Supreme Court of India
Shambu Nath Goyal vs Bank Of Baroda And Others on 27 September, 1983
Equivalent citations: 1984 AIR 289, 1984 SCR (1) 85
Author: D Desai
Bench: Desai, D.A.

PETITIONER:
SHAMBU NATH GOYAL

Vs.

RESPONDENT:
BANK OF BARODA AND OTHERS

DATE OF JUDGMENT27/09/1983

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
REDDY, O. CHINNAPPA (J)
VARADARAJAN, A. (J)

CITATION:
1984 AIR 289 1984 SCR (1) 85
1983 SCC (4) 491 1983 SCALE (2)931

ACT:
Industrial Disputes Act , 1947-Secs. 10 and 33-Proceedings under-Employer's right to adduce additional evidence before Labour Court/Industrial Tribunal-Not an independent right-Application for that purpose must be made at the earliest stage. Labour Court may consider and refuse such a request if made at a late stage.

HEADNOTE:
The appellant was working as a clerk in a branch of the first respondent Bank. He was issued a notice by the Deputy General Manager of the Bank informing him about the decision to hold departmental enquiry against him and also that one Sen Gupta, Agent of another branch of the Bank had been appointed as the Enquiry Officer and that any appeal rising out of his order could be made to the Chief Agent of the Bank at Delhi. The Enquiry Officer held an enquiry, found the appellant guilty of the charges and proposed to award the punishment of dismissal. The appellant protested against the proposed punishment and stated that the enquiry was arbitrary, biased and improper. The Enquiry Officer dismissed the appellant. An appeal filed by the appellant was dismissed by the appellate authority. On behalf of the

appellant the Union raised an industrial dispute and the Central Government ultimately made a reference to the Industrial Tribunal. The Tribunal held that the dispute was not an industrial dispute. In appellant's appeal by special leave this court held that the dispute was an industrial dispute and remanded the matter to the Tribunal. The Tribunal held that the domestic enquiry was vitiated and not in accordance with the principles of natural justice. The Tribunal further held that Sen Gupta was not clothed with any authority to award the punishment of dismissal as disciplinary authority and that no useful purpose would, therefore, be served by allowing the management to lead fresh evidence in the enquiry before it as requested by the management in its application. The Tribunal set aside the dismissal and ordered reinstatement of the appellant with full back wages. The High Court took the view that Sen Gupta was also the disciplinary authority as per the notice of enquiry and quashed the Tribunal's Award and remitted the enquiry to the Tribunal for affording an opportunity to the management for letting in further evidence to support the charges before the Tribunal. In this appeal the appellant submitted that the Enquiry Officer was not the appointing authority and that the order of dismissal passed by him is invalid in law.

Allowing the appeal,

86

HELD : It is difficult to say that the order of dismissal suffers from any lack of authority of Sen Gupta to award that punishment. The management's request for giving an opportunity to lead further evidence to support the charges before the Tribunal made at that late stage cannot be allowed. [99 H; 103 D]

From the fact that Sen Gupta has been appointed as the Enquiry Officer in the notice of enquiry dated 23-7-1965 and that it has been stated in that notice that any appeal from his order could be made to Majumdar, Chief Agent of the Bank at Delhi, it could be inferred that Sen Gupta had been constituted also as the disciplinary authority as otherwise it would not have been stated in that notice that any appeal against his order which could naturally include an order imposing punishment pursuant to any finding recorded in the domestic enquiry conducted by him should be presented before the Chief Agent of the Bank at Delhi. The workman also understood Sen Gupta to be functioning also as the disciplinary authority in the enquiry when he did not question his authority to award the punishment but merely stated that the enquiry was arbitrary, biased and improper. It would appear from para 521(12) of the Sastri Award which has been bodily incorporated in para 18.20(12) of the Desai Award that it is not necessary that only the appointing authority or any authority superior to that authority can be the disciplinary authority in regard to employees of a bank and that on the other hand the bank should decide which

officer shall be empowered to take disciplinary action in the case of each office or establishment and that it should also make provision for appeals against orders passed in disciplinary matters to an officer or body not lower in status than the Manager. But what is required by that para in the Awards is that the names of the officer or body competent to pass the original orders or hear appeals shall from time to time be published on the Bank's notice boards. In the instant case, the workman has not contended anywhere including in the course of arguments advanced on his behalf even before us that there was no such publication in the notice board in regard to the Jullunder Branch of the Bank where he was employed at the time of his suspension. [98 C-F; 99 B-D]

The rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either under s. 10 or s. 33 of the Industrial Disputes Act questioning the legality of the order terminating the service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take certain action or seeking approval of the action taken by it. If an application is filed by the management under s. 33 of the Act the management is made aware of the workman's contention regarding the defect in the domestic enquiry by the written statement of defence filed by him. Then, if the management chooses to exercise its right it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay. But when the question arises in a reference under s. 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the

87

workman, for the defect in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman compel him to surrender which he may not otherwise do. [101 C-D; G-H; 102 A.D]

In the present case an application seeking further opportunity to lead evidence before the Tribunal for

substantiating the charges framed in 1965 was made by the management on 8.2.1979 for the first time when the matter was before the Tribunal for the second time after it had been remanded by this Court on 2-2-1978 after rejecting the management's contention that the dispute is not an industrial dispute. That was done by the management nearly 14 years after the workman had been suspended on 20-7-1965 and nearly 13 years after the workman had been found guilty in the domestic enquiry and dismissed from service on 28-12-1965. The management is thus seen to have been taking steps periodically to see that the dispute is not disposed of at an early date one way or the other. [102 E-H]

Workmen of Motipur Sugar Factory (Private) Limited v. Motipur Sugar Factory [1965] 3 S.C.R. 588 and Shankar Chakravarti v. Britannia Biscuit Co. Ltd. & Anr., [1979] 3 S.C.R. 1165 referred to.

(Per Desai J.)

That statement in Shankar Chakravarti v. Britannia Biscuit Co. Ltd. & Anr. that if an application for giving an opportunity to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal is made during the pendency of the proceedings does not mean that some independent right to make an application at any time is conferred on the employer. Ordinarily, where a party claims relief, it must plead for the same. The pleading can be incorporated in a statement of claim or a written statement of defence. It was not for a moment suggested that an application at any stage of the proceedings without explaining why the relief was not claimed in the original pleading has to be granted. If a separate application is made, it would be open to the Labour Court/Industrial Tribunal to examine the question whether it should be granted or not depending upon the stage when it is made, the omission to claim the relief in the initial pleading, the delay and the motivation for such delayed action ? Without being specific, it can be said that such an application has to be examined as if it is an application for amendment of original pleadings keeping in view all the aforementioned considerations and if it does not appear to be bona fide or has been made after a long unexplained delay or the explanation for the omission to claim the relief in the initial pleading is unconvincing, the Labour Court/Industrial Tribunal would be perfectly justified in rejecting the same. [91 A-E]

88

Shankar Chakravarti v. Britannia Biscuit Co. Ltd. & Anr., [1979] 3 S.C.R. 1165 explained.

Bharat Sugar Mills Ltd. v. Shri Jai Singh & Ors. [1962] 3 S.C,R. 684 and Cooper Engineering Ltd. v. P. P. Mundhe, [1976] 1 S.C.R. 361 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2414 (NL) of 1980.

Appeal by Special Leave from the Judgment and Order dated the 16th September, 1980 of the Delhi High Court in Civil Writ Petition No. 1407 of 1979.

P.P. Rao, S.L. Aneja, Mr. C.P. Gupta and R.

Venkataramni, for the Appellant.

F.S. Damania, S.S. Shroff, S.A. Shroff and V.V. Joshi for the Respondent.

The following Judgments were delivered DESAI, J. There is no dissent from the judgment prepared by my learned brother Varadarajan, J. and I concur in the same. This short spilogue is provoked by one statement made in the judgment in Shankar Chakravarti v. Britannia Biscuit Co. Ltd. & Anr. which was relied upon by Mr. Damania, learned counsel for the respondents to support the decision of the High Court. The statement relied upon by Mr. Damania may be properly understood so that in future the meaning of the statement may not remain obscure resulting in a fresh round of litigation commencing from Bharat Sugar Mills Ltd. v. Shri Jai Singh & Ors. and ending with a decision in Shankar Chakravarti's case.

