Delhi Cloth & General Mills Co vs Ludh Budh Singh on 11 January, 1972

Equivalent citations: 1972 AIR 1031, 1972 SCR (3) 29, AIR 1972 SUPREME COURT 2128, 1973 3 SCC 189, 1972 LAB. I. C. 1276, 27 FACLR 25, 1973 (1) SCJ 673, AIR 1972 SUPREME COURT 1031, 1972 LAB. I. C. 573, 1972 3 SCR 29, 1972 2 SCJ 347, 25 FACLR 1, 41 FJR 42, 1972 (1) LABLJ 180

Author: C.A. Vaidyialingam

Bench: C.A. Vaidyialingam, Kuttyil Kurien Mathew

PETITIONER:
DELHI CLOTH & GENERAL MILLS CO.

Vs.

RESPONDENT:
LUDH BUDH SINGH

DATE OF JUDGMENT11/01/1972

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
MATHEW, KUTTYIL KURIEN

CITATION:
1972 AIR 1031 1972 SCR (3) 29
1972 SCC (1) 595
CITATOR INFO :
F 1972 SC2128 (14,19)
R 1973 SC1227 (25,33)
R 1975 SC1689 (11)
RF 1975 SC1900 (16,17,18)
F 1975 SC2025 (7)
R 1978 SC1380 (8)
RF 1979 SC1652 (23,26,27,28)
R 1984 SC 289 (15)
R 1984 SC1696 (7,8)

ACT:
Industrial Disputes Act (14 of 1947), ss. 10 and 33-Domestic enquiry by management-Jurisdiction of Tribunal to interfere with findings and consider additional evidence.

HEADNOTE:

An inquiry was held into certain allegations of misconduct against the respondent, who was an employee of the appellant, and the Enquiry Officer made a report holding that the allegations had been proved. The appellant accepted the report and decided to dismiss him. Since an industrial dispute between the appellant and its workmen was pending before the Industrial Tribnal, an application was made tinder S. 33 of the Industrial Disputes Act, 1947, to the Tribunal for permission to dismiss the respondent. Before the Tribunal neither party examined witnesses and the appellant relied only on the enquiry proceedings. After arguments, the Tribunal reserved judgment. The appellant, then filed ,in application praying that if the enquiry proceedings were found to be defective the appellant should be given an opportunity to adduce evidence to justify the action proposed to be taken. The Tribunal did not deal with the application but held that the enquiry proceedings had not been properly conducted and the findings of the Enquiry Officer were not in accordance with the evidence before him, and refused permission for dismissing the respondent.

Dismissing the appeal to this court,

HELD : (1) The Industrial Tribunal had to consider whether the appellant had made Out a prima facie case for the permission asked for, and for that purpose, it was justified in considering the nature of the allegations, the findings, and the evidence before the Enquiry Officer. The jurisdiction of the Tribunal in such matters is to consider whether the findings are such that no reasonable person would arrive ,it them on the materials before the Enquiry Officer, or, whether the findings were not supported by any legal evidence at all. If the Tribunal held that the conclusion arrived at by the Enquiry Officer conclusion not have been arrived at by a reasonable person, the Tribunal has jurisdiction to interfere with such a finding, on the ground that it is perverse. [38 C; 42 E-H; 43 A]

In the present case. (a) the fitiding against the respondent was 3-ccorded by the Enquiry Officer ignoring material admissions, by witnesses, in favor of the respondent. It is not a question of mere appreciation of evidence but really recording a finding contrary to evidence. [43 D]

(b) The Enquiry Officer found the respondent guilty of acts of violence from his mere presence in the crowd outside the promises of tile appellant. [43 F-F]

(c) The Enquiry Officer contrary to the rule of burden of proof, acid that ,since the respondent had not adduced any evidence in his defence it was not open to him to contend that he was not responsible for the acts of destruction and damage [43 F-G]

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Therefore, the Industrial Tribunal was justified in concluding that the appellant had not made out a prima facie

case. [44 A]
Delhi Cloth & General Mills Co. v. Ganesli Dutt and Ors. C.A. No. 982/67 Dt. 17-12-71, Martin Burn Ltd. v. R. N. Banerjee, [1958] S.C.R. 514, Lord Krishna Textile Mills v. Its Workmen, [1961] 3 S.C.R. 204 and Central Batik of India Ltd., New Delhi v. Shri Prakash Chand Jain, [1969]
1. S.C.R. 735, followed.
(2) In proceedings before the Tribunal either on a reference under s. 10 or by way of an application tinder s. 33 of the Act, the jurisdiction of the Tribunal is as follows :
(a) If no domestic inquiry had been held by the management or if the management makes it clear that it does not rely upon any domestic inquiry that may have been held by it, it is entitled straight away to adduce evidence before the Tribunal and justify its action The Tribunal is bound to consider that evidence on merits, and, in such a case it is not necessary for the Tribunal to consider the validity of the domestic inquiry. [54 G-H]
(b) If a domestic inquiry had been held, it is open to the management to rely upon it in the first instance, and alternatively, and without prejudice to its plea that the inquiry was proper, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management had, given up the enquiry conducted by it; and it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management were valid and proper. If the Tribunal is satisfied that the enquiry was properly held the question of considering the evidence adduced before it on merits does not arise. If the Tribunal holds that the enquiry was not properly held then it has jurisdiction to consider the evidence adduced before it by the management.
[55 A-D]
(c) When a domestic inquiry has been held by the management and the management relies on it, the management may request the Tribunal to try the validity of the domestic inquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal if the finding on the preliminary issue is against the management. In such a case if the finding on the preliminary issue is against the management. the, Tribunal will have to give the employer an opportunity to adduce additional evidence and also give a similar opportunity to the employee to lead evidence contra. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of before the proceedings were closed. the employer can make no grievance that the Tribunal did not provide for such an opportunity. [55 D-H; 56 A-C]
(d) If the employer relies only on the domestic inquiry and does not simultaneously lead additional evidence, or ask for

an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic inquiry and the finding recorded therein and decide the matter. It is not its function to suo moto give an opportunity to the management to adduce evidence before it to justify the action taken, [56C-E]

In the present case, the record of proceedings shows that the appellant filed the application for adducing further evidence after the proceedings before the Tribunal came to an end and judgement as reserved.

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The appellant did not ask for an opportunity when the proceedings were pending and hence, though the Tribunal did not deal with the application merits, it could not be said that the opportunity to which the appellant was entitled had been denied to the appellant. [57 B-G]

Management of Ritz Theatre (P) Ltd. v. Its Workmen, [1963]1 3 S.C.R. 61, State Bank of India v. R. K. Jain & Ors., C.A. No. 992/67 dt. 17-9-71, M/s. Bharat Sugar Mills Ltd. v. Shri Jai Singh & Ors. [1962] 3 S.C.R. 684 and Workmen of Motipur Sugar Factory (P) Ltd. v. Motipur Sugar Factory, [1965] 3 S.C.R. 588, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : C. A. No. 984 of 1967. Appeal by special leave from the judgment dated March 22, 1967 of the Delhi Administration Special Industrial Tribunal, Delhi in Application No. 10 of 1967 (Dhanbad). H. L. Anand, D. P. Thadani, S. S. Sharma and M. L. Chhibber, for the appellant.

