

(1980) 07 BOM CK 0023
In the Bombay High Court
Case No : Spl. C.A. No. 5595 of 1976

Parle Products Private Limited	Vs	APPELLANT
C.S. Saraswati and another		RESPONDENT

Date of Decision : 09-07-1980

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2)
Post and Telegraph Manual — Rule 285, 285(3)

Citation : (1981) 43 FLR 122 : (1981) 2 LLJ 419 : (1981) MhLj 646

Hon'ble Judges : M.N. Chandurkar, J; Bhonsale, J

Bench : Division Bench

Judgement

Chandurkar, J.—The petitioner-company in this petition is challenging an order made by the Industrial Tribunal, Bombay, declining to grant approval under S. 33(2)(b) of the Industrial Disputes Act, 1947, (hereinafter referred to as "the Act") to the order of discharge made by the petitioner-company discharging respondent No. 1(hereinafter referred to as "the employee") from employment after the charge framed against her were proved at a domestic enquiry.

2. Charges of disobedience of the orders of superior officers and her behaviour being subversive of discipline and good behaviour were held to have been proved by the enquiry officer who forwarded his report to the Commercial Manager of the petitioner-company. The Commercial Manager made an order on 8th of March, 1976 that the employee should be discharged from the service of the company forthwith. In reaching this conclusion, the Commercial Manager found that the employee had been earlier warned for disobeying the lawful and reasonable orders of the chief accountant.

3. On 9th of March, 1976 a communication was sent to the employee by one Jog, General Sales Manager, who was acting as Administrative Manager, in which he stated that "as the act of misconduct now proved against you is serious enough, we are compelled to terminate your services in the interest of discipline and good behaviour in the establishment". In the earlier part of this communication he has

referred to the charges and the findings of the enquiry officer and he has, inter alia stated as follows :

"The report of the enquiry officer was carefully considered and the undersigned further satisfied that not only the charges are proved but considering the circumstances of the case, your conduct of not responding to the repeated calls of Mr. Viswanathan was a provocative act of misconduct.

This letter also mentions that an application under S. 33(2)(b) of the Act for the approval of the action taken against the employee was being made because there was a dispute pending before the Industrial Tribunal in the matter of wage-scales and dearness allowance in which the employee was concerned. The letter further mentions : "We are sending separately today by money order one month's salary as provided under S. 33(2)(b) ". The petitioner's case is that a money order for Rs. 713.95 was accordingly sent on 9th March, 1976 and the receipt issued by the Post Office acknowledging the receipt of the amount of the money order was Ext. C2. This money order according to the petitioner, was received back by Jog. There is no dispute that the letter dated 9th of March, 1976 has reached the employee on the address given in that letter. According to the petitioner company, the money order was sent on the same address.

4. The application under S. 33(2)(b) of the Act was also made on 9th March, 1976 in which the petitioner-company stated that the company had remitted to the employee an amount equal to one month's wages on 9th March, 1976 and that the application was being filed on 9th March, 1976 and further that the discharge order, payment of one month's wages and filing of the application formed a chain of one transaction.

5. Before the Industrial Tribunal evidence of Jog and the enquiry officer Shanbhag was recorded. According to the petitioner, the recording of oral evidence was completed round about 4.20 p.m. on 5th October, 1976 and that a request was made to the Tribunal by the advocate for the petitioner-company to permit him to lead evidence of the postal authority to prove that the money order was actually tendered to the employee and that the employee did not claim the same. According to the petitioner-company, this request was rejected and the main application under S. 33(2)(b) of the Act was directed to be placed for hearing and arguments next day. The petitioner has averred petitioner-company showed a letter from the postal authorities clearly stating that the money order was sent to the employee and the money order was not claimed by the employee and that in spite of the said letter being shown to the Tribunal, the Tribunal did not allow the petitioner-company to lead evidence to prove the communication from the postal department in spite of the repeated requests of the advocate for the company. A copy of this letter has been filed along with the petition as Ext. "c" and the original of the letter was produced before us. This letter is from the Senior Superintendent of Post Offices, Bombay City West Division, Bombay, and is addressed to the General Sales Manager, Parle Products Pvt Ltd. Ville Parle (East). Bombay-400 057. The material contents of that letter are as follows :

