

**(1980) 12 KAR CK 0001**  
**In the Karnataka High Court**  
**Case No : WP 9305/1980**

L. Subba Narasimha Murthy

APPELLANT

Vs

Bharath Electronics Ltd. and Another

RESPONDENT

**Date of Decision :** 16-12-1980

**Acts Referred:**

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

**Citation :** (1981) 2 KarLJ 529

**Hon'ble Judges :** N. D. Venkatesh, J

**Judgement**

1. This petition, filed under Art. 226 of the Constitution of India, is directed against three orders, viz., (i) dated 20/30-5-1978 of the Deputy General Manager (Radar) of the Bharat Electronics Ltd., (B.E.L.) (I respondent herein); (Annexure-Q);

(ii) dated 4-7-1979 of the Presiding Officer of the Industrial Tribunal in Karnataka, Bangalore, holding preliminarily that the domestic enquiry conducted against the petitioner had been conducted in accordance with the principles of natural justice (Annexure R); and (iii) dated 14-11-1979 of the very Tribunal according approval to the actios taken against the petitioner by the I respondent (Annexure-S).

2. Action was initiated against the petitioner, who was a Clerk in the B.E.L. on the allegation that, on 25-8-1977, he had committed misconduct falling under Standing Order 15(1)(c) by committing theft of a property of the B.E.L., it being, a brass piece. The Personal Officer of the B.E.L. conducted the enquiry in which the petitioner participated and was also assisted by certain Govindappa, a co-employee of his choice. At that stage seven witnesses were examined in support of the charge. The enquiry Officer held that the petitioner was guilty of the charge and submitted his report to the authority concerned. That competent authority, after considering the Enquiry Officer's report accepted the same, held the petitioner guilty of the charge, directed payment of one month's wages at required by law, and ordered his dismissal, and sought approval of the Industrial

Tribunal under S. 33 (2) (b) of the Industrial Disputes Act, 1947 (the Act) of the action taken against him. It is on that application filed under S. 33 (2) (b) by the B.E.L., the Tribunal passed its two orders, the first one on the question whether the domestic enquiry was in accordance with the principles of natural justice, and the second one according approval for the action taken.

2(a). Though notices to respondents have been issued only re: Rule, both the sides agreed to argue the matter on merits and were accordingly heard.

3. While attacking the validity of the three orders impugned here, the learned Counsel for the petitioner submitted that no proper enquiry had been held; that the article, in connection with which the alleged theft is said to have taken place, had not at all been identified at the time of the enquiry; that the petitioner had not been supplied with a copy of the, report of the Enquiry Officer along with the final show-cause notice prior to the competent authority taking decision to dismiss him; that in the matter of seeking approval by the Tribunal the relevant provision of the Act had not been fully complied with, in that, the order of dismissal should have been followed after obtaining the approval of the Tribunal; and that, in any view of the matter, the Industrial Tribunal had not applied its mind fully to the facts of the case before according approval.

4. The learned Counsel for the B.E.L., supported the impugned orders and submitted that there are absolutely no grounds to interfere with the same. He also placed before me a few decisions in support of his contention that the scope of the enquiry in the Tribunal in a matter like this was a very limited one, and that the Tribunal, after fully considering all aspects of the matter, had arrived at correct conclusions. It was also his case that exercising its writ jurisdiction, this Court should not interfere with the findings arrived at in the domestic enquiry and by the Industrial Tribunal.

5. As to the scope of the enquiry by the Tribunal under S. 33 (2) (b) Gajendragadkar, J., speaking for the bench consisting of himself and Wanchoo, J., has stated as follows in *The Lord Krishna Textile Mills v. Its Workmen*, AIR 1961 SC 860.

