
(2013) 03 KAR CK 0199
In the Karnataka High Court
Case No : Writ Petition No. 14214 of 2007

Sandur Manganese and Iron Ore Ltd.	APPELLANT
Vs	
Narayan and Others	RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 313
Industrial Disputes Act, 1947 — Section 10(4-A), 11
Penal Code, 1860 (IPC) — Section 380, 457

Citation : (2013) 3 LLJ 410

Hon'ble Judges : Ravi Malimath, J

Bench : Single Bench

Advocate : K. Kasturi, for the Appellant; A.J. Sreenivasan, for the Respondent

Final Decision : Allowed

Judgement

Ravi Malimath, J.—The petitioner is in the business of mining operations. The respondents joined the services of the petitioner company initially as mine workers, and were later promoted as drillers and thereafter as tractor drivers, in the year 1982. That the respondents have been in the services of the petitioner company for almost 25 years as on the date of their dismissal. It is the case of the workmen that on 09.05.1997, they were all called to the Sandur Police Station on the pretext of a clarification that was sought for. They were detained in the police station on false charges that they are involved in a theft case. They were produced before the Judicial Magistrate. Thereafter, they were released on bail. A false case was foisted upon the workmen, on the allegation that some workmen were moving suspiciously with a gunny bag on 17.06.1997 and they were apprehended by the police along with some materials goods which were identified as the goods belonging to the Management. Though the workmen had nothing to do with the so-called seized goods and no complaint was lodged to the police by the Management, they were kept in custody by the police from 09.06.1997 to 17.06.1997. On trial, by the judgment dated 09.09.1999, the workmen were acquitted.

2. However, in the interregnum the Management issued a charge-sheet against the workmen alleging theft of certain articles. On denial of the charges, a domestic enquiry was ordered. The Enquiring Officer submitted his finding, that they were guilty of the charges. The Disciplinary Authority accepted the finding of the Enquiring Officer, while imposing the punishment of dismissal of the workmen.

3. Thereafter, an appeal was filed before the Tribunal for setting-aside the impugned dismissal order seeking reinstatement, back-wages and continuity of services, etc. The Tribunal by the impugned order set aside the enquiry report had directed the petitioner to reinstate the workmen with 50% backwages from 01.02.2001 till the date of reinstatement along with continuity of services and all other retirement benefits. Aggrieved by the same, the Management has filed the present petition.

4. Shri. Kasturi, the learned senior counsel appearing on behalf of the petitioner's counsel contends that the impugned order is bad in law and liable to be set-aside. That the Tribunal committed an error in misreading the evidence on record. That it failed to appreciate the material on record. That the Tribunal was misguided by the acquittal of the respondents. That the acquittal would not be a bar to a departmental enquiry. The findings recorded by the Enquiring Officer are just and proper. That the Enquiring Officer has considered all the material on record. Therefore, he pleads that the award of the Tribunal be set-aside by confirming the order of the Enquiring Officer, dismissing the workmen from the services.

5. Reliance is placed on the following judgments:

- (i) The Deputy Inspector General of Police and Another Vs. S. Samuthiram,
- (ii) Kuldeep Singh Vs. State of Punjab and Others,
- (iii) Deputy Inspector General of Police and Another v. S. Samuthiram, (supra).
- (iv) Avinash Sadashiv Bhosale (D) Thr. L.Rs.. Vs. Union of India (UOI) and Others,
- (v) Union of India (UOI) Vs. T.R. Varma,

6. On the other hand Shri. A.J. Srinivasan, the learned counsel appearing for respondent workmen defends the impugned order. He contends that there is no error committed by the Tribunal that calls for interference. That the contentions of the petitioner are unsustainable. That the evidence of the Management witnesses are not sufficient to implicate the respondents. So far as the commission of theft is concerned, the facts would narrate that they were summed to the Police Station wherein theft confession statements were recorded. That such a confession statement is sought to be held against the respondent - workmen. That they were forced to sign the confession statement, which they have stated before the Enquiring Officer. That the evidence as led in by the Management does not inspire any confidence. That the evidence can be

considered as hearsay. That there is no direct evidence led-in by the Management, that would implicate the workmen of the charges leveled.

7. In support of his case, he relies on the following judgments:

- (i) G.M. Tank Vs. State of Gujarat and Another,
- (ii) Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another,
- (iii) Roop Singh Negi Vs. Punjab National Bank and Others,
- (iv) Nand Kishore Prasad Vs. State of Bihar and Others,
- (v) Bareilly Holdings Ltd. Vs. Their Workmen,
- (vi) The State of Haryana and Others Vs. Ram Chander,
- (vii) Colour-Chem Limited Vs. A.L. Alaspurkar and Others,

8. Heard learned counsels and examined the records.

9. An enquiry report was submitted with respect of each one of the four workmen. The enquiry report appears to be on identical terms, so far as all the workmen are concerned. The same is not seriously disputed by either of the learned counsels. The Enquiring Officer while considering the evidence and the material was of the view that the charges framed against the workmen have been proved and that they are guilty of misconduct.

