SUREME COURT OF INDIA

Tata Engineering And Locomotive Co. Ltd.

Vs.

S.C. Prasad

(J Shelat and V Bhargava JJ.)

11.03.1969

JUDGMENT

J SHELAT J:

1. In Reference No. 27 of 1964 between the appellant-company and its workmen three questions were referred to the industrial tribunal for adjudication:

(1) Whether the discharge/dismissal of the ten workmen named therein was proper and justified; if not, whether they wore entitled to reinstatement or any other relief ?

(2) Whether the existing educational facilities provided by the management to the dependents of the workmen were adequate; If not, what additional facilities the company should provide ?

(3) Whether the existing medical facilities provided by the company to the workmen and the families were adequate; if not, what additional facilities it should provide ?

At, regards question (1), the company had held domestic enquiries against workmen 1 to 7 and on conclusion thereof the general manager accepting the findings of the enquiry officer, had passed orders of dismissal. So far as workmen 8 and 10 were concerned, the company bad removed their names from its rolls on the ground that they had abandoned their employment. Workman 9, Ram Manohar Dubey, was discharged from service on the ground that due to certain activities of his, the management had lost confidence in him and considered his being continued in service as prejudicial to the company's interests.

2. The tribunal gave an elaborate award and held that the said enquiries were not properly hold, that they suffered from breach of the principles of natural justice and that the said orders of discharge and dismissal were mala fide and were the result of victimization. The tribunal quashed the said orders and except in the case of the said Dubey, it directed reinstatement. In the case of Dubey. it directed that he should not be reinstated but that the company should pay his back-wages from the date of his discharge up to the date of the award. On questions (2) and (3) the tribunal directed the company to start a new high school as soon as possible and to construct a " full fledged hospital " within three years on the date of the award In spite of the existing provision made by the company for incurring annual expenditure of Rs. 3 lakhs and Rs. 15 lakhs for educational and medical

amenities respectively. This appeal, by special leave, is directed against the correctness and validity of the said award.

3. Sri Chagla for the company stated that the company would press the appeal on the first question only against the workmen,

(1) Satpal,

(2) Viahnu Lal,

(3) B. B. Prasad.

(4) B. P. Singh and

(5) Ram Manohar Dubey,

and not against the rest as the company has either reinstated some of them or the appeal has abated as in the case of Kalika Awasthi on account of his death. Sri Nag for the workman, on the other hand, stated that he was not in the position to support the award on questions (2) and (3) and that therefore on those questions it may be set aside and the company's appeal to that extent may be allowed. The question, therefore, which remains for our determination is whether the tribunal was right in holding that the orders of dismissal in respect of Satpal, Vishnu Lal, B. B. Prasad and B. P. Singh and the order of discharge against the said Dubey were rightly set aside by the tribunal and its orders of reinstatement and compensation are valid.

4. The appellant-company was started in 1945 and has since then developed into a large industrial complex employing about 18,000 workmen. Its business is to manufacture, amongst other things, Tata Meroedei Bens vehicles and various types of machineries and other engineering products. Amongst its several divisions, there is what is called the auto division in which trouble started in 1964 of which the instant reference was part of the manifestation. The trouble started with internecine rivalries between two groups of workmen, respectively, led by one B. N. Prasad and by the said Awasthi for obtaining control over the recognized union called the Telco Workers' Union. On 28 December 1963 a meeting of the union held for electing office-bearers ended in confusion and an order under S.144 of the Cr. PC had to be issued. The dissident group led by Awasthi demanded its recognition by the company and in an attempt to force the issue brought about a strike in January 1964. On 26 January 1964 the Assistant Commissioner of Labour wrote to the company requiring the management to deal with Awasthi who claimed to be the general secretary. As soon as the management started dealing with him the group led by R. N. Prasad filed a writ petition in the High Court of Patna and obtained an interim injunction against the company. The company's case was that the dissident group led by Awasthi, with a view again to force its hands, started an agitation inciting the workmen in the an to division not to park their cycles in sheds constructed for that purpose and to take their cycles along with them inside the workshop, This, it was said, was done in defiance of the order dated 27 May 1964, and other such orders directing the workman to leave their cycles in the sheds as the cycles inside the workshop were likely to obstruct the smooth running of that division. On 16 November l964 the High Court dismissed the said writ petition holding that the said letter of the Assistant Commissioner was not a directive but only an advice given by him and that no writ could be issued against such advice. The case of the workmen was that they were constrained to take their cycles inside the workshop as some of the cycles kept in the sheds had been

