
(1995) 09 PAT CK 0031
In the Patna High Court
Case No : C.W.J.C. No. 1911/1987 (R)

Manohar Singh Neech

APPELLANT

Vs

Presiding Officer, Central Government Industrial Tribunal and
Another

RESPONDENT

Date of Decision : 06-09-1995

Acts Referred:

Citation : (1995) 09 PAT CK 0031

Final Decision : Dismissed

Judgement

R.N. Sahay, J.—The petitioner, at the relevant time was employed as Mechanic in the maintenance department of Respondent No. 2 Management of Bagroo Bauxite Mine of M/s. Indian Aluminium Company Limited. Charge sheet was served on the petitioner by the management on February 6, 1979 alleging misconduct covered under Clause 24-B (9) and 24-B (J) of the Standing Order applicable to the petitioner. The petitioner was charged that on February 4, 1979 at about 8.30 A.M. he stabbed one Mahabir Ram Verma with a dagger, at the main entrance gate near the General Office. It is further alleged that when Shri Ashok Kumar Jain tried to intervene and dissuade the concerned workman from inflicting injury on the person of Shri Mahabir Ram Verma, Shri Ashok Kumar Jain was also stabbed by the concerned workman. The management took this act of the concerned workman as gross misconduct punishable under the relevant Standing Order. In reply to the charge sheet, the petitioner stated the circumstances in which the occurrence took place. The management was not satisfied with the explanation and ordered for a domestic enquiry to be conducted against the petitioner. During the course of inquiry, the witnesses were examined on oath from both the sides. On behalf of the management, only three witnesses were examined and on behalf of the petitioner, only one witness was examined. In course of inquiry, the conducting officer examined several witnesses for clarification.

2. The plea of the petitioner was that while he was on duty, Shri Mahavir Ram

Verma and Shri Ashok Kumar Jain along with several other persons surrounded him near the gate and assaulted him. The petitioner apprehended that he could be killed by those persons and as such in order to escape from them he took out his Kirpan and started wielding. The petitioner took shelter in a room of the General Office. A mob of about 50 persons gathered in front of the said room and broke open the door. The petitioner again wielded his dagger so that the assailants be prevented to assault the petitioner. In the meanwhile the police arrived there and took the petitioner to (sic.) the police station. A criminal case was also registered against the petitioner. The petitioner was convicted by the trial Court and the appeal preferred by the petitioner was also dismissed. However, the petitioner was acquitted by this Hon"ble Court in Criminal Revision No. 32 of 1983 (R).

3. The Inquiry Officer found the petitioner guilty of the charges aforesaid and in due course, the petitioner was dismissed from service. The petitioner contended before the Inquiry Officer that the Standing Order under which action was taken against the petitioner was not applicable. It was contended that Mahavir Ram Verma, General Secretary of the Labour Union was not a workman of the company. The petitioner raised an industrial dispute and the Govt. of India referred the dispute before the Labour Court, Dhanbad for adjudication; "Whether action of the management (Annexure-1) of Bagroo Bauxite Mine of M/s. Indian Aluminium Company Limited in dismissing from service Sri Manohar Singh Neech, Mechanic with effect from April 28, 1979 is justified? If not, to what relief the workman is entitled?

4. The case of the management in the Labour Court was that on April 4, 1979 at about 8.30 A.M. the petitioner stabbed one Mahabir Ram Verma and Ashok Kumar Jain with a dagger at the main entrance gate of the office. In the domestic inquiry, the petitioner was given opportunity to place his case before the inquiry officer: Inquiry was held in accordance with the principles of natural justice. The management, after taking into consideration the report considered it desirable to impose punishment of dismissal of the petitioner in view of the grave nature of the accusation. The management, therefore, justified its impugned action before the Labour Court.

5. The learned Labour Court proceeded to examine the main question whether punishment of dismissal was proper in the facts and circumstances of the case.

6. The management produced the entire papers produced in connection with the inquiry proceeding. The documents were marked as Ext. M- 1 to M-22. The Petitioner also produced two documents which have been marked Ext. W-1 to W-2.

7. The learned Labour Court examined the evidence of Ashok Kumar Jain, M.W.1. Shri Mahabir Ram Verma, M.W. 3 and Shri P.S. Kujur, M.W. 2 which were recorded before the Inquiry Officer, Shri Ashok Kumar Jain is an employee of the management. It was stated that the petitioner was running after Shri Mahavir

Ram Verma and that the petitioner attacked him with knife when Shri Verma fell near the gate. He has further stated that when he tried to intervene and asked the petitioner as to why he was doing so, the petitioner told that he would finish Shri Verma and then attacked Shri Jain also. After incident, this witness went to the dispensary where he was examined by the doctor and injury certificate was issued. Ram has also stated that the persons were running after the petitioner but nothing was seen in their hand. The Labour Court found nothing to disbelieve the evidence of this witness. The Labour Court has observed that the petitioner has stabbed Shri Mahabir Ram Verma and A.K. Jain with his dagger on the alleged date and time of occurrence.