10. The charge against the workmen was one of theft. That the workmen had stolen 4 jack hammers, 17 drilling rods and 53 meters of housing pipe of the petitioner company. That the police recovered the same. Having recovered the same and on a FIR being filed pursuant to the seizure, the workmen were charged for offences punishable under Sections - 457 and 380 of the Indian Penal Code. The learned JMFC by the order dated 09.09.1997, acquitted the workmen.

11. The Enquiring Officer considered the evidence led-in by the petitioner. The evidence of four management witnesses were led-in in support of their case. The first evidence is that of Mr. B.A. Sharif, who was working as a Security Officer. He has stated in his evidence that he knows the workmen. That he is aware that the incident of theft took place in their company. That one Shekar informed him about the theft of 4 jack hammers, 17 drilling rods and 53 meters of housing pipe and on coming to know of the theft, he in turn informed the same to the General Manager of the company. No complaint was lodged to the Police on the ground that the police may harass innocent workmen. However, they continued their investigation. That even after the expiry of one year, since the same was not traced, a watch was kept on the activities of the drivers. The security guard Mr. Venkatanaik, informed him that the drivers were talking in a state of intoxication about the stolen hammers at a brandy shop in the bus-stand. A telephone message was received from Sandur Police Station and when he went to the police station, he was asked to identify the stolen property. He saw five

drivers of their establishment, namely, the workmen and another. He also saw 4 jack hammers, 17 drilling rods and 53 meters of housing pipe of the petitioner company. The Police Inspector asked him to bring the concerned staff, as they have to give their statement regarding identification of the stolen property. Therefore, on 19.07.1997, he took Mr. Shekar foreman and two drivers to identify the stolen property and gave a statement, identifying the same. He obtained a copy of the same and other details of the documents and thereafter submitted a detailed information to the General Manager. On the basis of this report, the Management initiated disciplinary proceedings on the respondents and others. That the value of the stolen property is about Rs. 1,05,000/-. Original documents were produced in the case enquiry of one Mr. J. Babu, namely, another workmen and various documents were marked as Exhibits. So far as the enquiry is concerned, the security officers report of the investigation, the copy of the FIR, the statement of identification of the stolen property, panchanama, the statement of the workmen at Exhibit-M9 namely, their confession statement, the Xerox copy of the news portion reported in Prajavani, the standing orders of the company, the Enquiring Officer appointment letter was marked by this witnesses. There was no serious cross-examination so far as this witnesses is concerned.

12. The next witnesses is J. Shekar. He has stated that he has been working as a foreman with the petitioner since the previous nine years. He has stated that the first instance of theft was found on 04.07.1996, while they were checking the stock. He sent a report to the General Manager and also informed the same to the Security Officer. That for almost a year there was no progress in the investigation. On 17.06.1997, when he was again checking the stock, he found that some more material/goods were missing. He found 4 jack hammers, 17 drilling rods and 53 meters housing pipe were missing. He reported the same to the General Manager and to the security officer. That he came to know that the company drivers were arrested along with the stolen property by the Sandur Police on 19.06.1997. He and the other staff went to the police station and identified the stolen properties, where he saw the workmen in the police station. The report sent by him, the documents marked in the enquiry of J. Babu, the register book pertaining to the tractor, the jack hammers register pertaining to all the jack hammers were marked as exhibits. There is nothing worthwhile in the cross-examination, that could shake the evidence of this witnesses.

13. The third witness is Mr. Dhananjaya, who has stated that he was working with the petitioner company for the past 18 years as a Store Officer. In his evidence he has marked the documents as produced in the case of J. Babu. No cross-examination was conducted. He deposed about the value of the said material.

14. The next evidence is that of Mr. Venkatdas who has stated that he was working for the previous 20 years in the petitioner company as a security guard. That the security officer informed him about the theft of the material and asked

him to investigate and find out the said material. But he could not do so. As directed by the Security Officer, he kept a watch on the suspected persons. He had been to Sandur where he saw some drivers in a brandy shop near the bus-stop. He heard these drivers talking about the jack hammers of the company. He suspected Malliappa. He called him to his house and asked him about the material. The said Malliappa told him that he does not know anything about the material, but he would find out the material and would give information about the same. Not being confident about what Malliappa told him, he went to the native place of Malliappa. He saw Malliappa's son quarrelling with Malliappa. When he asked as to why they were quarrelling, Malliappa's father told him that his son had witnessed the tractor drivers bringing the stolen materials from the company and therefore was asked not to tell anybody and he will pay Rs. 5,000/- for retaining the secret. That such an amount was not paid. Therefore, they were quarrelling. Malliappa's father also stated that Venkatesh, Penchalayya, J. Babu, Narayan namely the other respondents were coming to the house of Malliappa.