stolen and though this fact was brought to the notice of the company, it took no steps to prevent such thefts and on the contrary disclaimed Its responsibility. As a result of the said agitation the company took action against workmen 1 to 7 mentioned in the reference and ordered their dismissal after enquiries were held against them and they were found guilty of insubordination and incitement to defy the said orders. According to the company, workmen 8 and 10 in the said reference had remained absent without leave and the company struck off their names from its rolls on the ground that they had abandoned their employment. As against the said Dubey it was said that on 4 March 1964 one Kurup, a superintendent in the auto division, was grievously assaulted near his residence in Telco colony. On a complaint by the victim, the said Dubey and some others were prosecuted. According to the company it had reason to believe that Dubey had instigated the assault and therefore considered his continuance in its service as prejudicial to its interests. On 30 April 1964 the company ordered termination of fall service giving him wages in lieu of notice. The workmen's case, on the other hand, was that the company viewed with displeasure the said Awasthi and his group of workmen having been elected as office-bearers in the union, that the management sided with the said R. N. Prasad and his group, that the company even dragged the question of election to the High Court, and that as that was of no avail it began to victimize those who followed the said Awasthi. As regards the dismissal of the workmen under reference, their case was that the said enquiries were contrary to the rule of natural justice and the company's standing orders and were the result of Its anti-union policy. Regarding the termination of service of the said Awasthi, Dubey and Bhuveneshwar Singh, workmen 8 to 10 in the reference, they said that as no charge sheet was issued and no enquiry was held against them the orders against them were Invalid. They also urged that though a large number of workmen had violated the said orders the company selected only seven of them and ordered their dismissal with a view to victimize them. Their case further was that as there were thefts of cycles when kept in the sheds the union had advised them to take their cycles inside but to keep them in such a way that they would not obstruct the work, that the workmen thereupon started taking their cycles inside, and that there was no incitement to defy the orders by those dismissed on that charge.

5. Before the tribunal the company examined the two enquiry officers, Narayanswami and K. B. N. Sinha, and the workmen examined the said Satpal. Viahnu Lal, Awasthi, Dubey and others. The company also produced the enquiry reports together with the evidence recorded by the enquiry officers, charge sheets and other documents and on the workmen not objecting to their being taken on record they were exhibited.

6. The said Narayanswami had held enquiries against the said Satpal, Vishnu Lal. R. S. Pandey and B. P. Singh. The tribunal held that these enquiries were vitiated for the following grounds:

(1) That Narayanswami had relied on certain extraneous matters recorded by him In Paras, 8 (i), 8 (iv) and 8 (vii) of his report but which were not in evidence before him and which he had Imported from his personal knowledge and that this was contrary to his acting in a judicial capacity and in breach of natural justice as no chance was given to the workmen to explain these matters.

(2) That the final authority to order dismissal was the general manager who while passing his orders of dismissal had observed that " on the basis of the evidence and other relevant information brought out in the course of the proceedings the charges levelled against the employees have been established." The general manager thus not only relied on the evidence but also on "other relevant information." which meant the said extraneous matters relied on by Narayan-swami. Secondly, though Narayanswami had held that the charge of habitual disobedience of the company's orders

against Satpal was not proved, the general manager by stating (sic) the workmen had been established considered that charge also to have been established. This showed that the general manager's orders wore perverse and further that he had not applied his mind' while agreeing with the findings of the enquiry officer and passing the said dismissal orders. This applied also to orders passed against three other workmen against whom K. B. N. Sinha had held enquiries and though he had held that the charge of habitual disobedience was not proved, the general manager in his orders of dismissal against them also had stated that the charges " levelled " against them had been established.

(3) That during the said enquiries the workmen were deprived of their legitimate rights:

(i) in the case of Vishnu Lal, in spite of his application Exs. 2 (d), 2 (a), 2 (b) and 2 (c) dated 18, 22 and 29 June 1964 for production of three documents, namely:

(i) his punching card,

(ii) the gate-diary, and
(iii) the duty register

the company had failed to produce these documents,

The enquiry officer bad also failed to produce two officers, Bhesanla and Samanta, and 35 other persons as witnesses for Vishnu Lal, though requested by him. According to the tribunal It was incumbent on the management to produce these persons as witnesses and the enquiry officer was not entitled to ask Vishnu Lal to select six or seven witnesses out of the list of 35 persons whom he wanted to be produced.

