(1985) 04 SHI CK 0022

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 417 of 1983

P.C. Thapliyal APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 20-04-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 10(1), 11(A), 12(4), 12(5)

Citation : (1985) 14 ILR HP 426

Hon'ble Judges : P.D. Desai, C.J

Bench : Single Bench

Advocate : A.B. Chandra, for the Appellant; P.A. Sharma, Central Government Standing Counsel and Shayama Vasudeva, Advocate, for the Respondent

Judgement

P.D. Desai, C.J.—This petition under Articles 226 and 227 of the Constitution is directed against the order dated July 13, 1983 (Annexure-P-7) passed by the Central Government whereunder the industrial dispute arising out of the dismissal of the Petitioner by the Respondent-Bank was declined to be referred to the Industrial Tribunal for adjudication u/s 10(1) read with Section 12(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The impugned order reads as follows:

"In continuation of this Ministry''s letter of even number dated 9th June, 1983, on the above subject, I am directed to say that the Central Government have decided not to refer the above dispute to an Industrial Tribunal for adjudication for the reasons that charges for which Shri P.C. Thapliyal was proceeded against were proved during domestic enquiry and every opportunity was given, to him to defend his case. There was no violation of natural justice and Shri P.C. Thapliyal also confessed his guilt during enquiry. The action of the management does not seem to be mala fide or unjustified.

2. The order has been challenged,. inter alia, on the following grounds:

(1) The Central Government, as it were, has decided the dispute on merits which was beyond its competence;

(2) Section 11-A of the Act, which confers wide powers upon the adjudicating authority including the power to consider whether the penalty is just, proper and reasonable, has been totally lost sight of; and

(3) The. overall conduct of the Petitioner during the course of the proceedings and thereafter, which is a factor having a direct bearing on the finding of guilt as well as on the quantum of penalty, has been totally lost sight of.

3. In order to appreciate the points in controversy, the facts will have to be set-out in some detail.

4. The Petitioner joined service of the Respondent-Bank on December 12, 1978. He was duly confirmed on completion of the probationary period. The Petitioner was, during the relevant period, that is, from November, 1980 to August, 1981, posted as clerk attending to the Savings Bank Counter in the Shimla branch of the Respondent-Bank. On October 27, 1981 the Petitioner was served wiih a charge-sheet (Annexure-P-1) which detailed several acts of commission and omission amounting to misconduct on his part, The substance of the charges was: (i) that while serving as such clerk, the Petitioner was reported to be entering the bank premises half an hour or one hour earlier than the other staff members thereby having free access to books, registers and records of the branch; (ii) that he was receiving monies from the constituents promising to credit them into their accounts; (iii) that he omitted to deposit the monies so received and dishonestly misappropriated the same; (iv) that he issued counterfoils of pay-in-slips and made entries in the pass-books, ledgers etc. making the constituents believe that the monies were duly credited in their accounts; (v) that he falsified/erased the entries in the ledgers and books to prevent detection that he borrowed monies and goods from the constituents but failed to repay or pay for the same; and (vi) that the aforesaid conduct on his part was reported to have prejudicially affected the reputation and interest of the Bank. The charge-sheet proceeded to specify that his acts or omissions constituted gross misconduct within the meaning of para 17.5 (d) and (j) of the Bipartite Settlement dated December 14, 1966 besides offences as defined in para 17.2 of the said Settlement. The Petitioner was called upon to submit his written statement of defence and meanwhile he was suspended from the service of the Bank.

