Supreme Court of India
Neeta Kaplish vs Presiding Officer Labour Court ... on 4 December, 1998
Bench: S. Saghir Ahmad, S. Rajendra Babu

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                CASE NO.:
Appeal (civil)  6079 of 1998

PETITIONER:
NEETA KAPLISH

RESPONDENT:
PRESIDING OFFICER LABOUR COURT AND ANR.

DATE OF JUDGMENT: 04/12/1998

BENCH:
S. SAGHIR AHMAD & S. RAJENDRA BABU

JUDGMENT:
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JUDGMENT 1998 Supp(3) SCR 379 The Judgment of the Court was delivered by S. SAGHIR AHMAD. J., Leave granted.

The appellant was working as a clerk in the Dayanand Medical College and Hospital, Ludhiana. Disciplinary proceedings were initiated against her on the basis of a charge-sheet which was issued to her on 07.10.1986. The charges were denied by the appellant and consequently an enquiry was initiated. One Shri L.C. Doctor, who was an advocate and legal advisor of the Hospital, Was appointed as the Enquiry Officer. He submitted his enquiry report on the basis of which the appellant was dismissed from service.

The appellant raised an industrial dispute in respect of the order of dismissal which was referred to the Labour Court by the State Government by its order dated 17.4.1987. The parties filed their written statements before the Labour Court which came to the conclusion that the enquiry conducted by the Management was not fair and proper and, therefore, by its order dated 21.11.1995, it called upon the Management to produce its evidence on merits. The Management did not lead evidence as directed by the Labour Court but produce only one witness, namely, T.S. Saroj, its Law Officer, and informed the Labour Court that it would rely upon the evidence already recorded during enquiry proceedings. Since tie Management did not produce any evidence on merits, the appellant also did not produce any evidence on merits, the appellant also did not produce any evidence with the result that the Labour Court, by its order dated 1st March, 1996, dismissed the claim of the appellant. A Writ Petition filed thereafter in the Punjab and Haryana High Court by the appellant was also dismissed on 17.2.1997. It is in these circumstances that the appellant has approached this Court.

Learned counsel for the appellant has contended that once it was held., by the Labour Court that the domestic enquiry, conducted by respondent No. 2, was not fair and was not in consonance with the principles of natural justice and it called upon the Management to lead evidence on merits, the evidence already recorded during domestic enquiry could not have been legally relied upon and it

ought to have been held by the Labour Court that since the Management had not led any evidence on merits, the claim of the appellant was liable to be allowed.

Learned counsel for the respondents, on the contrary, contended that since the Management had indicated to the Labour Court that it would rely upon the evidence already adduced during domestic enquiry, it was under no obligation to lead any fresh evidence but the appellant who had been contending from the beginning that proper opportunity of hearing was not given to her ought to have led her evidence once she was called upon to do so by the Labour Court. Since she had not done it, her claim was rightly dismissed. He further contended that in view of the Proviso to Section 11-A of the Act, the Labour Court had to decide the case on the basis of "the materials on record" and not on the basis of any fresh evidence. In any case, even if it is held that the Labour Court could take fresh evidence, the evidence already recorded during domestic enquiry would constitute " materials on record" and the same could not be ignored.

The ease of the appellant before the Labour Court, so far as illegalities and irregularities in the departmental proceedings are concerned, was set out in Para 10 of the claim (Written Statement), filed before the Labour Court, which is reproduced below:-

"10. That Mr. Boctor held the so called domestic enquiry against me against the principles of natural justice on account of the following amongst other reasons:-

(a) That I requested vide my application dated 18.1.87 that my witness Sh. Om Prakash Samai be examined, but the enquiry officer refused to do SO;

(b) That I also requested that my other witnesses Sh. Dr. I.S. Chawla, Principal, Dr. Kundan Singh, Dr, Rama Sofar, Dr. Ram Kumar Mittal, who were the employees of the DMC and H should be connected as my witnesses, but the Enquiry Officer refused to do so.

(c) That I requested for an adjournment of proceedings for the evidence of Vaid Kundan Lal, who was ill, but my request was not allowed in spite of his Medical Certificate.

(d) That my answers given to the questions of the Presiding Officer, were not recorded correctly and completely in spite of my protests and submitted an application dated 7.2.1987 to the Enquiry Officer, in detail about the same.

(e) That the Enquiry Officer was not at all impartial and was biased against me and he acted in accordance with the direction of the management during the so called enquiry. He acted both as prosecutor as well as judge. Mrs. Khurana, Head of the Microbiology Department of D.M.C. also interfered in the said enquiry in spite of my request and protest, but the Enquiry Officer acted in accordance with her wishes.

