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**(2001) 02 DEL CK 0002**  
**In the Delhi High Court**  
**Case No : C.W.No. 569 of 1997**

Shri Kishan Chand

APPELLANT

Vs

M/s Swatantra Bharat Mills and others

RESPONDENT

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**Date of Decision :** 13-02-2001

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 11

**Citation :** (2001) 02 DEL CK 0002

**Hon'ble Judges :** Dr. M.K. Sharma, J

**Bench :** Single Bench

**Advocate :** Mr. G.K. Srivastava, for the Appellant; Mr. Harvinder Singh, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Dr. Mukundakam Sharma, J.—This writ petition is directed against the award passed by the Presiding Officer, Labour Court No. 1, Delhi in I.D. Case No. 549/1991.

2. A domestic enquiry was instituted against the petitioner and a charge sheet was issued to him. On completion of the aforesaid domestic enquiry the Enquiry Officer submitted his report contending inter alia that the petitioner/workman is guilty of the charges leveled against him. The management, upon receipt of the aforesaid enquiry report considered the same as also the service record of the petitioner and passed an order dismissing the petitioner from service. A reference was sought by the petitioner, in view of the aforesaid dismissal from service and on the basis of the same the dispute was referred on the following terms for consideration of the Labour Court:

"Whether the dismissal of service of Shri Kishan Chand is illegal and/or unjustified, if so, to what relief is he entitled to and what directions are necessary in the aforesaid respect?"

3. During the course of the aforesaid reference learned Presiding Officer,

Industrial Tribunal examined as to whether the domestic enquiry was proper and fair or not. He considered the evidence on record filed by the parties and thereafter came to the conclusion that the enquiry was conducted fairly and properly by the Enquiry Officer and that the findings were not perverse and Therefore, there was no violation of the principles of natural justice. He also held that the punishment awarded to the petitioner is not disproportionate to the offence alleged. Being aggrieved by the said order the present writ petition is filed.

4. Counsel appearing for the petitioner submitted that it was incumbent on the part of the Industrial Tribunal to receive fresh evidence even to consider as to whether the enquiry conducted against the petitioner was fair and proper or not. He submitted that no such opportunity was given to the parties and Therefore, the conclusions arrived at are illegal and in violation of the principles of natural justice. He further submitted that since the Industrial Tribunal failed to come to an independent assessment in respect to the enquiry conducted against the petitioner the said conclusions are vitiated and are liable to be set aside.

5. The aforesaid submission of the counsel appearing for the petitioner was refuted during the course of his arguments by the learned counsel for the respondents. He submitted that the order of the learned Presiding Officer is supported by the decision of the Supreme Court in the case of *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, . In the aforesaid decision the Supreme Court has held that if no enquiry is held or if the enquiry held is defective then even u/s 11-A of the Industrial Disputes Act, the employer can adduce evidence for the first time before the Industrial Tribunal but in that case the Tribunal has to be satisfied about the guilt of the workman. It was further held that if proper enquiry is made then the Tribunal will have to give more cogent reasons for not accepting the view of the employer and the employer will also escape the charge of having acted arbitrarily or malafide and it would conduce to harmonious and healthy relationship between employers and the workmen.

6. It is an admitted position that in the present case a domestic enquiry was held. Therefore, it was necessary for the Industrial Tribunal to find out and come to a conclusion whether the enquiry held was in any manner defective and improper. For coming to the aforesaid conclusion the Tribunal has considered the records placed before it including the evidence adduced by the parties. On appreciation thereof the Tribunal has come to the definite conclusion that the domestic enquiry conducted against the workman was fair and proper and that the findings are not perverse. Although an allegation has been made that the workman was not allowed to lead evidence in defense in the domestic enquiry, it transpires from the record that the workman himself had refused to make a statement which led the enquiry officer to close the proceedings. The aforesaid position has been taken notice of by the learned Presiding Officer, Industrial Tribunal. Since on appreciation of evidence on record the Industrial Tribunal

came to the conclusion that the enquiry was conducted fairly and properly this court cannot sit as an appellate court over the aforesaid conclusion of fact arrived at by the Tribunal unless the same could be shown as perverse. This Tribunal has held that the findings of the domestic enquiry are also not perverse. Nothing contrary could be brought to my notice by the learned counsel appearing for the petitioner.

7. In the result, I find no merit in this petition and the same is dismissed but without costs.