8. The learned Labour Court has considered in detail the evidence of the petitioner before the Inquiry Officer. The plea of private defence was sought to be made out before the learned Labour Court on the basis of certain evidence. The evidence of P.S. Kujur before the Inquiry Officer was that the occurrence took place at about 8.30 A.M. on February 4, 1979 when one of his friends working in the stores told him that some people were running and then he looked out from the window of his office and saw that Mahavir Verma was lying on the ground and the petitioner was with a dagger in his hand and he stabbed Verma. He saw the petitioner stabbing twice.

9. That T.K. Das, the learned counsel appearing on behalf of the petitioner criticised the evidence of Kujur and submitted that the learned Labour Court has committed an error to accept the evidence of Kujur. Shri Das has further submitted that the learned Labour Court has not considered the evidence of Bishnath. It is true that the evidence of Bishnath Minj has not been considered by the learned Labour Court. It cannot be said that there is any serious contradiction as contended by the learned counsel for the petitioner that rendered the evidence of Kujur as non est. Annexure-2, the document submitted by the petitioner did not support the occurrence. The evidence of Kujur has been annexed with the supplementary affidavit.

This argument cannot be accepted taking into consideration the evidence of Mahabir Ram which is before me.

10. The learned Labour Court accepted the evidence of the petitioner. The defence case was considered by the Labour Court. The defence of the petitioner is that he had used his kirpan in his self- defence when he was surrounded by Mahabir Ram Verma and his men as he was not getting out to escape to the office.

11. The Case of the management as stated by Shri Verma is that the management of Bagroo Bauxite Mine had proposed to change Shift working of the mine from February 3, 1979 and as such he had come to see whether his workmen were doing the work according to the instructions of the management or not and he remained busy in seeing the same at unloading station and could not go to Bagroo. Shri Verma went to Bagroo on February 4, 1979 for the said

purpose and went to his union office where Jatru Oraon came to him and reported that the petitioner had called Jatru Oraon on February 3, 1979 at 9.00 A.M. to his house where an outsider was in the house of the petitioner whom the concerned petitioner introduced as CID Inspector of Lohardaga. In presence of the said man the petitioner asked Jatru Oraon to sign the documents. He was threatened and coerced to sign the same on the threat of a dagger. This matter was reported by Jatru Oraon to Shri Verma and then Jatru Oraon requested Shri Verma to go to the petitioner and collect the above paper from the petitioner. Shri Verma sent Jatru to the petitioner to collect the paper but the petitioner refused to hand over the paper. Thereafter Shri Verma went to collect the said paper from the petitioner near the power house along with Jatru. Shri Verma told the petitioner to return the paper signed by Jatru Oraon as it was wrong to get his signature under threat upon which the concerned workman told that he did so rightly and he would not return the paper whereupon the petitioner took out his dagger and in order to save himself Shri Verma started running towards the general office and he slipped and fell down. The petitioner reached near him and stabbed him thrice on his right shoulder saying that he would finish him. The aforesaid facts have also been stated before the Inquiry Officer by Shri Verma Ram. He (sic.) has also stated that the petitioner was running towards the office. The learned Labour Court has referred the evidence of Shri Ram before the Inquiry Officer. In the cross examination, Ram has stated that those who were running after, the petitioner had nothing in their hands. Capital is sought to be made out of the statement of Shri Jain. He has stated that the persons running behind the concerned workman had no weapon or stone in their hands. The statement of the petitioner does not show that the persons running behind him had any weapon in their hands. Here the confusion is clarified. It is apparent from statement of Jain that Verma in order to save him started running towards the office but he was chased by the petitioner and he fell down and was stabbed. The petitioner was also being chased by some persons. So actually there is no contradiction in the evidence of Shri Verma and Shri Jain.