"The jurisdiction of the appropriate industrial authority in holding an enquiry under S. 33 (2) (b) cannot be wider and is, if at all more limited, than that permitted under S. 33 (1). In view of the limited nature and extent of the enquiry permissible under S. 33 (2) (b) all that the authority can do in dealing with an employer's application is to consider whether a prima facie case for according approval is made out by him or not. If before dismissing an employed the employer has held a proper domestic enquiry and has proceeded to pass the impugned order as a result of the said enquiry, all that the authority can do is to enquire whether the conditions prescribed by S. 33 (2) (b) and the proviso are satisfied or not. The approving authority has to consider only (a) whether the standing orders justify the order of dismissal, (b) whether an enquiry has been held as provided by the standing order, (c) whether the wages for the month

have been paid as required by the proviso, and (d) whether an application has been made as prescribed by the proviso. And when all these conditions have been fulfilled by the employer, the tribunal is not justified in refusing to accord approval to the action taken by the employer. Nor is it justified while holding the enquiry to assume powers of an appellate Court which alone is entitled to go into all questions of fact. The question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a Court of facts and may fall to be considered by an appellate Court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the Court is limited as under S. 33 (2) (b). And if the Tribunal assumes jurisdiction not vested in it by law, and consequently refuses to accord approval to the action taken by the employer its order is patently erroneous in law."

6. Again the learned Judge, speaking for the Bench consisting of himself. Wanchoo, J., and Das Gupta, J., has stated as follows in *Swatantra Bharat Mills v. Ratanlal*, AIR 1961 SC 1156.

"Where an application for approval of its decision to dismiss an employee is made by the Management of Mill under S. 33 (2) (b), Industrial Disputes Act, the jurisdiction of the tribunal is limited to the enquiry as to whether a prima facie case has been made out by the employer against the employee or not.

Where the enquiry officer's report is a well considered document wherein he has examined the evidence adduced before him and has given elaborate reasons in support of his final conclusion, it is not open to the Industrial Tribunal to sit in appeal over the findings of the Enquiry Officer and to re-appreciate the evidence for itself. That is not the scope of the enquiry under S. 33 (2) (b). If the Tribunal has dismissed the application by going into the merits of the rival contentions as if it was trying the case itself, the Tribunal has exceeded its jurisdiction and that makes its award wholly unsustainable."

7. Further touching the jurisdiction and powers of the Tribunal under S. 33 (2) (b) of the Act, the Supreme Court, after considering many previous decisions of that Court including the ones referred to above, has observed in *Lalla Ram v. D.C.M. Chemical Works Ltd.*, AIR 1978 SC 1004, that in such an enquiry the jurisdiction of the Industrial Tribunal is confined to:

- (i) Whether a proper domestic enquiry in accordance with the relevant rules or Standing Orders and principles of natural justice has been held;
- (ii) Whether a prima facie case for dismissal based on legal evidence adduced before the domestic Tribunal is made out;
- (iii) Whether the employer had given a bonafide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice;
- (iv) Whether the employer has paid or offered to pay wages for one month to the employee; and (v) Whether the employer has simultaneously or within such reasonably short-time as to form part of the same transaction applied to the

Tribunal for approval of the action taken by him.

It is stated in the said decision that if these conditions are satisfied the Tribunal has to accord approval.

8. If the submissions made by the learned Counsel for the petitioner are examined in the light of the above observations, it has to be stated that there is no basis in his submission that, before passing an order of dismissal, the employer should have obtained the approval of the Tribunal. Normally, in these cases, what the employers will do is that they take a decision, and either simultaneously or within a short-time thereof seek approval for the action taken at the hands of the Tribunal. As observed in Lalla Ram's case that satisfies the requirement of law and, if the Tribunal grants approval, that would relate back to the date from which the employer had ordered dismissal.

9. Having gone through the two orders of the Tribunal carefully I am of the view that there is no basis or foundation for the submission of the learned Counsel for the petitioner that the Industrial Tribunal had not applied its mind. The Tribunal has examined, both at the preliminary stage and at the final stage, the dispute in all its aspects keeping in view the principles of law governing such cases.

