SUPREME COURT OF INDIA

Central Bank of India Ltd.

Vs.

Prakash Chand Jain

C.A.No.498 of 1966

(V. Bhargava and C. A. Vaidialingam, JJ.)

20.08.1968

JUDGEMENT

BHARGAVA, J.:-

1. The Central Bank of India, Ltd., New Delhi, has filed this appeal, by special leave, challenging an order of the Industrial Tribunal, Delhi, refusing to accord approval to an order of dismissal of the respondent, Prakash Chand Jain, underSection33 (2) (b) of the Industrial Disputes Act (hereinafter referred to as "the Act"). A charge-sheet, containing two charges, was served on the respondent on 21st July, 1961 in order to initiate formally an enquiry for the purpose of taking disciplinary action against him. The two charges framed were as follows:-

"1. On 14-1-1960, a sum of Rs. 30,400 was paid to Mr. P. C. Jain by the Assistant Cashier Mr. Nand Kishore out of the cheque No. 43004 dated 14-1-1960 drawn by Messrs. Mool Chand Hari Kishan for Rs. 63,000. Taking this money Mr. P. C. Jain on the same day i. e., 14-1-1960 left for Muzaffarnagar in company of some persons to retire the following bills drawn by M/s. Gupta Iron Industries:-

Naya Bazar LBC 3 drawn on Puran Chand Rs. 5,100.

Naya Bazar LBC 5 drawn on Hiralal Shyam Rs. 4,950.

Thus it was within the knowledge of Shri P. C. Jain that the bills of Messrs. Gupta Iron Industries were drawn on bogus firms and that those were retired by the drawer's representative who accompanied Mr. P. C. Jain to Muzaffarnagar. Instead of reporting sueh serious matters to higher authorities, Mr. P. C. Jain claims that he had never visited Muzaffarnagar.

2. Mr. P. C. Jain encashed on 25-2-60 cheque No. 400506 for Rs. 46,000/- from the United Bank of India Ltd., Chandni Chowk and brought cash to Naya Bazar after 11.30 A. M. i.e., after the time for presenting of the clearing cheques at the State Bank of India. To cover the misdeeds of Mr. Shiv Kumar Sharma the then Sub-Agent of Naya Bazar Office, Mr. P. C. Jain Treasurer's representative stated in his explanation dated 16-2-1961 that cash was received at the office at about 11 A. M. i. e. before the clearing time.

The above acts of Mr. Jain were prejudicial to the interests of the Bank as defined in paragraph 521-4(J) of the Sastry Award and amount to gross misconduct. The inquiry will be held on 12-8-1961 at Chandni Chowk Branch at 10-30 A. M. by Mr. P. B. Tipnis, Chief Agent, Agra." Subsequently, an enquiry was held by Mr. Tipnis, one of the senior Officers of the Bank. The Enquiry Officer, after recording evidence tendered on behalf of the Bank as well as the evidence given by the respondent, recorded his findings holding that both the charges were proved against the respondent and, on that basis, came to the view that the actions of the respondent were prejudicial to the interests of the Bank and amounted to gross misconduct, so that he proposed to award the punishment of dismissal from the Bank's service. The respondent was given a week's time to show cause against this proposed punishment and, thereafter, an order was made dismissing the respondent with effect from 18th July, 1962 and a month's wages were paid to him in accordance with the provision contained inSection33 (2) (b) of the Act. Since an industrial dispute was pending before the Industrial Tribunal, Delhi, an application underSection33 (2) (b) of the Act was made requesting the Tribunal to accord approval to this order of dismissal. The Tribunal, when dealing with this application, held that the enquiry, which had been held by the Enquiry Officer, was fair and was not vitiated by any irregularity or unfairness, but refused to accord approval on the ground that the findings recorded by the Enquiry Officer were perverse an were not based on evidence inasmuch as most of the findings were the result of mere conjecture on behalf of the Enquiry Officer. It is this order of the Tribunal that has been challenged in this appeal.