5. The Petitioner showed cause by his reply dated November 8, 1981 (Annexure R-3/1). The Petitioner pleaded guilty'' to all the charges levelled against him except a few which were detailed in the said reply. More particularly, he denied the charge that he used to go to the Bank early in the morning to have free access to the books and that he had erased entries in the books. The Petitioner referred to his having paid certain dues to the customers of the Bank as detailed in the reply and also stated that he had deposited with interest the monies in the

accounts of 23 customers and that the amounts accordingly deposited totalled upto Rs. 18,038.39 paise. According to the Petitioner, only Rs. 1,345/- remained to be paid. However, even out of the said sum, he had deposited Rs. 900/- on November 1, 1981 for payment to the customers. In the course of his reply, the Petitioner implicated one D.B. Sharma, the then Accountant of Shimla Branch, by levelling the following allegations:

... In 19 September, 1980 Mr. D.B. Sharma the then Acctt. at Shimla Branch told me that he wanted to go to Chandigarh and he did not had any money. He indicated to me how I should defraud constituents and take cash from them. This I misappropriated Rs. 500/- on 19th September, 1980 and paid to Shri D. B. Sharma... Thereafter in all most all the misappropriated amounts Shri D.B. Sharma took a major amount... Shri D.B. Sharma has taken about Rs. 12,000/-, out of misappropriated amount... I would like to submit that whatever all these misappropriation done was because of Shri D.B. Sharma''s instruction, guidance, encouragement and his need for money to adjust his declined L.T.C. claims, salary advances and his frequent visits to Chandigarh by Taxi. One visit to Chandigarh and back to Shimla costs Rs. 400/-. In addition to major share Shri Sharma has taken away Rs. 2500/- from my personal loan availed by me and Rs. 945/- my security amount refunded. He said he required money for his brother''s wedding.

The Petitioner tendered sincere apology and held out an assurance that he would never repeat such actions and requested to be dealt with leniently. These averments are found to have been made in para 10 of the reply which reads as follows:

I sincerely apologize and feel extremely sorry for what I have done and assure you that I shall never again repeat such a thing. Kindly excuse me this time. I beg to submit that apart from my father I am the only earning member in the family. I have to get two of my sisters married. My younger brother has got admission for training as a Pilot in Patiala and his fees are very heavy. We have to spend nearly Rs. 40,000 in three years only for his training purposes. All these expenses cannot be met by my father''s income alone. Moreover, since this is my first chance since I have pleaded guilty to the points mentioned in the charge sheet and since I have repaid almost all the money misappropriated, I request you to have mercy on me and to reinstate me.

On November 18, 1981, the Petitioner sent one more letter (Annexure R-3/3) in the course of which he said that he had deposited all the amounts misappropriated by him into the respective accounts of the customers, except a few therein mentioned most of which he claimed to have paid in cash. He requested that his case be treated sympathetically.

6. The proceedings of the enquiry were held on March 30 and 31, 1982 at Shimla. At the very outset, when the charge-sheet was read over to the Petitioner, and he was asked whether he pleaded guilty to the charges and

whether he wanted to be defended by anyone, the Petitioner stated that he did not want to be defended by anyone and that he pleaded guilty to all the charges to the extent admitted in his letter dated November 8, 1981. The Petitioner further stated that all the alterations referred to in the charge-sheet were made by him during the business hours. When specifically questioned about certain entries, he admitted having made such fictitious or false entries. The Petitioner was also questioned whether he had made payments of all misappropriated amounts to the customers/Bank and he replied in the affirmative and gave his detailed explanation in that behalf. The Petitioner pointed out that all the concerned accounts had been duly credited with the exact amounts misappropriated by him along with interest and he also explained the discrepancy in regard to the account of four customers. When questioned whether the examination of witnesses by the management may be waived since he had admitted the charges, he replied in the affirmative. When further questioned whether he wanted to examine any witness, he declined. He also stated that he did not wish to examine himself as a witness. He tendered a few documents requesting that they may be treated as his evidence. The Petitioner was then questioned whether, in respect of the charges for which he pleaded guilty, he had done so voluntarily and with full knowledge of the consequence thereof, the Petitioner replied in affirmative. When further questioned whether in view of his confession, the examination of the other witnesses could be waived, the Petitioner replied in the affirmative. He was also asked whether the enquiry could be treated as concluded and he replied in the affirmative. The inquiry proceedings are found at Annexure-R-3-4.