M. K. Ramamurthi, Vineet Kumar and S. S. Khunduja, for the respondent.

The Judgment of the Court was delivered by Vaidialingam, J.-This appeal, by special leave, is directed against the order dated March 22, 1967 of the Delhi Administration, Special Industrial Tribunal, dismissing application No. 10 of 1967 filed by the appellant under s. 33 (1) (b) of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act).

The appellant is a public limited company owning textile mills called Delhi Cloth Mills, situated at Bara Hindu Rao, Delhi, and Swatantra Bharat Mills, situated at Najafgarh, New Delhi. The workman Ludh Budh Singh was employed, at the material time, in the Spinning Section 'C' of the former mill. A dispute about the payment of bonus for the year 1964-65 arose between the appellant and their workmen some time in the later part of the year 1.965. In pursuance of a settlement dated December 13, 1965, arrived at between the management and its workmen, the bonus for the year ending June 30, 1964 was declared. The said settlement also provided that negotiations for settling the rate of bonus for the year ending June 30 1965 were to be held soon after the accounts of the mill had been audited and passed at the Annual General Meeting due to take place on December 14, 1965. The

negotiations in that direction were commenced on or about December 25, 1965, but no settlement could be arrived at between the parties and as such the negotiations failed on February 16, 1966.

In order to pay the bonus within the period prescribed in the Payment of Bonus Act, the appellant declared on February 21, 1966 bonus for the year ending June 30, 1965, at the rate of 6% of the annual wages. The workmen being dissatisfied with the quantum of bonus declared by the Company, the' Union called upon the workmen not to receive the bonus. As a protest, the workmen went on strike on the afternoon of February 23, 1966. According to the management, this strike took a violent turn resulting in the workmen indulging in wanton acts of destruction of the property of the mill from February 23, 1966 onwards. The appellant., in consequence, declared a lock out.

The disputes regarding the bonus as well as the legality of the strike and lock-out were referred for adjudication by the Delhi Administration by its order dated March 4, 1966, to the Special Industrial Tribunal, which was numbered as Reference No. 53 of 1966.

Sujan Singh, Security Officer of the mill, sent a report dated February 23, 1966 to the management regarding the violent activities of the workmen including Ludh Budh Singh, who belonged to the Spinning Section 'C'. That report is Ex. M. 15. The substance of the report is as follows : The concerned workman, whose duty hours on February 23, 1966 were from 6.30 A.M. to 2.30 P.M. did not go out of the mill even after his duty was over and continued to remain inside the mill premises. The concerned workman Ludh Budh Singh stood in front of the office of the Weaving Superintendent and collected workers. He further stopped the workers of the shift commencing at 2.30 P.M. from going to their place of work. He, along with other workers instigated the em- ployees to strike work. A large number of workmen collected in front of the office, of the Production Superintendent with the intention of causing obstruction and creating disorder. Ludh Budh Singh was a member of this unruly mob which forcibly broke open gate No. 4 and entered the open space in the mill's premises with a view to create disorder. The concerned workman along with the mob broke open the door and windows and destroyed the mill's property which included furniture, air-conditioners, iron-safe and office records. These acts of violence were witnessed by Sujan Singh, Security Officer, who made the report as well as by Rampal, a Sepoy of the Watch and Ward and Jai Prakash, a peon in the Weaving Section.

On the basis of this report, charge sheet dated March 30, 1966, Ex. M., was issued to Ludh Budh Singh alleging that he was guilty of misconduct under cls. (b) (i) and (in) of paragraph 27 of the Certified Standing Orders of the Mill. The allegations in the charge sheet were more or less on the lines of the report Ex. M. 15. It was specifically alleged that the workman, along with his companions. obstructed the mill workers of the in coming shift from proceeding to their place of work and that he and other members of the mob destroyed the property of the 'Mill, enumerated in the charge-sheet.

The workman sent a reply Ex. M. 2 dated April 1, 1966 denying the allegations. He pleaded that the charges levelled against him were absolutely baseless and that he had no knowledge of the incident stated therein. He denied having been a member of the mob and that he did not take any part in any violent activities, as alleged in the charge- sheet. According to him, after the completion of his duty

on February 23, 1966, at 2.30 P.M. he left the mill Premises and went home.

Not satisfied with the explanation offered by the concerned workman, the appellant issued notice dated April 27, 1966, stating that Shri S. S. Sharma has been appointed as the Enquiry Officer to hold an enquiry against the workman on May 3, 1966. The workman was required to be present, along with any evidence, that he may like to adduce. On May 3, 1966, as the notice had not been served on the respondent, the enquiry was adjourned to May 6, 1966. At the request of another workman Sanwal Singh, against whom also there were allegations of misconduct, the Enquiry Officer directed copies of the complaint and a list of witnesses to be, furnished to him. The Enquiry Officer gave further directions that such copies will also be given to the respondent. After further adjournment, the enquiry as against Sanwal Singh was separated on May 24, 1966 and it continued only as against the respondent. On behalf of the management, a photographer, who had taken the photographs of the crowd outside the mill premises on the day in question, was examined and the respondent admitted that in the said photograph he was also in the crowd. Two other witnesses, namely, Sujan Singh, Security Officer, who sent the report Ex. M. 15 and Rampal, a Sepoy in the Watch and Ward, were examined and they were also cross-examined by the respondents representative appearing on behalf of the respondent. After a consideration of the evidence, the Enquiry Officer sent his report dated August 31, 1966 holding that all the charges framed under sub-clauses (b) (1) and (in) of paragraph 27 of the Standing Orders of the Mill have been proved against the workman. Accept'-in,- the said report, the management of the Delhi Cloth Mills passed an order dated January 5/6, 1967 to the effect that the finding on each of the charges is sufficient to justify the dismissal of the respondent from service. The order further proceeds to state that the management has decided to dismiss the respondent for misconduct proved against him under cls. (b) (i) and (m) of the Standing Orders and that the said order has been passed after taking into account all relevant circumstances including the past record of service of the respondent. The order winds up by saying that as required under S. 3 3 (I) (b) of the Act, an application is being submitted to the Special Industrial Tribunal, Delhi for permission to pass the order of dismissal against the respondent, and that in the mean time pending the receipt of the permission, the respondent is suspended without wages.

An industrial dispute being Ref. No. 53 of 1966 was pending before the Special Industrial Tribunal, the appellant filed on January 6, 1967, before the Special Industrial Tribunal application No. 10 of 1967 under s. 33 (1) (b) of the Act, requesting the Tribunal to grant permission to dismiss the respondent. In the application there is a reference to the allegations made against the respondent, and the enquiry conducted against him as well as the findings recorded therein and to the order of dismissal being passed on the basis of misconduct proved against the, respondent in the said enquiry, findings in which were accepted by the Manager of the Mill.

The respondent in his written statement of March 20, 1967 contested the application of the appellant on the ground that the enquiry held by the appellant was not in accordance with the principles of natural justice and that the findings recorded by the Enquiry Officer were perverse and suffered from basic errors of facts. He attributed mala fides to the management in initiating disciplinary proceedings as well as in proposing to pass the order of dismissal.

