Supreme Court of India
State Bank Of India vs R. K. Jain & Ors on 17 September, 1971
Equivalent citations: 1972 AIR 136, 1972 SCR (1) 755
Author: C Vaidyialingam
Bench: Vaidyialingam, C.A.

PETITIONER:
STATE BANK OF INDIA

Vs.

RESPONDENT:
R. K. JAIN & ORS.

DATE OF JUDGMENT17/09/1971

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
REDDY, P. JAGANMOHAN

CITATION:
1972 AIR 136 1972 SCR (1) 755
1972 SCC (4) 304
CITATOR INFO :
RF 1972 SC1031 (43,45,52,58)
RF 1973 SC1227 (24)
RF 1975 SC1900 (12,16)
R 1978 SC1380 (8)
R 1979 SC1652 (20,23,28)
RF 1984 SC 289 (15)
RF 1991 SC1070 (6)

ACT:
Industrial Law Domestic enquiry Defence witnesses not summon ea-If violative of principles of natural justice-Sastri Award, para. 521(10)(c)-Scope of-Enquiry before Industrial Tribunal-Right of management to justify dismissal even if domestic enquiry vitiated--Scope of.

HEADNOTE:
The first respondent was a Money Tester in the appellant bank and was deputed to supervise the remittance of unissuable notes from the branch of the appellant to the Notes Cancellation and Verification Section of the branch of the Reserve Bank of India for destruction. On the allegation that, in order to-avoid liability, he deliberately tore off the label containing his initials, on a packet of notes in which there was a shortage, the

appellant ordered an inquiry. At the inquiry, the respondent examined two defence witnesses who were cashiers of the appellant from different branches. Some officers of Reserve Bank of India who gave evidence for the appellant refused to be cross examined and did not answer any question put to them in cross-examination. Notwithstanding the irregularity, the inquiry proceeded and the inquiry officer submitted his report finding the respondent guilty. The appellant however, ordered a de novo inquiry by another officer. During that inquiry, in which the first respondent took part under protest, he requested the inquiry officer to summon his two defence witnesses who were examined at the earlier enquiry and three others all employees of the appellant. The inquiry officer rejected the request regarding the three new witnesses on the ground that their evidence would not be relevant, and as regards the other two, he informed the respondent that he should arrange for producing them at the inquiry at his own expense, The respondent pleaded that he already incurred a considerable expense in that regard, that the second inquiry was being held due to no fault of his, and therefore, he regretted his inability to have the witnesses summoned at his expense He also requested that in case the two witnesses were not summoned on his behalf their evidence in the earlier enquiry may be treated as evidence in the second inquiry. But his plea was not accepted and the proceedings were conducted without those witnesses being examined on behalf of the respondent. The enquiry officer submitted his report finding the respondent guilty. The respondent was asked to show cause why the proposed punishment of discharge from service without notice in terms of para. 521(10)(c) of the Sastri Award should not be imposed. After considering his reply the appellant discharged him from service.

The Central Government referred the dispute as to whether the appellant was justified in discharging the respondent from its service, to the Industrial Tribunal.

The Industrial Tribunal held that the respondent was not afforded a reasonable opportunity to produce evidence in his defence during the second inquiry and that the management was not justified in terminating his services on the basis of the report of the inquiry officer.

In appeal to this Court, it was contended that (1) the Tribunal had no jurisdiction to set aside the order of the management discharging the

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workman from service when there was no finding that the appellant acted mala fide or with a view to victimise the employee; (2) even if it was held that the evidence was not sufficient to justify the order of discharge nevertheless, under the last part of the para. 521 (10) (c) of the Sastri Award the appellant had jurisdiction to pass the order of discharge; and (3) even assuming that the domestic inquiry conducted by the appellant was in any manner vitiated, the

Tribunal erred in law in not giving an opportunity to the management to adduce evidence before the Tribunal to establish the validity of the order of discharge.

Dismissing the appeal,

HELD : (1) The order terminating the services of a workman can be set aside when there has been a violation of the principles of natural justice. Though normally it may be the duty of a workman to have his witnesses produced before the inquiry officer, in the particular circumstances of this case the position was different. The workmen had incurred heavy expenses in the previous inquiry, which inquiry was abandoned by the management not because of any fault of the workman but because of the unreasonable attitude adopted by the employees of the Reserve Bank who gave evidence. For their conduct the workman should not be punished by making him incur expenses over again, especially when the second inquiry was conducted by the management of its own volition and in spite of the protests made by the workman. The request made by the workman was a reasonable and modest one. The Tribunal was, therefore, justified in holding that the workman was not afforded a reasonable opportunity to place his evidence before the inquiry officer, that there has been a violation of principles of natural justice in the conduct of the domestic inquiry and consequently, the order' of discharge could not be sustained. [769 A-B; 771 G-; 773 C-G; 774 A-B]

Tata Oil Mills Company Ltd. v. Their Workmen, [1966] 2 L.L.J. 602 and Ananda Bazar Patrika (P) Ltd. v. Its Workmen, [1964].3 S.C.R. 601, followed.

(2)Under para. 521(10)(c) of the Sastri Award even if the evidence on record is sufficient to hold a workman guilty of the charges framed against him the bank had ample power and jurisdiction to discharge him from its service if it does not consider it expedient to retain the employee. But in the present case, the management never sought to place any reliance on that part of sub-cl. (c). The finding of the inquiry officer was that on the evidence adduced the workman was guilty of the charges levelled against him and that the charges had been proved beyond all doubt. The show cause notice proceeded on the same basis and the final order of discharge was also to the same effect. Therefore, the appellant never proceeded on the basis that the service of the respondent was being dispensed with on the ground that the management did not think it expedient to retain the workman in its service notwithstanding the fact that the evidence had been found to be insufficient to sustain the charges levelled against him. [774 D-H]