"Adverting to your letter dated 24th March '76 this is to inform that Worli Naka P.O. money order No. 2084 dated 9-3-1976 for Rs. 713.95 payable to Miss C. S. Sarasvati, 10, Vijaya Building, C/o. Shri Savita Co-operative Housing Society, B10, Azar Road, Vile Parle East, Bombay-400057 has been repaid to the remitter since the payee has not claimed the amount of the money order in question. The money order in question has been paid to the remitter on 25-3-1976 by Prabhadevi Post Office."

6. The Tribunal after hearing the arguments advanced on behalf of the parties came to the conclusion that the victimisation had not been proved and that so far as the merits of the case were concerned, the enquiry could not be said to have been vitiated. The Tribunal held that the finding of the enquiry officer could not be said to be perverse, and not only that victimisation was not proved but that it could not be said that the order had not been passed in good faith or that it had been made for patently false reasons. With regard to the misconduct, the Tribunal held that it could not be said that the ("offence") alleged against the workman was of trivial nature and the punishment is shockingly disproportionate. The Tribunal thus found that so far as the merits of the case were concerned, the workman's contention must be negated. The Tribunal then referred to certain technical contentions advanced on behalf of the employee.

7. The first contention before the Tribunal was that the requirement in the proviso to S. 33(2) that the workman must be paid wages for one month before his discharge was not satisfied. The Tribunal came to the conclusion that there was no dispute about the fact that the employee had not been paid on month's wages. The Tribunal held that though Exhibit C-2 did show that an amount of Rs. 713.95 was sent by the applicant-company by money order to the opponent workman, that could not by itself show that the opponent workman was given the amount or that she declined to take the same. The Tribunal held that though Exhibit C-4, i.e., the money order coupon was produced by the company, there was nothing on record to show that Exhibit C-4 was a part of the original money order or that the money order came back with the postal endorsement "not claimed". The Tribunal has observed in its order that if the money order came back with the endorsement "not claimed" in ordinary course, it would be expected that the endorsement "not claimed", would be handed over to the applicant-company. The Tribunal did not accept the evidence of Jog that the money order was returned to him personally because, according to the Tribunal, "the transaction was not his personal transaction", but was an "office transaction". The Tribunal, therefore found that it was difficult to conclude that the money order was sent to the employee at the proper address and that it was not claimed by her or that she was in default. The Tribunal took the view that the burden of proving that the wages were paid to the opponent workman or proving that the workman was in default in not accepting the money order was on the applicant company. Thus the Tribunal held that the requirement of proviso to clause (b) of S. 33(2) had not been satisfied.

8. The Tribunal then went on to deal with the other contentions raised on behalf of the employee that the initiation of the disciplinary proceedings against the employee were not proved to have been at the instance of a competent officer. Considering the evidence of Jog, to which we shall refer later, the Tribunal held that it could not be said that it was proved that the proceedings were initiated against the employee by an authority competent to do so or that the services of the employee had been dispensed with by a competent authority. Thus though the Tribunal found that on merits the charges against the employee were proved and there was no victimisation and there was no failure to observe the principle of natural justice, it held that on account of the non-compliance with provisions of S. 33(2)(b), the petitioner-company was not entitled to the approval asked for. The application filed by the petitioner-company, therefore, came to be rejected.