On March 21, 1967, the appellant filed an application before the Tribunal that in case the Tribunal held that the enquiry conducted by it was defective, it should be allowed to adduce evidence before the Tribunal to justify the action proposed to be taken against the respondent. Before the Tribunal, it is seen, neither party examined any witnesses. On behalf of the appellant, the enquiry proceedings consisting of the charge-sheet, the reply of the respondent and the evidence of witnesses as well as the report of the Enquiry Officer were filed before the Tribunal. Arguments were advanced on both sides on the basis of enquiry proceedings.

The Tribunal by its order dated March 22, 1967 held that the enquiry proceedings had not been conducted against the respondent in accordance with the principles of natural justice and that the findings recorded by the Enquiry Officer were not in accordance with the evidence adduced before him. The Tribunal held that a copy of the report Ex. M. 15 was not furnished to the respondent so as to enable him to effectively cross-examine Sujan Singh.

who had made the said report. The Tribunal is of the view that the Enquiry Officer committed a very serious mistake in casting the burden of proving his innocence on the respondent instead of casting the burden on the management of proving the allegations of misconduct made against the workman. The Tribunal is also of the view that though very serious allegations of misconduct, namely, of inciting other workmen to strike work unlawfully and of riotous and disorderly behaviour were made against the workman, the Enquiry Officer has found the respondent guilty of those allegations merely on the basis that he was found in a crowd of workmen outside the mill premises and that his mere presence established the charges levelled against him. The Tribunal is of the view that the evidence adduced before the Enquiry Officer does not justify the recording of findings of misconduct against the respondent. On these grounds the Tribunal held that the enquiry proceedings suffered from very serious defects.

Regarding the application dated March 21, 1967 seeking per- mission to adduce evidence before the Tribunal, in case the domestic enquiry was held to be defective, the Tribunal in its order has merely referred to the filing of such an application, but has not dealt with it as such and there is no further reference to the said application in the order. Ultimately, the Tribunal has held that the appellant has not made out a prima facie case so as to justify the grant of permission asked for dismissing the respondent and in this view the permission asked for was refused and in consequence application No. 10 of 1967 stood dismissed. Mr. H. L. Anand, learned counsel for the appellant, has raised two contentions : (1) The enquiry proceedings held by the appellant were legal and valid and that the Tribunal has exceeded its jurisdiction under s. 33(1) (b) of the Act in holding that the said proceedings were defective; and (ii) Even assuming that the enquiry proceedings were defective for any reason, the Tribunal has committed an error in law in not dealing with and allowing the application filed by the appellant, which was one for giving the appellant an opportunity, which he has in law, of adducing evidence before the Tribunal to justify the action taken by it. Mr. Ramamurthy, learned counsel for the respondent, has taken us through the enquiry proceedings conducted by the management and pointed out that the view taken by the Tribunal that the enquiry proceedings were held in violation of the principles of natural justice is justified. He urged that the findings recorded by the Enquiry Officer were perverse as no such findings could be recorded on the evidence adduced by the management. Under these circum- stances, he pointed out that it was

within the jurisdiction of the Tribunal to consider whether the findings recorded by the Enquiry Officer were supported by the evidence on record. It is on such an examination of the evidence that the Tribunal has come to the conclusion that the findings recorded by the Enquiry Officer cannot 'De sustained, as material evidence in favour of the workman his been ignored and there has been a gross-misunderstanding of time evidence by the Enquiry Officer. The counsel also pointed out that the application filed by the appellant for permission to adduce evidence was highly belated inasmuch is it was filed after the proceedings had closed and the Tribunal had reserved judgment. He further pointed out +that the Tribunal obviously thought that no order need be passed on the said application as the proceedings had come to in end and no request was made by the management during the pendency of the proceedings.

In support of his first contention Mr. Anand urged that the appreciation of the evidence adduced in a domestic enquiry, as we'll ,is the weight to be given to that evidence are all matters falling primarily within the jurisdiction of the Enquiry Officer, over which the Industrial Tribunal has no right to sit in appeal. The counsel further urged that the conclusion arrived at by the Enquiry Officer is a possible view, which could be taken on the evidence on record. The Industrial Tribunal has no jurisdiction to consider whether the evidence available before the Enquiry Officer was adequate, or sufficient or of a satisfactory character. Mr. Anand pointed out that these are matters that an appellate court may be entitled to consider, but not an Industrial Tribunal, whose jurisdiction is very limited. He further pointed out that the findings recorded by the Enquiry Officer cannot be considered to be perverse, as charac- terised by the Industrial Tribunal, in the sense that it is not justified by any legal evidence.

The counsel further contended that the jurisdiction of the Tribunal, as laid down 'by this Court in several decisions, was only to satisfy itself whether a prima facie case has been made cut by the employer and that the employer has not acted mala fide and that the enquiry has been held in accordance with the principles of natural justice and the procedure indicated in the Standing Orders, if any. If once the Tribunal comes to the conclusion that the management has not acted mala fide and that there has been a proper enquiry and that the conclusion arrived at by the Enquiry Officer is a possible One on the evidence led before it, the Tribunal cannot substitute its own judgment for the judgment of the Enquiry Officer, though it may have come to a different conclusion on the evidence adduced before the Enquiry Officer.

We do agree, as abstract propositions of law, the contentions of the learned counsel regarding the scope of a Qribunal's jurisdiction, in such matters, axe correct. But the question for consideration by us is whether the Industrial Tribunal, when it declined to 3 7 grant the permission asked for by the appellant, has in any manner acted contrary to the principles 'referred to by Mr. Anand and set out above.

Before we proceed to deal with the contentions of Mr. Anand, it is necessary to state the law regarding the nature of the jurisdiction exercised by a Tribunal in dealing with an application under s. 33 of the Act. We had occasion to deal with a similar aspect in Delhi Cloth & General Mills Co. v. Ganesh Dutt and others(1). It was observed therein :

> "The nature of the jurisdiction exercised by an Industrial Tribunal in such circumstances is a very limited one and it has been laid down by several decisions of this Court. The legal position is that where a proper enquiry has been held by the management, the Tribunal has to accept the finding arrived at in that enquiry unless it is perverse or unreasonable and should give the permission asked for unless it has reason to believe that the management is guilty of victimisation or has been guilty of unfair labour practice or is acting mala fide. (Vide Punjab National Bank, Ltd. v. Its Workmen(2) , Bharat Sugar Mills Ltd. v. Jai Singh(3), Management of Ritz Theatre (P) Ltd. v. Its Workmen(3), and Mysore Steel Works v. Jitender Chandra Kar and others(5)"

In Martin Burn Ltd. v. R. N. Banerjee(6), it has been laid down that once an Industrial Tribunal is satisfied that the conclusion arrived at by the Enquiry Officer, on the evidence led before it, is a possible one, the Tribunal has no jurisdiction to substitute its own judgment for the judgment of the Enquiry Officer, though the Tribunal may itself have arrived at a different conclusion on the same materials.

It has been further laid down in The Lord Krishna Textile Mills v. Its Workmen (7) as follows :

> "It is well known that the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a court of facts and may fall to be considered I* an appellate court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the court is limited as under s. 33(2)(b). It is conceivable that even in holding an enquiry under s. 33(2)(b) if the authority is satisfied that the finding recorded at the domestic enquiry is (1) C.A. No. 982 of 1967 decided on 17-12-71 (2) [1960] 1 S.C.R. 806.
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> (4) [1963] 3 S.C.R. 461.
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> (6) [1958] S.C.R. 514.
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> (3) [1961] II L.L.J. 644.
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> (5) [1971] I LL.J. 543.
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> (7) [1961] 3 S.C.R. 204.

perverse in the sense that it is not justified by any legal evidence whatever, only in such a case it may be entitled to consider whether approval should be accorded to the employer Of, Dot but it is essential to bear in mind the difference between a finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or adequate or satisfactory evidence."