At the outset it is necessary to extract the passage relied upon by Mr. Damania in support of his submission that if the employer makes an application to the Labour Court/Industrial Tribunal that in the event the domestic enquiry is found to be either improper, invalid or vitiated, the Labour Court/Industrial Tribunal should accept the application of the employer and give it an opportunity to substantiate the charges imputing misconduct and leading to the termination of the service of the workman. The passage reads as under :

> "Therefore, it is crystal clear that the rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either under s. 10 or s. 33 of the Act questioning the legality of the order terminating service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take a certain action or seeking approval of the action taken by it. If such a request is made in the statement of claim, application or written statement, the Labour Court or the Industrial/Tribunal must give such an opportunity. If the request is made before the proceedings are concluded the Labour Court or the Industrial Tribunal should ordinarily grant the opportunity to adduce evidence. But if no such request is made at any stage of the proceedings, there is no duty in law cast on the Labour Court or the Industrial Tribunal to give such an opportunity and if there is no such obligatory duty in law failure to give any such opportunity cannot and would not vitiate the proceedings."

If this passage is examined divorced from the context in which it was drawn-up, we may feel that the contention of Mr. Damania deserves to be accepted. But the journey through the courts of the point involved in dispute if kept in view, the passage explains itself. Most of the decisions bearing on the subject were examined in Shankar Chakravarti's case, but firm reliance was placed in that case by the employer on the decision of this Court in Cooper Engineering Ltd. v. P.P. Mundhe and especially the following passage therein :

> "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 a 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. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue."

Relying on this statement of law in Cooper Engineering Ltd. case, it was contended in Shankar Chakravarti's case that it is the obligatory duty of the Labour Court/Industrial Tribunal to frame a preliminary issue whether the domestic enquiry is valid or vitiated ? After answering the issue, one way or the other if it is held that the domestic enquiry was vitiated, the employer has to be given an opportunity to lead evidence to substantiate the charge of misconduct. And that is how the extracted passage was interpreted by the Division Bench of the Calcutta High Court in Shankar Chakravarti's case. It was further contended that it is the obligatory duty of the Labour Court/Industrial Tribunal after deciding the preliminary issue in favour of the workman and against the management to call upon the employer to lead his evidence to substantiate the charge of misconduct. It is in this context that this Court observed that the employer must plead in the statement of defence filed before the Labour Court/Industrial Tribunal that in the event domestic enquiry which led to the termination of service is held to be vitiated or invalid, he must be given opportunity to lead evidence to substantiate the charge of misconduct. Explaining how the pleading can be raised this Court observed that if such a relief is claimed in the statement of claim, application for approval of its action or written statement of defence, the Labour Court/Industrial Tribunal must give such an opportunity. The Court further observed that if the request is made before the proceedings are concluded, the Labour Court/Industrial Tribunal should ordinarily grant the opportunity to adduce evidence. It was further observed that if such a pleading is raised and an opportunity is sought, it is to be given, but if there is no such pleading either in the original application or in the statement of claim or written statement or by way of an application during the pendency of the proceedings, there is no duty cast in law or by the rules of justice, reason and fair play that a quasi judicial Tribunal like the Industrial Tribunal or the Labour Court should adopt an advisory role by informing the employer of its rights.' The statement that if an application is made during the pendency of the proceedings does not mean that some independent right to make an application at any time is conferred on the employer. Ordinarily, where a party claims relief, it must plead for the same. The pleading can be incorporated in a statement of claim or a written statement of defence. It was not for a moment suggested that an application at any stage of the proceedings without explaining why the relief was not claimed in the

original pleading has to be granted. If a separate application is made, it would be open to the Labour Court/Industrial Tribunal to examine the question whether it should be granted or not depending upon the stage when it is made, the omission to claim the relief in the initial pleading, the delay and the motivation for such delayed action ? Without being specific, it can be said that such an application has to be examined as if it is an application for amendment of original pleadings keeping in view all the aforementioned considerations and if it does not appear to be bona fide or has been made after a long unexplained delay or the explanation for the omission of claiming the relief in the initial pleading is unconvincing, the Labour Court/Industrial Tribunal would be perfectly justified in rejecting the same. The observation was not made to lay down a proposition of law that as and when it suits the convenience of the employer at any stage of the proceedings, it may make an application seeking such opportunity and the Labour Court/Industrial Tribunal was obliged to grant the same.

