

(1992) 02 KAR CK 0007

In the Karnataka High Court

Case No : W.A. No"s. 524 and 525 of 1990

Karnataka Elec. Board, Bangalore

APPELLANT

Vs

Workmen of M/s Amalgamated Electric Co. Ltd. Belgaum and
Others

RESPONDENT

Date of Decision : 03-02-1992

Acts Referred:

Electricity (Supply) Act, 1948 — Section 79
Industrial Disputes Act, 1947 — Section 33 (2) (b)

Citation : (1992) ILR (Kar) 673 : (1993) 1 LLJ 512

Hon'ble Judges : S.P. Bharucha, C.J.; Shivraj V. Patil, J

Bench : Division Bench

Advocate : S.G. Sundaraswamy and B.C. Prabhakar, for the Appellant; M.C. Narasimhan, M.S. Murthy and Kumar, for the Respondent

Judgement

S.P. Bharucha, C.J.—The appellant is the Karnataka Electricity Board, for the sake of convenience we shall refer to it as "the Board". The second respondent is the Amalgamated Electric Co. Ltd. which used to supply electricity to Belgaum prior to its take-over, we shall refer to it as the erstwhile Company. The first respondents are certain workmen of the erstwhile Company. The third respondent is the Industrial Tribunal.

2. The erstwhile Company employed the 12 concerned workmen as Meter Readers. On 5th March, 1971, they were issued charge-sheets by the erstwhile Company which stated that, until August, 1970, they had been doing the programme work of taking down and reporting meter cards the motive power meter readings of consumers situated in the areas allotted to them for taking meter readings. They had stopped doing such work since the September-October, 1970 programme and had not informed the management of the erstwhile Company of the reasons for not doing this work. The charge-sheet alleged that the workmen were guilty of illegal stoppage of the work allotted to them, which was a misconduct under Clause 22(b) of the applicable Standing Orders. The workmen replied to the charge-sheet on March 9, 1971 and stated

that it was true that, prior to July 1970, they were, on many occasions, coerced to do the concerned work although it was no part of their duty as Meter Readers. It was also true that they had stopped reading and recording motive power meters since the September-October, 1970 programme, but it was not true that they had not informed the management of the reasons for so doing. The President of the Belgaum Workers Union had informed the management in his letter dated August 12, 1970, that all, workmen of the erstwhile Company, including the Meter Readers, had adopted a "Work to Rule" policy. Since it was not a part of their duty as Meter Readers to read motive power meters the workmen had not been doing this work since the September-October, 1970 programme. According to the Rules, this work had to be done by supervisors and none of them was a supervisor. Hence they had not committed any misconduct whatsoever, much less misconduct within the meaning of Clause 22(b) of the Standing Orders. The erstwhile Company then instituted a departmental enquiry against the workmen, which proceeded ex-parte. The enquiry report held that the charges against the workmen were established. The findings were accepted and the erstwhile Company, on April 16, 1971, dismissed the workmen from its service. Since the workmen were concerned in an industrial dispute pending on the file of the National Industrial Tribunal, Dhanbad, the erstwhile Company sought, u/s 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the said Act"), approval of such dismissal. The approval was accorded and the dismissal of the workmen was confirmed.

3. The workmen raised an industrial dispute which, on July 21, 1972 came to be referred to the Industrial Tribunal, Bangalore. The reference was heard and the Tribunal passed an order holding that the reference was not bad in law because of the approval granted by the National Industrial Tribunal to the dismissal of the workmen on principles analogous to res judicata. It also held that the disciplinary enquiry which had been conducted by the erstwhile Company was bad in law because there was no evidence in those proceedings or in the proceedings before the National Industrial Tribunal to show "the terms of the contract of service or its character and the position of the parties In the absence of such evidence the stoppage of reading motive power meters by the first party workmen, who are admittedly Meter Readers, it is not possible to term such an act as illegal. It is only the illegal stoppage on the part of the employees that amounts to misconduct under Standing Order 22(b) of the Standing Orders. The II Party Management has not placed any material before the Enquiry Officer in the domestic enquiry that the stoppage of reading and recording motive power meters by the first party workmen is contrary to the terms of the contract of service, or its character and the position of the parties."