We may also refer to the decision in Central Bank of India Ltd., New Delhi v. Shri Prakash Chand Jain(1) where after a reference to the principles laid down in The Lord Krishna Textile Mills v. Its Workmen(2), it has been pointed out that the test of perversity of a finding recorded by a Tribunal or an Enquiry Officer will be that the said finding is not supported by any legal evidence at all. It has been further pointed out that a finding recorded by a do()Domes tic Tribunal like an Enquiry Officer will also be held to be perverse in those cases where the finding arrived at by the domestic Tribunal is one, which no reasonable person could have arrived at on the material before it. The position was summed up by this Court in the said decision as follows :

> "Thus, there are two cases where the findings of a domestic tribunal like the Enquiry Officer dealing with disciplinary proceedings against a workman can be interfered with, and these two are cases in which the findings ,are not based on legal evidence or are, such as no reasonable person could have arrived 'at on the basis of the material before the Tribunal. In each of these cases, the findings are treated as perverse.
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> Bearing in mind the above principles, we will now consider whether the Industrial Tribunal, in the case before us, was justified in refusing to grant permission to the appellant to dismiss the respondent on the basis of the evidence recorded by the Enquiry Officer Shri S. S. Sharma. We have already extracted earlier the substance of the report Ex. M. 15, sent by Sujan Singh, Security Officer. From those allegation,, it will be seen that the respondent was alleged to have stopped the workmen from going to their place of duty and along with other workmen, instigating the employees of the mill to strike work. It is also alleged that the respondent along with the mob of workmen broke open the door and windows and also destroyed the mill's property, which included iron-safe, office furniture aid record etc. Therefore, it will be seen that definite individual acts of violence in destroying the mill's property and of (1) [1969] 1 S.C.R. 735.
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> (2) [1961] 3 S.C.R. 204.

instigating the other' workmen to strike work have been alleged against the respondent. Those individual acts of the respondent of destroying the mill's property and inciting other workmen not to go to work as also of obstructing the employees from going to their place of work are again the subject of the charge sheet Ex. M. These allegations of misconduct were the subject of enquiry before the Enquiry Officer.

Now, we will advert to the enquiry proceedings. At this stage it may be mentioned that though the Tribunal has held that the respondent was not furnished with a copy of the report Ex. M. 15, and though this aspect has also been stressed before us by Mr. Ramamurthy, on behalf of the workman, we are not inclined to agree with this finding of the Tribunal. No doubt, this is one of the circumstances pointed out by the Tribunal in support of its view that the enquiry proceedings were conducted in violation of the principles of natural justice as the workman had, no effective opportunity of cross-examining Sujan Singh, who made the report Ex. M. 15. When the enquiry proceedings commenced on May 3, 1966, the record shows, that the enquiry proceedings were

adjourned to May 6, 1966 because the respondent had not been served. But it is significant to note that on the same date, the Enquiry Officer had furnished to another workman, Sanwal Singh, copies of the report Ex. M. 15, as well as a list of witnesses proposed to he examined by the management. We have already referred to the fact that originally the enquiry was proposed to be held jointly, both against the respondent and Sanwal Singh, and it was only at ,a later stage that the enquiry as against Sanwal Singh was separated. After furnishing copies to Sanwal Singh, the Enquiry Officer had passed an order on the same date that similar copies will be sent to the respondent along with the date to which the proceedings were being adjourned. When the enquiry proceedings were continued later on, there is nothing on record to show that the respondent had not been furnished with the copy of Ex. M. 15, as well as the list of witnesses, as directed by the Enquiry Officer on May 3, 1966. That shows that the respondent must have been furnished with those copies. This conclusion gains further support from the fact that during the proceedings, the respondent never made any request for those copies.

It is also seen that Sujan Singh after giving evidence in the presence of the respondent before the Enquiry Officer, finally proved the report Ex. M. 15 as having been made by him and this document, when it was so proved, was read over to the respondent and he never took any objection to the same. On the other hand, on behalf of the respondent, the witness was cross-examined and the nature of the cross- examination also shows that the workman was fully aware of what was stated in Ex. M. 15. Therefore, it cannot be said that the enquiry proceedings were vitiated, as erroneously held by the Tribunal on the ground that the respo ndent was not furnished with a copy of Ex. M. 15. No doubt, the witnesses were examined in the presence of the respondent and they were also cross-examined by his representative, but, the question is whether the view of the Tribunal that the findings recorded by the Enquiry Officer are not supported by the evidence or in other words that the findings are perverse, is justified.

Sujan Singh, Security Officer, who sent the report Ex. M. 15, both in the report as well as in the evidence before the Enquiry Officer has referred to the incident as having taken place outside the mill at about 2-15 or 2-30 p.m. There is no controversy that the respondent was on duty in the Spinning Section till 2.30 p.m. on February 23, 1966. It is not the case of the management that he had surreptitiously left his place of work earlier than 2.30 p.m. Though Sujan Singh in chief examination has spoken to the part alleged to have been played by the respondent, while being cross- examined he has stated that the respondent was amongst the slogan shouters. He has also stated that he cannot say if the respondent had any weapon or tools in his hand. He has further admitted that he did not see the respondent destroying any property of the mills or obstructing any workman from going to his place of work. In fact, in his cross-examination the entire activity relating to destruction of mill's property and obstructing the workmen, is attributed by him to a crowd of workmen. These significant answers given by-the witness in cross- examination have not at all been properly adverted to by the Enquiry Officer.

On the other hand, the enquiry report shows that the Enquiry Officer has thoroughly misunderstood and misinterpreted the nature of the evidence given by Sujan Singh. It is stated in the said report that Sujan Singh has deposed that as the crowd was very large, it was difficult for him to state precisely as to what items of the mill were destroyed by the respondent. We have already referred to

the answers given by the said witness in the cross-examination that the respondent was only a slogan shouter and that he had not seen any tools or weapons in the hands of the respondent. But the more significant admission made by him and which has not at all been adverted to or considered by the Enquiry Officer is his categorical answer that he did not see the respondent personally breaking or destroying any of the articles of the mill.

Coming to the second witness Rampal, a sepoy in the Watch and Ward, it is seen from the enquiry proceedings that on June 13, 1966, J. C. Bose, the representative of the management mentioned to the Enquiry Officer that this Witness "has refused to tender evidence because he has no knowledge of this occurrence." This has, been recorded by the Enquiry Officer. But the said witness gave evidence on June 21, 1966 to the effect at about 2 or 2.30 p.m. on February 23, 1966 the Security Officer, Sujan Singh asked him to accompany him to gate No. 4 of the mill. He has further deposed that even before he reached the crowd, which had already collected outside the mills had broken open the gate. He has further stated that he saw the respondent in the crowd. He wound up his chief examination by saying that he has nothing further to add. to what has 'been stated above. It is significant to note that this witness even in the chief-examination has not spoken to any acts of violence committed by the respondent, nor has he referred' to the respondent behaving in a disorderly manner or of having,' obstructed any workman from proceeding to his place of work.