In the facts of the present case, there is hardly any explanation for the delay in making the application and therefore, the High Court was in error in remitting the case to the Labour Court. Accordingly this appeal must succeed and therefore, I concur in the final order proposed by my learned brother Varadarajan, J.

VARADARAJAN, J. This appeal by special leave is by a workman of the first respondent Bank of India. He was respondent No. 3 in W.P. 1407 of 1979 which was filed by the first respondent Bank for quashing the award dated 18.7.1979 of the Central Government Industrial Tribunal-Cum-Labour Court, Delhi, where by the workman Shambhu Nath Goel was ordered to be reinstated with full back wages to the position held by him when he was suspended on 20.7.1965. On the date of his suspension Shambhu Nath Goel was working as a Clerk in the Civil Lines Branch of the Bank at Jullunder. The Bank's Deputy General Manager issued a notice dated 23.7.1965 informing the workman that it has been decided to hold a departmental enquiry against him and one Sen Gupta, Agent of the Bank at Ludhiana is appointed as the Enquiry Officer and that any appeal arising out of his order can be made to S.M. Majumdar, Chief Agent of the Bank at Delhi, within 45 days of the communication of the order in writing to the workman.

The charges framed against the workman were: (1) Riotous and disorderly behaviour in the premises of the Bank which is gross misconduct under para 521 (4) (c) of the Sastri award; as confirmed by para 18.28 of the Desai award;

(2) Causing wilful damage to property of the Bank which is gross mis-conduct under para 521 (4) (d) of the Sastri award as confirmed by para 18.28 of the Desai award;

(3) Doing an act subversive of discipline, prejudicial to the interest of the Bank which is gross mis-conduct under para 521 (4) (j) of the Sastri award as confirmed by para 18.28 of the Desai award; and (4) Failing to show proper consideration to other employees of the Bank which is a minor mis-conduct under para 521 (6) (i) of the Sastri award as confirmed by para 18 (2) (8) of the Desai award. The workman filed his written statement of defence, contending inter alia that the enquiry has been instituted under the pressure of the majority Union from which he broke away due to acute differences of opinion on matters of policy. At the stage of defence evidence after the management's evidence had been recorded two applications were filed by the workman. One of those applications

was for the management being directed to produce three letters dated 2.8.1964, 15.3.1965 and 24.5.1965 which were stated to be very material for the workman's defence. It was stated in that application that if the documents were not produced by the management, three named persons may be caused to be produced for being examined as his witnesses at the enquiry. The Enquiry Officer who did not allow that application received written arguments from both sides and on the conclusion of the enquiry recorded his findings holding the workman guilty of all the charges. On 29.12.1965 he proposed to award the punishment of dismissal to the workman and heard the workman who protested against the punishment and stated that the enquiry was arbitrary, biased and improper. The workman was dismissed on the same day and his appeal was dismissed by the Appellate Authority on 26.11.1966.

The Union raised an industrial dispute which was opposed by the management but ultimately a reference was made by the Central Government to the Industrial Tribunal, Chandigarh on 11.5.1970. The management filed a written statement on 12.8.1970 contending inter alia that the dispute was not an industrial dispute. That contention found favour with the Tribunal. The workman came up in appeal by special leave to this Court which allowed the appeal on 2.2.1978 holding that it is an industrial dispute and remanded the matter to the Tribunal for expeditious disposal. The matter was subsequently taken up by the Central Government Industrial Tribunal-cum-Labour Court, Delhi at the instance of the Central Government as the Tribunal at Chandigarh had ceased to function meanwhile. The Tribunal framed two issues on the questions as to whether there was a fair and proper enquiry by the Domestic Tribunal and whether the dismissal of the workman was justified. On the first question it was held by the Tribunal that the enquiry was vitiated and not in accordance with the principles of natural justice on the ground that the three letters or the witnesses required by the workman to be produced for proving his defence were not made available to him though they were relevant and vital to prove his defence. The management moved an application on 8.2.1979 for an opportunity being given to it to lead evidence in support of the charges framed against the workman in the event of the Tribunal holding against it on the first question relating to the conduct of the domestic enquiry. The Tribunal held that Sen Gupta had been appointed only as Enquiry Officer and was not entrusted with any authority to award the punishment of dismissal as Disciplinary Authority and that no useful purpose would, therefore, be served by allowing the management to lead fresh evidence in the enquiry before it. The dismissal was held to be not justified and was set aside by the Tribunal and the workman was ordered to be reinstated with full back wages to the position held by him on the date of his suspension as mentioned above by the award dated 18.7.1979.