(f) That the enquiry file during the enquiry proceedings did not remain in the custody of the enquiry officer, but it remained in the custody of the management and the presenting officer.

(g) That the Enquiry Officer refused to give a copy of the written statement of the Management to enable me to furnish reply.

(h) That the said enquiry was just an eye wash and was illegal."

The Management, in its written statement, denied the claim of the appellant by stating in their written statement as under;-

"10. In reply to para no. 10 of the statement of claim, it is to be stated that domestic enquiry by Shri L.C. Boctor was held in accordance with the principles of natural justice and rules and regulations. Sub parawise reply is as under:-

In reply to sub-para (a) to (b) of para no. 10 of statement of claim, it is to be pointed out that the enquiry officer has acted within the aurhority as per principles of natural justice and management has nothing to do with that. Whatever evidence she has brought before the enquiry officer, the same was recorded. Presiding Officer in a domestic enquiry has no authority in law to summon any witness. It is for the parties concerned to bring their own witnesses. Her allegation that her statement made in her cross- examination was not correctly recorded is false and wrong. The enquiry officer has remained impartial and was not biased against her. The management have not issued any directions to the said enquiry. The allegation that he held enquiry as per wishes of Mrs. Khurana is also wrong. The allegations that the enquiry file did not remain in. the custody of the Enquiry Officer and inquiry was an eye-wash are wrong. The allegations that Enquiry Officer refused to give a copy of any written arguments of the respondent are false. Moreover, Enquiry Officer has not taken cognizance of any alleged written arguments of the management. So no prejudice has been caused to her."

In view of the pleadings of the parties as to the validity of proceedings, the Labour Court framed a specific issue on the question as follows:-

"Whether a fair and proper enquiry has been held?"

The Labour Court ultimately recorded the following findings:-

.....I have carefully considered the arguments advanced by both the parties and have considered the evidence on the file and I find that the enquiry in this case was not conducted in accordance with the rules of natural justice. The claimant made a request for the examination of Mr. Passi, but he -was not allowed to be examined on the ground that he was hot the scribe of the documents and he had not signed the documents. There is another mode of proof regarding the proof of documents by proving writing and signatures of a person. This witness might have proved the document by proving these writing of the scribe and signatures thereon. So, the request of the claimant to examine Mr. Passi was wrongly turned down. She made a request for the examination of Dr. L.S. Chawla and other witnesses, but her request was not allowed. It was argued on Behalf of the management that in an enquiry, a delinquent official cannot ask the management for the summoning of the witnesses as the management has no such authority. This contention is again not

correct because Dr. L.S. Chawla and other for whose summoning, request was made by the claimant were all employees of the respondent management and the management could very well direct its employees to appear as witnesses in this case. So, the observations made in case 1993 LLR 9 Padmanabhan v. Kerala State Handloom Development Corporation Ltd. on the facts of the Case in hand, because in this case, the management had the authority to direct its witnesses to appear in this case.

7. The enquiry officer had granted last adjournment to the claimant to produce her evidence. She wanted to examine Vaid Kundan Lal but the said witnesses could not be produced due to his illness. Medical Certificate was conducted along with the application, but the request was declined. In such a case, the Enquiry Officer should have granted one more opportunity for a smaller period and the same would not have affected the management in any manner. From all these facts, I have come to the conclusion that a fair and proper enquiry was not conducted by the Enquiry Officer.

After recording the above findings to the effect that a fair and proper enquiry was not conducted. The Labour Court, on 21.11.1995, passed the following order:, "Present: Authorised representative of the parties.

Vide my separate order the enquiry conducted in this case was not held to be fair and proper and as such the management is directed to produce its evidence on merits on 5.12.1995.

Sd/- Presiding Officer. 21.11 95"

The Management, in spite of the above order, did not produce any evidence on merits, except formally examining T.R. Saroj. Law Officer, who only produced the termination order along with postal receipt Ext, MX/1 and closed its evidence. Since the Management did not produce any evidence on merits, the appellant also stated that it would not examine any witness in defence. the Labour Court dismissed the claim of the appellant on the ground that while on behalf o the Management whole enquiry file containing the enquiry proceedings had been produced, there was no evidence on behalf of the appellant.

In order to appreciate the controversy raised in this case, it would be necessary to consider the past history with regard to the introduction of Section 11-A by Act No. 45 of 1971 in the Industrial Disputes Act, 1947 with effect from 15.12.1971.

Statement of Objects and Reasons appended to the amending Act 45 of 1971 reads as under:-

' "In Indian Iron and Steel Co. Limited v. Their Workmen, (1958) 1 L.L.J. 260, the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in cases of dismissal for misconduct the, Tribunal does not act as a Court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc., on the part of the management.