7. The Enquiry Officer submitted his report Annexure-R-3-5 at the conclusion of the enquiry wherein he found that the charge relating to the Petitioner having gone to the Bank half an hour or one hour earlier than the other staff members in order to have free access to the books, registers and records of the Bank was not established. He further found that misappropriation in relation to accounts of 28 out of 29 customers was established on the basis of the reply dated November 8, 1981 given by the Petitioner to the charge-sheet. He also found that the charge relating to alteration/unauthorised entries, cuttings etc. in all the documents such as the ledger books, pass books etc. was duly established. The Enquiry Officer accordingly found the Petitioner guilty of misconduct under para 17-5 (d) and (j) of the Bipartite Settlement dated December 14, 1966.

8. On May 8, 1982, while acknowledging the receipt of a copy of the proceedings of inquiry and of the truth of its contents, the Petitioner made a final plea to the disciplinary authority in the following words (vide Annexure R-3/6):

I request you to kindly consider my case very sympathetically, bearing in mind my personal assurances to you stating that no such instance will ever occur again. Please bear in mind my family circumstances also. Once again, deeply regretting my actions in the past and requesting you to forgive me.

9. On June 2, 1982, the Petitioner was served with a notice, Annexure P-2, to

show cause why the penalty of dismissal from service should not be imposed upon him in view of the findings recorded in the report of the Inquiry Officer. It is not clear whether a reply to the show cause notice was given but it appears that a hearing on the show cause notice was afforded to the Petitioner on July 6,1982. By an order dated July 13,1982, Annexure P-3, the Petitioner was dismissed from service.

10. The Petitioner preferred an appeal Annexure P-4, to the General Manager of the Respondent-Bank against the said order of dismissal on August 17, 1982. In the appeal memo, the Petitioner, inter alia, stated as follows:

... Mr. D.B. Sharma, Accountant, and Manager of Shimla Branch, Mr. Rao, joined hands and made me scape goat. As already stated above, I was a new recruit to the Bank still I was not changed in rotation from the cash counter for more than two years ignoring the practice that no clerk of a Bank can remain on one seat for more than six months and senior officers of the bank kept on benefiting because of my innocence.

... Sir, the fact is that Mr. D. B. Sharma and Mr. Rao Manager who happen to be very influential persons, prevailed upon Mr. C.M. Premkumar, Enquiry Officer, and they all the three joined hands and they forced me, misguided me, coercised me, and by inducement promises and threats completely washed away my brain and whatever I have written and admitted during enquiry, is at the dictation of Mr. C.M. Premkumar, Enquiry Officer and Mr. Rao the Manager of the Bank''s Shimla Branch. At all the places, I was asked to sign blindly. Sometimes, if I dare to resist their directions, threats were held out to me that 1 shall be involved in the matter and dismissed from service. At times a fear was put in my mind that lacs of rupees shall be shown to have been misappropriated by me and in this way not only myself but my aged parents shall also be entrapped. Enquiry Officer was even-jealous to incupate me and to save the senior officers of bank and to achieve this object he managed to obtain my signatures every where, recklessly....On 6-7-82 1 was called at Madras for personal hearings. There also Mr. C.M. Premkumar held out promises that nothing is going to happen against me and induced me that I should not involve the Manager Mr Rao and Accountant Mr. D.B. Sharma. Rather he forced me to sign saying that only . some indemnity bond shall be needed from me.....

The appeal was dismissed and a communication dated September 25, 1982, Annexure P-5, was sent to the Petitioner in that regard.

11. The Petitioner thereupon invoked the, machinery of the Act to challenge the aforesaid order of dismissal. On December 1, 1982, the Petitioner addressed a letter to the Assistant Labour Commissioner (Central), Chandigarh, Annex-ure-R-3/7, raising an industrial dispute about his wrongful dismissal. In the course of the said letter the Petitioner, inter alia, stated that: (i) the evidence at the enquiry was dictated by the Manager who was personally interested in the case, (ii) the enquiry was closed door and no independent advice was allowed and, (iii)

confession was made in the course of the enquiry on the allurement of the disciplinary authority and the plea of guilty was, therefore, the result of plea-bargaining.