4. The order of the Tribunal was impugned in this Court (W.P. No. 3792/1974). The writ petition was rejected by the learned Single Judge and an appeal was preferred (W.A. No. 660/1974) which was heard and decided on October 5, 1979. The appeal Court observed that the finding of the Tribunal that the reference was good was not disputed. What was disappointed was the Tribunal's finding that

the disciplinary enquiry was not proper. It had held that the disciplinary enquiry was defective on the ground that there was no evidence as to the terms and conditions of the contract of service and as to the character and position of the workmen and that, in the absence of such evidence the refusal to read motive power meters could not be held to amount to misconduct. The appeal Court came to the conclusion that the Tribunal was in error in holding that there was no evidence as to the character and position of the workmen. The workmen had been designated as Meter Readers. It was not disputed that they had been reading motive power meters till the year 1970. It was only thereafter that they had refused to read motive power meters. Having regard to the designation of the workmen as Meter Readers, the absence of an essential difference between motive power meters and other kinds of energy meters and the fact that the workmen had been reading motive power meters for a long time, there was enough material in the disciplinary enquiry to come to a conclusion as to whether or not the workmen were guilty of misconduct by reason of their refusal to read motive powers meters. The Tribunal had been in error in holding that the finding in the disciplinary enquiry on the question of misconduct of the workmen was based on no evidence and that the disciplinary enquiry was defective. However, the appeal Court made it clear that, in view of the provisions of Section 11-A of the Act, it would be open to the Tribunal to re-assess the evidence on record and to come to its (the Tribunal's) own conclusion as to whether the charge of misconduct was established. The finding of the Tribunal that the disciplinary enquiry was irregular was quashed and the Tribunal was directed to proceed to decide the dispute referred to it in accordance with law and in the light of the observations of the appeal Court.

5. Thereupon the Tribunal considered the reference again and, after hearing the parties and recording evidence, delivered a Judgment and order on November 22, 1982. It noted the contention on behalf of the erstwhile Company that, having regard to the appeal Court Judgment dated October 5, 1979, the validity of the disciplinary enquiry had been decided once and for all and it was not open to the workmen to contend again that it was not valid. The Tribunal noted the clarification of the appeal Court, which we have referred to above, and its power u/s 11-A11-A and held that it had the power to re-assess the evidence on record to examine whether the orders of dismissal of the workmen were justified. It took the view that, since the charge-sheets referred to the stoppage of the reading of motive power meters from the September-October, 1970 program onwards and the charge-sheets were dated March 5, 1971, it meant that the workmen had failed to do this work until March 5, 1971 and were charge-sheeted for the same. The Tribunal referred to a settlement dated December 12, 1970, which had been brought on record on behalf of the workmen and which related to a dispute between the erstwhile Company and some similarly situated Meter Readers, which showed that the erstwhile Company had agreed to maintain the status quo regarding the workload and strength of its work force as it was immediately prior to December 7, 1970. The Tribunal held that it was therefore

obvious that the charge relating to the non-performance of duties by the workmen for the period between the programme of September-October, 1970 and the December 7, 1970 was not valid and was illegal. The Tribunal also took account of the evidence of one Kallappa, examined on behalf of the workmen. From the evidence of Kallappa it was clear that in the State Electricity Boards of Maharashtra and Karnataka the work of motive power reading was entrusted to higher officers such as Supervisors, etc., since it involved higher responsibilities and related to larger bills. This was also clear from a book published by the Mysore State Electricity Board, 1969 edition. When it was thus established that the work of motive power reading was being done by higher officers, such as Supervisors, drawing more pay in the Maharashtra State Electricity Board and when, admittedly, the scales of Maharashtra State Electricity Board had been applied to the work force of the erstwhile Company with effect from April 1, 1967, it was but natural for the workmen to have contended that they should not be burdened with the workload of a higher responsibility. The evidence on record showed that the erstwhile Company was not within its limits and was not acting in accordance with law in asking the workmen to read motive power meters without finding out whether they were qualified and eligible to do so, having itself placed them on a lower grade. In the result, the Tribunal found that the orders of dismissal could not be upheld and that the workmen were entitled to reinstatement with full back wages.