2. Learned Counsel appearing for the appellant Bank urged that the Tribunal, in refusing to accord approval and in disregarding the findings recorded by the Enquiry Officer, exceeded its jurisdiction conferred bySection33 (2) (b) of the Act. It was further urged that, when the Tribunal found that the enquiry was fair, the Tribunal had no jurisdiction to go into the question whether the findings of fact

recorded by the Enquiry Officer were correct and could not sit in judgment over those findings like a Court of Appeal. The Tribunal should have accepted those findings and only examined whether a prima facie case was made out for according an approval. If the Tribunal had proceeded in accordance with this principle, there would have been no justification for the Tribunal to refuse to approve the order of dismissal.

3. The jurisdiction and functions of a Tribunal underSection33 (2) (b) of the Act were explained by this Court in Bangalore Woollen, Cotton and Silk Mills Co. Ltd. v. Dasappa (B) (Binny Mills Labour Union), 1960-2 Lab LJ 39 = (AIR 1960 SC 1352) where it was held:-

"The settled position in law therefore is that permission should be refused if the tribunal is satisfied that the management's action is not bona fide or that the principles of natural justice have been violated or that the materials on the basis of which the management came to a certain conclusion could not justify any reasonable person in coming to such a conclusion. In most cases it will happen where the materials are such that no reasonable person could have come to the conclusion as regards the workman's misconduct that the management has not acted bona fide. A finding that the management has acted bona fide will ordinarily not be reached if the materials are such that a reasonable man could not have come to the conclusion which the management has reached. In every case, therefore, it would be proper for the tribunal to address itself to the question, after ascertaining that the principles of natural justice have not been violated, whether the materials on which the management has reached a conclusion adverse to the workman, a reasonable person could reach such a conclusion."

The point was again considered by this Court in the case of Lord Krishna Textile Mills v. Its Workmen, 1961-3 SCR 204 = (AIR 1961 SC 860) and it was held:-

"In view of the limited nature and extent of the enquiry permissible underSection33 (2) (b) all that the authority can do in dealing with an employer's application is to consider whether a prima facie case for according approval is made out by him or not. If before dismissing an employee the employer has held a proper domestic enquiry and has proceeded to pass the impugned order as a result of the said enquiry, all that the authority can do is to enquire whether the conditions prescribe bySection33 (2) (b) and the proviso are satisfied or not. Do the standing orders justify the order of dismissal? Has an enquiry been held as required by the standing order? Have the wages for the month been paid as required by the proviso? and, has an application been made as prescribed by the proviso?"

The Court then proceeded to consider whether the Tribunal in that case had acted rightly, and noted that one had merely to read the order to be satisfied that the Tribunal had exceeded its jurisdiction in attempting to enquire if the conclusions of fact recorded in the enquiry were justified on the merits. The Tribunal did not hold that the enqiury was defective or the requirements of natural justice had

not been satisfied in any manner. The Court then indicated that the Tribunal had proceeded to examine the evidence, referred to some discrepancies in the statements made by witnesses and had come to the conclusion that the domestic enquiry should not have recorded the conclusion that the charges had been proved against the workmen in question. It was then held that, in making these comments against the findings of the enquiry, the Tribunal clearly lost sight of the limitations statutorily placed upon its power and authority in holding the enquiry underSection33 (2) (b). The Court then indicated the principle applicable by saying:

"It is well known that the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a Court of facts and may fall to be considered by an appellate court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the Court is limited as underSection33 (2) (b). It is conceivable that even in holding an enquiry underSection33 (2) (b) if the authority is satisfied that the finding recorded at the domestic enquiry is perverse in the sense that it is not justified by any legal evidence whatever, only in such a case it may be entitled to consider whether approval should be accorded to the employer or not; but it is essential to bear in mind the difference between a finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or adequate or satisfactory evidence."