The Petitioner also sought leave to raise all the grounds taken in the memo, of appeal before the General Manager of the Respondent-Bank and prayed that those grounds be read in support of the dispute raised by him. On behalf of the Respondent-Bank two written submissions were filed in reply: the first on January 18, 1983, Annexure R-3/8 and the second on February 16, 1983, Annexure R-3/9. All the allegations made by the Petitioner were denied in the course of those communications. The proceedings were taken in conciliation by the Assistant Labour Commissioner (Central), Chandigarh. The Assistant Labour Commissioner submitted a failure report, Annexure P-6, on May 11, 1983. After taking into consideration the failure report, the Central Government passed the impugned order.

12. The question which arises for consideration against the aforesaid background is whether, on the facts and in the circumstances of the case, the impugned order, insofar as it declined to refer the dispute arising out of the dismissal of the Petitioner to an Industrial Tribunal for adjudication on the grounds stated therein, is in accordance with law. The impugned order has been reproduced in the earlier part of the judgment and it is manifest on a bare reading of the said order that the reference has not been made on the ground that the charges levelled against the Petitioner were proved during the course of the domestic inquiry which was held in compliance with the rules of natural justice and that the action of the Respondent-Bank, which was based on a confession made by the Petitioner, did not appear to bo mala fide or unjustified. The precise question for determination is whether, on the facts and in the circumstances of the case and on the grounds aforesaid, it was legally competent to the Central Government to decline to make a reference.

13. The decision in Bombay Union of Journalists and Others Vs. The State of Bombay and Another, is the locus classicus on the subject of the scope of the power of the appropriate Government in regard to the making of a" reference under the relevant provisions of the Act. It was there observed that in an industrial dispute in respect of which a failure report has been.submitted u/s 12(4), the appropriate Government ultimately exercises its power u/s 10(1), subject to this that Section 12(5) imposes an obligation on it to record reasons for not making the reference when the dispute has gone through conciliation and a failure report has been made u/s 12(4). While considering the question whether or not the industrial dispute should be referred for adjudication, the appropriate Government may consider, prima facie, the merits of the dispute and take into account other relevant considerations. If the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on the said questions of law, because that would normally lie within the jurisdiction of the Industrial Tribunal. Similarly, on disputed questions of fact, the

appropriate Government cannot purport to reach final conclusions, for that again would be the province of the Industrial Tribunal. Then follow the following further observations which have been heavily relied upon on behalf of the Respondents:

But it would not be possible to accept the plea that the appropriate Government is precluded from considering even prima facie the merits of the dispute when it decides the question as to whether its power to make a reference should be exercised under S. 10(1) read with Section 12(5), or not. If the claim made is patently frivolous, or is clearly belated, the appropriate Government may refuse to make a reference..... It must, therefore, be held that a prima-facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute u/s 10(1), and so, the argument that the appropriate Government exceeded its jurisdiction in expressing its prima facie view on the nature of the termination of services of Appellants 2 and 3 cannot be accepted.

Yet Anr. decision, which was relied upon on behalf of the Respondents, is in Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, The relevant observations, from the said decision to which my pointed attention was drawn are as follows:

Section 10(1) confers a discretionary power and this discretionary power can be exercised on being satisfied that an industrial dispute exists or is apprehended. There must be some material before the Government on the basis of which it forms an opinion that an industrial dispute exists or is apprehended. The power conferred on the appropriate Government is an administrative power and the action of the Government in making the reference is an administrative act. The formation of an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. Thus the jurisdictional facts on which the appropriate Government may act are the formation of an opinion that an industrial dispute exists or is apprehended which undoubtedly is a subjective one, the next step of making reference is an administrative act. The adequacy or sufficiency of the material on which the opinion was formed is beyond the pale of judicial scrutiny. If the action of the Government in making the reference is impugned by a party it would be open to such a party to show that what was referred was not an industrial dispute and that the Tribunal had no jurisdiction to. make the Award but if the dispute was an industrial dispute, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before Government on which it could have come to an affirmative conclusion on those matters.