6. We may note at this stage that, in the meanwhile, the undertaking of the erstwhile Company had been taken over by the Board which had been impleaded before the Tribunal. The Tribunal, therefore, passed this award. It held that the erstwhile Company was not justified in dismissing the workmen. It directed the Board to reinstate the workmen in their original posts. It directed the erstwhile Company to pay the workmen back wages and consequential benefits until December 18, 1974, and the Board to pay them remuneration, back wages and consequential benefits from and after December 18, 1974.

7. The order of the Tribunal was impugned in Writ Petition Nos. 2040 of 1984 and 4057 of 1984, the first writ petition being filed by the erstwhile Company and the second by the Board. By the Judgment and order dated October 19, 1989 the two writ petitions were dismissed. These appeals are filed by the Board.

8. It was contended on behalf of the Board that the issue as to whether or not the disciplinary enquiry was fair and proper was concluded by the order of the appeal Court and it was not open to the Tribunal to come to the contrary conclusion that it was not. The appeal Court found only that there was enough material upon the record to establish whether or not the workmen were guilty of misconduct when they refused to read motive power meters. In the clarification which we have referred to the appeal Court left no doubt that the Tribunal had to apply its mind independently to the evidence on record. We, therefore, find no substance in this contention.

9. It was then contended that it was not permissible for the Tribunal to take into

consideration any material outside the record of the proceedings of the disciplinary enquiry as to the misconduct. It was submitted that the action of the Tribunal in allowing further evidence and relying upon the said settlement and the service conditions of the Maharashtra and Karnataka State Electricity Boards was impermissible having regard to the ambit of its powers u/s 11-A. Great reliance was placed upon the Judgment of the Supreme Court in the *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*,

10. Before, however, we go to the Judgment, it is appropriate to set out the provisions of section 11-A. It reads thus :

"11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen - Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of dismissal or discharge was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workmen including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require : Provided that in any proceeding under this section the Labour Court Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

11. It empowers the Labour Court, Tribunal or National Tribunal, where an industrial dispute relating to the discharge or dismissal of a workman has been referred to it, to enquire into and be satisfied that the order of discharge or dismissal was not justified. If it is so satisfied it may set aside the order of discharge or dismissal. It may then direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or it may give such relief to the workman as the circumstances of the case may require, including the award of a lesser punishment in lieu of discharge or dismissal. The proviso to Section 11-A requires the Labour Court, Tribunal or National Tribunal in any proceeding under the section to rely only on "the materials on record" and debars it from taking "any fresh evidence in relation to the matter."

12. We may now refer to the Firestone Judgment where the scope of. Section 11-A was considered. The Supreme Court thought it appropriate first to consider the powers of the Tribunal prior to the coming into force of Section 11-A, as laid down in judicial pronouncements. Among the principles which it found to emerge were this : (para-27) (pp. 293-294) :

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is plausible conclusion flowing from the evidence, adduced at the said

enquiry, the Tribunal has no jurisdiction to sit in Judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fides.

xxx xxx xxx

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only if no enquiry has been held or after the enquiry conducted by an employer is found to be defective."

13. The Supreme Court then noted the terms of Section 11-A and opined that even a mere reading of it indicated that a change in the law had been effected. According to counsel appearing before it for the workmen the entire law has been completely altered, whereas, according to counsel appearing for the employer, a very minor change had been effected giving power to the Tribunal only to alter the punishment after having held that the misconduct was proved. The Supreme Court rejected the extreme contentions advanced on behalf of both workmen and employers. The words in the section "in the course of the adjudication proceeding the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicated that the Tribunal was now clothed with the power to re-appraise the evidence in the domestic enquiry and satisfy itself whether the evidence relied upon by the employer established the misconduct that was alleged against the workman. The Tribunal was now at liberty to consider not only whether the finding of misconduct recorded by the employer was correct but also to differ from such finding if a proper case was made out. What was once largely in the realm of the employer had ceased to be so and it was the satisfaction of the Tribunal that finally decided the matter. Section 11-A, therefore, gave to the Tribunal full power to go into the evidence and satisfy itself that the misconduct was proved and that the proven misconduct warranted the punishment of dismissal or discharge. The Tribunal, though it might hold that the misconduct was proved, might nevertheless be of opinion that the order of discharge or dismissal was not justified, in which case it could award to the workman a lesser punishment. The expression "materials on record" occurring in the proviso could not be confined only to the materials which were available at the domestic enquiry. The "materials on record" in the proviso had to be held to refer to materials on record before the Tribunal. The expression took in :

"(1) the evidence taken by the management at the enquiry and the proceedings of the enquiry, or

(2) the above evidence and in addition, any further evidence led before the Tribunal, or

(3) evidence placed before the Tribunal for the first time in support of the action taken by an employer as well as the evidence adduced by the workman contra."