When this witness was cross-examined by the respondent on June 22, 1966, he started by saying that he never mentioned earlier to anybody that he had no knowledge about the occurrence in respect of which he had come to give evidence before the Enquiry Officer. But when he was confronted with the record made by the Enquiry Officer on June 13, 1966 on the representation of J. C. Bose that this witness has refused to tender evidence because he has no knowledge of the occurrence, he admitted that he had so represented to J. C. Bose. From this, it is clear that this witness, even according to his own admission, has no knowledge about the occurrence about which he had come to give evidence. It is rather strange, that nevertheless he appeared before the Enquiry Officer on a later date to give evidence. But, as we have already pointed out, even in the chief examination he has not attributed any overt act to the respondent. To resume the further answers given by this witness in cross-examination, he admitted that before he reached gate No. 4, it had already been broken and that he did not inform anybody about the same. He has also admitted that he did not inform Sujan Singh about having seen the respondent near the gate. He has admitted that Sujan Singh also did not mention to him about the presence of the respondent in the crowd. He has also admitted that he did not see any arms or weapons in the hands of any member of the crowd. The photograph that appears to have been taken of the crowd was shown to this witness and he admitted on seeing, the same that nobody in the crowd was carrying any weapons or arms. There was, no doubt, the evidence of the photographer Mangal Das, Witness No. 3. He has referred to the fact that he took the photos of the crowd outside the mill, which numbered about 3000 4-L864SupCI/72 workers of the mill. He has also stated that he took photos at about 3 P.M. on February 23, 1966. He does not refer to any further events relating to the incident of destruction of property or obstruction of workmen. It is no doubt true that when the photograph Ex. M.I. was shown to the respondent, the latter admitted that he was in the crowd. This admission, at the most, is only to the effect that at about 3 P.M. when a large number of mill workers were outside the mill premises, the respondent was also in that crowd.

But the material evidence relating to the incident and relied on by the management is that of Sujan Singh and Rampal and we have already referred to the nature of their evidence. The Enquiry-, Officer, in the state of the evidence given by the two witnesses and referred to by us earlier, has recorded a finding to the effect that as the respondent was in the crowd, that by itself is enough for proving the charges levelled against him. In fact, the finding of the Enquiry Officer is :

> "The admission on the part of the workman about his presence in the mob as shown in the photograph Ex. M. 1 is sufficient to hold him guilty of charges."

Another statement made by the Enquiry Officer is "It does not lie in the mouth of the workman once having chosen not to produce evidence in his defence to state that he was not responsible for the acts of destruction and damages. He is estopped from denying his presence in the mob because of Ex. M. 1.

The Industrial Tribunal had to consider whether the appellant has made out a prima facie case for permission being granted for the action proposed to be taken against the workman. For that purpose the Tribunal was justified in considering the nature of the allegations made against the workman, the findings recorded by the Enquiry Officer and the materials that were available before the Enquiry Officer, on the basis of which such findings had been recorded. Accepting the contention of Mr. Anand that it was within the jurisdiction of the Enquiry Officer to accept the evidence of Sujan Singh and Rampal will be over-simplifying the matter and denying the legitimate jurisdiction of the Tribunal in such matters to consider whether the findings are such as no reasonable person could have arrived at on the basis of the materials before the Enquiry Officer. It the materials before the Enquiry Officer are such, from which the conclusion arrived at by the Enquiry Officer could not have been arrived at by a reasonable person, then it is needless to state, as laid down by this Court in Central Bank of India Ltd., New Delhi v. Shri Prakash Chand Jain(1) that the (1) [1969] 1 S.C.R. 735.

finding has to be characterised as perverse. If so the Industrial Tribunal had ample jurisdiction to interfere with such a finding.

We have already pointed out that the Tribunal has not taken into account the admissions made by Sujan Singh in his cross-examination where he has not attributed any acts of destruction or violence to the respondent. The Enquiry Officer has proceeded on the basis that though Rampal declined to participate in the enquiry at an earlier stage, that circumstance does not affect his veracity, when he has later on appeared to give evidence. This observation of the Enquiry Officer clearly shows that he has not at all cared to give effect to the record made 'by him on June 13, 1966 to the effect that Rampal had refused to give evidence because he had no knowledge about the occurrence. If a person had no knowledge on June 13, 1966, that is a matter which had to be very carefully borne in mind by the Enquiry Officer when he again came to give evidence about the incident. This aspect has not been given due consideration by the Enquiry Officer. Therefore, a finding recorded by an Enquiry Officer ignoring the material admissions made by a party in favour of an accused, is not a question of mere appreciation of evidence, but really recording a finding contrary to the evidence adduced before him. Even otherwise, the findings recorded by the Enquiry Officer are rather very strange. He does not hold the respondent guilty of any act of violence or of destroying the mill's property or of

obstructing the workmen from going to their place of work. These were the allegations of misconduct in the charge sheet. But curiously, the Enquiry Officer proceeds on the basis that because the workman was in the crowd, that by itself is enough to find him guilty of the charges of obstructing the mill workers and destroying mill property. The Enquiry Officer has also committed another mistake when he proceeded on the basis that as the workman has not adduced any evidence in his defence, it is not open to him to contend that he was not responsible for the acts of destruction and damages. This observation clearly shows that the Enquiry Officer has missed the elementary principle of jurisprudence that when allegations of misconduct are levelled against a person, it is the primary duty of the person making those allegations to establish the same and not for an accused to adduce negative evidence to the effect that he is not guilty.

The above aspects, in our opinion, have been rightly taken into account by the Industrial Tribunal when it characterised the finding recorded by the Enquiry Officer as being such that no reasonable person will come to, on the material on record. Therefore, the Industrial Tribunal was perfectly justified in coming to the conclusion that the enquiry proceedings are vitiated by violation of the principles of natural justice and that the appellant has not made out a prima facie case for grant of the permission to dismiss the respondent., Therefore the first contention of Mr. Anand will have to be rejected.

The second contention of Mr. Anand, as noted already, is that the Tribunal has committed an error in law, in not permitting the, appellant to adduce evidence before it to justify the action proposed to be taken against the respondent. We have already referred to, the fact that an application under S. 3 3 (1) (b) of the Act was filed by the appellant on January 6, 1967. The basis of the application is the enquiry conducted by the Enquiry Officer, the findings recorded therein and the acceptance of those findings by the Manager of the mill. The respondents filed his written statement on March 20, 1967 contesting the application filed by the appellant. The respondent had contended that the enquiry proceedings had been held in violation of the principles of natural justice and that the findings of the Enquiry Officer were perverse and that the report itself suffers from basic errors of facts. He had characterised the evidence before the Enquiry Officer as false. The Industrial Tribunal pronounced its order on March 22, 1967 rejecting the application filed by the appellant under s. 33 (I) (b) of the Act. In its order the Tribunal has stated that neither the appellant nor the respondent adduced any oral evidence and that the appellant produced only the records relating to the enquiry proceedings and the report of the Enquiry Officer. It was on the basis of the enquiry report that arguments were advanced in great detail by both parties. We have already referred to the fact that there is a reference in the order to the effect that an application was filed on March 21, 1967 'by the appellant that if the Tribunal holds the enquiry proceedings to be defective, for any reason, the management should be, allowed to adduce evidence before it to justify the allegations made against the workman. There is no further consideration in the order about this application made by the appellant. The fifth entry in the order sheet of the Tribunal is dated March 21, 1967 and it is to the effect that the case was taken up for argument and that the enquiry proceedings were filed by the management and that arguments were heard on both sides and that the judgment was reserved. After this entry on the same date, there is an entry as item No. 6 to the effect that the appellant had filed a petition for fresh evidence if the enquiry is found to be defective with the endorsement "keep it on record". On March 22. 1967 orders were pronounced by the Tribunal dismissing the main application No. 10 of 1967.