(ii) In the case of Satpal, the management failed to produce his original punching card though called upon to do BO and produced instead its duplicate without any explanation for their failure to produce the original. According to the tribunal the original punching card was necessary to show that Satpal was not moving about between 5.45 a.m. and 6.05 a.m. on 22 January 1964 for inciting the workmen as alleged.

(4) That the reports, on the strength of which the charge sheets against these workmen had been framed, were not produced though called for. According to the tribunal it is a fundamental principle of natural justice that these reports should have been made known to the workmen as they were entitled to know the " genesis " of the charges.

(5) That there was lapse of considerable time between the service of the charge-sheets on the workmen and the submission of the enquiry, reports by the enquiry officers and also between the date of deposition of the witnesses and the dates when their signature? were taken on these depositions. The enquiry officer had failed to explain these delays.

These defects, according to the tribunal, vitiated the said enquiries and therefore it was entitled to go behind the, findings of the enquiry officers and decide for Itself whether the said orders were proper and justified. On merits, the tribunal observed that the company bad examined the two enquiry officers and a formal witness only, but did not examine any witness to controvert: the evidence given by the workmen before it. The tribunal accepted the evidence of the workmen and holding

that the said charges were not proved came to the conclusion that their dismissals could not be upheld. It also held that these workmen were victimized on account of their association with the said dissident group. It further held that the company had discriminated against these workmen inasmuch as though it had reinstated some of the workmen who had participated in communal riots it declined to reinstate these workmen.

7. The question is whether the tribunal was correct in holding that the said enquiries were vitiated for the reasons given by it and was entitled to disregard the findings of the enquiry officers and to decide the question of dismissals for itself. We will first examine the case of the said Dubey and thereafter the orders of dismissal of Satpal, Vishnu Lal and the two others.

8. Dubey's case was that he was closely associated with Awasthi group, that be was collecting funds for that group and that therefore the company had falsely Implicated him in the case of assault on Kurup. That case was pending before the Sessions Judge when the present award was given. According to the company, there was sufficient material for its satisfaction that that assualt was committed in pursuance of a plan prepared and executed by Dubey and that therefore continuing him in the company's service was prejudicial to its Interests. Dubey was suspended on 10 March 1964 in connexion with the said assualt and his application for ball was refused by the committing magistrate. On 80 April 1964 he was, however, granted ball by the High Court and it was on that very day that the company served on him its order terminating his services. The tribunal took the view that the company had discriminated, against Dubey inasmuch as while it refused, to reinstate him it had reinstated certain workmen though they were Involved in communal riots. It also held, that if the company had material to satisfy itself that Dubey was involved in the said attack those materials ought to have been produced before it, that the fact that the magistrate had passed the committal order against Dubey and refused ball was not material and that the plea of Dubey that his discharge was not bona fide and was made to victimize him was correct. The tribunal also observed that the company had not explained as to why it had resorted to passing the order of discharge instead of holding an enquiry for misconduct against him under standing orders 24, 25 and 26. Though the tribunal held that the order of discharge against Dubey was passed with a view to victimize him, it did not strangely direct his reinstatement and ordered the company to pay his back-wages only.

9. Under standing order 47, the company had the power to terminate. Dubey's services on giving notice or wages in lieu thereof. No doubt, the fact that the order was couched in the language of a discharge simplicity la not conclusive. Where such an order gives rise to an industrial dispute its form is not decisive and the tribunal which adjudicates that dispute can, of coarse, examine the substance of the matter and decide whether the termination is in fact discharge simpliciter or dismissal though the language of the order is one of simple termination of service. If it is satisfied that the order is punitive or mala fide or is made to (sic) the workmen of amounts to unfair labour practice, it is competent to set it aside. The test is whether the act of the employer is bona fide. If it is not, and is a colourable exercise of the power under the contract of service or standing orders, the tribunal can discard it and in a proper case direct reinstatement.