15. On considering the evidence and the material on record, the Enquiring Officer held, that the workmen have stated with reference to the physical and mental torture meted out to them. That on the first occasion in the reply to the charge-sheet, they have pleaded that the confession statement made by them has been obtained by force. However, the plea with regard to physical and mental torture was not raised by them at the earliest when they were produced before the criminal court. That for the first time before the Enquiring Officer, such a plea was taken by the workmen. The Enquiring Officer considered the evidence placed before him on two categories, direct evidence, as well as circumstantial evidence. By considering the evidence as well as the material, he was of the view that the Management has established its case. That the evidence would show that the four tractor drivers committed theft of the material belonging to the company. That the evidence of the management would clearly show that the workmen were guilty of the offences alleged against them. It was of the view that, the plea of the management that the complaint was not lodged immediately on the ground that the drivers would be harassed requires to be accepted. That in order to avoid unnecessary harassment to the innocent drivers a complaint was not filed. That in the charge-sheet vide Exhibit-M-15, the date of the first theft was mentioned as 04.07.1997, whereas the proved facts are that it was on 03.07.1996 the material were found missing. That such a minor omission does not shake the entire case of the management. That the first theft took place on 03.07.1996 but the material were recovered on 17.06.1997 namely, after almost a year by the Sandur Police. The confession statement which was marked as Exhibit-M9 would indicate that the workmen have stated that it was they who have committed the theft. That the period between the theft and recovery could not be considered as being delayed. On considering the confession statement, the Enquiring Officer was of the view that the reasoning assigned by the workmen that it has been obtained by force by using physical and mental torture was not substantiated by any material. The same would have to be considered as

the truth and a statement made by them. That such a plea of physical and mental torture was not raised by them when they were produced before the Magistrate. That was when they had an occasion to state whether such a statement had been obtained by force or otherwise. However, that was not stated before the Court. It was only for the first time in the reply to the charge-sheet that they have stated that their statement is as a result of mental and physical torture. Hence, the retraction or otherwise was not accepted by the Enquiring Officer. Even otherwise, the Enquiring Officer was of the view that strict rules to procedure or otherwise would not be applicable to proceedings as this. Consequently, it held that the material and evidence on record would show that the charges leveled against the workmen were proved. That the action of the workmen would amount to misconduct.

16. The disciplinary authority by its order dated 06.01.1999 dismissed the workmen from service. The dismissal orders were challenged before the Labour Court, u/s - 10(4-A) of the Industrial Disputes Act, 1947. Thereafter on the ground of jurisdiction, they withdrew the disputes and then raised the dispute before the ALC (Central), the Conciliation Officer, Bellary and the conciliation proceedings ended in a reference being made to the Industrial Tribunal-cum-Labour Court.

17. The Tribunal by the impugned order directed the management to reinstate the workmen with 50% of the backwages from 01.02.2001 till the date of reinstatement with continuity of service and all other attendant benefits. Aggrieved by the same, the management has filed the present petition.

18. The entire reasoning of the Labour Court in reversing the finding of the Enquiring Officer are at para Nos. 14 and 15 of its order.

19. In para - 14 of its order, it held that the police officer who is said to have seized the stolen property was not examined before the Criminal Court. Therefore, the recovery of the property could not be substantiated. The punch witnesses for the recovery Sri. Venkata Naik and Sri. Raja Naik were examined as PW-2 and PW-3 before the JMFC Court. The judgment of the JMFC Court would state that PW-2 and PW-3 have turned hostile and they have denied that the police have seized the articles from the possession of the accused. Therefore, in view of the principles as laid down in Paul Anthony's case and since the criminal court has acquitted the workmen and such an acquittal is a honorable acquittal, the Management is not justified in maintaining the impugned punishment.

20. The Tribunal, considered the evidence of the witnesses examined before the Enquiring Officer. It was of the view that none of the witnesses speak against the workmen connecting them with the alleged theft. It held that the Enquiring Officer committed an error in relying on this evidence. Therefore, it reversed the findings of the Enquiring Officer.