Mr. Anand, learned counsel for the appellant very strenuously urged that as per the decisions of this Court, the management is entitled to an opportunity to adduce evidence before the Tribunal to justify its action in case the Tribunal holds that the domestic enquiry is defective for any reason. It was for this opportunity, which the appellant is entitled in law, that the application was filed on March 21, 1967 seeking permission to adduce evidence before the Tribunal. The grievance of the appellant, according to the counsel, is that there is absolutely no consideration by the Tribunal of this application and no opportunity was given to the appellant to adduce evidence before the Tribunal. This, the counsel pointed out, constitutes a very serious error in the approach made by the Tribunal and therefore the proceedings will have to be remanded to the Tribunal to enable the appellant to adduce evidence before it. In fact, Mr. Anand urged that it is open to the management to make such a request to adduce evidence in spite of the fact that a domestic enquiry has been held either after the Tribunal has recorded a finding about the defective nature of the domestic, enquiry or at any time before the final judgment is pronounced by the Industrial Tribunal. In this case, the counsel pointed out, the proceedings must be considered to be pending on the date when the application was filed, namely, March 21, 1967, as judgment was pronounced on March 22, 1967.

Mr. M. K. Ramamurthy, learned counsel for the respondent, pointed out that the proceedings must be considered to have been closed on March 21, 1967, when the Tribunal has made a note in the order sheet that the judgment has been reserved. The application filed by the management seeking permission to adduce evidence was admittedly filed, as the order sheet shows, after the judgment was reserved. That may be the reason why the Tribunal did not think it necessary to consider the application on merits, nor did it think it necessary to give an opportunity to the appellant to ,adduce evidence.

So far as the right of the management to adduce evidence and ,satisfy the Tribunal about its justification for the action taken or proposed to be taken against the workman is concerned, this Court in its recent decision State Bank of India v. R. K. Jain and others(1) has after a reference to the earlier decisions bearing on the matter held that it is open to a management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It has also bean further held that the management has a right to adduce independent evidence before the Tribunal to justify the action taken or proposed to be taken and that it is for the management to avail itself of the said opportunity.

Mr. Anand placed considerable reliance not only on the above decision but also on the decision in Management of Ritz Theatre (P) Ltd. v. Its Workmen(2) and urged that it is only after the (1) C.A. 992 of 1967 decided on 17-9-1971.

(2) [1963] 3 S.C.R. 461, Tribunal has found that the domestic enquiry is defective, for any reason that the management's right to adduce independent evidence before the Tribunal arises for consideration.

Before we deal with the decision in State Bank of India v. R. K. Jain and others(1), it is necessary to refer to three earlier decisions of this Court. In M/s Bharat Sugar Mills Ltd. v. Shri Jai Singh and others(2), a domestic enquiry had been held by the management, but the said enquiry was held by

the Tribunal to be defective. The management, however, adduced evidence before the Tribunal to make out its case that the workmen concerned were in fact guilty of misconduct. This evidence was accepted by the Tribunal and it held that the action of the management was valid. It was contended by the workmen before this Court that when once the Industrial Tribunal had held that the domestic enquiry was defective, it had no jurisdiction to allow the management to adduce evidence before it to justify the action taken or proposed to be taken. This contention was rejected by this Court as follows "When an application for permission for dismissal is made on the allegation that the workman has been guilty of some misconduct for which the management considers dismissal the appropriate punishment the Tri- bunal has to satisfy itself that there is a prima facie case for such dismissal. Where there has been a proper enquiry by the management itself the Tribunal, it has been settled by a number of decisions of this Court, has to accept the findings arrived at in that enquiry unless it is perverse and should give the permission asked for unless it has reason to believe that the management is guilty of victimisation or has been guilty of unfair labour practice or is acting mala fide. But the mere fact that no enquiry has been held or that the enquiry has not been properly conducted cannot absolve the Tribunal of its duty to decide whether the case that the workman has been guilty of the alleged misconduct has been made out. The proper way for performing this duty where there has not been a proper enquiry by the management is for the Tribunal to take evidence of both sides in respect of the alleged misconduct. When such evidence is adduced before the Tribunal the management is deprived of the benefit of having the findings of the domestic tribunal being accepted as prima facie proof of the alleged misconduct unless the finding is per- verse and has to prove to the satisfaction of the Tribunal itself that the workman was guilty of the alleged misconduct. We do not think it either just to the management or indeed even fair to (1) C.A. 992 of 1967 dated 17-9-71.

(2) [1962] 3 S.C.R. 684.

the workman himself that in such a case the Industrial Tribunal should refuse to take evidence and thereby drive the management to make a further application for permission alter holding a proper enquiry and deprive the workman of the benefit of the Tribunal itself being satisfied on evidence adduced before it that he was guilty of the alleged misconduct." It must, however, be pointed out that it is not clear from the facts mentioned in the judgment as to when the finding regarding the defective nature of the domestic enquiry was recorded by the Tribunal and at what stage the management adduced evidence before the Tribunal. But one thing is clear, namely, that the management adduced evidence before the Tribunal when the proceedings were still pending before the Tribunal.

In Management of Ritz Theatre (P) Ltd. v. Its Workmen(1), disciplinary action was taken by the management against some of its workmen on the basis of the finding recorded in the domestic' enquiry. The domestic enquiry was challenged by the workmen before the Tribunal as being defective for several reasons. When the proceedings commenced before the Industrial Tribunal and even before the validity of, the domestic enquiry was considered by the Tribunal, the management filed an application asking for permission to adduce evidence before the Tribunal to justify the action taken against the workmen. The Tribunal allowed this application ,and permitted both the management as well as the workmen to adduce evidence before it. In addition to the evidence so led

before the Tribunal, the management also produced before it all the papers relating to the departmental enquiry as well as the report of the Enquiry Officer.