(3)When an order of punishment by way of dismissal or termination of services is effected by the management the issue that is referred by the Industrial Tribunal is whether the management was justified in discharging and terminating the services of the workman concerned and whether the workman was entitled to any relief. Under those

circumstances it is the right of the workman to plead all infirmities in the domestic inquiry if one has been held, and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry had been held by it on the basis of
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which the impugned order had been passed. It is also open to the management to justify on facts that the order passed by it was proper. If the management &fends its action solely on the basis that the domestic inquiry held by it is proper and valid and if the Tribunal holds against the management on that point, the management will fail. It is open to the Tribunal to accept the evidence adduced by the management to justify its action and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is however essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. The inquiry that is conducted by the Tribunal is 'a composite inquiry, and there is no justification for the view that the inquiry before the Tribunal has to be conducted in two parts first, an investigation into the validity of the domestic inquiry and if the decision is against the management on the point, then to conduct a further inquiry regarding the evidence that may be adduced by the parties about the validity of the action taken by the management. [776F-H; 777A-D; 778 C-D]
In the present case, the to justify the legality of the domestic inquiry held was passed. It never to produce any evidence before the Tribunal apart from the inquiry proceedings. No opportunity for justifying its action was asked for by the management nor availed of. [.778 H; 779 A-B]
M/s.Hindustan Steel Ltd. v. Their Workers, (1970) Labour & Industrial Cases, 102, approved.
Madhya Pradesh State Road Transport Corporation v. Industrial Court, Madhya Pradesh, (1970) Labour & Industrial Cases 510 and Premnath Motors Workshop Private Ltd. v. Industrial Tribunal, Delhi, (1971) I.F & L.R. 370, overruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 992 of 1967. Appeal by special leave from the Award dated April 7, 1967 of the Industrial Tribunal, Chandigarh in Reference No. 4C of 1966.

Jagadish Swarup, Solicitor-General, H. L. Anand, Ashok Grover and K. B. Mehta, for the appellant M.K. Ramamurthi, R. A. Gupta and K. B. Rohatgi, for respondent No. 1.

The Judgment of the Court was delivered by Vaidialingam, J. This appeal, by special leave, by the State Bank of India, is against the award dated April 7, 1967 of the Industrial Tribunal, Chandigarh, setting aside the order of the appellant, discharging the services of the first respondent and directing his reinstatement with full back wages.

The first respondent joined the service of the appellant on June 13, 1955 as a Money Tester and was working in that capacity at the Ambala City Branch in July, 1960. On July 26, 1960, he was deputed to supervise the remittance of unissuable notes of Rs. 87,48,000/- from the Ambala City Branch to the Note Cancellation and Verification Sections of the Reserve Bank of India, Ludhiana for destruction. According to the appellant the procedure adopted for such purpose was : the currency notes intended to be carried for destruction to the concerned section of the Reserve Bank of India, are examined, counted and then tied in bundles with a label or slip attached to each packet containing the particulars including the initials of the examining officer' Each packet is then recounted by the Money Tester and the latter puts his initial on the label or slip in token of his having done the recounting, the idea being, that if any shortage is discovered subsequently, the person whose initials are found on the label or slip can be made liable to account for the deficiency, and be asked to make good the same. Accordingly, when the money was taken by the first respondent on July 26, 1.960 and delivered to the Note Cancellation and Verification Section of the Reserve Bank of India, Ludhiana, officials therein noted a shortage of Rs. 100/- in the packet containing Rs. 10/denomination notes. Such a deficiency was noted in the packet to which was tacked the label bearing the initials of R, K. Jain. The shortage was pointed out to R. K. Jain by the officials of the Reserve Bank of India, and the packet was handed back to the former to enable him to satisfy himself regarding the shortage. R. K. Jain, under the guise of trying to unstitch the packet, tore off the label bearing his initials in spite of the protest made by the officials of the Reserve Bank of India. The torn label was picked up and as it contained the initials of R. K. Jain, the officials of the Reserve Bank of India kept the torn pieces intact. Later on., a verbal inquiry was made by the Superintendent of the Reserve Bank of India and R. K. Jain admitted the shortage by his letter dated July 29, 1960. In that letter, addressed to the Reserve Bank of India. R.' K. Jain stated that while count- ing the packet containing the Rs. 10/- notes in which a shortage of Rs. 100/- was found, the slip was torn by him inadvertently and that he repasted the slip, after having confirmed the mutilation as desired by the officials of the Reserve Bank of India. Ambala City Branch of the appellant, addressed a letter dated August 13 , 1960 to R. K. Jain regarding the reports made by the Currency Officer, Reserve Bank of India and the Superintendent Incharge of the Reserve Bank of India, Ludhiana, regarding the shortage of Rs. 100/-. In that letter, after referring to the counting of the packet by the first respondent and his tearing the label and recasting it, it is stated that the first respondent is responsible for the shortage as he has put his signature in the label in token of having recounted the packet and found it to be correct. It was further stated that the first respondent tore off the label because it contained his initials and this was done to avoid any liability or responsibility. These acts were stated to amount to gross misconduct and R. K. Jain was called upon to submit his explanation to the Head Office of the appellant. On August 16, 1960, the first respondent stated that the packet containing soiled notes was handled by several persons and counted more than once both in the Branch at Ambala as well as in the concerned section of the Reserve Bank of India, Ludhiana. After referring to the fact that the packet was given to him for recounting, as the officers asked him to hurry up the matter and to return the packet soon, and as

there was a shortage of Rs. 100/-, he got confused and while handling the packet the covering slip tore off accidentally. This fact was explained to the officer of the Reserve Bank of India. He further stated that he did not destroy the label deliberately to avoid any liability. The first respondent has further stated that on the morning of July 26, 1960, ten notes of rupee one denomination were found short in a packet which was verified and found correct by the staff of the Reserve Bank of India. But later on the Superintendent of the Reserve Bank of India detected the shortage and this deficiency was made up by the staff of the Reserve Bank. The concerned staff of the Reserve Bank, who had made up the deficiency, was not well disposed towards him as he declined to accede to their request to reimburse, them in the sum of Rs. 10/- which they had to make good due to their negligence. Therefore, the staff of the Reserve Bank in the concerned section has made a false allegation that the slip was deliberately torn off by the first respondent. R. K. Jain has further stated that he had put in nearly five years service and had a clean record and that the allegations made against him were false and frivolous.

Not satisfied with the explanation given by R. K. Jain, the appellant placed him under suspension with effect from September 6, 1960 pending an inquiry, which had been ordered against his conduct. By letter dated October 10, 1960, R. K. Jain was required to show cause why disciplinary action should not be taken against him on the following charges :

> "(1) That during the course of examination of Ambala City Branch remittance of non-issuable notes sent to the Note Cancellation and Verification Section of the Reserve Bank of India. Ludhiana,' on 26th July, 1960, under your supervision, 10 pieces of Rs. 10/- notes were found short in one packet; the packet in question was recounted by you at the Branch.
>
> (ii) That when you were given the aforesaid packet for satisfying yourself regarding the shortage, you tried to unstitch it and in the process tore off the label stitched on the packet despite instructions not to do so. On the label being examined by the Superintendent-in- Charge of the Reserve Bank's Note Cancellation Section it was revealed that the label bore your signature in token of your having counted the packet in question. It is, therefore, obvious that you tried to destroy the label in order to absolve yourself of the responsibility for the shortage in question."