It was on the basis of these materials that the Tribunal was obliged to consider whether the misconduct was proved and the further question whether the proven misconduct justified the punishment of dismissal or discharge. The proviso prohibited the Tribunal from taking any "fresh evidence" either to satisfy itself regarding the misconduct or for altering the punishment. The expression "fresh evidence" had to be read in the context in which it appeared, viz, as distinguished from the expression "materials on record." The proviso emphasised that the Tribunal had to satisfy itself one way or the other relating to misconduct, the punishment and the relief to be granted to the workman only on the basis of the materials on record before it. Those materials comprised of what we have quoted above. The Tribunal for these purposes could not call for further or fresh evidence as an appellate authority could do. The word "matter" in the proviso referred to the order of discharge or dismissal that was being considered by the Tribunal.

14. By reason of the proviso to Section 11-A therefore, the Tribunal may not take evidence in regard to the act that is alleged to be the act of misconduct, the adequacy of the punishment, or the relief to be granted to the workman. u/s 11-A, however, the Tribunal is bound to consider whether the order of discharge or dismissal is unjustified. It may consider this, as judicial decisions show, in the context of perverse findings, unfair labour practices, mala fides and the like. For this purpose it may take evidence.

15. In the instant case, the act that was alleged to be an act of misconduct was the act of not reading motive power meters. As is evident from the workmen's reply to the show cause notice, there was no dispute in this behalf. The workmen admitted that they had not read motive power meters. The act that was alleged to be the act of misconduct was, therefore, not disputed. The dispute was as to whether that act was an act of misconduct. It was the case of the workmen that the work of reading motive power meters was not their duty. It was in that regard that the Tribunal took into account the evidence furnished by the said settlement and the service conditions of the Maharashtra and Karnataka State Electricity Boards. It came to the conclusion that the duty of reading motive power meters was that of a class of employee superior to the class of employee to which the workmen belonged. It was the duty of Supervisors and the workmen were only Meter Readers. It, therefore, held that the act, though proven, was not an act of misconduct. As we read Section 11-A and the Firestone Judgment, we think that the Tribunal was entitled to take this material into account to come to such conclusion.

16. The other contention that is urged on behalf of the Board is this : that the Board cannot be made liable either to reinstate the workmen or to pay them any back wages.

17. For the purposes of considering the contention, it is necessary, first, to set out briefly the relevant dates once again. The misconduct that was alleged was for the September-October 1970 programme onwards and the charge-sheet in

this behalf was dated March 5, 1971. The workmen were, consequent upon the disciplinary enquiry, issued with orders of dismissal dated April 16, 1971. They raised an industrial dispute and it was referred to the Tribunal on July 21, 1972. The Tribunal held the enquiry to be bad, and the earlier writ petition was filed to impugn its order. The writ petition was dismissed. The appeal there against was pending disposal when, on September 18, 1974, the undertaking of the erstwhile Company was taken over by the Board. The appeal was allowed on October 5, 1979, and the matter was remanded to the Tribunal to dispose of the reference in accordance with the appeal Court's order. On April 2, 1982, an application was made on behalf of the workmen to implead the Board in the reference and this was allowed. It is not in dispute that a substantial portion of the hearing before the Tribunal took place thereafter. The award was made on November 22, 1982.

18. Certain provisions of the Karnataka Electricity Supply Undertakings Acquisition Act, 1974, and the Karnataka Electricity Supply Undertakings Acquisition Rules, 1976, need to be considered :