9. In this petition challenging this order of the Tribunal, Mr. John appearing on behalf of the petitioner has contented that the jurisdiction of the Tribunal under S. 33(2)(b) is restricted to see whether the employer has made out a prima facie case and whether he has satisfied the conditions precedent as laid down in the proviso and that unless victimisation is made out, the Tribunal was not entitled to withhold the approval to the order of discharge made by the employer. It is enough, according to the learned counsel, to show that the employer had tendered the amount of wages for a month and that she did not receive the money order. The learned counsel contended that opportunity should have been given by the Tribunal to the petitioner to tender evidence of the postal authorities to show that the money order was sent to a proper address and that it has been returned, as "not claimed". The learned counsel has further urged that so far as the letter from the postal authorities is concerned, that clearly shows that the money order was sent to the proper address. It is, therefore, firstly, contended by learned counsel that the Tribunal was clearly in error in holding that the condition of payment of one month's wages to the employee as required by the proviso to S. 33(2)(b) was not satisfied,

10. Mr. Cama appearing for the employee has contended that money sent by the money order can be said to be effectively tendered only if it is proved that the money was offered to the employee and that the employee had refused to receive the money order. According to the learned counsel, refusal to receive the money order by the employee should be positively proved which has not been done in the instant case and there was, therefore, a clear failure to comply with the statutory requirement contained in the proviso to S. 33(2)(b).

11. It is also contended by the learned counsel that this Court is not sitting in appeal against the order of the Tribunal and the conclusion drawn on the facts appearing on the record and merely because a different view is possible, this Court should not interfere with the order of the Tribunal.

12. Now so far as the application for approval of action of the employer required to be taken under S. 33(2)(b) is concerned, the law is now well settled and the conditions laid down in the proviso to 33(2) of the Act have to be satisfied by the

employer. The dismissal or discharge order, the payment of wages and the making of an application for approval have to be simultaneous, and whether these three things have been done simultaneously has to be judged from the employer's conduct and if the employer's conduct show that these three form part of the same transaction, then the requirements of S. 33(2)(b) proviso must be taken to be satisfied.

13. In *Strawboard Manufacturing Co. Vs. Gobind*, the Supreme Court has observed as follows :

"As we read the proviso, we are of the opinion that it contemplates the three things mentioned therein, namely, (i) dismissal or discharge, (ii) payment of wages and (iii) making of an application for approval, to be simultaneous and to be part of the same transaction, so that the employer when he takes the action under S. 33(2) by dismissing or discharging an employee should immediately pay him or offer to pay him wages for one month and also make an application to the Tribunal for approval at the same time. When, however, we say that the employer must take action simultaneously or immediately we do not mean that literally, for when three things are to be done they cannot be done simultaneously but can only be done one after the other. What we mean is that the employer's conduct should show that the three things contemplated under proviso, namely (i) dismissal or discharge, (ii) payment of the wages and (iii) making of the application are parts of the same transaction."

14. The decision in *Straw Board Manufacturing Co. Ltd.*'s case was later followed in *P.H. Kalyani Vs. Air France Calcutta*,

15. The same view was reaffirmed in *Calcutta State Transport Corporation Vs. Md. Noor Alam*, where it was observed by the Supreme Court as follows.

"The proviso to S. 33(2)(b) contemplates three things; (i) dismissal or discharge; (ii) payment of wages and (iii) making of an application for approval to be simultaneous and to be part of the same transaction. The object is that when the employer takes action under S. 33(2)(b) by dismissing or discharging an employee he should immediately make payment to him or offer payment of wages for one month and also make an application to the Tribunal or the Labour Court, as the case may be, for approval. The employer's conduct should show that the three things contemplated under the proviso are parts of the same transaction."

Under the proviso to S. 33(2)(b) payment of wages for one month is one of the conditions prescribed. Now though the proviso uses the words "unless he has been paid wages for one month", as pointed out by the Supreme Court, it is sufficient if the employer offers to pay wages for one month. In a given case, an employee may not accept the wages. That, however, will not cease to make the conduct of the employer in offering the wages being in compliance with the requirement of the proviso. Indeed, the Supreme Court has pointed out in the *Straw Board Manufacturing Co. Ltd.*'s case as well as *P. H. Kalyani*'s case cited

(supra) that the employer should immediately offer payment of wages for one month. It will, therefore, be sufficient compliance with the requirement of the proviso if money is tendered to the employee and that such tender would be sufficient for the purposes of the proviso to S. 33(2)(b).

