
(1993) 11 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 5950 of 1991

Laxman Swain

APPELLANT

Vs

Presiding Officer, Industrial Tribunal and Another

RESPONDENT

Date of Decision : 05-11-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(4), 12

Citation : (1994) 2 LLJ 950

Hon'ble Judges : D.M. Patnaik, J;A. Pasayat, J

Bench : Division Bench

Advocate : R.N. Acharya, S.K. Purohit and R.K. Jena, for the Appellant; A.N. Mishra, Additional Government Advocate for Opp Parties No. 1 and J.K. Tripathy and Somnath Mishra for Opp. Parties No. 2, for the Respondent

Final Decision : Dismissed

Judgement

A. Pasayat, J.—This writ application involves adjudication of the question whether an Industrial Tribunal after holding a domestic enquiry pursuant to which a punishment is inflicted on a workman is bad and the reference is only relatable to punishment inflicted, can grant opportunity to lead further material relating to punishment inflicted.

2. The factual position is almost undisputed. The petitioner (hereinafter referred to as the "workman") was working as a crane operator under the establishment of Rourkela Steel Plant (hereinafter referred to as the "employer"). On January 21, 1976 he was charge-sheeted on the allegation of various accusations of misconduct. The accusations were that on January 20, 1976 at about 2.10 p.m. he unauthorisedly entered into the steel melting shop time office, misbehaved with Mr. V.V. Samuel, Selection Grade Time Keeper and forcibly took away the token from the token board and when Mr. Samuel objected to such act, he quarrelled with him and assaulted him. An explanation was filed by the workman denying the charges, but the Management conducted an enquiry and after enquiry inflicted punishment on February 24, 1977, demoting him from P-7

Grade to P-5 Grade. His basic pay was reduced from Rs.739/- to Rs.390/-. A dispute was raised by the workman, and the Government of Orissa in Labour, Employment and Housing Department in exercise of powers conferred under Sub-section (5) of Section 12 read with Clause (d) of Sub-sections (1) of Section 10 of the Industrial Disputes Act, 1947 (in short, the "Act") referred the matter for adjudication by the Labour Court, Orissa, Bhubaneswar. The following dispute was referred for adjudication:

"whether the punishment inflicted upon Sri L. Swain, Crane Operator, S.M.S. is proper, reasonable and justified? If not to what relief Sri Swain is entitled?"

Subsequently, reference was transferred for adjudication by the Industrial Tribunal, Orissa (in short, the Tribunal"). The Tribunal adjudicated as a preliminary issue whether domestic enquiry conducted was fair or not. It was held that enquiry was neither fair nor reasonable. The Management was thereafter called upon to establish charges of misconduct against the workman by adducing evidence in respect of the allegation of misconduct. Both parties examined witnesses. Five witnesses were examined by the Management, while three were examined on behalf of the workman, who examined himself as N.W.Ko.3. On the consideration of evidence brought on record, the Tribunal came to hold that there was an occurrence in which both the workman and Time Keeper Mr. Samuel (N.W.I) were involved. At the relevant time, tokens were being issued by the Time Office for the "B" shift till 2.05 p.m. and by the time workman reached the Time Office issue of tokens for " B" shift had been stopped. The workman admitted that he was the last person who wanted to obtain token, and none came after him to the Time Office for obtaining tokens. He entered inside the Time Office and he was refused to be issued with token. The grace period of 15 minutes for a worker to be present at his worksite was not considered relevant as, in the proceeding, conduct of the workman was to be considered. It was observed that even the Time Keeper unreasonably refused to give him token, the workman had no right to enter inside the Time Office, and create disturbance there. He had no justification in taking law into his own hands. Evidence clearly indicated that the workman came to the Time Office after time for issue of token was over and being refused to be given a token, got enraged and misbehaved with the Time Keeper. But after having arrived at the conclusion, the Tribunal came to hold that punishment imposed was unwarranted, and was quite disproportionate to the charges of misconduct. The workman was under the impression that the Standing Order permitted him to receive the token till 2.15 p.m. The Time Keeper (N.W.-I) on the basis of the circular (Ext.8) thought that the time for issuing tokens in the "B" shift was over immediately after 2.05 p.m. In such circumstances, when the workman was given a token, he apprehended that he would lose his wages for the day, which resulted in provocation and he behaved roughly with N.W.I. The punishments inflicted were vacated, and in its place another punishment was substituted i.e. the workman was directed to be demoted to the post of Crane Operator (P-6) as a disciplinary measure, and his pay in the said P-6 Grade was to be fixed not at

the lowest stage of the scale of pay admissible to P- 6 Grade, but at the stage which he would have reached had he continued in P-6 Grade.

3. According to Mr.R.N. Acharya, learned counsel for the petitioner, the Tribunal was required only to answer reference made to it, and after having come to the conclusion that domestic enquiry was neither fair nor reasonable, had no jurisdiction to permit the Management to lead further evidence, and to substitute punishment as done. Mr. J.K. Tripathy, learned counsel for the Management, however, submitted that it is trite law that even after coming to the conclusion that the domestic enquiry is not fair or reasonable, the Tribunal after due notice to the workman can consider the sustainability of charges. The workman participated in the proceeding, led evidence and at this stage, it is not open to him to say that conclusion of the Tribunal is unjustified. According to him, the Tribunal had the power to permit the Management to lead evidence on merit after due notice to the workman concerned.