He was further directed to submit his explanation within 10 days of the receipt of the charge sheet.

It will be seen from the above that the charges against R. K. Jain were twofold: (i) There was a shortage of 10 pieces of notes of Rs. 10/- denomination in the packet which contained the label bearing his initial; and (ii) That he tried to destroy the label in order to absolve himself from the liability for the shortage.

R.K. Jain sent his explanation to the charges by his letter dated October 18, 1960. While admitting that he was deputed on July 26, 1960 to remit unissuable noted in the concerned section of the Reserve Bank of India, Ludhiana, and the shortage being found and the packet being given to him for recounting, R. K. Jain has stated That as the packet had been handled by different persons in the

offices of the two banks, the stitching had become loose. Therefore, when the packet was being recounted by him, the slip tore off accidentally. As the staff of the Reserve Bank desired him to confirm the mutilation ,of the slip, he signed a letter which had been drafted by them on being assured that it was a routine procedure to be adopted. He denied that he deliberately tore off the slip bearing his initial to avoid responsibility for the shortage of currency notes. In turn he alleged that the staff of the Reserve Bank of India at Ludhiana, in the Note Cancellation and Verification Section was prejudiced against him as he had declined to accede to their request to pay them a sum of Rs. 10/- which they had to make good in respect of another packet. He denied the charges as baseless and as he had signed the letter of July 29, 1960, as drafted by the staff of the Reserve Bank of India, Ludhiana, he requested that the, proceedings may be dropped.

It is seen that there was a Departmental Inquiry conducted by one B. P. Tiwari, an officer of the Appellant Branch at Ambala. The inquiry commenced on December 23, 1960 and the Inquiry Officer submitted his report on February 2, 1961 holding R. K. Jain guilty of the charges levelled against him. it is not necessary for us to advert to the findings in this report as a fresh inquiry was conducted later. It is only necessary to note that during the inquiry proceedings conducted by B. P. Tiwari, the :first respondent had examined Pooran Singh and Sanjhi Ram, who were Cashiers at the Jullundur and Amritsar Branches respectively, of the appellant Bank, as his defence witnesses. They had given evidence complaining about the behaviour of the staff of the Reserve Bank of India in the Note Cancellation Section particulars towards potdars of the State Bank of India. It is also seen that some officers of the Reserve Bank of India at Ludhiana in the Note Cancellation Section had given evidence for the appellant. Those officers surprisingly refused to be cross-examined by the first respondent during that inquiry. This resulted in the Deputy General Secretary of the State Bank of India's Staff Association sending a letter on December 24, 1960 to B. P. Tiwari pointing out that in the inquiry that was being conducted by him, the employees of the Reserve Bank of India, at whose, instance the charges had been framed against R. K. Jain, did not permit the delinquent to put them any question in cross- ,examination. In fact, it is averred that those officers of the Reserve Bank of India flatly refused to answer any questions that were put by R. K. Jain and his representative and also declined to answer any questions put to them in cross-examination. It was alleged that the statements given by those officers of the Reserve Bank of India were one sided and R. K. Jain and his representative had to sit as spectators during the inquiry. The inquiry was quite contrary to the Procedure to be adopted in disciplinary action taken in respect of Bank employees. Notwithstanding this grievance made on behalf of the first respondent that the inquiry was opposed to all principles of natural justice and was not a proper inqairy, .nothing seems to have been done, by the appellant, as will be seen from the fact that the inquiry proceeded and the report, finding R. K. Jain guilty, was sent by B. P. Tiwari, so late as February 2, 1961.

It is stated by the appellant that when the report of B. P. Tiwari was considered, the grievance made on behalf of R. K. Jain in the letter dated December 24, 1960 was taken into account and it was decided that the inquiry conducted by D. P. Tiwari, was not a proper one and hence a de novo inquiry was directed to be done by another Officer B. D. Sharma. It may be mentioned that there is no order of the appellant on record, in and by which they directed a de novo inquiry by B. D. Sharma.

It appears that the new Inquiry Officer B. D. Sharma sent a communication dated May 27, 1961 to R. K. Jain that he will be conducting another inquiry against him on the charges originally framed and that the inquiry is fixed for June 14, 1961. On receipt of this communication the Deputy General Secretary of the State Bank of India Staff Association sent a reply on June 10, 1961 to D. D. Sharma stating that the Association was astonished about the proposal to have a second inquiry. The letter proceeds to state that B. P. Tiwari conducted an inquiry about six months back and that though a report appears to have been sent by him to the Head Office, no copy of such a report had been furnished to R. K. Jain. The Association has been making several inquiries from the Head Office regarding the matter, but the only reply that was received by it was that the matter was receiving the attention of the Head Office. The Staff Association further protested very strongly against the Bank's action in holding a fresh inquiry and that it was unjustified and amounted to an unfair labour 'practice. The Association further charged the management that they were somehow or the other intent on finding R. K. Jain guilty of some charge or other and to punish him. On these grounds the Association made a request to cancel the second inquiry proposed to be held. A copy of this communication was also sent to the Secretary and Treasurer of the appellant Bank at New Delhi requesting him to look into the matter and stop the fresh inquiry proposed to be conducted by B. D. Sharma on June 14, 1961. But the Inquiry Officer, by his letter dated June 13, 1961 informed R. K. Jain that the inquiry will be held on June 14, 1961 as already intimated. Again on June 14, 1961 the Deputy General Secretary of the Staff Association sent a communication to the Inquiry Officer that the Head Office has not informed R. K. Jain that a fresh inquiry: is proposed to be conducted and that in fact even the details of the inquiry relating to the one conducted by B. P. Tiwari have not been furnished to him. The Association again requested the Inquiry Officer to stop holding the inquiry and furnish R. K. Jain with a copy of the previous inquiry proceedings.

We will have to refer to certain further correspondence that passed between the Inquiry Officer and the Staff Association on behalf of R. K. Jain. It is enough to state that R. K. Jain, when he found that the inquiry was being proceeded with consented to take part under protest. He made a request to the Inquiry Officer to summon five witnesses who are employees of the appellant Bank. The Inquiry Officer rejected the request of R. K. Jain regarding three of those witnesses on the ground that their evidence will not be useful for the inquiry. Regarding the two others, the Inquiry Officer informed R. K. Jain that the latter should arrange for producing those witnesses at the inquiry at his expenses. R. K. Jain pleaded that those witnesses were that he has already incurred considerable expense in that regard. The second inquiry was being held due to no fault of his and therefore he regretted his inability to have them summoned at his expense. But this plea was not accepted by the lnquiry Officer and the proceedings were conducted without those witnesses being examined on behalf of R. K. Jain.