4. These decisions make it clear that, when an Industrial Tribunal is asked to give its approval to an order of dismissal underSection33 (2) (b) of the Act, it can disregard the findings given by the Enquiry Officer only if the findings are perverse. The test of perversity that is indicated in these cases is that the findings may not be supported by any legal evidence at all. This principle was further affirmed in a different context in State of Andhra Pradesh v. S. Sree Rama Rao, 1964-3 SCR 25= (AIR 1963 SC 1723), where this Court had to consider whether a High Court, in a proceeding for a writ under Article 226 of the Constitution, could interfere with the findings recorded by departmental authority in disciplinary proceedings taken against a Government Servant. The Court held:-

"But the departmental authorities are, if the enquiry is otherwise properly held, the sole Judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

5. In this connection, reference was also made to some cases where this Court has held that a finding by a domestic tribunal like an Enquiry Officer can be held to be perverse in those cases also where the finding arrived at by the domestic tribunal is one at which no reasonable person could have arrived on the material before the tribunal. Thus, there are two cases where the findings of a domestic tribunal like the Enquiry Officer dealing with disciplinary proceedings against a workman can be interfered with, and these two are cases in which the findings are not based on legal evidence or are such as no reasonable person could have arrived at on the basis of the material before the

Tribunal. In each of these cases, the findings are treated as perverse. It is in the light of these principles that we have to see whether the Industrial Tribunal, Delhi, in the present case, was justified in refusing to accord approval to the order of dismissal which was passed on the basis of the evidence recorded by the Enquiry Officer, Mr. Tipnis.

6. We have already reproduced above the charges that were framed against the respondent and we proceed to examine how far the Tribunal was correct in holding that the Enquiry Officer's findings on these charges were without legal evidence and were based merely on conjecture. The first charge consisted of the following elements:

(i) that on 14-1-1960, a sum of Rs. 30,400/- was paid to the respondent by the Assistant Cashier Nand Kishore out of the amount payable on a cheque drown by M/s. Mool Chand Hari Kishan for Rs. 63,000/-;

(ii) that the respondent left the same day for Muzaffarnagar;

(iii) that he left for Muzaffarnagar in company of some persons to retire the bills drawn by Ms. Gupta Iron Industries;

(iv) that these bills of M/s. Gupta Iron Industries had been drawn on bogus firms;

(v) that these bills were retired by the drawer's representative who accompanied the respondent to Muzaffarnagar;

(vi) that the respondent failed to report these serious matters to higher authorities: and

(vii) that the respondent, instead, wrongly claimed that he had never visited Muzaffarnagar.

7. The Tribunal in its Order has held that on all these elements the findings recorded by the Enquiry Officer were perverse, because they were based on hearsay evidence and on conjecture. Learned counsel appearing for the Bank took us through the entire evidence recorded by the Enquiry Officer in order to canvass his argument that these findings recorded by the Enquiry Officer were based on the material before him. We have found that, on two of these points, there was material before the

Enquiry Officer which could be held to be legal evidence and, consequently, we have to hold that, on those two points, the Tribunal was incorrect in recording its view that the findings of the Enquiry Officer were defective and could be disregarded by the Tribunal. These two are elements Nos. (ii) and (vii). The finding that the respondent left for Muzaffarnagar on 14-1-1960 was based on the inferences drawn by the Enquiry Officer from the records of the Branch of the Bank in which the respondent was working on that day. The facts found by the Enquiry Officer were that, in the cash receipt book of that date, there were only four entries in the handwriting of the respondent that he made no payments on that day; that, though he was in charge of the entire cash department, he had no knowledge that cash of Rs. 1 lac was brought from the Chandni Chowk Office of the Bank three times during that day; that the Godown Keeper had also verified several vernacular signatures when it was the respondents duty only to verify them; and that the cash account of that day was closed by the Godown Keeper instead of the respondent who should have done so if he was in the Bank until the closure of the work on that day. These circumstances were brought to the notice of the Enquiry Officer from the records of the Bank by Management's witness, J. J. Daver. In our opinion, the Tribunal was incorrect in holding that the Enquiry Officer was acting on mere conjecture when, on the basis of these circumstances, he drew the inference that the respondent had left his work in the Naya Bazar Branch of the Bank on 14-1-l960 after working there for a short time only. Further, the Enquiry Officer in his report mentioned that three witnesses, S.C.L. Chawla, Officer Incharge of the Muzaffarnagar Office of the Bank, Inder Sain Jain, Cashier in the Muzaffarnagar Office, and Nihalchand Jain, who was a Clerk in the Muzaffarnagar Office had stated that they had seen the respondent at Muzaffarnagar office on 14-1-1960, and relied on their evidence to hold that the respondent did go to Muzaffaranagar on that day leaving his work in the Naya Bazar Office of the Bank at Delhi. The Tribunal criticised the evidence of these three witnesses and came to the view that the Enquiry Officer was not justified in believing these witnesses and in holding on the basis of their evidence that the respondent was in Muzaffarnagar on that day. It is clear that, in adopting this course, the Tribunal exceeded its powers. It was not for the Tribunal to sit in judgment over the view taken by the Enquiry Officer about the value to be attached to the evidence of these witnesses, even though the Tribunal thought that these witnesses were unreliable because of circumstances found by the Tribunal in their evidence. What the Tribunal at this stage did was to interfere with the finding of fact recorded by the Enquiry Officer by making a fresh assessment of the value to be attached to the evidence of these witnesses which was not the function of the Tribunal when dealing with an application underSection38 (2) (b) of the Act. In these two respects, we find that the Tribunal fell into an error.