Reliance was also placed on behalf of the Respondents on the decision of the Andhra Pradesh High Court in D. Prasad Babu v. The State of Andhra Pradesh and. Ors. , 1977 Labour and Industrial Cases 1298 and on the decision of the Bombay High Court in National Union of Commercial Employees and Others Vs. State of Maharashtra and Another, which, broadly speaking, affirm the same principles.

14. It would be pertinent at this stage to refer to a very recent decision in The M.P. Irrigation Karamchari Sangh Vs. State of M.P. and Another, The workers'' union in that case had raised a dispute concerning service conditions of the workmen. One of the demands related of the payment of Dearness Allowance equivalent to that of the Central Government Employees. The State Government, which was the appropriate Government, declined to refer the said dispute for adjudication on the ground that it (in the capacity of an employer) was not in a position to bear the financial burden involved in paying the Dearness Allowance on that basis. The workers'' union challenged the decision before the High Court, which, relying upon the observations made in Bombay Union of Journalists'' case (supra), upheld the decision holding that the State Government was not precluded from making a prima facie examination of the merits of the dispute while considering whether the reference was necessary or not. The decision of the High Court was successfully challenged in appeal before the Supreme Court which held that the reference could not have been rejected on the specious plea that the State Government could not bear the additional burden since such determination constituted adjudication and thereby usurpation of the power of a quasi judicial Tribunal by an administrative authority. The following observations from the decision of the Supreme Court in that case being pertinent are extracted hereinbelow:

...while conceding a very limited jurisdiction to the State Government to examine patent frivolous-ness of the demands, it is to be understood as a rule, that adjudication of demands made by workmen should be left to the Tribunal to decide. Section 10 permits appropriate Government to determine whether dispute ''exists or is apprehended'' and then refer it for adjudication on merits. The demarcated functions are (1) reference, (2) adjudication What the State Government has done in this case is not a prima facie examination of the merits of the question involved. To say that granting of dearness allowance equal to that of the employees of the Central Government would cost additional financial burden on the Government is to make a unilateral decision without necessary evidence and without giving an opportunity to the workmen to rebut this conclusion. This virtually amounts to a final adjudication of the demand itself. The demand can never be characterised as either perverse or frivolous. The conclusion so arrived at robs the employees of an opportunity to place evidence before the Tribunal and to substantiate the reasonableness of the demand.....There may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Government should be very slow to attempt an examination of the demand with a view to decline reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render Section 10 and Section 12(5) of the Industrial Disputes Act nugatory.

15. The perspective of the statutory power to make a reference is thus clearly defined by the pronouncements of the highest Court in the above-cited decisions. In arriving at a decision whether or not to refer an industrial dispute for adjudication u/s 10(1) read with Section 12(5) of the Act, the appropriate Government exercises a discretionary power or jurisdiction which operates in a very limited field. The appropriate Government may examine the merits of the dispute, prima facie, to ascertain whether the claim made is either perverse or frivolous or belated. If so satisfied, the appropriate Government may refuse to make a reference. When, however, the appropriate Government applies its mind to the materials on record for the purposes of a prima facie examination of the merits of the dispute to form an opinion whether or not the dispute calls for an adjudication, it has to be appreciated as a rule that: (a) if the dispute in question raises questions of law, the appropriate Government should not purport to reach a final decision on those questions and (b) similarly, on disputed questions of fact also, the appropriate Government cannot purport to reach final conclusions. Those matters fall appropriately within the jurisdiction of the Industrial Tribunal and the appropriate Government should be very slow to attempt an examination of the demand from those angles and should not arrive at a final adjudication of the demand itself on that basis and decline a reference on that ground. Any attempt on the part of the appropriate Government in that direction would not only rob the employees of an opportunity to place evidence before the Industrial Tribunal and to substantiate the reasonableness of the demand but also amounts to the usurpation of the powers conferred upon the Industrial Tribunal for adjudication of valid disputes. The Courts must be vigilant and should not permit the appropriate Government to do so, lest the provisions of Section 10 read with Section 12 of the Act aer rendered nugatory.