The Tribunal, however, held that as the management had asked for permission to adduce evidence before it, it had jurisdiction to consider on merits the dismissal of the workmen concerned exclusively on the basis of the evidence adduced by the parties before it. The Tribunal further proceeded on the basis that it was not necessary to consider the validity or otherwise of the domestic enquiry proceedings. In this view the Tribunal considered in that% case the evidence adduced before it and came to the conclusion that the order of dismissal passed by the management was not justified. Before this Court it was contended by the management that the Tribunal had exceeded its jurisdiction inasmuch as it had considered only the evidence adduced before it without first adjudicating upon the validity or otherwise of the domestic enquiry. This Court accepted that contention and held that if the Tribunal accepts the enquiry proceedings conducted by the management as (1) [1963] S.C.R. 461.

proper, it has no right to sit in appeal over the findings recorded at the domestic enquiry. It was further held that the first question which the Tribunal had to consider when an enquiry has been held by the management was whether the said enquiry has been held properly and the findings recorded are based upon the materials available before the Enquiry Officer. It was further held that it is only when the Tribunal is satisfied that a proper enquiry has not been held or that the findings recorded at such an enquiry are perverse that it derives jurisdiction to deal with the merits of the dispute. The legal position, in such circumstances, regarding the duty of the Tribunal to consider the validity of the domestic on enquiry held by the management as well as the right of the management to adduce evidence before the Tribunal to justify the action taken by it has been stated as follows :

> "....It is well settled that if an employer serves the relevant charge or charges on his employee and holds a proper and fair enquiry, it would be open to him to act upon the report submitted to him by the Enquiry Officer and to dismiss the employee concerned. If the enquiry has been properly held, the order of dismissal passed against the employee as a result of such an enquiry can be challenged if it is shown that the conclusions reached at the departmental enquiry were perverse or the impugned dismissal is vindictive or mala fide and amounts to an unfair labour practice. In such an enquiry before the Tribunal, it is not open to the Tribunal to sit in appeal over the findings recorded at the domestic enquiry. This Court has held that when a proper enquiry has been held, it would be open to the Enquiry Officer holding the domestic enquiry to deal with the matter on the merit bona fide and come to his own conclusion. It has also been held that if it appears that the departmental enquiry held by the employer is not fair in the sense that proper charge had not been served on the employee or proper or full opportunity had not been given to the employee to meet the charge, or the enquiry has been affect ed by other grave irregularities vitiating it, then the position would be that the Tribunal would be entitled to deal with the merits of the dispute as to the dismissal of the employee for itself. The same result follo ws if no enquiry has been hold at all. In other words, where the Tribunal is dealing with a dispute relating to the dismissal of an industrial employee, if it is

> satisfied that no enquiry has been held or the enquiry which has been held is not proper or fair or that the findings recorded by the Enquiry Officer are perverse, the whole issue is at large before the Tribunal. This position also is well-settled. In regard to cases falling under this last category of cases, it is however open to the employer to adduce additional evidence and satisfy the Tribunal that the dismissal of the employee concerned is justified: And in such a case, the Tribunal would give opportunity to the employer to lead such evidence, would give an opportunity to the employee to meet that evidence, and deal with the dispute between the parties in the light of the whole of the evidence thus adduced before it. There can be little doubt about this position."

The contention of the workmen that by the management straightaway adducing evidence before the Tribunal, in spite of its having held the domestic enquiry, amounts to the employer giving up its reliance on the domestic enquiry, was rejected as follows .lm15 "..... It is quite conceivable, and in fact it happens in many cases, that the employer may rely on the enquiry in the first instance and alternatively and without prejudice to his plea that the enquiry is proper and binding, may seek to lead additional evidence. It would, we think, be unfair to hold that merely by adopting such a course, the, employer gives up his plea that the enquiry was proper and that the Tribunal should pot go into the merits or the dispute for itself. If the view taken by the Tribunal was held to be correct, it would lead to this anamoly that the employer would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the Tribunal to deal with the merits for itself, because as soon as he asks for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Otherwise, it may have to be held that in all such cases no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then. no additional evidence need be cited by the employer; if the finding on the said issue is against him, permission have to be given to the employer to cite additional evid- ence, instead of following such an elaborate and somewhat cumbersome procedure, if the employer seeks lo lead evidence in addition to the evidence adduced at the departmental enquiry and the employees are also given an opportunity to lead additional evidence, it would be open to the Tribunal first to consider the preliminary 5 0 issue and then to proceed to deal with the merits in case the preliminary issue is decided against the employer. That, in our opinion, is the true and correct legal position in this matter."

After rejecting the contention of the workmen, this Court in the said decision considered the validity of the domestic enquiry held by the management and held that it was a proper enquiry and that the findings recorded therein were correct. It was further held that the action taken by the management against the workmen on the basis of the finding recorded in the domestic enquiry was legal.

In Workmen of Motipur Sugar Factory (Private) Limited v. Motipur Sugar Factory(1), this Court had again to consider the nature of the jurisdiction exercised by a Tribunal. The management therein had terminated the services of some of its workmen without holding any enquiry as required by its Standing Orders. The legality of termination of the services of the workmen was referred to for adjudication to the Industrial Tribunal under the Act. The management let in evidence before the

Tribunal justifying its action in terminating the services of the workmen for misconduct. The workmen also let in evidence contra. The Tribunal after consideration of the evidence adduced before it held that the action of the management in terminating the services of the workmen was proper. Before this Court it was urged on behalf of the workmen that as the management had given no charge sheets and had held no enquiry as required by the Standing Orders, it was not open to the management to justify before the Tribunal its order discharging the workmen and that the Tribunal had no jurisdiction to consider the claim of the management on merits. The conten- tion of the workmen was rejected by this Court as' follows :

> "It is now well-settled by a number of decisions of this Court that where an employer has failed to make in enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which lie had in cases where domestic inquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been properly held (See Indian Iron & Steel Co. v. Their Workmen) (2) , but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to M/s Sasa Musa Sugar Works (P) Limited v.
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> (1) [1965] 3 S.C.R. 588.

.lm15 Shobrati Khan(1), Phulbari Tea Estate v. Its Workmen (2) and the Punjab National Bank Limited v. Its Workmen (3). There three cases were further considered by this Court in Bharat Sugar Mills Limited v. Shri Jai Singh(4), and reference was also made to the decision of the Labour Appellate Tribunal in Shri Ram Swarath Sinha v. Belaund Sugar Co.(5) It was pointed out that "the import effect of commission to hold an enquiry was merely this : that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have been made out." It is true that three of these cases, except Phulbari Tea Estate's case(2), were on app- lication under s. 33 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the tribunal lot approval under s. 33 or on a reference under S. 10 of the Industrial Disputes Act, 1947. In either case, if the enquiry is defective or if no enquiry has been hold as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. Phulbari Tea Estate's(2) was on a reference under s. 10, and the same principle was applied there also, the only difference being that in that case, there was an enquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge as proper. If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the industrial tribunal only on that round, it would inevitably mean that the employer will, immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the mean-time. This

course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry given. On the other hand, if in such cases the employer is given in opportunity to justify the impugned dismissal on the .lmo (1) [1959] Supp. S.C.R. 836.

(3) [1960] 1.S.C.R. 806.

(5) [1954] L.A.C. 697.

(2) [1960] 1 S.C.R. 32.

