file documents and the case was adjourned to 5 November 1966. Thereafter, the case was adjourned to 17 November 1966 for recording evidence. On that date, Gyan Chand Sharma was examined on behalf of the workmen and he was cross-examined by the petitioners and the case was adjourned to 6 December 1966. On 6 December 1966, the petitioners made an application for recalling Gyan Chand Sharma for further cross-examination inter alia on the ground that on the previous hearing the witness could not be cross-examined on all relevant points as the petitioners were not in a position to scrutinize all the documents filed on behalf of the workmen at the time of the evidence, and that it was necessary to draw the attention of the witness to certain documents which were linked to the dispute raised. The tribunal disposed of the said application thus:

The application of the management to recall Gyan Chand Sharma for further examination is found belated and is rejected. This application was moved at the very commencement of the hearing.

The proceedings were continued thereafter and when the petitioners' witness Tulsiram was being examined, an objection was raised on behalf of the workmen that he could not be allowed to be examined to prove facts showing that Gyan Chand Sharma was not a workman and that, therefore, could not be a member of the union. This objection was sustained by the tribunal. At this stage, the petitioners applied for adjournment on the ground that they intended to file a writ petition in the High Court and obtain the stay order from there. On this, the tribunal granted the adjournment subject to payment of Rs. 100 as costs to the opposite party.

Learned Counsel for the petitioners first contended that the transfer of the reference from the Bombay tribunal to the Jabalpur tribunal was invalid and that the Jabalpur tribunal had no jurisdiction to deal with the reference. This contention is based on the ground that though the Central Government by its order dated 17 September 1966 directed the transfer of the reference to the Jabalpur tribunal, the Jabalpur tribunal was not constituted till 26 September 1966 and, as such, the transfer was invalid. The assertion that the tribunal was constituted on 26 September 1966 is based on a memorandum dated 11 October 1966 issued by the Jabalpur tribunal intimating the petitioner that the case was fixed for 27 October 1966 before it. In that memorandum (Ex. D) it is stated that the Central Government, by an order dated 29 September 1966, constituted the industrial tribunal (the tribunal in question) u/s 7A of the Industrial Disputes Act. This statement in Ex. D appears to be erroneous. We have seen a copy of the

notification dated 6 September 1966 which purports to constitute industrial tribunal with headquarters at Jabalpur and appoints Sri G.C. Agarwal as the presiding officer of the tribunal with effect from 31 August 1966. That notification was published in the Central Government Gazette dated 17 September 1966 at p. 2669, Even if it be assumed that the appointment of file tribunal became effective from the date of the publication of the notification on the gazette, it will have to be held that the tribunal was constituted on 17 September 1966. The transfer order passed by the Central Government on 17 September 1966 cannot, therefore, be said to be invalid. The said ground must, therefore, fall.

It was then urged that there was no Justification for rejecting the application of the petitioners for affording an opportunity to further cross-examine Gyan Chand Sharma. In our opinion, the complaint is well-founded. The application was rejected on ground that It was belated and yet It was said that the application was moved at the very commencement of the next hearing. This is a contradiction in terms. Sri Gulab Gupta, counsel appearing for the workmen, urged that on that previous hearing the petitioners had closed the cross-Examination and were seeking a fresh opportunity for further cross-examination on the next date. This was described by the tribunal as a belated action He also urged that the tribunal had the Jurisdiction to decide as to whether a fresh opportunity should be granted to the petitioners in the matter of further cross-examination or not, the decision of the tribunal one way or the other was not open to challenge in the proceeding under Articles 226. It was also said that the tribunal had no Authority to recall the witness whose examination was over and who had been discharged. We find It difficult to accept any of the submissions. The application for additional opportunity to cross-examine the witness was not rejected on the ground that it was either mala fide or was filled with a view to protract the proceeding, or that no ground was made out for additional opportunity. The application was rejected solely on the ground that it was belated. The necessity for making an application for granting an additional opportunity to cross-examine the witness further can only arise where the cross-examination of the witness is already closed. On 6 December 1966 when Gyan Chand Sharma was examined and cross-examine and discharged; the case was adjourned because the time was over. On the adjourned hearing, however, at the very initial stage the petitioners filed the application and therefore it cannot be Inferred that the same was belated. The reason given by the tribunal for rejecting the application cannot be sustained, and as no other reason was given for rejecting the application, it must be held that the rejection was improper This manifestly My erroneous order or the tribunal refusing further cross-examination can be corrected by this Court in exercise of Its power under Article 227.

Sri Gupta is also act right in saying that the tribunal had no jurisdiction to recall the witness for further cross-examination. Sub-section (8) of Section 11 of the Industrial Disputes Act confers on the tribunal the same power as are vested in a civil Court under the CPC 1908, In the matter of enforcing the attendance of any person and examining him on oath. This power includes the power to recall a

witness. For the aforesaid reason, we quash the order dated 6 December 1966 (annexure H) rejecting the application of the petitioners for permission to further cross-examine Gyan Chand Sharma.

In regard to the grievance that the petitioners were unlawfully prevented from examining Tulsiram on the question of the actual duties performed by Gyan Chand Sharma, it is enough to say that in the statements filled before the tribunal was not urged that Gyan Chand Sharma was not a workman and that for that reason no dispute could be raised on his behalf. We also find that the tribunal had not framed any issue on the point. It cannot, therefore, be said that the tribunal was in error in sustaining the objection of respondents 1 and 2. It was urged on behalf of the petitioners that the enquiry as to whether Gayan Ghand Sharma was a workman or not goes to the root of the matter as on that decision depends the depends the jurisdiction of the tribunal. It maybe so but the petitioners did not raise this issue in the statement filed before the tribunal. It the petitioners are so advised, they may apply for amendment of the statement and may raise that issue specifically and seek a fresh opportunity from the tribunal to lead evidence on that point.

No other point was raised before us.

For the above said reasons, the petition is partly allowed. The order dated 6 December 1966 is quashed and the rest of the petition is dismissed. In the circumstances of the case we make no order as to costs. The outstanding amount of the security deposit shall be refunded to the petitioners.