The inquiry proceedings were conducted by B. D. Sharma between June 14, 1961 and July 12, 1962. B. D. Sharma sent- his report to the Head Office on August 23, 1962. In the said report the Inquiry Officer found that R. K. Jain was responsible for the shortage of the currency notes and that he deliberately tore off the slip bearing his initials in the packet where the deficiency was noted and this was done with the intention of destroying evidence of his having recounted the packet. Thefindings are by and large based upon the evidence of the officers of the Reserve Bank of India, who in the previous inquiry had' refused to be cross- examined. On receipt of the report, the Superintendent of

the Ambala City Branch of the appellant by his letter dated March 4, 1963 intimated R. K. Jain that theInquiry Officer B. D. Sharma has found him guilty of the charges framed against him. It was further stated that the appellant has come to the decision that R. K. Jain should be discharged from service of the Bank without notice in terms of paragraph 521 (10) (c) of the Sastry Award read with paragraph 18.28 of the Desai Award. R. K. Jain was desired to show cause within a week why the proposed punishment should not be imposed. He was also informed that he, would be given a hearing before final orders are passed, if he so desired. , The first respondent sent a reply on March 28, 1963 pleadinginnocence. In the said reply he alleged that the first inquiry by B. P. Tiwari was conducted contrary to all principles of natural justice. The second inquiry by B. D. Sharma was also conducted in voilation of the principles of natural justice and that he was not Oven a reasonable opportunity to defend himself. He made a grievance that his request to have certain witnesses summoned for being cross- examined on his behalf was arbitrarily rejected by the Inquiry Officer. He further alleged tbat his representative was not permitted to put the necessary questions to the officers of the Reserve Bank, who gave evidence before the Inquiry Officer. In particular hp, referred to the fact that his request to summon two witnesses Pooran Singh and Sanjhi Ram, who were in the employ of the appellant was arbitrarily rejected by the Inquiry Officer. Apart from pleading all these facts, he alleged that the findings recorded by the Inquiry Officer were opposed to the evidence onrecord. The sum and substance of the grievance of R. K. Jain, was that the inquiry conducted by B. D. Sharma was contrary to all principles of natural justice; and that he was not given a fair opportunity for placing his defence before the Inquiry Officer and the whole proceedings were not conducted in a judicial manner.

The Superintendent of the appellant branch at Ambala, by his ,order dated October 1, 1963 discharged R. K. Jain from the service of the Bank without notice, on the ground that his explanation contained in his letter dated March 28, 1963 was unsatisfactory and cannot be accepted. The first respondent filed an appeal on November 8, 1963 before the Deputy Secretary and Treasurer of the appellant Bank at New Delhi. The Appellate Authority, 'however, rejected the appeal on January 18, 1964.

We have given elaborately the circumstances leading to the order of discharge passed by the appellant Bank in order to appreciate the background which led to a reference being made by the Central Government 'to the industrial Tribunal for adjudication. The Central Government by its order dated September 19, 1966 referred for adjudication to the Industrial Tribunal, Chandigarh the following dispute :

> "Whether the management of the State Bank of India was justified in discharging from service Shri R. K. Jain, Money Tester at Ambala City Branch, with effect from 1st October, 1963 if not, to what relief is the employee entitled ?"

In the written statement filed by the workman, after setting out the, various facts mentioned earlier, it was averred that the Reserve Bank employees who appeared before B. P. Tiwari declined to be cross-examined by the workman and that the second inquiry by B. D. Sharma was conducted in spite of protests made by the workman. it was pleaded that the workman never wanted the second inquiry. He further alleged that the inquiry conducted by B. D. Sharma was in voilation of the

principles of natural justice inasmuch as he was denied an opportunity of having certain witnesses summoned, who were in the employ of the appellant, to give evidence. The workman also criticised the manner in which the inquiry proceedings were conducted by B. D. Sharma. The findings recorded by B. D. Sharma were also attacked as being opposed to the evidence on record. In particular, the workman made a grievance that he was denied the opportunity to summon Pooran Singh, Cashier at Jullundur Branch and Sanjhi Ram, Cashier at Amritsar Branch of the appellant Bank, who had appeared as his witnesses in the inquiry conducted by B. P. Tiwari. He had incurred a lot of expense in that regard and the first inquiry was scraped for no fault of his and the second inquiry was ordered by the management of their own accord. All these matters have caused considerable prejudice in placing his defence before Inquiry Officer.

The appellant Bank, in its written statement admitted that during the inquiry conducted by B. P. Tiwari the employees of the Reserve Bank at Ludhiana, who gave evidence did not allow themselves to be cross-examined by the representative of R. K. Jain and, therefore, the said inquiry was not proper. It was because of the fact that the workman did not have a fair and proper inquiry conducted against him, the second inquiry was directed to be conducted by B. D. Sharma. The Bank further averred that full opportunity was given to the workman to place his defence and facilities were provided for arranging to get any witnesses that he wanted to produce before the Inquiry Officer. The Bank supported the findings recorded by the Inquiry Officer. The Bank further averred that the Agents at the Jullundur and Amritsar Branches, were permitted to release Pooran Singh and Sanjhi Ram, if they were willing to give evidence at Ambala at their expense on behalf of R. K. Jain. The Bank finally pleaded that the action taken against R. K. Jain was perfectly justified and it was in accordance with the procedure indicated in the Sastry Award.