21. The first reasoning of the Tribunal is based on the acquittal of the workmen

and the judgment in Capt. M. Paul Anthony v. Bharat Gold Mines Limited (supra) case. The judgment in Capt. M. Paul Anthony v. Bharat Gold Mines Limited (supra) case is with reference to the veracity of the Departmental Enquiry in the face of an acquittal before the criminal court. However, the subsequent judgment of the Hon''ble Supreme Court reported in case of Avinash Sadashiva Bhonsle v. Union of India (supra), the judgment in Capt. M. Paul Anthony v. Bharat Gold Mines Limited (supra) case was considered and so also the judgment relied upon by the learned counsel for the respondent reported in case of Roop Singh Negi v. Punjab National Bank And Others (supra). In considering these judgments, the Hon''ble Supreme Court held at para - 44, as follows:

44. This Court recently reiterated the legal principle that departmental proceedings can be conducted simultaneously to the criminal trial in the case of Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao (supra). In this case, making reference to almost all the previous precedents, this Court has reiterated the legal position as follows:

- (a) There is no legal bar for both proceedings to go on simultaneously.
- (b) The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of facts and law.
- (c) Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.
- (d) Departmental proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common.

22. The evidence and other material would have to be considered as to whether they are identical in the same set of facts, same evidence, etc. To hold that the acquittal is sufficient for closure of the departmental enquiry cannot be accepted. The law as laid down in the aforesaid judgment would necessarily stand applicable on all fours to this case. Therefore the judgment relied upon by the respondents in G.M. Tanks v. State of Gujarat (supra) case and Capt. M. Paul Anthony v. Bharat Gold Mines Limited (supra) case would be of no help to them.

23. It is the further case of the workmen that they have been honorably acquitted. That honorable acquittal would mean that the prosecution has failed to make out any case against them. That the workmen have been honorably acquitted and therefore the same should have an appropriate bearing so far as the departmental enquiry is concerned.

24. On the other hand, the learned counsel for the petitioner relies on the judgment reported in case of Deputy Inspector General of Police and Another v. S. Samuthiram (supra) case, wherein the Hon''ble Supreme Court while

considering the judgment in AIR 1994 552 (SC) held at para 24, as follows:

24 ... that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honorable. The expressions "honorable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It difficult to define precisely what is meant by the expression "honorably acquitted". Millen the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges leveled against the accuse, it can possibly be said that the accused was honorably acquitted.

Further Para - 26 reads as follows;

... if an employee is honorably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceedings is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient.

25. On following this judgment, I'am of the considered view that the said principles, would be directly applicable to the case on hand. The onus of proving the guilt in a criminal case is on the prosecution. The Management has no role to play, except to support the prosecution through evidence, if called upon to do so. If the prosecution fails to establish its case beyond reasonable doubt, then the workmen would be acquitted. But it cannot be said that the management has failed to prove the workmen guilty. That such an order of acquittal would be passed, not because of the inaction of the management but because of the failure of the prosecution to prove its case. The conviction or the acquittal is never in the hands of the management. It is in the hands of the prosecution. Further, so far as the departmental enquiry is concerned, the enquiry is quite different from the one before the Criminal Court. It is the management therein which has to establish its case against the workmen. If they would have to succeed, it would be based on the material and the evidence they lead. Therefore, the proceedings before the criminal court cannot by itself determine a departmental enquiry.

26. No doubt such an order of a criminal court would have to be considered. Even if it is held to be a honorable acquittal, it would not absolve the workmen of all further disciplinary proceedings. Therefore, I'am of the considered view that the acquittal of the workmen would not by itself render the workmen to succeed in the departmental enquiry.

27. Further, the Tribunal was of the view that the evidence of the management

witnesses cannot be accepted. That none of the witnesses implicate the workmen. That the evidence does not lead to the fact that there is a direct nexus between the workmen and the theft.

28. However, the evidence of MW-4 would speak of the events that occurred. MW-4 has stated among other things that his officer instructed him to keep a watch on the suspected drivers. Therefore, he went to Sandur by following them. He has stated that he was told by his superiors to keep a watch on the suspected drivers. He accordingly went to the Brandy shop near the Sandur bus-stand and Malliappa was also there. Malliappa is one of the respondents in this case. The next day he took Malliappa to his house. Malliappa told him that he does not know about the theft. That he will find out the stolen Jack Hammers and give information about the same within 3 days. Suspecting his statements he went to Yeshwantnagar, which is the native place of Malliappa. He law Malliappa's son quarrelling with Malliappa. He asked as to why they were quarrelling. Malliappa's father told him that his son had witnessed the tractor drivers bringing the stolen materials from the Company and therefore was asked not to tell it to anybody for which he will pay a sum of Rs. 5,000/- for retaining the secret. Based on this evidence the learned counsel for the workmen contends that such evidence cannot be accepted. Firstly this statement by this witness would narrate that he saw some drivers in the brandy shop. He does not narrate that he saw the particular workmen in the brandy shop. The only workmen he saw there was Malliappa. Therefore to implicate the workmen purely on the basis of this statement is inappropriate. The further part of the evidence that he went to Malliappa's house and there Malliappa told him that his son witnessed the tractor driver bringing the stolen materials etc., is a hearsay evidence. That what was told to the witness is what he actually saw or heard. He was told by Malliappa of an incident which Malliappa had witnessed in the past. Therefore this constitutes a hearsay evidence which is not admissible. He relies on the judgment reported in Full Bench, in the case of *The State of Haryana and others v. Ram Chander* (supra), with reference to para - 4 which reads as under:

4 ...Even though the Tribunal is not bound by formal rules relating to procedure and evidence, it cannot rely on evidence which is purely hearsay, because to do so in an enquiry of this nature would be contrary to rules of equity and natural justice.

29. On the other hand, the learned counsel for the petitioner disputes the same. By placing reliance on the Judgment in the case of *State of Haryana and Another Vs. Rattan Singh*, wherein it was held as follows:

4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking

not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rule of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passenger who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The "residuum" rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular court proceedings but in a fair common sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because in support of a finding is certainly available for the court to look into because of it amounts to an error of law apparent on record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, in some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.

It is therefore contended that it is not hearsay evidence and consequently the credibility of the witness should be accepted and the statement should be considered.

30. The evidence would clearly show that the witness has seen some of the drivers. He has not seen the petitioners herein except for Malliappa. Therefore to that extent to hold that the management have established through this evidence that all the workmen are guilty of the offence would be incorrect. The further case is that his father told him that he was carrying the stolen goods in the tractor. Even if the statement were to be considered as direct evidence and not hearsay evidence the same may at the most implicate Malliappa and not the other workmen. So far as the credibility of this witness is concerned, I am of the considered view that the evidence to this extent as narrated by him would not lead to the conclusion that the workmen could be implicated. Therefore, the reasons assigned by the Tribunal, far as this issue is concerned, is appropriate.

31. Reliance is sought to be placed by the petitioner on the confessional statement made by the workmen before the concerned police. The management have marked the confessional statement through their witnesses. The same is borne out from the records as could be seen from the evidence of the management witnesses. However, the same is disputed by the respondents

counsel. He contends that the documents were produced and marked by the Enquiring Officer. That such documents have not been marked through their witness. Therefore there is no marking of the document. It is a contention that it is incapable of being accepted. There is a difference between the marking of a document and proving the document. What has been shown through the evidence of the witness is that the document has been marked. The document necessarily has to be proved. Whether that has happened or not is a subsequent consideration. The fact of the matter remains that the document has been marked.

32. It is his further contention that mere marking of a document is not sufficient to prove the document. That the person who is the author of the document alone who should mark the document. In the instant case, the document has been marked by the witnesses for the management.

33. What is sought to be marked is the confessional statement of the workmen. When such a document has been marked it was well within the knowledge of the workmen. There is no effort made by him to dispute it in the cross-examination. There is nothing worthwhile in the cross-examination that requires to be considered. Therefore to contend that the document has been wrongly marked or inappropriately marked cannot be accepted.

34. In support of his case the petitioner's counsel relies on the Judgment in the case of Bareilly Electricity Supply Co. Ltd., v. The Workmen and Others reported in (supra) wherein specific reference is made to para.-14, which reads as follows:

14 ... But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are sub to cross-examination by the party against whom they are sought to be used. When a document is produced in a Court or a Tribunal the question that naturally arises is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balance-sheet and profit and loss account of the Company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice are also according to the procedure under Order XIX CPC and the Evidence Act both of which incorporate these general principles. Even if all technicalities of the Evidence Act are not strictly applicable except in so far as Section 11 of the Industrial Disputes Act, 1947 and the rules prescribed therein permit it, it is inconceivable that the Tribunal can act on what is not evidence such as hearsay, nor can it justify the Tribunal in basing its award on

copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them, if they are alive and can be produced.

35. On the other hand, reliance is placed by the respondents on the judgment of the Hon'ble Supreme Court reported in the case of Roop Singh Negi v. Punjab National Bank and Others (supra), with reference to para - 14, which reads as follows:

14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceedings. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIT" which could not have been treated as evidence.

36. At para - 21 of the aforesaid judgment a portion of the judgment of M.V. Bijlani v. Union of India was extracted, which reads as follows:

25 ... Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof...