19. By reason of Section 4(1) of the Acquisition Act, the undertakings of certain Companies, including the erstwhile Company, stood, with effect on and from the appointed date, transferred to and vested in the State Government. The appointed date in regard to the erstwhile Company was December 18, 1974. Section 6 deals with the general effect of vesting. The undertakings of the Companies vesting in the State Government u/s 4 are, by reason of Section 6(1), deemed to consist only of the property, rights, liabilities and obligations specified therein viz., the fixed assets of the Companies and all documents relating to the undertaking; and all rights, liabilities and obligations of the Companies under certain agreements and contracts. By reason of Section 6(2), these vest in the State Government free from any debts, mortgages or similar obligations of the Companies attaching to the undertakings. By reason of Section 6(4), the State Government may, by notification, provide for the transfer to, and vesting in the Board of the property, rights, liabilities and obligations which vest in the State Government under the Acquisition Act and thereupon, such property, rights and obligations stand transferred to and vest in the Board. Section 11 relates to the employees of the Company and provides thus :

"11. Provisions respecting the officers and employees of the Company. - (1) Subject to the provisions of Sections 10 and 13, every officer or other employee (except a Director, Advisor, Consumer or Auditor) employed before the vesting date in connection with the affairs of the undertakings which have vested in the Government by virtue of this Act, shall become as from that date, an officer or other employee, as the case may be, of the Government and shall hold his office or service by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges and to pension, gratuity and other matters as he would have held under the Company if its undertakings had not vested in the Government and shall continue to do so unless and until his employment under the Government is terminated after

giving him three calendar months notice in writing or paying him three months pay in lieu of such notice or until his remuneration, terms and conditions including the privileges as to pension and gratuity are altered by rules or orders made by the Government :

Provided that nothing contained in this sub-section shall apply to any officer or employee who has by notice in writing given to the Government or to any person nominated in this behalf by the Government, within thirty days from the appointed day intimated his intention of not becoming an officer or other employee of the Government.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, (Central Act 14 of 1947) or in any other law for the time being in force, the transfer of the services of any officer or other employee of the company by virtue of this Act shall not entitle any such officer or other employee to any compensation under this Act or other law and no such claim shall be entertained by any Court, Tribunal or other authority".

20. Rule 6 of the Acquisition Rules provides for the taking over the staff of the Companies. It reads thus :

"6. Taking over the Company"s staff -

(1) Every officer or other employee who from the vesting date, has u/s 11, become an officer or employee of the Government, shall within such date as may be specified in a notice issued to him in Form "A" be entitled to exercise his option in Form "B" for being transferred to the Board"s Services.

(2) Every officer or other employee who under sub-rule (1) has exercised his option, shall be screened by a Committee constituted under sub-rule (7) which shall determine his suitability for the Board Services, having due regard to his age, experience, qualifications and his antecedent records, if any.

(3) Every officer or other employee selected by the Committee as suitable for the Board"s Services, shall by an order made by the Government be transferred to the Board Services and on such transfer, he shall be absorbed in the corresponding class, category or grade of the Board Service.

(4) Every officer or other employee absorbed in the Board"s Services under sub-rule (3) shall, from the date of his absorption, be governed by the regulations framed under clause (c) of Section 79 of the Electricity Supply Act, 1948 (Act No. LIV of 1948).

(5)(a) The employment of an officer or other employee who is adjudged by the Committee as unsuitable for the Board Services may be terminated after giving him three calendar months notice in writing or paying him three months pay last drawn in lieu of such notice.

(b) On such termination, the Provident Fund amounts standing to his credit while in the service of the Company and which stands transferred to the Government

under sub-section (1) of Section 12, together with the Provident Fund amounts standing to his credit while in the service of the Government, shall also be paid to him.

(6) The post held by any office or new employee transferred to the Board's Services under sub-rule (3) shall be equated to the corresponding posts in the Board Services before they are absorbed under the said sub-rule.

(7) For the purpose of sub-rule (2), the following two committees are constituted for the categories of posts indicated against each :

(8) the options exercised under sub-rule (1) by the officers and employees transferred to the Board Services under sub-rule (3) shall be sent to the Board for record in their service Registers."

21. It was submitted that there was no material to show that the 9 workmen with whom we are now concerned had exercised the option to become employees of the Board and that, in any case, the Board could not be made liable for the period prior to the date upon which an application was made to the Tribunal to implead it. On behalf of the workmen it was submitted that no evidence was placed before the Tribunal to show that the erstwhile Company's employees had not all been absorbed by the Board but had been given the option contemplated by Rule 6 and had thereafter been screened and that, in any event, the form in that behalf prescribed by the Acquisition Rules indicated that if the employee did not reply to the letter giving him the option within 30 days from its receipt his willingness to enter into the service of the Board would be presumed.