The Industrial Tribunal, by its award dated April 7, 1967, held that R. K. Jain was not afforded a reasonable opportunity to produce evidence in his defence during the inquiry conducted by B. D. Sharma and that the management was not justified in terminating his services, on the basis of the report of the Inquiry Officer. The Tribunal has referred to the evidence given by the Inquiry Officer R.W. 1, as well as the Agent of the appellant Bank R.W. 2, who passed the order of discharge. It referred to the admission made by the Inquiry Officer regarding the request made by R. K. Jain to have the two Cashiers Pooran Singh and Sanjhi Ram examined on his behalf and that request was not acceded to on the ground that it was for the workman concerned to produce them for examination, if he so desired. According to the Tribunal the workman had been put to a considerable expense in examining those witnesses in the previous inquiry held by B. P. Tiwari, which had to be abandoned due to no fault of the workman. The Tribunal further found that the workman did not want the second inquiry. Under those circumstances, when a fresh inquiry was being conducted by the, management, it is the view of the Tribunal that it was quite unreasonable on their part to expect a poor workman to be put to unnecessary and additional expense for no fault of his. The Tribunal also held that the inquiry was closed in spite of repeated requests made by the workman for summoning the witnesses and that even the statement of R. K. Jain was not recorded after the evidence on the side of the management was closed. For all these reasons, the Tribunal held that the inquiry proceedings were vitiated by violation of the principles of natural justice and, therefore the inquiry was not valid. The learned Solicitor-General on behalf of the appellant ha,,-, urged three contentions : (1) The Tribunal had no jurisdiction to set aside the order of the,

management discharging the workman from service when there is no finding that the appellant had acted mala fide or with a view to victimise the employee; (2) Even if it is held that the evidence is not sufficient to justify the order of .,discharge, nevertheless under the last part of paragraph 52 1, cl. (10), sub-clause (c) of the Sastry Award, the appellant has 'full jurisdiction to pass the order of discharge; and (3) Even assuming that the domestic inquiry conducted by the Bank was in any manner vitiated, the Industrial Tribunal erred in law in not giving an opportunity to the management to adduce evidence before it to establish the validity of the order of discharge. Mr. M. K. Ramamurthi, learned counsel for the first respon- dent, strenuously contested the position taken on behalf of the appellant. The counsel urged that the finding of the Tribunal that the second inquiry was not conducted at the instance of the workman is correct. Though, normally it is the duty of the party, who wants to have witnesses examined, to produce them before the Inquiry Officer, yet in the particular circumstances of this case and in view of what happened in the inquiry conducted by B. P. Tiwari, the Tribunal is justified in holding that the Inquiry Officer's refusal to have the two Cashiers, namely, Pooran Singh and Sanjhi Ram produced for giving evidence amounts to a denial of a reasonable opportunity to the workman in placing his defence before the Tribunal. The counsel further urged that the last part of Sub-Cl. (c) of Cl. 10 of Paragraph 521 does not apply and it has not been pleaded by the appellant. The counsel further pointed out that the appellant, as will be seen from the written Statement filed before the Tribunal, was prepared to justify the order of discharge solely on the basis of domestic inquiry and it never offered to adduce evidence before the Tribunal dehors the domestic inquiry. The appellant, not having asked for an opportunity to adduce evidence before the Tribunal, and not having even raised such a point in the Special Leave Petition, cannot be allowed. to urge, for the first time in the appeal that the Tribunal should 'have given an opportunity to adduce evidence to justify the order of discharge. We will now consider the contentions of the learned Solicitor in the order stated above. Before we do so it is necessary to refer to the relevant provisions in the Award of the All India Industrial Tribunal (Bank Disputes), which is known as the Sastry Award. Chapter XXV deals with the method of recruitment, conditions of service, termination of employment, disciplinary action etc. Section 1 deals with the method of recruitment; and S. 2 with the terms and conditions of service. Section 3, in which Paragraph 521 occurs, deals with the procedure for taking disciplinary action. Clauses (9) and (10) of Paragraph 521 are as follows :

"521 : A person against whom disciplinary action is proposed or likely to be taken should, in the first instance, be informed of the particulars of the charge against him; he should have a proper opportunity to give his explanation as to such particulars final orders should be passed after due consideration of all the relevant facts and circumstances. With this object in view we give the following directions..-

> (9) When it is decided to take any disciplinary action against an employee such decision shall be communicated to him within three days thereof.
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> (10) The. procedure in such cases shall be as follows
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> (a) An employee against whom disciplinary action is proposed or likely to be taken shall be given a chargesheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him and a

date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation as also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the officer conducting the enquiry, to cross- examine any witness on whose evidence the charge rests and to examine witnesses and pro- duce other evidence in his defence. He shall also be permitted to be defended by a representative of a registered union of bank employees or, with the bank's permission, by a lawyer. He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him.

(b) Pending such inquiry he may be suspended, but if on the conclusion of the enquiry it is decided to take no action against him he shall be deemed to have been on duty and shall be entitled to the full wages and allowances and to all other privileges for the period of suspension; and if some punishment other than dismissal is inflicted the whole or a part of the period of suspension, may, at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages, allowances etc.

(c) In awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances that may exist. Where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such misconduct is of "gross" type he may be merely discharged, with or without notice or on payment of a month's pay and allowances, in lieu of notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the bank does not , for some reason or other, think it expedient to retain the employee in question any longer in service. Discharge in such cases shall not be deemed to amount to disciplinary action."

of the first respondent under sub-cl.(c) of cl. (10) referred to above. It will also be seen that sub-cl. (a) of Cl. (10) incorporates, substantially the principles of natural justice in the conduct of an inquiry and also of giving a reasonable opportunity to the workman concerned to defend himself, which includes a right to cross-examine the witnesses on the side of the management, and also to adduce evidence in support of his defence.

In support of the first contention, the learned Solicitor urged that the second inquiry by B. D. Sharma was conducted at the instance of the workman and that there was not duty cast on the Inquiry Officer to summon witnesses required by the workman. The learned Solicitor urged that apart from the fact that an Inquiry Officer has no power to summon witnesses, it is well established by the decisions of this Court that it is the duty of the party, who wants to have witnesses examined to produce them before the Inquiry Officer for examination. The reasoning of the Tribunal, that the principles of natural justice have been violated in the domestic inquiry by non-summoning by the Inquiry Officer of Pooran Singh and Sanjhi. Ram, as requested by the workman, is very strenuously attacked as erroneous in law. The legal position regarding the circumstances under which the

Tribunal can interfere with the domestic inquiry have been laid down by this Court. Among the circumstances which will justify the interference by the Tribunal are : when the order of discharge is punitive, or mala fide or when it amounts to victimization or unfair labour practice. (Vide Tata Oil Mills Company, Ltd. v. Their Workmen) (1). The order terminating the, services of the workman can also be set aside when there has been a violation of the principles of natural justice, in the conduct of the inquiry which led to the passing of the order of termination. The extent of the jurisdiction of a Labour Court or Industrial Tribunal to interfere with an order of termination passed on the basis of a domestic inquiry held by the management have also been reiterated by this Court in Ananda Bazar Patrika (P) Ltd. v. Its Work-

men 2 ) at page 606 as follows :

"The extent of the jurisdiction which a Labour Court or an industrial Tribunal can exercise in dealing with such disputes is well-settled. If the termination of an industrial employee's services has been preceded by a Proper domestic enquiry which has been held in accordance with the rules of natural justice and the conclusions reached at the said enquiry are not perverse the Tribunal is not entitled to consider the propriety or the correctness. of the said conclusions. If, on the other hand, in terminating the services of the employee, the management has acted maliciously or vindictively or has been actuated by a desire to punish the employee for his trade union activities, the Tribunal would be entitled to give adequate protection to the employee by ordering his reinstatement, or directing in his favour the payment of compensation; but if the enquiry has been proper and the conduct of the management in dismissing the employee is not mala fide, then the Tribunal cannot interfere with the conclusions of the enquiry officer, or with the orders passed by the management after accepting the said conclusions."