10. The submission of the learned Counsel for the petitioner that the final order passed by the employer, having not been made complying with the principles of natural justice, in that, his client having not been supplied with a copy of Enquiry Officer's report along with the final showcause notice, is liable to be quashed was met by the learned Counsel appearing for the I respondent by stating that a second show-cause notice is not contemplated under the Standing Orders and that even if one was issued it was not in fulfilment of any principles of natural justice. In the submission made by the learned Counsel for the I respondent there is considerable force. The Standing Orders governing this industry do not provide for any second show-cause notice. The learned Counsel also rightly placed reliance on the observations of the Supreme Court in *Suresh Koshy George v. University of Kerala*, AIR 1969 SC 198, para 15, which reads as follows:

"There seems to be an erroneous impression in certain quarters evidently influenced by the provisions in Art. 311 of the Constitution particularly as they stood before the amendment of that Article that every disciplinary proceeding must consist of two enquiries, one before issuing the show cause notice to be followed by another enquiry thereafter, such is not the requirement of the principles of natural justice. Law may or may not prescribe such a course. Even if show-cause notice is provided by law from that it does not follow that a copy of the report on the basis of which the show cause notice is issued should be made available to the persons proceeded against or that another enquiry should be held thereafter".

11. The same principle has been reiterated in *Shahdara (Delhi) Saharanpur Light Railway Co., Ltd., v. S.S. Railway Workers Union*, AIR 1969 SC 513. Para 18 may be seen.

12. In *M/s. Tannery and Footwear Corporation of India Ltd., v. State of U.P.*, (1979) 2 Lab. IC 1434, a Division Bench of the Allahabad High Court has held that failure to supply a copy of the Enquiry Officer's report along with the show cause notice did not amount to violation of the principles of natural justice.

13. Hence, as already stated, there is no force in the contention of the learned Counsel for the Petitioner that his client should have been supplied with a copy of the Enquiry Officer's report along with the show-cause notice after the domestic enquiry was over.

14. On the question that the subject-matter of the alleged theft, the brass piece, had not been properly identified at the time of the enquiry and that it had not been proved that that alleged theft related to the property made available at the time of the domestic enquiry, this is what the Tribunal has stated at para-10 of its final order (Annexure-S).

"The second contention urged by Sri Dwaraka Nath is that there was some material discrepancy regarding the weight of the material and it has not been identified and produced before the Enquiry Officer. As observed by the Enquiry Officer in his report, it was true that there was some discrepancy regarding the actual weight of the property in question. The Enquiry Officer has also stated in his report in para 6.3. that the brass piece was duly weighed at the time of the enquiry and the difference is only 10 gms. and that is very negligible. It has also transpired in evidence before Enquiry Officer that the weight of the brass piece given in the complaint was only approximate. In view of negligible difference in weight of the property in question, in view of the fact that the dishonesty in Company's property and identified by the same and further also in view of the admission of the possession of the property in question, the findings of the Enquiry Officer cannot be said as unreasonable or perverse".

Besides this, one need not make much of that fact in the instant case for the reason that the workman has admitted, in answer to the charge levelled against him, that a piece of brass had been found in his bag though he qualifies that statement by stating that somebody had placed the same without his knowledge (may see the written reply, An. B, of the workman to the employer). The relevant evidence placed before the Enquiry Officer reveals of such a brass piece having been recovered from the possession of the workman after a proper mahazar. In the circumstances that aspect of the matter need not be made much of.

13. Even in the submission of the learned Counsel for the petitioner that there was no proper enquiry by the Enquiry Officer, there is no substance. This aspect has been considered by the Tribunal, both at the preliminary stage and also at the final stage, and the Tribunal has rightly come to the conclusion that there was no basis in the said allegation. I am, therefore, of the view that the orders impugned herein (Annexure Q, R, and S) deserve to be sustained, and are not liable to be interfered with.

16. Therefore, Rule not issued, and the writ petition is dismissed. No costs.