8. However, we find that, on the other ingredients of the first charge, the Tribunal was justified in arriving at the conclusion that the findings recorded by the Enquiry Officer were perverse. The Tribunal gave the reason that these findings were based on hearsay evidence. This view taken by the Tribunal appears to be fully justified. The first and the third elements of the charge relating to payment of the sum of Rs. 30,400 to the respondent by Nand Kishore and of the respondent leaving for Muzaffarnagar in the company of some persons in order to retire the bills drawn by M/s. Gupta Iron Industries, were sought to be proved before the Enquiry Officer by the evidence of the Internal Auditor, N. N. Vazifdar, but the latter could not give any direct evidence, as he was not present at the time when money was paid to the respondent or when the respondent left for Muzaffarnagar. He purported to prove these elements of the change by deposing that a statement was made to him by Nand Kishore to the effect that Nand Kishore had paid Rs. 30,400 to the respondent and that, thereafter, the respondent left for Muzaffarnagar in the company of two persons. The Enquiry Officer accepted this evidence of Vazifdar, but ignored the fact that Vazifdar's evidence was not

direct evidence in respect of the elements of the charge sought to be proved, and that Vazifdar was only trying to prove a previous statement of Nand Kishore which, as rightly held by the Tribunal, would amount to hearsay evidence. Nand Kishore himself was also examined as a witness, but, in his evidence, which was admissible as substantive evidence, he made no statement that this sum of Rs. 30,400 was paid by him to the respondent or that the respondent left for Muzaffarnagar in the company of some persons to retire the bills drawn by M/s. Gupta Iron Industries. In fact, Nand Kishore even went further and denied that he had made any statement to Vazifdar as stated by Vazifdar. The Enquiry Officer was, of course, entitled to form his own opinion and to believe Vazifdar in preference to Nand Kishore; but on this basis, the only finding that the domestic tribunal could record was that Nand Kishore's statement given before him was incorrect and that Nand Kishore had made statements to Vazifdar as deposed by Vazifdar. Those statements made by Nand Kishore to Vazifdar could not, however, become substantive evidence to prove the correctness of these elements forming part of the charge. It is in this connection that importance attaches to the views expressed by this Court in the cases cited above where it was pointed out that a finding of a domestic tribunal may be perverse if it is not supported by any legal evidence. It is true that, in numerous cases, it has been held that domestic tribunals, like an Enquiry Officer, are not bound by the technical rules about evidence contained in the Indian Evidence Act; but it has nowhere been laid down that even substantive rules, which would form part of principles of natural justice, also can be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act. In fact, learned counsel for the appellant Bank was unable to point out any case at all where it may have been held by this Court or by any other Court that a domestic tribunal will be justified in recording its findings on the basis of hearsay evidence without having any direct or circumstantial evidence in support of those findings.