16. In *Management of Delhi Transport Undertaking Vs. Industrial Tribunal, Delhi and Another*, the Supreme Court, while pointing out that tendering the amount before dismissal is sufficient compliance with the requirement of the proviso, has observed as follows :

"The proviso does not mean that the wages for one month should have been actually paid, because in many cases the employer can only tender the amount before the dismissal but cannot force the employee to receive the payment before dismissal becomes effective."

17. Now, when wages are to be tendered as required by the proviso, it would be perfectly permissible for the employer to tender that amount by sending it by money order. It is quite possible that on the date on which the order of discharge is to take effect, the employee may not be immediately available for payment of the proviso can be complied with is to remit the money to the employee by money order. Where such amount is remitted and consequently it is tendered to the employee through the postal authorities, that will be sufficient compliance with the requirement of the proviso.

18. Now these does not seem to be any dispute in the present case that the amount of Rs. 713.95, being one month's wages, was remitted by money order on 9th of March, 1976. The money order was sent on the same day on which the order of discharge was posted to the employee. The learned Member of the Tribunal has, however, taken the view that the fact that the money order was sent cannot by itself show that the opponent workman was given the amount or that he declined to take the same. There is hardly any reason to dispute this proposition. The money order which has been sent to the payee can normally result in two things : (i) if it is sent on the correct address, the money will be tendered to the payee : and (ii) the payee will either accept it or refuse to accept it. In the first case, the person who has remitted the amount will get back an acknowledgment duly signed by the payee. If the payee refuses to accept the amount, the money order will be returned back to the remitter and he will get back the money.

19. We shall presently refer to the part of the money order from which comes back to the remitter. However, normally a presumption will have to be drawn that were money has been remitted by money order, the postal authorities have acted in their normal course of duty and the postman has tendered the money to the payee assuming of course that the correct address of the payee concerned is shown on the money order form. The presumption that the money was tendered to the addressee will, therefore, have to be drawn in the case of a money order form. Now, what the learned Member of the Tribunal has done when he came to

the conclusion that there is nothing to show that the amount of money order was tendered to the employee is that he has doubted as to whether the document Ext. C4 is the part of the original money order from and, according to the learned Member, this coupon does not have any endorsement of "not claimed" and the learned Member, therefore, found it difficult to hold that the money order was returned on the ground that it was not claimed by the payee. The learned Member has declined to accept the oral evidence of Jog that the money order was returned because it was not claimed because the learned Member took the view that Jog's memory was not very reliable. Jog has stated that amount of the money order had been returned to him because the money order bears his signature showing that it was he who sent the money order under his signature.

20. It, therefore, becomes necessary to find out whether the Tribunal was right when it came to the conclusion that that part of the money order from which contained the endorsement of "not claimed" should have been handed over to the petitioner-company. In this regard the instructions which are contained in the Post and Telegraphs Manual, Volume VI, with regard to unclaimed money orders become not only relevant, but important, and it appears that the Tribunal's attention was not directed to the manner in which unclaimed money orders are dealt with by the Postal Departments. It is no doubt true that at one point of time lower two third portion of the money order from was returned to the remitter when the money order was returned as not claimed. If that system had continued, there could not be any difficulty in holding that the Tribunal was right when it took the view that that portion of the money order form which contained the endorsement of not claimed should have been returned to the company. The Postal Department, however, seems to have changed its practice since 1969. We have gone through the Posts and Telegraphs Manual and Rule 285 which deals with the unclaimed money order found in Volume VI. Under that Rule, the following appears :

"Rule 285(3) of the P&T Manual Volume VI, part-I, provide that when the amount of a money order is repaid to the remitter, the signature of the remitter should be taken only on the receipt portion of the order in the place for signature of the payee and that no signature should be taken on the acknowledgment portion of the money order which. Together with the coupon, should be detached and handed over to the remitter.

2. In partial modification of the above Rule, the Director General has since decided that only the coupon portion of the money order should be given to the remitter. The acknowledgment portion shall be retained by the paying office and after detachment filed with the office copy of the M.O. paid list. Before such money order are given to the postman for repayment to the remitters, the M.O. clerk should indicate in red ink on the acknowledgment portion thereof "To be retained in office."