The management sought the quashing of the Tribunal's award by the Delhi High Court in the Writ Petition filed on several grounds. The first ground was that the transfer of the dispute to the Tribunal at Delhi after the matter was remanded by this Court to the Tribunal at Chandigarh was not valid and that the only course open to the Central Government was to act under s.8 of the Industrial Disputes Act, and no resort could be had to s.33 of that Act. The High Court had no difficulty in rightly rejecting this contention in view of the provisions of s. 33 B(1) of the Act which reads, thus:

> "33B. (i) The appropriate Government may, by order in writing and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court, Tribunal or National Tribunal, as the case may be, for the disposal of the proceeding and the Labour Court, Tribunal or National Tribunal to which the proceeding is so transferred may, subject to special directions in the order of transfer, proceed either de novo or from the stage at which it was so transferred:
>
> Provided that where a proceeding under s. 33 or s. 33A is pending before a Tribunal or National Tribunal, the proceeding may also be transferred to a Labour Court."

The Industrial Tribunal, Chandigarh ceased to exist before the matter could be taken up after the remand by this Court and, therefore, there was no question of the Central Government taking action under s.8 of the Industrial Disputes Act for filling up any vacancy. There is no need to say anything more about this objection which was not rightly raised before us by the learned counsel for the management.

The second contention urged before the learned Judge of the High Court was that the Tribunal's finding that Sen Gupta was not competent to dismiss the workman as Disciplinary Authority is unsustainable. Before the High Court it was admitted by both parties that the conditions of service of the employees of the Bank are mainly and largely governed by the Desai award, para 18.20 (12) whereof states that it is necessary that a bank should decide which officer shall be empowered to take disciplinary action in the case of each office or establishment and that it should also make provision for appeals against orders passed in disciplinary matters to an officer or body not lower in status than the manager. In the notice of enquiry dated 23.7.1965 referred to above Sen Gupta had been named as the Enquiry officer and it was stated that any appeal against the order of that Enquiry Officer can be made to Majumdar, Chief Agent, Delhi. The High Court held that the order referred to in that notice of enquiry could be the final order imposing penalty at the conclusion of the domestic enquiry and that the workman understood that Sen Gupta was also Disciplinary Authority when he protested against the proposed punishment without questioning the jurisdiction of Sen Gupta to award it to him and that the Tribunal's view that Sen Gupta was not the Disciplinary Authority is not correct. Relying upon this Court's decision in Tata Oil Mills Company Ltd. v. The Workman, the learned Judge of the High Court held that the Enquiry Officer holding a domestic enquiry cannot take any effective steps to compel the attendance of witnesses and consequently the Enquiry Officer in the present case could not be stated to have committed any procedural irregularity in not causing the production of the three witnesses required by the workman to be examined as his witnesses at the enquiry. This position was not disputed by the learned counsel for the workman before the learned Judge of the High Court. The workman's application for production of the three documents which were in the custody of one or the other branch of the Bank could have been allowed as they were considered by the workman to be necessary to prove his case that the charge-sheet had been issued to him under the pressure of the majority Union from which he broke away. They were not caused to be produced before the Enquiry Officer inspite of the workman's application dated 29.11.1965. They were not produced even before the Appellate Authority though the workman applied for their production once again by a letter dated 3.8.1966. The learned Judge of the High Court found that though the three documents may or may not have supported the stand

taken by the workman that the charge-sheet was issued to him under the pressure of the rival majority Union there was material on record to show that those documents were relevant and he observed that the non-production of those documents has caused prejudice to the workman. In this view the learned Judge agreed with the Tribunal that the domestic enquiry was vitiated because of the non-production of those documents. Having held so the learned Judge adverted to the management's application dated 8.2.1979 made before the Tribunal by which an opportunity to lead evidence in support of the charges in the event of the Tribunal holding that the domestic enquiry was defective for any reason whatsoever was prayed for. The Tribunal has stated as follows in its award in regard to that request of the management:

> "Ordinarily I would have been inclined to hold enquiry myself but in the circumstances of the case I do not think much purpose would be served by holding of enquiry by this Tribunal in view of the fact that order of termination is not sustainable on the face of it, having been passed by a person not competent to pass it. In this behalf I would like to refer to the order of appointment of the Enquiry Officer. From the perusal of the said order I find that the Enquiry Officer had been appointed only to enquire into the charges and report .....The order appointing the Enquiry Officer does not travel beyond that. It does not empower Sen Gupta to award the punishment as well. It is not that Sen Gupta is the Appointing Authority and as such can also constitute himself as the Punishing Authority ..... The order of appointment of Enquiry Officer cannot be held to impliedly contain the power of punishment ..... The order of punishment is patently without any authority and jurisdiction and as such cannot be sustained .. ....It is for this reason that I Shall not consider it proper for myself to hold a fresh enquiry because the enquiry would be of no avail since the order of punishment itself is not passed by any competent authority".

The learned Judge of the High Court appears to have disagreed with this view of the Tribunal in view of his conclusion that Sen Gupta was also the Disciplinary Authority as per the notice of enquiry dated 23.7.1965 read with para 18.20 (12) of the Desai award, which is word for word para 521(12) of the Sastri award. This is one of the reasons for the learned Judge to quash the Tribunal's award dated 18.7.1979 and remit the enquiry to the Tribunal for affording an opportunity to the management asked for by the application dated 8.2.1979 for letting in further evidence to support the charges before the Tribunal. The workman had claimed before the Tribunal in addition to reinstatement full back wages and other benefits from the date of his suspension. The management contended in its written statement of defence before the Tribunal that it is a well established rule that the workman should do his best for minimizing the damages by seeking service elsewhere and that there is nothing in the workman's claim statement to suggest that he remained unemployed during the intervening period and, therefore the workman's demand for back wages cannot be considered by the Tribunal. The learned Judge of the High Court held that the Tribunal should have framed an issue on that question and allowed the parties opportunity to establish their respective cases and he gave the necessary direction. This is the second reason for the learned Judge to remit the matter to the Tribunal for further enquiry. The workman has filed this appeal by special leave, feeling aggrieved by the order of the learned Judge of the High Court.

Before us arguments were advanced by Mr. P.P. Rao, Senior Advocate and Mr. F.D. Damania, Advocate appearing for the workman and management respectively. Only two questions were raised before us, namely, whether or not Sen Gupta who held the domestic enquiry and passed the order of dismissal of the workman was Disciplinary Authority competent to award the punishment and whether the learned Judge of the High Court was or was not justified in remitting the matter to the Tribunal for the management having an opportunity to adduce further evidence in support of the charges and also to consider the question whether the workman was or was not gainfully employed in the intervening period. It is not disputed that no additional statement were filed and no further evidence was let in by the parties after this Court held that the dispute is an industrial dispute and remanded the matter to the Tribunal for fresh disposal in accordance with law.