9. In the case of Khardah Co. Ltd. v. Their Workmen, 1964-3 SCR 506 at pp.512-13 = (AIR 1964 SC 719 at p. 722) this aspect was noted by this Court as follows:-

"Normally, evidence on which the charges are sought to be proved must be led at such an enquiry in the presence of the workman himself. It is true that in the case of departmental enquiries held against public servants, this Court has observed in the State of Mysore v. Sivabasappa, 1963-2 SCR 943 = (AIR 1968 SC 375) at if the deposition of a witness has been recorded by the enquiry officer in the absence of the public servant and a copy thereof is given to him, and an opportunity is given to him to cross-examine the witness after he affirms in a general way the truth of his statement already recorded, that would conform to the reqirements of natural justice; but as has been emphasised by this Court in M/s. Kesoram Cotton Mills Ltd. v. Gangadhar, 1964-2 SCR 809 = (AIR 1964 SC 708), these observations must be applied with caution to enquiries held by domestic Tribunals against the industrial employees. In such enquiries, it is desirable that all witnesses on whose testimony the management relies in support of its charge against the workman should be examined in his presence. Recording evidence in the presence of the workman concerned serves a very important purpose. The witness knows that he is giving evidence against a particular individual who is present before him, and therefore, he is cautious in making his statement. Besides, when

evidence is recorded in the presence of the accused person, there is no room for persuading the witness to make convenient statements, and it is always easier for an accused person to cross-examine the witness if his evidence is recorded in his presence. Therefore, we would discourage the idea of recording statements of witnesses ex parte and then producing the witnesses before the employee concerned for cross-examination after serving him with such previously recorded statements, even though the witnesses concerned make a general statement on the latter occasion that their statements already recorded correctly represent what they stated."

10. In the case of 1964-2 SCR 809 = (AIR 1964 SC 708) referred to in the quotation above, it was held:-

"Even so, the purpose of rules of natural justice is to safeguard the position of the person against whom an inquiry is being conducted so that he is able to meet the charge laid against him properly. Therefore, the nature of the inquiry and the status of the person against whom the inquiry is being held will have some bearing on what should be the minimum requirements of the rules of natural justice. Where, for example, lawyers are permitted before a tribunal holding an inquiry and the party against whom the inquiry is being held is represented by, a lawyer, it may be possible to say that a mere reading of the material to be used in the inquiry may sometimes be sufficient: (see New Prakash Transport Co. Ltd. v. New Suwarna Transport Co. Ltd., 1957 SCR 98 = (AIR 1957 SC 232), but where in a domestic Inquiry in an industrial matter lawyers are not permitted, something more than a mere reading of statements to be used will have to be required in order to safeguard the interest of the industrial worker. Further we can take judicial notice of the fact that many of our industrial workers are illiterate and sometimes even the representatives of labour union may not be present to defend them. In such a case, to read over a prepared statement in a few minutes and then ask the workmen to cross-examine would make a mockery of the opportunity that the rules of natural justice require that the workmen should have to defend themselves. It seems to us, therefore, that when one is dealing with domestic inquiries in industrial matters, the proper course for the management is to examine the witnesses from the beginning to the end in the presence of the workman at the enquiry itself. Oral examination always takes much longer than a mere reacting of a prepared statement of the same length and brings home the evidence more clearly to the person against whom the inquiry is being held. Generally speaking, therefore, we should expect a domestic inquiry by the management to be of this kind."

11. Proceeding further, the Court held:-

"The minimum that we shall expect where witnesses are not examined from the very beginning at the inquiry in the presence of the person charged, is that the person charged should be given a copy of the statements made by the witnesses which are to be used at the inquiry well in advance before the inquiry begins and when we say that the copy of the statements should be given well in advance, we mean that it should be given at least two days before the inquiry is to begin. If this is not done and yet the witnesses are not examined-in-chief fully at the inquiry, we do not think that it can be

said that principles of natural justice which provide that the person charged should have an adequate opportunity of defending himself are complied with in the case of a domestic inquiry in an industrial matter."

These views expressed by this Court, in our opinion, bring out what was meant when this Court held that findings recorded by an Enquiry, Officer must be supported by legal evidence. The evidence, as indicated in these cases, should consist of statements made in the presence of the workman charged. An exception was envisaged where the previous statement could be used after giving copies of that statement well in advance to the workman charged, but with the further qualification that that previous statement must be affirmed as truthful in a general way when the witness is actually examined in the presence of the workman.