Paragraph 2 of the above quoted extract from the Posts and Telegraphs Manual, therefore, clearly shows that only the coupon portion of the money order is to be

given to the remitter when the amount of the money order is to be repaid to the remitter in case of an unclaimed money order. Therefore, with effect from 1969 the acknowledgment portion is retained by the Postal Department with the signature of the remitter in token of having received back money which was sent by money order. Therefore, there was no foundation for the view which the Tribunal has taken that that the part of the money order coupon containing the endorsement of not claimed should have been handed over to the company.

21. Therefore, the only part of the money order form which could be returned was the lower portion of the money order form called the coupon portion which is meant for writing any communication intended for the payee.

22. Now, the Tribunal has held that there is nothing on record to show that Ext. C4 is a part of the original money order. When the Tribunal took the view that there is nothing to show that this was a part of the original money order, it is obvious from the later part of the order of the Tribunal that it had in view the fact that the central portion of the money order form intended for getting the acknowledgment from the payee should have been found along with the money order coupon. It is difficult for us to imagine what other evidence could be possible to show that this was the part of the money order coupon. The rest of the money order form has been retained by the Postal Department as required by Rule 285. Exhibit C-2 clearly shows that the money order addressed to Miss C. S. Saraswati was sent on 9th March, 1976. It is common knowledge that the clerks in the Post Office who deal with the money orders or registered letters submitted to the postal authorities do not write the full address on the receipt which is given to the sender in token of having receiving either the money order or the registered envelope. Exhibit C2, therefore, clearly showed that a money order was sent to Miss C. S. Saraswati, i.e., the employee. As already pointed out, only two things could have happened to this money order. It is either paid to the payee or received back unclaimed. If the address was incomplete, it could have been received back on the ground that the address is not complete. Normally, postal materials which cannot delivered to the addressee for want of correct address are returned back on the ground that the address is incomplete. This has not been done in this case. The petitioner-company was quite conscious of the requirement of S. 33(2)(b). The letter dated 9th March, 1976 specifically mentions that one month's wages are being sent separately by money order. If all these circumstances are taken into account and which seem to have been ignored by the Tribunal, the only inference that is possible is that Ext. C4 is the money order coupon which was returned back to the company.

23. One of the grounds on which the Tribunal declined to accept the case of the petitioner-company that money was sent by money order and it was returned as not claimed, was that it was returned as not claimed, was that it was wholly unnatural that the money order coupon would be returned to Jog personally and that in normal course the money order coupon along with the money would be returned to the office. Now Jog has stated in his evidence that the money order

coupon was brought to him because he had sent the money order. The Tribunal seems to have lost sight of the fact that Jog was the Administrative Manager who had despatched the letter of discharge to the employee. He had himself taken care to see that the money order is sent because it was he who had signed the communication on the money order coupon intended for the employee in which the words are "one month's salary as per S. 33(2)(b) of the Act sent herewith". Jog was, therefore, himself dealing with the matter in order to ensure that the requirements of S. 33(2)(b) are complied with. If the reasoning of the Tribunal is correct that a returned money order should normally have been returned to the office then on a parity of reasoning it would also have been perfectly permissible for the money order to be sent by some clerk in the office of the petitioner-company. This, however, was not done and it was Jog who personally signed the money order coupon which indicated that he wanted to make sure that the requirements of S. 33(2)(b) were complied with. It is not wholly improbable that since the matter related to the compliance with the statutory requirements of the Act and since Jog had himself sent the money order, even when the money order was returned, it was returned to him personally. The evidence of Jog seems to have been rejected, in our view, on extremely flimsy and untenable ground.

24. Now, the Tribunal has taken the view that it was not possible to hold that the money order was sent to a proper address. It is no doubt true that Jog was stated before the Tribunal that "I have nothing in writing here today to show on what address the money order was sent", and the Tribunal has held that Jog has not even stated that money order was sent at the same address at which the registered letter was sent. The Tribunal has found the conduct of Jog inexplicable as to why he was not able to give the address at which money order was sent.