Mr. Rao drew our attention to the notice of enquiry dated 23.7.1965 and submitted that it does not specifically clothe Sen Gupta who had been constituted as the Enquiry Officer, with the powers of a Disciplinary Authority without the workman disclosing either in the claim statement filed before the Tribunal or in the arguments before the learned Judge of the High Court or even before us as to who the appointing Authority in relation to the workman was. Mr. Rao submitted that Sen Gupta who was Agent of the Ludhiana Branch of the Bank which was different from the Jullunder Branch in which the workman was employed as a Clerk at the time of his suspension was not the Appointing Authority and that the order of dismissal passed by him pursuant to his finding recorded against the workman in the domestic enquiry is therefore invalid in law. Mr. Damania also could not say who the Appointing Authority was in regard to the workman. But he submitted that the Enquiry Officer and disciplinary Authority were constituted as per the directions given in para 521(12) of the Sastri award and para 18.20 (12) of the Desai award and, therefore, the question as to who the Appointing Authority was is not material. He further submitted that the fact as to who was the Disciplinary Authority is clear from the notice of enquiry dated 23.7.1965 and the conduct of the workman. We think Mr. Damania is right in his submission. As observed by the learned Judge of the High Court from the fact that Sen Gupta has been appointed as the Enquiry Officer in the notice of enquiry dated 23.7.1965 and that it has been stated in that notice that any appeal from his order could be made to Majumdar, Chief Agent of the Bank at Delhi, it could be inferred that Sen Gupta has been constituted also as the Disciplinary Authority as otherwise it would not have been stated in that notice that any appeal against his order which could naturally include an order imposing punishment pursuant to any finding recorded in the domestic enquiry conducted by him should be presented before the Chief Agent of the Bank at Delhi. The workman also understood Sen Gupta to be functioning also as the Disciplinary Authority in the enquiry when he did not question his authority to award the punishment but merely stated that the enquiry was arbitrary, biased and improper. Para 521(12) of the Sastri award which has been bodily incorporated in para 18.20(12) of the Desai award reads thus:

> "18.20(12) It also seems to us necessary that a bank should decide which officer shall be empowered to take disciplinary action in the case of each office or establishment and that it should also make provision for appeals against orders passed in disciplinary matters to an officer or a body not lower in status than the manager, who shall if the employee concerned so desires in a case of dismissal hear him or his representative before disposing of the appeal. We direct accordingly and further

> direct that the names of the officers or the body who are empowered to pass the original orders or hear the appeals shall from time to time be published on the bank's notice boards, that an appeal shall be disposed of as early as possible, and that the period within which an appeal can be referred shall be forty-five days from the date on which the original order has been communicated in writing to the employee concerned."

It would appear from this portion of the awards that it is not necessary that only the Appointing Authority or any authority superior to that authority can be the Disciplinary Authority in regard to employees of a Bank and that on the other hand the Bank should decide which officer shall be empowered to take disciplinary action in the case of each office or establishment and that it should also make provision for appeals against orders passed in disciplinary matters to an officer or body not lower in status than the Manager. But what is required by that para in the awards is that the names of the officer or body competent to pass the original orders or hear the appeals shall from time to time be published on the Bank's notice boards. The workman has not contended anywhere including in the course of arguments advanced on his behalf even before us that there was no such publication in the notice board in regard to the Jullunder Branch of the Bank where he was employed at the time of his suspension. In these circumstances we are unable to accept the argument of Mr. Rao that the order of dismissal suffers from any lack of authority of Sen Gupta to award that punishment.

Regarding the other main question of opportunity being afforded to the management to substantiate the charges before the Tribunal. Mr. Damania invited our attention to two decisions of this Court in Workmen of Motipur Sugar Factory (Private) Limited v. Motipur Sugar Factory and Shankar Ghakravarti v. Britannia Biscuit Co. Ltd. and Anr., to the latter of which one of us was a party. In the first of those decisions it is observed as follows:

> "Then we come to the question whether it was open to the tribunal when there was no enquiry whatsoever by the respondent to hold an enquiry itself into the question of go-slow. It was urged on behalf of the appellants that not only there was no enquiry in the present case but there was no charge either. We do not agree that was no charge by the respondent against the workmen concerned. The first part of the notice of December 15, 1960 which was served on each individual workman was certainly a charge by the respondent telling the workmen concerned that they were guilty of go-slow for the period between November 27 and December 15, 1960. It is true that the notice was not headed as a charge and it did not specify that an enquiry would follow, which is the usual, procedure when a formal charge is given. Even so, there can be no doubt that the workman concerned knew what was the charge against them which was really responsible for their discharge from December 18, 1960.
>
> 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-[1958 S.C.R. 667] but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified.. ..... 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."