37. Further, reliance is placed on para - 23 of the said judgment, which is as follows:

23. ... The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

38. Therefore, it is contended that the absence of examining the police officer cannot be taken advantage of by the management. That the confessional statement requires to be spoken of and the same has not been done.

39. I have considered the contentions as well as the Judgments in support of the case. In Bareilly Electricity Supply Co. Ltd., v. The Workmen (supra) case the Hon'ble Supreme Court held that no material can be relied upon to establish a

contested fact which is not spoken of by persons who are not competent to speak about and subjected to cross-examination by the party against such material is relied upon. What was considered by the Supreme Court was the reliance placed therein of a document on which the delinquent was not aware of. That such a document was relied upon by the management against the workmen. It is under these circumstances the finding was recorded. Therefore it was held that when the letter or other document is produced to establish facts which are relevant to the enquiry the representative or his affidavit in support thereof is to be filed and an opportunity afforded to the opposite party to challenge this fact. In the instant case, what has been considered is not a letter or a document or any other material which is in exclusive possession of the management to which the workmen were not aware of. It is not a new document that the enquiry officer considered. Firstly the document was marked for consideration and there is no worthwhile cross-examination with regard to the same. Secondly and more importantly the document relied upon is a commissional statement. It is a statement made by the workmen. It is he who is the author. It is he who has signed to it. It is he who has made that statement. The relevancy or dependency of such a confessional statement would be considered in the latter part of the Judgment, but to apply the Judgment in Bareilly Electricity Supply Co. Ltd., v. The Workmen (supra) case holding that the author of such a letter or such a document is required to produce his evidence is gross opposite to the facts of this case.

40. The Judgment in Roop Singh Negi v. Punjab National Bank (supra) case in was collected through investigation by the investigation officer against the accused. No witness was examined to prove the said document. The management witness tendered the documents and did not prove the contents thereof. Hence, the same was frowned upon. However, herein, the confessional statement is admittedly relatable to the criminal case or otherwise. It is not a document or an investigation, that has been conducted or a presumption to be arrived at. It is known to the respondents. It is not an alien document. It is his very own document. He is the author of the document. It is not a result of an investigation that such a document has surfaced. It is the confessional document. It is not the document which has arisen because of the investigation by the prosecution. Therefore the relevancy in para-14 of the Judgment, cannot be made applicable to the facts of the case. That apart, at para 21 of the Judgment where the Judgment of M.V. Bijlani v. Union of India (supra) case was extracted wherein it was held that the enquiry officer performs a quasi judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges. That he cannot take into consideration any irrelevant facts, etc. There is no quarrel that this proposition of law stands applicable to the case on hand. In para-23 it was held that the decision must be arrived at on the basis of some evidence which is legally admissible. The provisions of The Evidence Act may not be applicable to the departmental proceeding but the principles of natural justice are. Suspicion

cannot outweigh legal proof. Hence this pronouncement by the Hon''ble Supreme Court is in favour of the petitioners case.

41. However, the learned counsel appearing for the respondents would narrate that even in *Roop Singh Negi v. Punjab National Bank and Others* (supra) case what was relied upon is the confessional statement made by the workman therein. He relies on para-14 in *Roop Singh Negi v. Punjab National Bank and Others* (supra) case wherein the Hon''ble Supreme Court relied upon the confession made by the parties. The Hon''ble Supreme Court considered the fact that the evidence that was available before the Criminal Court and the evidence that was available in the departmental enquiry were one and the same. Therefore when the accused were acquitted on the basis of the evidence produced before the Criminal court the workmen cannot be held to be guilty in the departmental enquiry on the same set of evidence. However, as noted hereinabove 4 witnesses were examined by the Prosecution before the Criminal Court. Three witnesses are not the witnesses in the departmental enquiry. Their evidence is different from the evidence as led in by the management in the departmental enquiry. Therefore, the reasoning of the Hon''ble Supreme Court with regard to the similarity of the evidence in the Criminal Court and the departmental enquiry would not come into play in the facts and circumstances of this case. Tilt facts and circumstances of this case so far as issue of evidence is concerned are totally different from the Judgment of the Hon''ble Supreme Court.

42. The relevancy of this document is that it was a confessional statement. What is sought to be contended is that the confessional statement was obtained by threat and coercion. That they were forced to sign on this document. Therefore they seek to retract from the same. The retraction is also an opportunity given to the witness so far as his evidence is concerned. He could retract from the statements made or he could even contend that the same is obtained by fraud, threat or coercion.