12. The petitioner had examined two defence witnesses before the Inquiry Officer but they were not the witness on the alleged occurrence. It is submitted that Labour Court has failed to consider the evidence of six witnesses who were examined by the Inquiry Officer to clarify some of the facts as their names transpired in the evidence of management's witness Nos. 1, 2 and 3. These subsequent witnesses were also cross examined by the petitioner. The learned Labour Court has observed that those witnesses were called by the Inquiry Officer for clarification of the version of the petitioner regarding the manner of injury caused on the person of Shri Verma and Shri Jain. The learned Labour Court in page 16 of his Judgment held as follows:

"Page-16", Considering the entire facts, evidence and circumstances of the case it appears that the defence which was sought to be established by the concerned workman does not find any support from the evidence on the record. I, hold, therefore, that the version of the concerned workman that Shri Verma and Shri

Jain had received stab injuries at his hands while the concerned workman was trying to save his life is not true. It is clear, therefore, that the concerned workman was an aggressor and had caused the stab injuries to Shri Verma and Shri Jain and it is not a case of self-defence in which the concerned workman had used his Kirpan in order to save his life."

13. The learned Labour Court for the above reasons did not find any merit in the case made out by the petitioner. It was submitted before the learned Labour Court that since the petitioner was acquitted in the criminal case, he should not be punished in the departmental inquiry. This plea was rightly rejected by the Inquiry Officer by a well reasoned order.

14. The learned Labour Court came to the following conclusion: "as the concerned workman has been acquitted by the Hon"ble Court, the concerned workman cannot be dismissed from service on the very allegation for causing injury to Shri Verma and Shri Jain. It has been held in catena of decisions of the Hon"ble Supreme Court and other Hon"ble High Courts that the consideration before the Criminal Court is entirely different from the consideration which has to be made in a domestic enquiry and that the decisions in a criminal case cannot do away with the evidence and finding arrived at in a domestic enquiry. In the above view of the matter I hold that the decision in the Criminal case cannot be a ground for holding in a domestic enquiry that the charge before it has not been established. So far as the domestic enquiry is concerned, I have already held that the management has been able to establish the charge against the concerned workman that he had stabbed Shri Verma and Shri Jain in the premises of the Bagroo Mine".

15. Shri Das has strongly contended that in any view of the matter the act alleged to be proved cannot attract under Clause 24(B) (j) of the Standing Orders of the Company. Clause 24(B) (j) of the Standing Order provides as follows:

"Causing or threatening to cause physical injury to others".

16. Shri Das has submitted that the dispute which relates to the unfortunate incident was of purely a private affair since admittedly one of the persons assaulted was not an employee of the Respondent- company. He was only General Secretary. So atleast a part of the charge cannot be attracted by (sic) Clause 24(B) (J) of the Standing Order. It is, however, not disputed that other persons who have been assaulted were the co-workers. Thus, relevant Standing Order is plainly attracted.

17. The contention of Sri Das that Clauses 24(B) (J) of the Standing Order could not be invoked in the facts and circumstances of the case, cannot be accepted. The said clause which has been quoted above is wide in its scope to embrace even assaults committed to a person who is not an employee of the establishment. It is not necessary that the assault or physical injury should be committed within the factory premises.

18. In *W.A. Agni v. Badri Das* reported in 1963 I LLJ 684) (SC), the Supreme Court upheld the award of the Tribunal and set aside the dismissal of the worker for having indulged in abusive and vulgar language and creating riotous scene in a departmental store in a Tribune colony. The Court observed that it was plain that the conduct proved against the appellant does not fall under this clause. The quarrel was between the appellant who espoused the cause of Chakerpani, another employee of the respondent and the shopkeeper Om Prakash. The Tribunal was right to reject the respondents' case that the misconduct proved against the appellant was of a character which would fall under Standing Order 10(9).

19. This decision is of no help to the petitioner because the wordings of the Standing Order in that case limited the misconduct within the precincts of the Trust estate which is not the case here. In *Tata Oil Mills Co. Ltd. Vs. Its Workmen*, Supreme Court held that it would be unreasonable to include within such Standing Order any riotous behaviour outside the factory which was the result of purely private and individual dispute and in course of which tempers of both the contestants became hot which evolved a rule which brings certain acts of misconduct of riotous and disorderly behaviour within the ambit of relevant Standing Order to show that the disorderly and riotous behaviour has some rational connection.

20. In this case two workmen were dismissed for misconduct as they way laid one C.A. Augustine, the chargeman of the soap plant of the company's factory at Tatapuram while he was returning home after his duty in the second shift and assaulted him. The Court held that it was clear that the assault committed by the delinquent workman need not purely be (sic.) private and individual matter as it was committed owing to some difference of opinion in regard to the introduction of incentive bonus scheme.

21. It is relevant to state that one person who was assaulted in this case was the office bearer of the Union. Although the assault took place in some other context, in view of the wide wordings of the Standing Order, workman was rightly held guilty of the charge.

22. Considering the facts and circumstances of the case, it is not possible to interfere with the award on the grounds urged by Shri Das. This application is dismissed, but without costs.