10. Sri Chagla's contention was that the tribunal was not entitled to come to the conclusion that the company's order was either mala fide or was passed to victimize the workman or was in substance an order of dismissal. It is true that Dubey was a prominent member of Awasthi group. It Is also true that some of the workmen who had taken part in communal riots had been reinstated. It is farther true that the allegation of Dubey and Awasthi was that the company was partial towards the group of

R.N. Prasad. Bat these facts cannot be looked at in isolation nor can they be treated as decisive. The undisputed facts on record were:.

(1) that on 4 March 1064 Kurup was grievously assaulted,

(2) that In that connexion the police had charge sheeted Dubey, and

(3) that the committal order Ex. D dated 17 February 1965, passed by the magistrate, which the company was entitled to consider, recited that the relations between Kurup and Dubey had been strained before the incident of assault.

Kurup's evidence before the magistrate was that as a superintendent in the auto division he had taken departmental action against Dubey on 13 February 1964 for being absent from duty and had issued a note of caution against him, that he was prepared to withdraw that notice of Dubey apologized which Dubey refused to do, that thereafter on 26 February 1964 Dubey had come to his office and held out serious threats to him and his family and that the assault on him was committed only a few days after Dubey had threatened him. Lastly, there was evidence before the magistrate of three witnesses of having seen Dubey running away on a cycle from near the scene of the offence immediately after the said assault. It is Impossible to think that the management was unaware of these materials when they passed the said order of discharge. From these materials, which they must have known from Kurup, if they were reasonably satisfied that Dubey had in one way or the other a hand In the said assault, though they may not be enough for a conviction in a criminal Court and the management came to the conclusion that it was no longer possible to continue to have confidence in him and retaining him in service was prejudicial to the interests of the company and discharged him from service, it is manifest that the management cannot be said to have acted mala fide or that their order was anything but what it stated. Besides, the evidence of Narayan-swami showed that it was not as if the management passed the said order out of bias or malice against Dubey. That evidence was that before the management passed the said order they had consulted the officers of the auto division, that those officers had reported that Dubey was a terror in that division and that it was not in the interests of the company to retain him in its service. In these circumstances it is manifestly wrong to say that the company acted mala fide or to victimize Dubey because he was a leading member of the dissident group. To hold BO would be tantamount to saying that even if an employer were to be satisfied that it was prejudicial to the interests of his concern to continue a workman in his service merely because that workman was an active union worker the order of discharge against him must be deemed to be mala fide or passed to victimize him. Certain workers who had participated in communal riots were, it is true, reinstated after some time while Dubey in spite of his applications was not. But from "this fact it would not follow that the management had the intention to victimize him or that the order of discharge was a colourable exercise of the power to discharge under the standing orders. The company may not view participation of its workmen Incommunal riots as seriously as it would an incident wherein one of its officers is grievously assaulted by those working under him. The company had two alternatives, either to act under standing order 47, or to take disciplinary action and hold a domestic enquiry. But the latter course would have meant that the company would have to launch into an enquiry almost parallel to the one which was going on before the committing magistrate. If the company, in these circumstances, preferred the former it would not be reasonable to say, as the tribunal did, that the company should have charged the workman with misconduct and held an enquiry. The fact that it did not do so but exercised its power under standing order 47 cannot render the order mala fide or one passed in colourable exercise of its power to discharge & workman from service if such power was properly exercised. There have been

instances as in Jabalpur Electric Supply Company v. Sambhu Prasad Srivastava and Ors. [1952-II L.L.J. 216] where on a question arising whether the power exercised was one for simple discharge or was punitive for a misconduct it was held that it was the former even though an investigation had preceded the order. Considering all the circumstances we are satisfied that the company properly and Justifiably exercised its power to terminate the services of Dubey. There was no warrant for the tribunal to come to the conclusion that it had acted mala fide or to victimize Dubey. Its order in regard to Dubey must, therefore, be set aside.

11. Coming now to the grounds on which the tribunal held that the domestic enquiries against the other four workmen were vitiated, the first ground was that the enquiry officer, Narayanswami, had relied on the extraneous matters set out in Paras. 8 (1), 8 (iv) and 8 (vii) of his report which were not in evidence before him and which be had Imported from his personal knowledge. These facts, as stated in that paragraph, were:

(1) that the cycle sheds were in exist- once for a number of years,

(2) that there was provision for 2,000 cycles or so,

(3) that the practice of keeping cycles in those sheds existed since the sheds came into existence,

(4) that a number of employees were found making parts for their cycles from 4 the company's materials and using their cycles for surreptitiously removing materials from the workshop, and

(5) that a concerted effort was made by the dissident group to incite defiance of the company's orders by a vigorous propaganda accompanied by shouting and gesticulating and that such propaganda was carried on from 25 May to 6 June 1964.