12. Applying this principle to the present case, it is clear that the previous statement made by Nand Kishore to Vazifdar could not be taken as substantive evidence against the respondent, because Nand Kishore did not affirm the truth of that statement when he appeared as a witness and, on the other hand, denied having made that statement altogether. Even though his denial may be false, that fact would not convert his previous statement into substantive evidence to prove the charge against the respondent when that statement was given to Vazifdar in the absence of the respondent and its truth is not affirmed by him at the time of his examination by the Enquiry Officer. This statement of Nand Kishore made to Vazifdar being ignored, it is clear that no other material was available to the Enquiry Officer on the basis of which he could have held that the sum of Rs. 30,400 was paid to the respondent by Nand Kishore and that Nand Kishore, (respondent?) thereafter left for Muzaffarnagar in the company of some persons with that money.

13. The fourth element of the charge was that the bills of M/s. Gupta Iron industries were drawn on bogus firms. We think that the Tribunal is quite correct in its comment that the Enquiry Officer, in holding that the bills were drawn on bogus firms, proceeded to do so without any evidence altogether. In fact, the Enquiry Officer has not referred to any material which was available to him before accepting the allegation against the respondent that the bills had been drawn on bogus firms. Even in the course of his submissions before us, learned counsel for the Bank was unable to point out any evidence which would support this part of the charge. The only evidence to which learned counsel could refer was the statement of Nihal Chand Jain who said that intimations of the bills were sent to the parties mentioned in the bills by post, but were received back unserved. Those intimations were not produced before the Enquiry Officer and there is no mention of the reason why the postal authorities returned those intimations. The mere return of the intimations could not possibly lead to the inference that the parties to whom they were addressed, were bogus. It is quite likely that their addresses were incomplete, so that the postal authorities were unable to trace them. Clearly, in these circumstances, the finding on this point recorded by the Enquiry Officer was without any evidence or material.

14. The same remarks apply with regard to the element of the charge to the effect that the bills were retired by the drawer's representative who accompanied the respondent to Muzaffarnagar. The Enquiry Officer again does not mention any witness who may have stated that the bills were retired

by the drawer's representative or that that representative had accompanied the respondent. The only evidence on this point to which our attention was drawn, was trial of T. C. Jain who purported to prove a previous statement of Inder Sain Jain made to him. According to T. C Jain, Inder Sain Jain had come to him and told him that Prakash Chand Jain had come with the representative of the drawer to retire the bills. This evidence of T. C. Jain was rightly not relied upon or referred to by the Enquiry Officer, because Inder Sain Jain, when he appeared as a witness before him, did not state that he had made any such statements to T. C. Jain and, in his examination, he excluded the possibility of his having made that statement. According to Inder Sain Jain's statement before the Enquiry Officer, the respondent only accosted him once and bid him "Jai Ram Ji Ki". He had no other talk with him. He also stated that this happened about two hours after the bills had been refired. Consequently, according to Inder Sain Jain's statement before the Enquiry Officer, the respondent was not present when the bills were retired and there was no question of the respondent accompanying the drawer's representative for retiring the bills. Inder Sain Jain also did not state that the bills were retired by the representative of the drawer. Thus, on this point also, there is no legal evidence on which a finding could have been recorded against the respondent.

15. So far as the sixth element of the charge is concerned, that becomes totally immaterial when it is found that the Enqiry Officer's findings that the bills were drawn on bogus firms and that they were retired by the drawer's representative accompanying the respondent are held to have been given without any legal evidence. If the bills are not proved to have been drawn on bogus firms and to have been retired by the drawer's representative with the aid of the respondent, there was nothing that the respondent was required to convey to higher authorities.