25. Now one fails to see what writing could there be to show that the money order was sent on a certain address except the money order form. The order of the Tribunal shows that it was insisting on proof which would have really not been available at all with the petitioner. There are two documents which could show the address on which the money order was sent. The first was the money order receipt, Ext. C2 and the only other document would be the money order form itself. Exhibit C2, as already pointed out, merely contains the name of the payee which is not unusual as would be anybody's experience when dealing with the post office. The second document is the money order form itself which is with the postal authorities. There could be no other direct evidence in writing to show that the money order was sent to a particular address. The Tribunal was, therefore, bound to look into the circumstances of the case which would have clearly shown that the money order could not have been sent to any other address except on which the registered letter containing the intimation of discharge was sent. Three things have been done by petitioner on the same day, namely, 9th March, 1976. It has addressed a registered letter to the employee on her address which she has received. It has filed an application before the Industrial Tribunal under S. 33(2)(b) on which the same address of the employee as on the registered letter has been written and on the same day it has also sent

a money order. The normal inference would be that the money order was also sent on the same address. It is no doubt true that the burden to show that the money order was sent on the correct address is on the petitioner. But that burden could be discharged by putting on record circumstances which would lead to that conclusion in the absence of any direct evidence to show the address on which the money order was sent. When Jog was deposing that he had nothing in writing to show that the money order was sent to the correct address he was, in our view, deposing in a most frank and straight manner because there could not be anything in writing with him to show that the money order was sent to a particular address.

26. There is one circumstance which the Tribunal seems to have completely lost sight in the present case. The employee has not thought it fit to enter the witness-box in this case and rebut the evidence which has been led on record on behalf of the company. It could have been perfectly permissible for her to depose and give oral evidence to show that the money order was never tendered to her or that she never refused to accept the money order in which case the matter would have been required to be considered on a different footing. But there was only the evidence of the Administrative Manager before the Tribunal to prove the documents which clearly indicated that the money order was sent to the correct address. All this evidence has been rejected by the Tribunal, in our view, on extremely untenable grounds. It has clearly fallen in an error when it has insisted on proof of a standard higher than what is normally expected.

27. To put the matter beyond controversy as pointed out, the petitioner at the end of the evidence wanted to tender before the Tribunal a copy of the letter received from the postal authorities which has now been produced along with the petition. The petitioner has made averments in the petition that the Tribunal declined to take on record evidence in the form of a letter from the postal authorities. Even in this petition the employee has not found it either necessary or convenient to rebut the averments made on behalf of the petitioner-company that the letter dated 6th October, 1976 received from the Senior Superintendent of the Post Offices was actually offered to be produced before the Tribunal. In the absence of those averments being traversed, we do not see any reason to reject the statement made in this petition that the letter dated 6th October, 1976 was sought to be produced before the Tribunal. Even the stage at which it was sought to be produced on the same day on which the second witness for the petitioner-company had given evidence. The employee did not want to give any evidence. There was, therefore, no question of prejudice to the employee. If that letter is read. It is clear that the query with regard to the "not claimed" money order was made by the petitioner as far back as on 24th March, 1976. It appears that this query was made because by that time the money order coupon had not been returned. This letter clearly states that the money order intended for the employee whose address is given in detail in that letter had been repaid to the remitter "since the payee has not claimed the amount of the money order in question". The money order was returned to the remitter on 25th March, 1976.

We do not find any justification on the part of the Tribunal to shut out this evidence which was sought to be tendered on behalf of the petitioner. Indeed, the plea that the money order was not claimed by the employee appears to us to be unanswerable, particularly in view of the conduct of the employee both before the Tribunal and in this Court where not even a return has been filed on her behalf denying the averments made by the petitioner. There is thus a serious infirmity in the finding recorded by the Tribunal that it was not proved that the money order was ever tendered to the employee and to say the least the finding appears to be wholly perverse and was liable to be quashed.