12. That the company had provided sheds and that cycles used to be kept there were facts not susceptible of doubt. It could not also be disputed that the workmen, instead of leaving their cycles in the sheds, were taking them inside with the result the company had to issue several orders directing them not to do so. That an agitation against those orders was started by a section of the workers also cannot be doubted. Indeed, it was the company's case that this agitation was launched by the leaders of the dissident group to compel the management to recognize them as the office-bearers of the union. However, there was no evidence before the enquiry officer that the said sheds were for about 2,000 cycles or as to the practice of parking them there since the time they were constructed: nor was there evidence of the workmen, having surreptitiously used or removed the company's materials or that the propaganda against the said orders was carried on by shouting and gesticulating. Strictly speaking, the enquiry officer was not entitled to bring in facts in his report which did not form part of the evidence. From the report of Narayan-Swami, however, it is clear that these observations were made Incidentally and none of them was rolled on by him for holding any of the workmen against whom he had held enquiries guilty of the charges against them. The charges against, them were disobedience of the company's lawful orders and inciting other workmen to disobey them. It was not necessary for him to rely on the fact that there were sheds for about 2,000 cycles or the fact that there was the practice of keeping them in the sheds from the time that they had been constructed. Nor was the observation that the workmen used their cycles for removing the company's materials used against any one of those workmen. Undoubtedly, if any one of these observations had been relied on by him, the enquiry and its report would have been vitiated on the ground that it did not form part of the evidence and that that being so the workman concerned

had not been given the opportunity to controvert it. But, Narayanswami, as aforesaid, made these remarks as incidental observations and had not in fact relied on them for the purpose of holding any one of the said workmen guilty of the charges preferred against them. In India Marine Service (Private), Ltd. v. their workmen [1963-I L.L.J, 122], the employer, in his order of dismissal communicated to the workman concerned, stated that the workman as a result of the enquiry, had been found guilty of the charges and he had, therefore, decided to dismiss him. But he had also added that he had looked into his past record and that he had taken it into consideration while deciding the action to be taken against him. The tribunal held that the findings against the workmen were not only based on the charges but also on matters which were not in the charges and that they were therefore vitiated. It was held that the tribunal was in error, that the findings were based on the charges alone, that the last sentence was added only to give additional weight to the decision already arrived at and consequently the tribunal was not entitled to go behind the findings given in the enquiry report. Even where other Incidental matters have crept in an enquiry, an order of dismissal has been sustained if it is based on a finding on a charge which the workman had the opportunity of meeting-of. Kalindi (N.) and Ors. v. Tata Locomotive and Engineering Company, Ltd., Jamshedpur [1960-II L.L.J. 228] and Calcutta Jute Manufacturing Company, Ltd. v. Calcutta Jute Manufacturing Workers' Union [1961-II L.L.J. 686].

13. Industrial tribunals, while considering the findings of domestic enquiries, must bear in mind that persons appointed to hold such enquiries are not lawyers and that such enquiries are of a simple nature where technical rules as to evidence and procedure do not prevail. Such findings are not to be lightly brushed aside merely because the enquiry officers, while writing their reports, have mentioned facts which ore not strictly borne out by the evidence before them. Of course, if the enquiry officer were to transgress the rules of natural justice by relying on matters which the workman had no opportunity to meet the validity of his findings would be affected. Since the extraneous mutters relied on by the tribunal were merely incidental matters and did not affect the findings, they cannot be held to have vitiated them.

14. The second ground was that though in the case of certain workmen the enquiry-officers bad found the charge of habitual insubordination as not having been proved the General Manager while passing his orders of dismissal had stated that he agreed that "on the basis of the evidence and other relevant Information brought out in the course of the proceedings the charges leveled against the employees have been established." The tribunal took a twofold exception:

(1) that they showed that the general manager had taken into account " other relevant information " which meant the extraneous matters, and

(2) that he took it for granted that the enquiry officer had found all charges "leveled " against the workmen as proved which in fact he had not and therefore the said order ex facie showed that he had not applied his mind to the reports and had passed the said orders in a cavalier fashion.