43. The Supreme Court has time and again stated that the Rules of Evidence, CPC and Code of Criminal Procedure are not strictly applicable to proceedings under the Industrial Disputes Act. It is the rules of natural justice that would prevail. The workmen themselves have given the statement before the police that they have committed the offence. They admit to the offence that they have committed. Should law be interpreted to mean that when an accused himself has pleaded guilty, the management should still prove that he is guilty. It is not so. When the matter is taken up for consideration before a Criminal Court necessarily the veracity of the plea of the workmen that the statement has been recorded by threat, coercion or otherwise requires to be considered, vis-a-vis the Evidence Act. If the rigorous of the Evidence Act are brought into play into the departmental proceedings necessarily the contention of the respondents requires to be appreciated in its full force. But that is not the purport of the law. The application of these acts has been excluded. It is the liberty of the Tribunal to deal with the same purely under the Rules of natural justice. The Rules of natural

justice when applied would stand against the contentions of the respondents. Here is a case where even after a period of one year there was no progress in the investigation. The stolen-goods are not recovered and nothing worthwhile came out of the investigation. The workmen had given their confessional statement. They have stated that they have committed the offence. When they were produced before the Magistrate no such plea was taken by them that it was obtained by threat or by coercion. The workmen on the very first occasion after recording of such a statement, should have brought it to the notice of the JMFC. They have failed to do so. Therefore in not-applying the Rules of Evidence Act or the Code of Criminal Procedure but in applying the basic rules of natural justice one could firmly say that the confession sought to be retracted, cannot be accepted. In proceedings wherein the Law of Evidence and the Criminal Procedure Code are directly applicable then such a defence could be taken and it would necessarily have to be considered by the Court. Even if it is to be construed as a statement made by the accused during the course of investigation such a retraction can be made only in accordance with law. Such a retraction has to be made during the course of the proceedings before the Court. However, in the instant case it has not happened. The workmen have retracted from the statement only before the Enquiring Officer. Therefore, in the facts involved herein, it is not a statement that has been retracted in terms of law before the Magistrate. It is a retraction that is sought to be made only before the Enquiring Officer. Therefore the finding of the Enquiring Officer that the confession statement relates to the guilt of the workman requires to be accepted. Even as held by the Hon"ble Supreme Court in *Roop Singh Negi v. Punjab National Bank and Others* (supra) case, it is not a report of the Enquiring Officer which is based on mere *Ipsi Dixit* and surmises and conjectures. The finding of the Enquiring Officer is based on the confession of the accused themselves. Hence, the finding requires to be sustained.

44. Reliance is also placed by the petitioners on the judgment reported in the case of *Kuldip Singh v. State of Punjab and Others* (supra), with reference to Para - 10, to contend that the Hon"ble Supreme Court following the observations of the judicial committee of the Privy Counsel reported in 1955 AC 197, which has been approved by the Hon"ble Supreme Court in the case of *Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others*, held as follows:

The test to be applied, both in civil and in criminal cases, in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the Court is not concerned with how it was obtained.

The reliance is justified and applicable herein.

45. What is of importance that requires to be considered is the fact that the confessional statement as has been reiterated by the respondents is not a statement recorded in terms of Section 164 of Cr.P.C. It is a statement recorded during the course of investigation. It is a statement made u/s 161 of the Cr.P.C. Therefore before the Criminal Court the workman/accused should have

necessarily stated with regard to their statement in the statement that is sought to be recorded u/s 313 of the Cr.P.C. There is no material forthcoming with regard to their statement made u/s 313 of Cr.P.C. It is at this stage that the workmen/accused would have stated with regard to the statement made u/s 161 and as to whether it was obtained under pressure or coercion. Under these circumstances when there is no material to show the statement of the workmen/accused u/s 313 of Cr.P.C. and when such a plea has not been taken before the Criminal Court, it is not possible to hold that the statement has been obtained by threat or coercion. It is unacceptable.

46. It is specifically contended by the learned counsel for the respondents that there is no marking of the document. He contends that such a document was not confronted to any one of 4 workmen. The least that the Enquiring Officer should have done is to accost the workmen with this document and they should be asked with regard to the document. It is the further case of the respondents that the document was not confronted to them. The case of the petitioner is that the document was marked. That the workmen were well aware of the documents that they intended, to confront to the witnesses. That if the witness intended to have his say on the same he should have done so at the stage of cross-examination.

47. I have heard the learned counsels on this issue. Even if the contention of the respondents were to be accepted that the document was not confronted, in law he was given an opportunity to cross-examine the witnesses with regard to the same. That is the stage at which an opportunity is given. When he knows that the document has been marked assuming that his contention were to be accepted that he is innocent of marking in the presence of Enquiring Officer, it is for these reasons that he has been given an adequate opportunity to cross-examine their witnesses. He has failed to do so. It is at this stage that he should have questioned not only this document but any of the other documents that he found to be doubtful or otherwise. He has failed to do so. It therefore presupposes that it is not a case where the document was not confronted to him and therefore he was not aware of it, rather a presumption that he was aware that his confessional statement was recorded and that he was aware that it was being marked. Therefore the submission that it was not fronted to him notwithstanding the fact that it was marked cannot be held in favour of the respondents.