28. That brings us to the second ground on which the Tribunal has decided not to grant approval to the action taken by the employer. The Tribunal has taken the view that the proceedings were not initiated against the employee by an authority competent to do so and the services of the employee have not been dispensed with by the competent authority. The Tribunal has held that there is nothing on the record to show, except the oral evidence of Jog, the Administrative Manager, that the Commercial Manager had power to pass the discharge order. Now Jog was acting as an Administrative Manager in place of Mehta. Jog has admitted that as acting Administrative Manager he did not have the power to take a decision of discharging a workman, nor did Mehta have such power. Jog has also stated that there were no standing orders governing the workmen at the head office and by custom and practice the Administrative Manager deals with the matters relating to the disciplinary action, discharge, etc. He further stated that there was "nothing in writing to show that Mehta had power to initiate the disciplinary proceeding and had no power to pass the order of discharge." Now, it is no doubt true that it was, therefore, for the petitioner-company to satisfy the Tribunal that the action taken was legal and that the person who took the action was authorised to take it. But it is also interesting to note that at no stage had the employee herself challenged the power of the Commercial Manager to make an order of discharge, nor had she at any stage raised the question of legality of the enquiry proceedings before the enquiry officer. The order of the Tribunal shows its unusual insistence on every piece of evidence to be in writing. In a commercial establishment normally distribution of duties and allocation of administrative work is not always done by orders issued in writing as is done in a Government office. Ultimately it is a matter of arrangement between the top officers of a commercial concern as to how they will distribute functions between themselves. At no stage was the power of the Commercial Manager to take action against the employee challenged. Indeed, it is difficult for us to appreciate the contention raised before the Tribunal and consequently raised before us also that the Commercial Manager did not have the power to discharge the employee. It is surprising that the respondent who now challenges the power of the Commercial Manager to pass the order of discharge does not want to tell us who was the officer, according to her, who could validly exercise the power to discharge the employee. On principle, it may not be difficult to dispute that a disciplinary action can effectively be taken

against an employee by a person who is the head of the organisation or by the person who has appointed the employee. But we fail to see now the Tribunal could have rejected the oral statement of Jog that it was a matter of internal arrangement and that by custom and practice the Administrative Manager deals with the matters relating to a disciplinary action. If a written delegation was not necessary because these are not statutory authorities, the Tribunal could not have insisted on evidence in writing especially when it is not even established that there is any such evidence in existence and which is not produced. There is nothing illegal if an Administrative Manager, who is entrusted with the duties of administration and thus exercises control over the employees, initiates a disciplinary action. So also in the absence of any evidence to the contrary, the Tribunal should have accepted the statement of Jog that the powers to discharge lay with the Commercial Manager. Even assuming for a moment that the disciplinary proceedings could not be initiated by the Administrative Manager, in our view, it was too late for the employee to challenge them, more so, when the Commercial Manager, while reaching a decision to discharge the employee has merely treated those proceeding as furnishing material on which he could take a decision in the matter of discharge of the employee. There was thus no infirmity in the initiation of the disciplinary proceedings or the order of discharge.

29. That brings us to the last contention advanced before us by Mr. Cama that interference with the order of the Tribunal under Arts. 226 and 227 could not be permissible to us because this is not an appellate jurisdiction. Now, there can be hardly any doubt that we cannot sit in appeal over the order of the Tribunal, but the errors, which we have pointed, and into which the Tribunal has fallen while dealing with the application of the petitioner are sufficient in our view, to indicate that the entire approach of the Tribunal is vitiated. It has also clearly acted illegally in shutting out evidence, especially when that evidence would have conclusively established the case of the petitioner-company. An application under S. 33(2)(b) has no be judiciously dealt with and shutting out evidence which was clinching, whether it is in favour of the employee, would create a serious infirmity in the proceedings before the Tribunal. We are, therefore, satisfied that the order of the Tribunal declining to grant approval to the order of discharge made against the employee requires to be quashed and the petitioner was entitled to the approval sought.

30. Consequently, the impugned order is quashed. The petition is allowed. Rule absolute with costs.

31. Mr. Damania asks for leave to appeal to the Supreme Court. We do not think that there is any substantial point which is required to be decided by the Supreme Court involved in this case, Leave rejected.