In the said decision again at page 608 it is observed "There can 'be no doubt that at the domestic enquiry it is competent to the enquiry officer to refuse to examine a witness if he bona fide comes to the conclusion that the said witness would be irrelevant or immaterial. If the refusal to examine such a witness, or to allow other evidence to be led appears to be the result of the desire on the part of the enquiry officer to deprive the person charged of an opportunity to establish his innocence, that course, would be a very serious matter."

(1) [1966] 2 L.L.J. 602.

(2) [1964] 3 S.C.R. 601.

t5-L3SUP Cl/72 That an officer holding the domestice, inquiry can take no valid Or effective steps to compel the attendance of any witness and that just as the management produces its witnesses before the officer concerned for giving evidence, it is the duty of the workman ,to take steps to produce his witnesses before the Inquiry Officer holding a domestic inquiry, is also laid down by this Court in Tata Oil Mills Co. Ltd. v. Its Workman(1).

Having due regard to the principles laid down in the above decisions, the contention of the learned Solicitor that the Inquiry Officer B. D. Sharma was justified in refusing to examine the three officers

of the appellant branch as desired by the workman and that he was also justified in refusing to summon the two Cashiers. namely, Pooran Singh and Sanjhi Ram to give evidence, on the ground that it is the duty of the workman to have them produced 'for giving evidence, no doubt, may on the face of it, appear to be very attractive. But when the facts are considered, it will be clear that no reasonable opportunity has been provided, in the domestic inquiry to the workman to place his offence. As emphasised by this Court in Ananda Bazar Patrika (P) Ltd. v. Its Workmen (2), the termination of an employee's service must be preceded by a proper domestic inquiry held in accordance with the rules of natural justice. Therefore, it is evident that if the inquiry is vitiated by violation of the principles of natural justice or if no reasonable opportunity was provided to a delinquent to place his defence, it cannot be characterized as a proper domestic inquiry held in accordance with the rules of natural justice. We will be indicating later that the domestic inquiry held in this case suffers from a very serious infirmity.

Mr. Ramamurthi referred us to certain letters addressed by the Staff Association on behalf of R. K. Jain in support of his contention that the second inquiry was not held at the instance of the workman. In our opinion, Mr. Ramamurthi is well founded in his contention and the view of the Industrial Tribunal in this regard is correct. We will now refer to the material on record which will support the above finding of the Industrial Tribunal.

When B. P. Tiwari commenced the first inquiry, the Staff Association' addressed a letter on December 24, 1960 that the employees of the Reserve Bank who-were giving evidence on behalf of the management refused to be cross-examined by the workman. That this allegation is justified is borne out by the admission contained in the written statement of the appellant filed before the Industrial Tribunal. But notwithstanding this letter written as early as December 24, 1960, the appellant took no steps whatsoever to redress the grievance of the workman by stopping the in- (1) [1966] 21.1.J. 602.

(2) [1964] 3 S.C.R. 601.

quiry conducted by B. P. Tiwari. On the other hand, the management allowed him to continue the inquiry and to send the report on February 2, 1961 holding the workman guilty'. Notwithstanding the repeated requests made by the Staff Association as to what has happened regarding the inquiry conducted by B. P. Tiwari, the management except saying that the matter is under consideration did not furnish any information about their proposal to conduct a second inquiry. It was only when the communication dated May 27, 1961 was received- from B. D. Sharma regarding the inquiry to be conducted by him. on the same charges on June 14, 1961 that R. K. Jain knew, for the first time that a fresh inquiry is proposed to be conducted by the management. Immediately on June 10, 1961 the Staff Association wrote a letter of protest to the Inquiry Officer expressing surprise at the proposed second inquiry and requesting him to stop the same. Notwithstanding the fact that a copy of this letter was sent to the Secretary and Treasurer of the appellant Bank at New Delhi, no further information was given by the management to the workman concerned. The In- quiry Officer B. D. Sharma firmly informed the workman that the inquiry will proceed as scheduled on June 14, 1961. On June 14, 1961, several letters Passed between the Staff Association and the Inquiry Officer. After finding that all attempts to stop the second inquiry have proved futile, the workman decided to

participate in the same under, protest. The correspondence that took place between the Inquiry Officer and the Staff Association clearly shows that the workman never wanted a second inquiry to be conducted against him. The correspondence also shows that the first inquiry, though it was conducted to the finish by B. P. Tiwari was abandoned by the management due to the unreasonable attitude of the officers of the Reserve Bank of India, who figured as witnesses, refusing to be cross-examined by the workman. The management never informed the workman about their decision to conduct a second inquiry till B. D. Sharma himself conveyed that intention to The workman only as late as May 27, 1961. It is clearly established in the cir- cumstances that the second inquiry was not conducted, because the workman wanted it. On the other hand, it is clear that it was being conducted at the instance of the management. Therefore, the finding of the Industrial Tribunal that the second inquiry was not conducted because the workman wanted it, is correct.