Committee	Categories	of	Posts
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Committee No. 1.	1. The Chief Engineer, Clecy.	For posts whose minimum basic (General), KEB, Bangalore pay scale a is in excess of Rs. (Chairman) 400 or maximum of the pay scale is in excess of Rs. 650	2. The Chief Engineer, Elecy
-----do-----	(North), KEB, Bangalore (Member)	3. The Chief Controller of	-----do-----
-----do-----	Accounts, KEB, Bangalore (Member)	4. Deputy SEcy. to Government	-----do-----
	P.W. & E. Department (Elec. and P.P.), Bangalore (Member)	5. The Secy., KEB, Bangalore	-----do-----
	(Member and Secretary)	Committee No. 2.	1. The Supdtg. Engineer, Elecl., For Posts whose minimum of the KEB, Hubli Circle, Hubli pay scale is not in excess of (Chairman) Rs. 400 or maximum of the pay scale is not in excess of Rs. 650
	2. The Deputy Secy. to Government, P.W. and E. Department (Elec. and P.P.) Bangalore (Member.)	3. The Dy. Controller of Accounts, KEB, Hudi Circle, Hudi (Member).	4. The Executive Engineer, Electricity Of the Division concerned KEB (Member and Secretary).

22. It is clear that the Board, by reason of the Acquisition Act or Rules, did not become bound to employ each and every employee who was in service of the

erstwhile Company on the date on which its undertaking was taken over. A procedure for their scrutiny was prescribed by Rule 6.

23. Upon our asking counsel for the Board, we were shown the proceedings that related to the initial scrutiny, which took place on or around April 30, 1977. We find the committee which did the screening, constituted under Rule 6 took into consideration statements that contained information relating to each employee classified in the following columns :-

----- 1 2 3 4 5 6					
----- S. No.					
Name of the Design. of Date of Qualification Grade in Employee of employee					
Birth of tion of which the the Licensee under Employee the Employee employee					
was the Licensee borne under the licensee on 18.12.1974					
----- 7 8 9					
10					11
----- Pay					
drawn as Date of Grade to which Pay to which Remarks on 18.12. joining ch the					
post employee is 1974 under duty the is equated in equated in the Licensee					
Licensee the Board Service the Board Undertaking Undertaking of the service of					
KEB as on KEB as on 18.12.1974 18.12.1974					

24. We have gone through all those statements and find that there are remarks only in regard to 10 out of 237 employees concerned. These relate to the retirement or resignation of particular workmen or their emoluments. In other words, there is no remark that relates to the efficiency or character or service record or health of any of the employees.

25. We are of the view that, having regard to the terms of the Acquisition Act and Rules, particularly Rule 6, it is necessary that the Board should be given the opportunity of scrutinising the cases of the 9 workmen with whom we are here concerned. Such scrutiny shall be made by a committee of the officers who presently hold the posts mentioned in Rule 6. We direct the Board to prepare a statement similar to the one to which we have just adverted in respect of the 9 workmen and place it before the Committee so constituted. The committee shall decide which, if any, of the 9 workmen shall not be absorbed by the Board. This process shall be completed within 12 weeks from to-day. We direct the Board not to inform the members of the Committee, either directly or otherwise, that the workmen had been charge-sheeted and found guilty at a disciplinary enquiry by the erstwhile Company. We direct the members of the Committee, should they come to hear this by any other means, to put it out of their minds for the purposes of the scrutiny. We also direct the members of the Committee not to take account of the fact that if the 9 workmen are drafted into the Board's service the Board will become liable to pay to them back wages.

26. We are of the view that the Board must pay back wages to the workmen it

now absorbs into its service on and from December 18, 1974. Once the order of dismissal of the workmen is set aside they become entitled to reinstatement. But for the peculiar facts of this case, they would have exercised the option, gone through the process of scrutiny, and, unless weeded out, would have become, long back, employees of the Board. We also note the fair admission on behalf of the Board that the material part of the Tribunal's enquiry was conducted subsequent to the Board being impleaded. Lastly, there is no material on record to substantiate the submission that the workmen had taken other employment in the interregnum.

27. In the result, the appeal is partly allowed. The order under appeal shall stand modified to the extent indicated hereinabove. There shall be no order as to costs.