In the second decision it is observed as follows:-

> "Earlier clear cut pronouncements of the Court in R. K. Jain's case and Delhi Cloth & General Mills Co. case that this right to adduce additional evidence is a right of the management or the employer and it is to be availed of by a request at appropriate stage and there on duty in law cast on the Industrial Tribunal or the Labour Court to give such an opportunity notwithstanding the fact that none was ever asked for or not even departed from. When we examine the matter on principle we would point out that a quasi-judicial Tribunal is under no such obligation to acquaint parties appearing before it about their rights more so in an adversary system which these quasi-judicial Tribunals have adopted. Therefore, it is crystal clear that the rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either under s. 10 or s. 33 of the Act questioning the legality of the order terminating service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take certain action or seeking approval of the action taken by it. If such a request is made in the statement of claim, application or written statement, the Labour Court or the Industrial Tribunal must give such an opportunity. If the request is made before the proceedings are concluded the Labour Court or the Industrial Tribunal should ordinarily grant the opportunity to adduce evidence. But if no such request is made at any stage of the proceedings, there is no duty in law cast on the Labour Court or the Industrial Tribunal to give such an opportunity and if there is no such obligatory duty in law failure to give any such opportunity cannot and would not vitiate the proceedings".

We think that the application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to adduce further evidence to substantiate the charge or charges framed against the workman referred to in the above passage in the application which may be filed by the management during the pendency of its application made before the Labour Court or Industrial Tribunal seeking its permission under s. 33 of the Industrial Disputes Act, 1947 to take a certain action or grant approval of the action taken by it. The management is made aware of the workman's contention regarding the defeat in the domestic enquiry by the written statement of defence filed by him in the application filed by the management under s. 33 of the Act. Then, if the

management chooses to exercise its right it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay. But when the question arises in a reference under s. 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defeat in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do.

It is true that in the present case an application way made by the management on 8.2.1979 when the matter was before the Tribunal for the second time after it had been remanded by this Court on 2.2.1978 after rejecting the management's contention that the dispute is not an industrial dispute. That was done by the management nearly 14 years after the workman had been suspended on 20.7.1965 and nearly 13 years after the workman had been found guilty in the domestic enquiry and dismissed from service on 28.12.1965. The management took the preliminary objection which found favour with the Tribunal in the first instance on 25.10.1970 that the dispute is not an industrial dispute. That objection, which was upheld by the Tribunal, forced the workman to seek his remedy in this Court which rejected the objection on 2.2.1978. It is only thereafter that the management filed the application dated 8.2.1979 for the first time seeking further opportunity to lead evidence before the Tribunal for substantiating the charges framed in 1965. The management is thus seen to have been taking steps periodically to see that the dispute is not disposed of at an early date one way or the other. The blame for not framing an issue on the question whether or not the workman was gainfully employed in the intervening period cannot be laid on the Tribunal alone. It was equally the duty of the management to have got that issue framed by the Tribunal and adduce the necessary evidence unless the object was to make up that question at some later stage to the disadvantage of the workman as in fact it has been done. The management appears to have come forward with the grievance for the first time only in the High Court. There is no material on record to show that the workman was gainfully employed anywhere. The management has not furnished any particulars in this regard even before this Court after such a long lapse of time. The workman could have been asked to furnish the necessary information at the earliest stage. The management has not resorted to that course. The workman was not expected to prove the negative. In these circumstances, we do not think that it would be in the interest of justice to prolong any further the agony of the workman whose power to endure the suffering of being out of employment for such a long time and to oppose the management Bank, a nationalised undertaking with all the money power at its disposal in this prolonged litigation is very limited by allowing the Bank to have the advantage belatedly sought in the application dated 8.2.1979 in an industrial dispute which arose to early as in 1965. For the reasons stated above we are of the opinion that the order of the High Court could not be sustained under the facts and circumstances of the case. The appeal is accordingly allowed with costs of the workman quantified at Rs. 5,000. The High Court's judgment is set aside and the Tribunal's award

directing reinstatement of the workman with full back wages and other benefits from the date of his suspension, is restored. The amounts paid to the workman under this Court's orders dated 20.2.1980, 8.4.1980 and 27.10.1980 shall be taken into account in computing the workman's claim for full back wages and other benefits from the date of suspension to the date of his reinstatement.

N.V.K. Appeal allowed.