The tribunal, however, did not state why it thought that " the other relevant information " necessarily meant the said extraneous matters which, as held by us, were merely incidental observations. The findings against the workman being about their disobedience and their Inciting other workmen to disobey them, the other relevant Information obviously meant other materials, such as the company's orders brought on record apart from the evidence of the witnesses and the statements of the workmen. There was, In our view, no warrant to hold that the general manager had relied on, when he mentioned the " other relevant information," the said incidental observations of

the enquiry officer. As to the second objection, the general manager clearly used the word "leveled" through mistake and did not mean to base his orders on the footing that all the charges against the workmen stood established. This is clear from the formal orders of dismissal served on the concerned workmen which clearly stated that they were dismissed as they were found guilty

(1) of disobedience of the company's orders, and

(2) for inciting other workmen and not on the charge of habitual disobedience.

The decision of the High Court of Madras In Royal Printing Works v. Industrial Tribunal, Madras and Ors. [1953-II L.L.J. 60] relied on by Sri Nag in this connection has no bearing on the present facts as the order of dismissal there was on the basis that all the three charges were established though on two of them the workman was found not guilty and there was nothing to show that the order was made only in respect of the third charge which alone was proved.

15. The third ground was that there was considerable delay between the service of the charges on the workmen and the reports by the enquiry officers as also between the examination of the witnesses and taking their signatures on their evidence. There was no allegation, however, of any tamper-log of the evidence of any of the witnesses. The delay between the service of the charge-sheets and the reports of the enquiry officers was not by any measure considerable. The lapse of time between the recording of evidence and taking the signature thereon of the witnesses was explained by the enquiry officers. Even Sri Nag did not support this ground relied on by the tribunal and therefore we need not go into that ground.

16. The fourth ground was that the company failed to produce certain documents during the enquiries though called for by the workmen and which the workmen alleged would have shown that they were not present at the gates at the time of the alleged Incitement of other workmen to defy the company's orders. These documents were:

(1) the punching card,

(2) the gate-diary, and

(3) the duty register In the case of Vishnu Lal and the original punching card in the case of Satpal.

The letters of Vishnu Lal received by the enquiry officer on 22 and 29 June 1964 (Exa. L/1 and 2/A) show that Vishnu Lal had called for these three documents. But the tribunal was factually in error in holding that these documents were not produced during the enquiry. The enquiry report, Ex. J, which contains Vishnu Lal's statement during the enquiry shows that the duty register and the gate diary were produced and seen by him and that in fact he had relied on them for his obligation that the gate-diary did not contain the names of workman who had taken their cycles inside the workshop. That this was so is also indicated by the fact that though the written statement of Vishnu Lal before the tribunal alleged in Para. 27 several infirmities against the domestic enquiry, the ground of alleged non-production of these documents was not taken. In his evidence before the tribunal, Vishnu Lal, however, did allege that these documents were not produced. But when he was confronted by his statement before the domestic enquiry he first pretended that he did not under-staid that part of his statement but had ultimately to concede that the statement bore his signature and that it contained his statement that he had seen at the time of the enquiry both the duty register

and the gate-diary. Narayanswami, who conducted the enquiry against Vishnu Lal, was not questioned about the alleged non-productions of these documents although it was he to whom the workman had addressed his letters for their production. Strangely, the tribunal has not given any finding about the non-production of these documents although it made it a ground for holding the enquiry bad.

17. As regards Satpal, he, no doubt, made a grievance before the tribunal that the management produced the duplicate and not his original punching card though called upon to do so. It appears that the practice in the company was that after the cards were punched by workmen on entering the gates of the auto division, they would be taken to the office where the time of entry of each workman would be noted on a duplicate form. It was this form which was produced. The original card would be stamped while : the duplicate would be in the handwriting of the clerk. But it is Important to bear in mind that Satpal had not, at any stage, not even before the tribunal, alleged that the time recorded in the duplicate was different from that on the original card or that the duplicate was not genuine or had been tampered with. So that it really made no difference whether the original or the duplicate of it was produced. In this connection It is also interesting to read his evidence . before the enquiry officer. The allegation against him was that on 2 June 1964 he was I found inciting the workmen between 5.45 a.m. and 6-05 am. to defy the company's said orders. To that his case was that he had entered the gates of the division at 5.55 a.m. and had punched his card at 6 a.m. This meant that he had not gone inside the workshop till 6 a.m. and, therefore, it was possible for him to incite the workmen between 5.45 a.m. and 6 a.m. as the company's witnesses had deposed. Realizing the significance of this statement, he changed his case and complained that if his original punching bard was produced it would have shown that he was inside the workshop from 5-50 a.m. That obviously was not true because if he had punched his card at 6 a.m. as he stated, he could not be inside the workshop at 5-50 a.m. The duplicate having been produced and there being no allegation of its being either wrong or tampered with, we fall to understand, bow the tribunal could possibly make the non-production of the original card a ground for ' holding that proper opportunity to controvert the company's case against this workman was not afforded and that therefore the findings of the domestic enquiry against him were vitiated.