48. At this stage the learned counsel for the petitioner relies on the proceedings before the Enquiring Officer which would narrate that the documents that were marked were physically shown to the workmen. That the Enquiring Officer had asked the workmen whether he requires any of the documents that are sought to be relied upon by the Management which were shown to him. That these documents included the confessional statement. That the workmen stated that they do not require any of the documents. Hence, it is contended by the petitioner's that the plea of the respondents of not being aware of the

documents not being confronted is incorrect and opposed to the records.

49. Further, reliance is also placed by the petitioners on the judgment reported in the case of Union of India (UOI) Vs. T.R. Varma, which reads as follows:

no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act, but that Act has no application to enquiries conducted by Tribunals, even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decisions is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a court of law. Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed.

50. The rules of natural justice are followed. The document has been shown. They did not even want a copy of the same. Hence, they cannot now plead that the Evidence Act has not been followed.

51. Coming to the similarity between the Criminal case and the departmental enquiry, the Judgment in the Criminal Court would throw light on the same. Even so far as the witnesses examined in the Criminal Court are concerned there were four witnesses. None of these witnesses except PW-4 constitute the witnesses before the Enquiring Officer. P.W. 4 is the only common witness between the Criminal case and the departmental enquiry. Therefore to hold that the material evidence are one and the same so far as witnesses are concerned cannot be held in favour of the respondents. On considering the same I'am of the considered view that this is a perverse finding recorded by the Tribunal. The reasons assigned by the Tribunal by reversing the finding of Enquiry Officer cannot be sustained.

52. So far as issue of loss of confidence is concerned, the learned counsel for the petitioner contends it is because of misconduct they have lost confidence. Having committed these acts against the management, no relief could be granted. He relies on the judgment in the case of L. Michael and Another Vs. Johnson Pumps Ltd., with reference to para - 19, which is extracted hereunder, to contend that the loss of confidence is often subjective feeling or individual reaction to an objective set of facts and motivations.

19. . . . loss of confidence is often a subjective feeling or individual reaction to an objective set of facts and motivations. The Court is concerned with the latter and

not with the former, although circumstances may exist which justify a genuine exercise of the power of simple termination.

53. Reliance is placed by the respondents on the judgment of the Supreme Court reported in the case of Nand Kishore Prasad v. State of Bihar and Others (supra), with reference to para - 18 which reads as follows:

18 ... Suspicion cannot be allowed to take the place of proof even in domestic inquiries. As pointed out, by this Court in Union of India (UOI) Vs. H.C. Goel, "the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules".

54. Reliance is also placed by the respondents on the decision of the Hon'ble Supreme Court in the case of Colour Chem Limited v. Alaspurkar A.L. and Others (supra), by relying on para-14 which reads as follows:

14 ... Thus if a person is made to suffer by some exceptional treatment it would amount to victimization. The term "victimisation" is of comprehensive import. It may be victimization in fact or in law. Factual victimization may consist of diverse acts of employers who are out to drive out and punish an employee for no real reason and for extraneous reasons.

55. I have considered the judgments and the contentions advanced. I am of the considered view that this is a case where there is absolute loss of confidence. When the respondents have indulged in such acts, it would be impossible to conclude that the petitioner would continue to have any confidence in the workmen. Substantial investigation has been carried out. A fair enquiry is held. A confession is made. Therefore, I am unable to accept the contention of the respondents on this issue.

56. At this stage, the learned counsel appearing for the respondents submits that the respondents are all aged 58 years. That one of them has just retired. At this advanced age the Court may take a lenient view and grant compensation to them. However, Sri Leelakrishna, the learned counsel appearing for the petitioner submits that notwithstanding the result of this petition, he is willing to consider the case of the respondents purely on grounds of compassion. He submits that no proceedings would be initiated for recovery of any of the amounts paid to the respondents. No proceedings would be initiated so far as payment of gratuity and related matters are concerned. That in addition he will make a payment of Rs. 50,000/- to each one of the four workmen-respondents. His submission is noted. For the aforesaid reasons, the Writ Petition is allowed. The common award dated 8-6-2007 passed by of the Central Government Industrial Tribunal Cum Labour Court, Bangalore in Central Reference Nos. 8 to 11/2002 is set aside. The order of the Enquiring Officer is upheld.

Rule made absolute.