After the second inquiry was commenced by B. D. Sharma, the Staff Association addressed a letter to the Inquiry Officer on June 15, 1961. The Inquiry Officer was requested to arrange to summon five persons for cross-examination by the workman. Those persons were : (1) Shri B. P. Tewari, (2) Shri J. S. Bhatnagar, (3) Shri K. C. Mehra, Agent, Ambala City, (4) Shri Sanjhi Ram, Cashier, Amritsar, and (5) Shri Puran Singh, Cashier, Jullundur. The first three persons mentioned in the list were the officers of the Bank and 4 and 5 were also employees of the appellant, but working in different branches. There is no controversy that Pooran Singh and Sanjhi Ram were examined by the workman at his expense in the previous inquiry conducted by B. P. Tiwari. Those witnesses had also stated that the staff of the Reserve Bank, Note Cancellation Section were antagonistic to the potdars of the State Bank of India. That is a matter of record. The Inquiry Officer replied on June 15, 1961 stating that the three officers, namely, M/s Tewari, Bhatnagar and Mehra are all working outside Ambala and that if it is found necessary the workman will be given an opportunity to cross-examine them. But regarding Sanjhi Ram and Pooran Singh, the Inquiry Officer categorically stated that since those persons had appeared at the instance of the workman in the previous inquiry, it was for him to arrange for their presence for giving evidence. On June 15, 1961 again there was a lot of correspondence between the Staff Association and the Inquiry Officer. The Staff Association emphasised that Sanjhi Ram and Pooran Singh had been examined at the instance of the workman in the previous inquiry and that was abandoned due to no fault of the workman. It was emphasised that the workman cannot afford to bear the expenses of bringing those witnesses over again in the second inquiry. The Inquiry Officer was requested to contact the management two witnesses, who were employees of the appellant, The Inquiry Officer firmly replied that it is for the workman to make arrangements for producing Sanjhi Ram and Pooran Singh, if their evidence was considered necessary by him and that the Inquiry Officer cannot take any steps in that behalf. Notwithstanding the further request made by the Staff Association on the ground that the workman's financial position does not enable him to bear the necessary expenses in that regard. No doubt, it is seen that the Agent of the Ambala Bank addressed letters to the officers at Jullundur and Amritsar Branches to release Pooran Singh and Sanjhi Ram in case they desired to appear at the inquiry on behalf of the workman; but it was made clear in those letters that the two Cashiers must be specifically told that their presence at the inquiry will be at the request of R. K. Jain and the Bank will not pay any expense that may be incurred by them. In these circumstances, quite naturally the two witnesses did not appear before the Inquiry Officer and the workman also could not afford to bring them all the way to give evidence on his side. On the other 'hand, the management brought all their officers as

well as the officers of the Reserve Bank for the purpose of giving evidence on their side and the management incurred all the expenses in that behalf. During the course of the correspondence the, workman even made a request that the Reserve Bank officers have already given evidence in the previous inquiry and that the present inquiry may be confined only to their cross-examination and the inquiry continued from that stage. He also made a request that in case the :two Cashiers Pooran Singh and Sanjhi Ram are not summoned on his behalf: their evidence given in the inquiry held by B. P. Tiwari, ,which was already on record, may be treated as their evidence in the present proceedings. These requests were also rejected by he Inquiry Officer. Whether there has been a violation of the principles of natural justice in the domestic inquiry and whether a reasonable opportunity of defending himself has been provided to the workman in the said inquiry has to be considered in the light of the circumstances referred to above. Though, normally it may be the duty of the workman to have his witnesses produced before the Inquiry Officer, in the particular circumstances of this case the position is entirely different. The workman has admittedly incurred heavy expenses in the previous inquiry conducted by B. P. Tiwari. There is no controversy that he brought the two Cashiers at considerable expense to give evidence on his side. That inquiry conducted by B. P. Tiwari was abandoned by the management not because of any fault of the workman, but because of the unreasonable attitude adopted by the employees of the Reserve Bank who gave evidence. For the conduct of those witnesses, the workman, in our opinion, should not be punished by making him to incur the expenses over again specially when the second inquiry was being conducted by the management of its own volition in spite of protests made by the workman, and the management was prepared to bear the expenses of the second inquiry regarding its officers as well as the officers of the Reserve Bank of India, Ludhiana. But it was not prepared to accept, what in our view, was a reasonable and modest request made by the first respondent to have the two Cashiers summoned for giving evidence on his side. As to what evidence they would have given or as to whether the evidence given by them would have helped the respondent No. 1, are not matters which arise for consideration, because their evidence was not made available in the second inquiry. Under those circumstances, in our opinion, the Tribunal was justified in holding that there has been a violation of the principles of natural _justice in the conduct of the domestic inquiry and that the workman was not afforded a reasonable opportunity to place his defence before the Inquiry Officer. It may be that the order of the Inquiry Officer declining to ask the management to produce the three officers may be justified , because 'the Inquiry Officer certainly has discretion to consider whether their evidence will be relevant or not. But the Inquiry Officer, who was part of the management was not justified in not forwarding the request of the workman to arrange for the production of Pooran inquiry suffers from a very serious infirmity and in consequence the order to discharge based upon the findings recorded in such an inquiry cannot be sustained. Such an order has been rightly set aside by the Industrial Tribunal. The second contention of the learned Solicitor is that on the basis of the last part of sub-cl.(c) of Cl. (10) of Paragraph 521 of the Sastry Award, the order of discharge can be justified. The last part of the said sub-cl. (c) of Cl. (10) relied on by the learned Solicitor is as follows :

> "Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the bank does not, for some reason or other, think it expedient to retain the employee in question any longer in service. Discharge in such cases shall not be 'deemed to amount to disciplinary action."

That is according to the learned Solicitor even if the evidence on record is insufficient to hold the workman guilty of the charges framed against him, the appellant has ample power and jurisdiction to discharge the workman from its service, if it considers that it is not expedient to retain the employee. We are not inclined to accept this contention of the learned Solicitor, Apart from the fact that the management never sought to place any reliance on this part of sub-cl. (c), quoted above, before the Tribunal or even in the Special Leave Petition before this Court, the contention is also devoid of substance. The finding of the Inquiry Officer B. D. Sharma is that, on the evidence adduced before him the workman is guilty of both the charges levelled against him and that charges have been proved beyond all doubt. The show cause notice dated March 4, 1963 sent by the Superintendent of the appellant branch at Ambala categorically says that in the inquiry conducted by B. D. Sharma, the workman has been found guilty of the charges and that on the basis of the said finding, it is proposed to punish the workman by discharging him from service without notice. The final order of discharge dated August 1, 1963 is also to the same effect. Therefore, the appellant never proceeded on the basis that the service of the Respondent was being dispensed with on the ground that the management did not think it expedient to retain the workman in its service, notwithstanding the fact that the evidence has been found to be insufficient to sustain the charges levelled against him. Therefore, the second contention of the learned Solicitor has to be rejected.

The last contention of the learned Solicitor is that the Tribunal having held that the order of discharge cannot be sustained because the domestic inquiry has been conducted in violation of the principles of natural justice, the appellant should have been given an opportunity by the Tribunal to adduce evidence to justify the order terminating the service of the workman. That is, according to the learned Solicitor, the Tribunal has first to consider whether the domestic inquiry, on the basis of which the order of termination has been passed, has been conducted properly and bona fide by the management. If it comes to the conclusion that the domestic inquiry is vitiated, it is only then that the stage is set for giving an opportunity to the management to adduce evidence before the Tribunal to support the order of termination. In this connection, the learned Solicitor referred us to the decisions of the High Courts of Orissa, Madhya Pradesh and Delhi.