(4) [1962] 3 S.C.R. 684.

merits of his case being considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or im- proper, the tribunal may give an opportunity to the employer to prove his case and in doing so the tribunal tries the merits itself. This view is consistent with the approach which industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in the disposal of industrial disputes. Therefore, we are satisfied that no distinction can 'be made between cases where the domestic enquiry is invalid and those where no enquiry has in fact been held. We must therefore reject the contention that as there was no enquiry in this case it was not open to the respondent to justify the discharge before the tribunal"

> The recent decision of this Court bearing on this matter is the one rendered in State Bank of India v. R. K. Jain and others (1). That was a case where the Tribunal held that the domestic enquiry conducted by the management leading to the termination of the workmen was held in violation of the principles of natural justice and in consequence the order terminating the services of 'the workman was set aside. On appeal by the management, this Court rejected its conten- tion that the view of the Tribunal about the invalidity of the enquiry proceedings was erroneous. But it was contended that the Tribunal, after having come to the conclusion that the domestic enquiry was not valid, should have given an opportunity to the management to adduce evidence before it to justify the order terminating the services of the workmen. This Court held that the legal position is that it is open to the management to rely upon the domestic enquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same. It was further laid ,down that the management has also got a right to justify on facts as well that its order of dismissal or discharge was proper by .-adducing evidence before the Tribunal. But it was emphasised that the dispute that is referred to a Tribunal is not the validity ,or otherwise of the domestic enquiry held by the management leading to the order of termination, but the larger issue whether' tile ,order of termination, dismissal, or imposing or proposing to impose punishment on the workman concerned is justified. It was observed as follows (1) C.A. 992 of 1967 decided on 17-9-71.

> "If the management defends its action solely on the basis that the domestic enquiry held by it is proper and valid and if the Tribunal holds against the management. on that point, the management will fail. , On the other hand, if the management relies not only an the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic enquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and it is for the management to avail itself of the said opportunity."

It was further held that it may be open to the management to' request the Tribunal to decide in the first instance as a preliminary issue the validity of the domestic enquiry that may have been conducted by it and then to give an opportunity to adduce evidence before the Tribunal, if the finding was against the management. It was he-Id on facts that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the. appellant, therein had made no such request; and therefore the contention that the Tribunal should have given an opportunity suo moto to adduce evidence was not accepted, in the circumstances of that case.

We have referred to decisions illustrative of various aspects. M/s Bharat Sugar Mills Ltd. v. Shri Jai Singh and others(1) was, an :Instance where a domestic enquiry was held, but it was not ,accepted by the Tribunal as a proper enquiry. The management let in evidence to justify its action, which was accepted by the Tribunal. The contention of the work-men that when once the domestic enquiry has been held to be defective by the Tribunal, there was no right in the management to adduce evidence to justify its action, was rejected by this Court.

Management of Ritz Theatre (P) Ltd. v. Its Workmen (2) was an instance where a domestic enquiry had been held by the management. But when the dispute regarding the termination of .the services of the workmen on the basis of such an enquiry was referred to the Industrial Tribunal, even when the trial started, the management adduced evidence justifying its action. The management also relied upon the enquiry proceedings conducted by it.

(1)[1962] 3 S.C.R. 684. (2) [1963] 3 S.C.R. 461.

The Tribunal did not consider the validity of the domestic enquiry, but, on the other hand, held against the management on the evidence before it. The grievance of the management that the Tribunal should have first considered the validity of the domestic enquiry was accepted by this Court. Workmen of Motipur Sugar Factory (Private) LTd. v. Motipur Sugar Factory (1) was an instance where no enquiry at all had been held by the management as per its Standing Orders before terminating the services of the employees. But evidence was adduced before the Tribunal by the management justifying its action and that evidence was accepted by the Tribunal. The contention of the workmen that as no enquiry had been held by the management before passing the order of

termination, it was not open to the management to adduce evidence 'before the Tribunal justifying its action, was rejected by this Court.

State Bank of India v. R. K. Jain and others (2) was an instance where an enquiry was conducted by the management, but it was held to be defective by the Tribunal and in consequence the order terminating the services of the workmen was set aside. No permission to adduce evidence before the Tribunal justifying its action was asked for by the management. The grievance, of the management before this Court, that the Tribunal should have given such an opportunity suo moto was not accepted, in the circumstances of that case.

It may be pointed out that the Delhi and Madhya Pradesh High Courts had held that it is the duty of the Tribunal to decide, in the first instance, the propriety of the domestic enquiry held by the management and if it records a finding against the management, it should suo moto provide an opportunity to the management to adduce additional evidence, even though the management had made no such request. This view was held to be erroneous by this Court, in State Bank of India v. R. K. Jain & others(2).

From the above decisions the following principles broadly emerge :

(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(1) [1965] 3 S.C.R. 588.

(2) C.A. 992 of 1967 decided 17-9-71.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. in such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the- Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the

evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct. (5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer, can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly,

it is not its function to invite suo moto the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under s. 10 or by way of an application under s.

33 of the Act.

Having due regard to the above principles, as could be gathered from the decisions, referred to above, in our opinion, the application filed by the management for permission to adduce evidence was highly belated. We have already emphasised that the enquiry proceeding before the Tribunal is a composite one, though the jurisdiction of the Tribunal to consider the validity of the domestic enquiry and the evidence adduced by the management before it, are to be considered in two stages. It is no doubt true that the management has got a right to adduce evidence before the Tribunal in case the domestic enquiry is held to be vitiated. The Tribunal derives jurisdiction to deal with the merits of the dispute only if it has held that the domestic enquiry has not been held properly. But the two stages in which the Tribunal has to conduct the enquiry are in the same proceeding which relates to the consideration of the dispute regarding the validity of the action taken by the management. Therefore, if the management wants to avail itself of the right, that it has in law, of adducing additional evidence, it has either to adduce evidence simultaneously with its reliance on the domestic enquiry or should ask the Tribunal to consider the validity of the domestic enquiry as a preliminary issue with a request to grant permission to adduce evidence, if the decision of preliminary issue is against the management. An enquiry into the preliminary issue is in the course of the proceedings and the opportunity given to the management, after a decision on the preliminary issue, is really a continuation of the same proceedings before the Tribunal. In the case before us, it is seen from the order sheet that Item No. 5 relates to the entry of March 21, 1967 regarding the appellant having filed the enquiry proceedings and to the Tribunal having heard the arguments of both sides on the basis of the enquiry proceedings. There is also the further entry that judgment has been reserved by the Tribunal. That shows that the enquiry proceedings have closed by then and what was left was only the delivery of judgment by the Tribunal. The order sheet further shows that after the judgment was reserved on March 21, 1967, the appellant filed the application in question praying that if the enquiry proceedings are found to be defective, it should be given an opportunity to adduce evidence. In the order sheet the entry relating to the receipt of this application is shown as item No. 6, after Item No. 5 which, as pointed above, relates to the reserving of judgment. No doubt, it would have been proper for the Tribunal to have dealt with this application in its main order and expressed its opinion on the same. It is regrettable that the Tribunal apart from just making a reference to the filing of the application in its main order., has not dealt with it on merits. But, that is of no consequence. so far as the present case is concerned. The appellant did not ask for an opportunity to adduce evidence when the proceedings were pending; nor did it avail itself of the right given to it in law to adduce evidence before the Tribunal during the pendency of the proceedings. If such an opportunity had been asked for and refused or if the Tribunal had declined to receive evidence, when it was sought to be tendered on behalf of the management, when the proceedings were still pending, the position would have been entirely different. In such a case, it can be held that the appellant had been deprived of the opportunity which should have been afforded to

it, in law, of adducing evidence on merits before the Tribunal if the domestic enquiry was held to be defective. Having due regard to the fact that the appellant moved the Tribunal in that regard only after the proceedings had come to an end, it cannot be said, in this case, that such an opportunity had been denied to it.

In the result, the order of the Special Industrial Tribunal is confirmed and this appeal dismissed with costs.

V.P.S. Appeal dismissed,
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