16. Now, in the present case, against the legal and factual background aforesaid, the impugned decision of the Central Government declining to make a reference on the stated grounds cannot but be regarded as in excess of its power, authority and jurisdiction. The Central Government has virtually decided the dispute on merits instead of examining, prima facie, the merits to ascertain whether the claim is either perverse or frivolous. Indeed, it has finally decided, either expressly or impliedly, intricate questions of law as well as seriously disputed questions of fact and thus deprived the Petitioner of an opportunity to raise those questions and to lead evidence thereon and to substantiate before the Industrial Tribunal his claim that the dismissal was wrongful. True it is that in the course of the disciplinary proceedings the Petitioner has registered the plea of guilty at almost all the stages. However, the said plea, at all material stages, was coupled with a plea for clemency and leniency, which was sought to be supported by pressing into service extenuating circumstances such as the family and financial conditions and his own conduct, which reflected ready admission of the guilt,

expression of penitence and reimbursement of the loss caused to the clients/ customers. Besides, soonest after the penalty of dismissal was imposed, the Petitioner levelled serious allegations in the memorandum of appeal presented by him to the General Manager of the Respondent-Batik to the effect, inter alia, that the real beneficiaries of the objectionable transactions were the Manager (Mr. Rao) and the Accountant (Mr. Sharma), that he was forced, coerced, misguided and induced by promises and threats to plead guilty in the course of the domestic inquiry and that a clear promise was held out to him by the inquiring authority, who also happened to be the disciplinary authority, that "nothing" was going to happen to him and that only an indemnity bond would be obtained, if he pleaded, guilty, and thus absolved the Manager and the Accountant. In terms, the Petitioner submitted that the plea of guilty was the result of plea-bargaining. It will be recalled that the allegations against the Accountant (Mr. Sharma) were levelled even in the reply to the charge-sheet. The order passed in appeal, being non-speaking, does not deal with these allegations. The same was the stand adopted by the Petitioner also before the Conciliation Officer. However, all these allegations were repudiated by the Respondent-Bank in the conciliation proceedings. Against this backdrop, unless nice questions of law and highly disputed questions of fact are adjudicated upon, it would not be possible to take the view that the charges levelled against the Petitioner were duly proved inter alia on the basis of his confession made in the course of the disciplinary proceedings or that the proceedings were conducted in conformity with natural justice. Before the confession could be acted upon, seriously disputed questions of fact surrounding or encircling the confession will have to be decided on merits on the basis of the evidence led before an adjudicating authority invested with proper jurisdiction. Besides, in the eye of law, such a confession is required to be taken as a whole and it must be found to be true and voluntary. If the allegations levelled by the Petitioner as to the circumstances under which he pleaded guilty during the course of the domestic inquiry, are even prima facie established, the neat questions of law which, inter alia, would arise are (i) whether the admission of charges on his part could be acted upon as confession, (ii) if so, whether the confession could be regarded as having been retracted and, (iii) if so, whether the finding of guilt could be sustained on the basis of such confession. The impugned order does not at all refer to these various aspects of the matter. It is no where evident on the face of the order that these factors were even present to the mind of the Central Government and that its mind was applied to those questions. There is no finding, prima facie, that the plea raised by the Petitioner is frivolous or false, even assuming that it was possible to arrive at such a conclusion. It is thus apparent that the decision declining to make a reference is wholly beyond the scope of the power, authority and jurisdiction invested in the Central Government u/s 10(1) read with Section 12(5) of the Act.