True it is, that it has been held by this Court in Workmen of Motipur Sugar Factory (Private) Ltd. v. Motipur Sugar Factory(1) page 588 at page 596 :

> "It is now well-settled by a number of decisions of this Court that where an employer has failed to make an 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 he 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 inquiry 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. Shobrati Khan(-'), Phulbari Tea Estate V. Its Workmen(2) and the Punjab National Bank Limited v.Its Workman(5). These 'three cases were further considered by this Court in Bharat

Sugar Mills Limited v. Shri Jai Singh(") and reference was also made to the decision of the Labour Appeallate Tribunal in Shri Ram Swarath Sinha v. Belaund Sugar Co. (7). It was pointed out that the import to the effect of omission 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 really been made out". It s true that three of these cases, except Phutbari Tea Estate's Case(2) were on applications under s. 33 (1) [1964] 7 S.C.R.555. (2) [1965]3S.C.R.

588 (3) [1958] S.C.R.667 (4) [1959]Supp. S.CR.836 (5) [1969] 1 S.C.R.32. (6) [1960] 1 S. R. 06

7) [1962] 3 S.C.R.684 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the tribunal for 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 held 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(1) 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 was proper."

From the above extract it is clear that it is open to the management to rely upon the domestic inquiry conducted by it and satisfy the Tribunal that there is no infirmity attached to the same.

The management has also got a right to justify on facts is well that its order of dismissal or discharge was proper. The above principles have also been reiterated in the, later decisions of this Court. Under those circumstances, we fail to see why the High Courts should raise a controversy about the stage when the management has to adduce evidence before the Triblunal to justify the action taken by it. It should be remembered that when an order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under those circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts similarly the management has also a right to defend the action

taken by (1) [1959] Supp. S.C.R. 836.

it on the gorund that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to,justify on facts that the order passed by it was proper. But the point to be noted is that tile inquiry that is conducted by the Tribunal is a composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and if the Tribunal holds against the mana- gement on that point, the management will fail. On the other hand, if the management relies not only on 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 ,-he domestic inquiry. 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. We will now refer to the decisions of the High Courts, which have been referred by the learned Solicitor. In M/s. Hindustan Steel Ltd. v. Their Workers through Rourkela Mazdoor Sabha and others(1) a Division Bench of the Orissa High Court had to consider a claim made by the management that if a Labour Court comes to a conclusion that the domestic inquiry was not fair, it should have given notice to the management regarding its finding about the defect in the domestic inquiry and then give an opportunity to the management to adduce independent evidence before it to establish the charge against the workman. This contention was negatived by the High Court on the ground that there was no obligation, in law, on the part of the Labour Court to indicate its mind about the infirmities in the domestic inquiry at any stage before it gave its finding in the award.

A contrary view has been taken by the Madhya Pradesh High Court in The Madhya Pradesh State Road Transport Corporation v. Industrial Court, Madhya Pradesh (2) . A Division Bench of the said High Court has held that it is. a healthy practice, that after coming to the conclusion that the domestic inquiry was not proper, the Industrial Tribunal or the Labour Court should give an opportunity to the employer Lo produce evidence to satisfy the authority that the action taken by it is justified.

A similar view has also been taken by a learned Single Judge of the Delhi High Court in Premnath Motors Workshop Private (1) [1954] I.A.C. 697.

(2) (1970) Labour & Industrial Cases 102.

Ltd. v. Industrial Tribunal, Delhi(1). In the said decision it has been held that it is essential that a Tribunal or a Labour Court gives at first a finding about the legality of the domestic inquiry before it decides to consider the merits of the charges. At that stage the Tribunal must give the parties an opportunity to adduce such evidence regarding the charges as the Tribunal might consider relevant. It is clear from the three decisions of the High Courts, referred to above, that there is a difference of view between the Orissa High Court on the one hand and the Madhya Pradesh and Delhi High Courts on the other. The Madhya Pradesh and Delhi High Courts appear to proceed on the basis that

the inquiry before the Tribunal has to be conducted in two parts, namely, first an investigation into the validity of the domestic inquiry, and if the decision is against the management on this point, then to conduct a further inquiry regarding the evidence that may be adduced by the parties about the validity of the action taken by the management. As already mentioned by us earlier, there is no justification for such a view being taken. By and large, we are in agreement with the views expressed by the Orissa High Court. But the Orissa High Court has observed that it may be open to the management to request the Tribunal to decide, in the first instance, as preliminary issue regarding the validity of the domestic inquiry that may have been conducted by it. In our opinion, no hard and fast rule can be laid down under what circumstance an issue is to be decided as a preliminary issue. That is a matter for the Tribunal or the Labour Court concerned to consider, having due regard to the nature of the pleadings and the points that arise for consideration.

In the case before us the appellant has no right to make a grievance that he should have been given an opportunity to adduce evidence on facts before the Tribunal justifying the action taken by it against the workman. The written statement filed by the appellant before the Industrial Tribunal makes it quite clear that the appellant was prepared to sustain the validity of the order of discharge solely on the basis of the domestic inquiry conducted by B. D. Sharma. The evidence adduced before the, Tribunal was also of the Inquiry Officer B. D. Sharma and of the officer who passed the order of termination. Both these witnesses referred only to the proceedings connected with the domestic inquiry and gave evidence to the effect that the workman was given all facilities to participate in the domestic inquiry. The management's stand was that it is prepared to justify the legality of the order of discharge solely on the basis of the domestic inquiry held by it as a result of which the order of discharge was passed. It never offered to produce (1) [1967] Labour and Industrial Cases 510.

any evidence before the Tribunal, apart from the inquiry proceedings. No doubt, there is a right in the management to adduce evidence before the Tribunal and justify the action taken by it. No such opportunity was asked for by the appellant nor even availed of. If such an opportunity was, asked for, but refused by the Tribunal, the position would be entirely different. The appellant further has not even made a grievanc, in the Special Leave Petition that it was not given an opportunity by the Tribunal to adduce independent evidence to justify the action taken by it. Therefore, it follows that the third contention of the learned Solicitor-General has also to be rejected.. To conclude, the award of the Industrial Tribunal dated April. 7, 1967, is confirmed and this appeal is dismissed with costs of the first respondent.-

V.P.S.

Appeal dismissed.