16. So far as the second charge is concerned, we find that, similarly, the principal findings given by the Enquiry Officer are not supported by any legal evidence. The substance of the charge was that the respondent enacted the Cheque for Rs. 46,000 from the United Bank of India Ltd and brought the cash after 11.30 a. m., but wrongly stated that he had brought the cash to the Naya Bazar Office of the Central Bank before 11 a. m. The significance of the time was emphasised by the Enquiry Officer because, according to him, 11 a. m. was the clearing time of another cheque of Rs. 15,000 which had been marked as "good for payment" by the then Sub-Agent, Shiv Kumar Sharma and the respondent had to show that cash in respect of the other cheque of Rs. 46,000 had been brought to the Bank at Naya Bazar for deposit in the account of the Drawer of that cheque of Rs. 15,000 so as to justify the endorsement made by the Sub-Agent that it was 'good for payment'. We examined the whole record and we are unable to find any evidence at all in support of the fact accepted by the Enquiry officer that the clearing time was 11 a. m. On the contrary, the only evidence on this point, which was that of Management's witness J. J. Daver, was to the effect that the clearing time was 11.30 a. m. Ignoring this evidence altogether, the Enquiry Officer proceeded to record his findings against the respondent on the basis that the clearing time was 11 a. m. without at all referring to any evidence in support of this fact. The second significant point was as to the time by which the respondent brought the cash in respect of the cheque of Rs. 46,000 from the United Bank of India Ltd., Chandni Chowk, to his own Central Bank Branch in Naya Bazar. No one gave any direct evidence as to the time when the respondent brought the money. The Enquiry Officer has proceeded to hold that the money could not have been brought before 11 a. m., because there is an endorsement on that cheque of Rs. 46,000 which, according to the Enquiry Officer, shows that that cheque was presented for encashment at the United Bank of India Ltd., Chandni Chowk, at 11-15 a.

m. This endorsement was also examined by us as it appeared on the photostat copy of the cheque. The endorsement consists of a number 37 beneath which is noted the time 11-15 a. m. with a line drawn between them. From this endorsement alone, the Enquiry Officer proceeded to infer that this cheque was presented for encashment at 11-15 a. m. even though no evidence at all was given by anyone working in the United Bank of India Ltd., Chandni Chowk, to prove that this endorsement of time of 11.15 a. m. represented the time of presentation of the cheque at that Bank. In fact, the Enquiry Officer has not made reference to any evidence at all when holding that this cheque was presented for payment at 11 a. m. at the counter of the. United Bank of India. Learned counsel for the Bank however, referred us to the evidence of J. J. Daver on this point, Daver in this case was discharging a dual function as a witness and as the prosecutor of the case against the respondent for the Bank. In his evidence, Daver stated that this endorsement represented the time when the token was issued to the person encashing the cheque. Later, while prosecuting the case against the respondent on behalf of the Bank, Daver urged before the Enquiry Officer that this endorsement of 11.15 a. m. represented the time of presentation of the cheque and this was noted by the Enquiry Officer in his proceedings. Obviously, the time of presentation of the cheque and the time of issue of the token in respect of it would not be identical. In fact, there can be a lapse of an appreciable interval between the two. In spite of this fact, the Enquiry Officer seems to have proceeded on the basis of what was urged before him by J. J. Daver while acting as prosecutor, and what was stated in that capacity was not evidence at all. The evidence given by Daver was different and that was not relied upon by the Enquiry Officer. On the face of it, the proper evidence, by which it could have been proved that the cheque was either presented at 11.15 a. m. or that the token in respect of it was issued at 11,15 a. m. could have been obtained if the Bank had cared to examine the person in charge of encashing the cheque at the United Bank of India, Chandni Chowk. Daver was not present when the cheque was presented and he has not explained on what basis he stated in his evidence that this endorsement represented the time when the token was issued. It is clear that, on this charge also on the two crucial points of the time viz., the clearing time of the cheque of Rs. 15,000/- as well as the time when the second cheque of Rs. 46,000/- was presented for encashment at the United Bank of India Ltd., Chandni Chowk, the Enquiry Officer has recorded findings without those findings being supported by any legal evidence.

17. In these circumstances, it is clear that the Tribunal was fully justified in holding that the findings recorded by the Enquiry Officer on both the charges were perverse in the sense of not being supported by any legal evidence, of course, with the exception of the finding recorded to the effect that on 14-l-1960 the respondent, after doing some work in the Naya Bazar Branch of the Bank, left for Muzaffarnagar and was seen in Muzaffarnagar on that day. It was to this limited extent that the first charge only could have been held to have been proved before the Enquiry Officer against the respondent. On this limited proof and on holding that the Enquiry Officer's findings were correct in respect of this part of the charge only, the Tribunal would be fully justified in withholding its approval to the order of dismissal which was passed by the Bank on the basis that all the elements of both the charges had been proved. The order of the Tribunal refusing to grant approval was, therefore, not vitiated by any error and must be upheld.

18. The appeal fails and is dismissed with costs,

Appeal dismissed.