17. Yet Anr. aspect which appears to have been wholly overlooked relates to the quantum of penalty in regard to which the jurisdiction of the Industrial Tribunal is widened by the enactment of Section 11-A. The Tribunal has thereunder not only

the power to reappraise the evidence led in the domestic inquiry and to satisfy itself whether the misconduct alleged against the workman was established but also to consider whether on the facts and in the circumstances of the case a lesser punishment than that imposed or any other relief was required to be awarded. Even prior to the enactment of Section 11-A it was settled law in the field of industrial adjudication that if there was justification for the punishment imposed, the Industrial Tribunal would not interfere; yet, where the punishment was so disproportionate that no reasonable employer would ever have imposed in like circumstances, the Tribunal could treat the imposition of such punishment as itself showing victimisation or unfair labour practice (See: Hind Construction and Engineering Co. Ltd. Vs. Their Workmen, and the Management of The Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal, . After the enactment of Section 11-A, however, the power in this regard has been considerably enlarged. In the present case, even assuming that the plea of guilty could be relied upon in proof of the misconduct of the Petitioner, he could have still pleaded before the Industrial Tribunal that the award of the extreme penalty of dismissal was not justified in light of his overall conduct right from the start to the end in the course of the disciplinary proceeding. By declining reference, the Petitioner has been deprived of the opportunity of adjudication on that issue.

18. In support of the view which I am inclined to take, reference may be made to the decision of a Division Bench of the Gujarat High Court in Suresh Shantaram Joshi v. Regional Manager, Bank of Maharashtra, Baroda and Anr. (1985) 26 GLR 46. In that case the Central Government had declined to refer a dispute arising out of the dismissal of a workman on almost similar grounds, namely, that the charges against him were proved during the inquiry and that he had also admitted his guilt voluntarily during the inquiry and that every opportunity was given to him to defend his case during the inquiry and that there was no violation of natural justice and that the action of the management could not, therefore, be regarded as mala fide or unjustified. The workman in that case had complained, as here, that the so-called admission of guilt was not voluntary and that he was misled into making such statement and that the truth could be found only upon adjudication. The High Court quashed the decision of the Central Government holding as follows:

The observation of the Central Government that every opportunity was given to defend his case during the enquiry and there was no violation of natural justice is a mechanical assertion because in view of the observation that there was voluntary admission there was no question of holding inquiry and giving an opportunity and observing principles of natural justice. On the quantum of punishment also there is no discussion. Section 11-A of the Industrial Disputes Act provides that if the Court is satisfied that the order of dismissal was not justified, it may set aside the order of dismissal and direct reinstatement of the workman and give such other relief including award of lesser punishment as the circumstances of the case may require. All these questions can be properly gone into if a reference is made and the Central Government was not at all justified in assuming adjudicatory role and finally deciding the questions. In case of dismissal of a workman when prima facie some questions arise for consideration, it would not be proper for the Central Government to decide those questions finally and it would be proper exercise of power and duty to refer such dispute for adjudication to the appropriate authority under the Industrial Disputes Act.

The decision is on all fours and fully supports the view I am inclined to take herein.

19. For the foregoing reasons, in my opinion, the impugned decision is wholly unsustainable and it is quashed and set aside. A writ of Mandamus is issued to the Central Government directing it to reconsider the question of making a reference u/s 10(1) read with 12(5) of the Act in light of the observations made in the course of this judgment and in accordance with law. The Central Government will arrive at an appropriate decision in the matter within a period of six weeks from the date of supply of a certified copy of this judgment on payment of urgent charges on an application being made in that regard immediately.

20. Rule made absolute accordingly with no order as to costs.

21. Before parting, it may be mentioned that initially the case was heard sometime back and even the judgment was partly dictated. However, the decisions in M. P. Irrigation Karamchari Sangh''s case and Suresh Shantaram Joshi''s case having come to notice before the dictation of the judgment was concluded, the case was fixed for re-hearing and it is being disposed of now after giving to the parties an opportunity to address arguments on those decisions.