18. As regards witnesses whom Vishnu Lal wanted to be examined his demand was that two of the company's officers, Bhesania and Samant, should be produced. Apart from these two, he had given a list of 36 workmen whom he wanted to examine. It appears that the enquiry officer told him that he had no power to compel the company to produce the said officer and that if he wanted to examine them he could arrange for their attendance. As regards the said list of 35 workmen, the enquiry officer told him that If he wanted their attendance to be arranged by him, he should select five or six Important witnesses out of the list as called 36 workmen would hinder the work of the workshop. Vishnu Lal refused to choose and told the enquiry officer that either he should call all of them or select five or six out of that list. The enquiry officer said that he could not do that and to enable the workmen to arrange for their attendance adjourned the Inquiry though the workman ought to have kept his witnesses in readiness to be examined by him. The enquiry proceedings show that so far as the two officers were concerned Vishnu Lal did not want them to be examined as his witnesses but he wanted their production as company's witnesses and to cross-examine them. The tribunal held that It was the obligation of the enquiry officer to have these witnesses produced and that his failure to do so was a defect which vitiated the enquiry, The tribunal was, in our view, in error in thinking that the enquiry officer was under any obligation in law to produce witnesses required by the workman. It was also factually in error when it commented - to reduce the number of his witnesses to 5 or 6 out of 86. This observation was factually incorrect as the only thing that

the enquiry officer had said was that if Vishnu Lal wanted him to arrange for the attendance of those workmen he should select five or six of the more important of them. It was not as if Vishnu Lal was prepared to call them and yet he asked him to examine five or six of them. As regards the two officers, there was no obligation on the management to produce them not as the witnesses of the workman bat for his cross-examination. The tribunal ought to have appreciated that the enquiry officer had no power as a court has to summon witnesses and therefore there was no failure on his part when he told Vishnu Lal that he could not produce nor compel the company to produce those witnesses and therefore just as the company had produced its witnesses the workman had to take steps to produce his witnesses [of Tata Oil Mills Company, Ltd. v. its workmen (by the Tata Oil Mills Workers' Union, Ernakulam), and Ors. 1964-II L.L.J. 113).

19. The last ground was the omission by the company to produce the preliminary reports on the strength of which the charges against those workmen were founded. Those reports were collected by the company to satisfy itself whether disciplinary action against these workmen should be launched or not. They did not form part of the evidence before the enquiry officer nor were they relied on by them for arriving at their findings. That being so, it was not obligatory on the company to disclose them and the omission could not be a ground for holding that their non-disclosure was a non-observance of the rules of, natural justice.

20. The above discussion makes it clear that none of the grounds relied on by the tribunal for holding the enquiries and the findings thereat arrived vitiated can be sustained. The jurisdiction of the tribunal being limited, it can deal with the merits of the impugned orders only if it could properly come to the conclusion either that the domestic enquiries were not validly or properly held or that the findings given by the enquiry officers were vitiated either by reason of their being in breach of the rules of natural justice or perverse or contrary to the evidence-of. Rite Theatre (Private), Ltd. v. its workmen [1962-II L.L.J. 498]. Since that was not so, the tribunal could not disregard those findings and decide for Itself that the orders of dismissal were unjustified. No question of victimization or the management having a bias against these workmen also pan arise once it is held that the finding of misconduct alleged against the employees was properly arrived at and the domestic enquiry was in no way vitiated, See Hamdard Dawakhana Wakf v. its workmen and Ors. 1962-II L.L. J. 772.

21. For the reasons aforesaid, the company succeeds, its appeal is allowed and the tribunal's award is set aside. In the circumstances of the cage, we make no order as to costs.