2, The International Labour Organisation, in its recommendation (No. 119) concerning "Terminatio-n of employment at the initiative of the employer" adopted in June 1968, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination, among others, to a neutral body such as an arbitrator, a Court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the natural body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated With unpaid wages should be paid adequate compensation or afforded some other relief.

3. In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power, in cases wherever necessary to set aside the order of discharge or dismissal and direct reinstatement of the workmen on such terms and conditions, if any, as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new S. 11A is proposed to be inserted in the Industrial Disputes Act, 1947".

Provisions of the Industrial Disputes Act were thus amended on the recommendation of the International Labour Organization and Section 11-A was introduced in the Act by the Parliament, wherein it was provided that the Tribunal had not only the power to set aside the order of dismissal and direct reinstatement of the workman, it had also the power to award lesser punishment. The Proviso to Section 11-A, however, provided that the Tribunal would rely only on me material already on record and shall not take fresh evidence.

The provisions of Section 11-A, specially the prohibition contained in the Proviso that the Labour Court would not take any fresh evidence, came to be considered by this Court in several cases which we shall shortly notice but even before the introduction of Section 11 -A, this Court in -Ritz theatre (Pvt.). Ltd. Delhi V. Its Workmen, (1962) 2 LLJ 498 = AIR 1963 SC 285 = [1063] 3 SCR 461, laid down that where the Management relied upon the domestic enquiry in defending its action, it would be the duty of the Tribunal to first consider the validity of the domestic enquiry and only when it came to the conclusion that the enquiry was improper or invalid, it would itself go into the merits of the case and call upon the parties to lead evidence.

Even after the introduction of Section 11 -A, the legal position as to the jurisdiction of the Labour Court of Tribunal to itself decide the merits of charges on fresh evidence remained unaltered.

In State Bank of India v. R.K, Jain & Qrs. (1971) 2 LLJ 599 = AIR (1972) SC 136 = [1972] 1 SCR 755 - [1972] 4 SCC 304, the domestic enquiry was found to be defective by the Tribunal and, therefore, the order of dismissal was set aside. The employer in that case had not asked for permission of the Tribunal for adducing fresh evidence to justify its action. The grievance raised by the employer before this Court was that such opportunity should have been given suo motu by the Tribunal but

this was not accepted.

In Delhi Cloth & General Mills Co. Ltd v. Ludh Budh Singh, (1972) 1 LLJ 180 = AIR (1972) SC 1031 = [19-72] 3 SCR 29 = [1972] 1 SCC 595, the Court held that where no enquiry was found to be defective, the employer shall have to be given a chance to adduce evidence before the Tribunal for justifying his action provided the employer asks for the permission of the Tribunal to adduce fresh evidence to justify its action. Such request has to be made "while the proceedings are pending" and not after the proceedings had come to an end. The following propositions were laid down :-

"(I) 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 straight away 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.

(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 with, 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 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 availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did both 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 there in 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 motu 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."

These principles were adopted in The Workmen of M/s Firestone Tyre & Rubber Co. of India Pvt Lid. v. The Management & Ors.. (1973) 1 LLJ 278 = AIR (1973) SC 1227 = [1973] 3 SCR 587 = [1973] 1 SCC 813, which was decided after the introduction of Section 11-A in the Act. In Cooper Engineering Ltd. v. P.P. Mundhe AIR (1975) SC 1900 = [1976] SCR 361 = [1975] 2 SCC 661, in which M/S Firestone Tyre & Rubber Co. of India Pvt. Ltd. v. The Management & Ors., (Supra) was followed, the court observed:

"In our considered opinion it will be most unnatural and impractical to expect a party to take a definite stand when a decision of jurisdictional fact has first to be reached by the Labour Court prior to embarking upon an enquiry to decide the dispute on its merits. The reference involves. determination of the larger issue of discharge or dismissal and not merely whether a correct procedure had been followed by the management before passing the order of dismissal."

The Court further observed :

"We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication, the Labour Court should first decide as preliminary issue:

whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties, that question must be decided as a preliminary issue. Oh that decision being pronounced, it will be for the management to decide whether it will adduce any evidence before that Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible, in any proceeding to raise the issue."

This decision makes it clear that the 'stage' at which the employer has to ask for an opportunity to adduce evidence for justifying its action is the stage when the Tribunal finally conies to the conclusion that domestic enquiry was invalid.

The subsequent decisions in The East India Hotels v. Their Workmen and Ors., AIR (1974) SC 696 = [1974] 3 SCC 712 and Ruston & Hornsby Ltd. v. T.B Kadam, AIR (1975)SC 2025 = [1976] 1 SCR 119 = [1976] 3 SCC 71 have followed this view.