4. If an objection as to the maintainability of dispute or jurisdiction of the Tribunal is raised, the Tribunal can examine it as a preliminary issue. The finding which the Tribunal may record on this preliminary issue will decide whether it has jurisdiction in dealing with any dispute or not. For instance, in a disciplinary case, the Tribunal can decide legality and fairness of domestic enquiry as a preliminary issue and after that decision is pronounced, it is open to the Management to decide whether it will adduce any evidence before the Tribunal. Therefore, it is not possible for the Tribunal to hear such a preliminary issue along with main reference as the scope of hearing and enquiry stands restricted and enlarged depending upon the finding one way or other on the preliminary issue. If the Tribunal finds that it has no jurisdiction, though there will be a need for the proceeding before it so far as main dispute is concerned, the Tribunal will have no jurisdiction to go into merits of reference and any finding recorded by the Tribunal on merits will be ineffective, being without jurisdiction. If on the other hand, the Tribunal finds that there is no substance in the preliminary issue, then it will proceed to adjudicate on the reference. However, preliminary issue and jurisdictional issue are collateral to the main issue. This position has been succinctly stated by the Apex Court in *The Cooper Engineering Limited Vs. Shri P.P. Mundhe*, .

5. Section 10(4) of the Act circumscribes the parameter of jurisdiction of the adjudicatory Tribunals requiring them to confine their adjudication to the points specified in the order of reference and matters incidental thereto. Thus there are two categories of points which the Tribunal has to decide. Firstly, points which have been specified in the order of reference for adjudication. Secondly, matters incidental thereto. In this category will come determination of questions which go to the root of jurisdiction of the Tribunal. On the determination of such points will depend the question as to whether the Tribunal has jurisdiction on the points referred to it for adjudication. If the decision in this regard is in the affirmative, the Tribunal proceeds to adjudicate, while if it is in the negative, the Tribunal has

no jurisdiction to proceed further for adjudication. In Cooper Engineering case (supra) it is held that with a view to obviate undue delay in adjudication of the real dispute, the Tribunal should decide preliminary issues and issues on merit together. The Court observed that there will be no justification for any party to stall final adjudication of the dispute by the Tribunal by questioning its decision with regard to the preliminary issues when the matter, if worthy, can be adjudicated even after final award. In S.K. Verma Vs. Mahesh Chandra and Another, the Court disapproved practice of raising preliminary objections, more often than not, frivolous. The Apex Court in D.P. Maheshwari Vs. Delhi Administration and Others, suggested that it would be preferable that the industrial adjudicator should decide all issues in a dispute in the same time without trying some of them as preliminary issues because it will lead any litigation to misery of the workman and jeopardise industrial peace. In respect of punishment of dismissal or discharge, right of the employer to defend action not only on the basis of the domestic enquiry but also to justify punishment on merits by adducing relevant documents before the Tribunal has been recognised by the Supreme Court in many cases. (See Workmen of the Motor Industries Co. Ltd. v. Management of Motor Industries Co. Ltd. and another 1969 1 LLJ 17 Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, and The Workmen of Firestone Tyre & Rubber Co of India P. Ltd. v. The Management and Ors. 1973 1 LLJ 278. The cases of "defective enquiry" were equated with "no enquiry" cases and it was held that in either case, the Tribunal will have jurisdiction to go into the merits of the case on the basis of the evidence adduced before it by the parties. If the enquiry is defective or no enquiry is held, the entire case would be open before the Tribunal. The entire subject is at large and both guilty and punishment, in equal measure may be determined without inhibition of jurisdiction by the Tribunal. In Desh Raj Gupta v. Industrial Tribunal v. U.P. Lucknow and another 1991 1 LLJ 120 it was observed on analysis of the fact situation that by asking the employer to justify the punishment by adducing additional evidence, the Tribunal merely reminded the employer of his rights. An Industrial Tribunal is the creature of statute. Hence jurisdiction is circumscribed by the Act. Its adjudication must, therefore, be confined to the perimeter of the provisions of the Act. Section 10(4) lays down that the adjudication by the Tribunal is to be confined only to (i) the points specified in the reference and (ii) the matters incidental thereto. The reference in the case at hand related to the question whether punishment inflicted was proper, reasonable and justified. The Tribunal has, after consideration of evidence led before it, considered that aspect alone. This is not a case where the Tribunal has travelled beyond the terms of reference. The plea by the petitioner that the Tribunal had no jurisdiction to accept further evidence is misconceived after he has participated and led evidence. Such a fence-sitting is not legally permissible. The Tribunal has elaborately dealt with fact-situation and in our considered opinion, punishment awarded is proper.

6. The writ application fails and is dismissed. No costs.

D.M. Patnaik, J.

7. I agree.