In Shankar Chakravarti v. Britannia Biscuit Co. & Anr., 1979 (2) LLJ 194 - AIR [1979] SC 1652 = [1979] 3 SCR 1165 = [1979] 3)\ SCC 371, this Court observed that the right of the Management to adduce additional evidence must be availed of by it by making proper request for that purpose which may even be contained in the pleadings or may be made at any time before the proceedings are closed. The Court observed that if such a request is made in the pleadings itself, the Tribunal has to give an opportunity to the Management to lead fresh evidence.

In Bharat forge Co. Ltd v .A. B. Zodge & Anr. AIR 1996 SC 1556 = (1996) 4 SCC 374, as also in The United Planters Association of Southern India v .K..G Sangameswaran and Anr., AIR 1997 SC 1800= [1997] 4 SCC 741 = JT (1997) 3 SC 379, it was laid down that the Labour Court or the Tribunal can take fresh evidence on merits of the charge if it comes to the conclusion that the domestic enquiry was not properly held and principles of natural justice were violated.

In view of the above, the legal position as emerges out is that in all cases where enquiry has not been held or the enquiry has been found to be defective, the Tribunal can call upon the Management or the employer to justify the action taken against the workman and to show by fresh evidence, that the termination or dismissal order was proper. If the Management does not lead any evidence by availing of this opportunity, it cannot raise any ground at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman. If, however, the opportunity is availed of and the evidence is adduced by the Management, the validity of the action taken by it has to be scrutinised and adjudicated upon on the basis of such fresh evidence.

In the instant case, the appellant had questioned the domestic enquiry on a number of grounds including that her own answers, in reply to the questions of the Presiding Officer, were not correctly and completely recorded and that the Enquiry Officer was not impartial and was biased in favour of the respondent. It was further contended that her own witnesses were not called and she was not given the opportunity to lead evidence. The Labour Court has discussed a few of these grounds but has not given any finding on the bias of Enquiry Officer or the ground relating to incorrectly

recording the statement of the appellant. The Labour Court, however, found that the enquiry was not fairly and properly held. It was after recording this finding that the Labour Court called upon the Management to lead evidence on merits which it did not do.

Learned counsel for the appellant contended that in spite of the direction by the Labour Court to the respondent-management to lead evidence, it was open to the Management to rely upon the domestic enquiry proceedings already held by the Enquiry Officer, including the evidence recorded by him, and it was under no obligation to lead further evidence, particularly as the Management was of the view that the charges, on the basis of the evidence already led before the Enquiry Officer, stood proved. It was also contended that under Section 11-A, the Labour Court had to rely on the "materials on record" and since that enquiry proceedings constituted "material on record", the same could not be ignored. The argument is fallacious.

The record pertaining to the domestic enquiry Would not constitute "fresh evidence" as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute "material on record", as contended by the counsel for the respondent, within the meaning of Section 11-A as the enquiry proceedings, on being found to be bad, have to be ignored altogether. The proceedings of the domestic enquiry could be, and, were, in fact, relied upon by the Management for the limited purpose of showing at the preliminary stage that the action taken against the appellant was just and proper and that full opportunity of hearing was given to her in consonance with the principles of natural justice. This contention has not been accepted by the Labour Court and the enquiry has been held to be bad. In view of the nature of objections raised by the appellant, the record of enquiry held by the Management ceased to be "material on record' within the meaning of Section 11-A of the Act and the only course open to the Management was to justify its action by leading fresh evidence as required by the Labour Court. If such evidence has not been led, the Management has to suffer the consequences.

Having regard to the findings recorded by the Labour Court that the domestic enquiry was not properly and fairly held and an effective opportunity of hearing was not given to the appellant, the Labour Court was right in calling upon the Management to lead fresh evidence. Since the Management did not lead any fresh evidence on merits, the appellant was well within her right to say that she, too, would not lead any fresh evidence. But, for that reason, her claim could not be rejected- Rather, she was entitled to be granted relief then and there. However, having regard to the entire circumstances of me case particularly when the Labour Court had itself found that the enquiry was not fairly and properly held, we allow the appeal, set aside the judgement of the High Court and that of the Labour Court and remand the case back to the Labour Court to decide the case afresh after requiring the parties to lead fresh evidence on merits in pursuance of its order dated 21.11.1995. Having regard to the fact that the appellant was removed from service on 04.04.1987, we direct that the Labour Court shall dispose of the whole matter within three months from this date on which the certified copy of this Judgment is produced before it. There will be no order as to costs.