Shankar Chakravarti

Vs

Britannia Biscuit Co. Ltd. and Another

Civil Appeal No. 1168 of 1978

(V. R. Krishna Iyer, D. A. Desai, A. D. Koshal JJ)

04.05.1979

JUDGMENT

DESAI, J. -

1. The hollow plea of the employer of an alleged denial of an opportunity (never claimed at any stage except in Letters Patent Appeal) to substantiate an alleged misconduct of the workman by evidence alieunde has been responsible for dragging a tiny dispute rendering the workman jobless for an unusually long period of more than 7 years to this apex Court.

2. Facts now beyond the pale of controversy are few and may be briefly stated. Appellant joined service with the first respondent company ('company' for short) in August, 1963 and was confirmed in March, 1964. In October, 1970 appellant was drawing a composite salary of Rs. 180. An Industrial dispute touching the workmen of the company was pending before the Industrial Tribunal, when the events leading to the present appeal occurred. On October 1, 1970 around 5 p.m. appellant is alleged to have hoisted two red flags atop the Branch Office building simultaneously shouting inflammatory slogans. He is alleged to have threatened the Shift Manager, Shri Manik Mukherjee who was on duty at the relevant time. The incident was reported to police. Respondent employer felt aggrieved by such indiscipline exhibited by the appellant and decided to hold a disciplinary enquiry, as a first step towards which, a charge-sheet dated October 1, 1970 was served upon the appellant calling upon him to submit his explanation within three days from the receipt of the charge-sheet. In the meantime on October 3, 1970 first respondent company declared a lock out. Appellant submitted his explanation on October 10, 1970 denying all the charges and complaining that as he is a trade union leader he is being singled out for victimisation. On the same day appellant was arrested by police and some criminal case was lodged against him in which he was discharged by the Magistrate on December 2, 1970. Somehow or the other the management did not proceed with the enquiry till as late as June 30, 1971 when the appellant was informed that the enquiry would be held on July 8, 1971. In the meantime the appellant was detained under the Prevention of Violence Act, 1970, with the result that when he received the intimation of the date on which the enquiry was to be held, he informed the company that as he is in detention he would not able to attend the enquiry and sought an adjournment. Adjournment appears to have been granted but a fresh notice was served upon the appellant in the jail intimating to him to appear before the enquiry officer on September 15, 1971 but as the appellant was still in detention, he could not avail of this opportunity. Consequently on 16th September, 1971 the enquiry proceeded ex parte. Enquiry Officer held the charges proved and on the report of the enquiry officer the management of the first respondent company terminated service of the appellant and gave one month's wages in lieu of notice. Since an industrial dispute between the workmen of the company and the company was then pending before the Industrial Tribunal, an application was made under Section 33(2)(b) of the Industrial Disputes

Act, 1947 ('Act' for short) seeking approval of the Industrial Tribunal to the action of the management terminating service of the appellant. This case came to be registered as Case No. 128 of 1971 under Section 33(2)(b) of the Act before the III Industrial Tribunal, West Bengal.

3. On a notice issued by the Industrial Tribunal appellant was produced before the Tribunal from the jail custody and he submitted his written statement. The Tribunal then proceeded to adjudicate upon the dispute. The Tribunal was of the opinion that the enquiry was conducted in violation of the principles of natural justice and hence vitiated. Accordingly, by its Award dated 15th September, 1973, the Tribunal rejected the application for approval of the action terminating service of the appellant made by the company and declined to grant approval.

4. The company preferred a writ petition under Articles 226 and 227 of the Constitution to the High Court of Calcutta. The learned Single Judge of the High Court before whom the writ petition came up for hearing dismissed the petition observing that the enquiry was not held according to the principles of natural justice and the order terminating the service made in such an enquiry is invalid and of no effect and the Industrial Tribunal was fully justified in declining to grant approval of such an action. It may specifically be mentioned that no contention was raised before the learned Single Judge that no opportunity was afforded to the first respondent company to lead evidence in proof of charges after the domestic enquiry was found to be defective.

5. The company preferred Letters Patent Appeal No. 80 of 1974. A Division Bench of the Calcutta High Court held that after the Industrial Tribunal adjudicated upon the preliminary issue whether the enquiry was in accordance with the principles of natural justice and having held against the company it was incumbent upon the Industrial Tribunal to give an opportunity to the employer to lead evidence to prove the charges alleged against the workman and as the issue about the validity of the enquiry was not decided as a preliminary issue and as thereafter no opportunity was given to the employer it would be necessary to remand the matter to the Industrial Tribunal for giving an opportunity to the employer to adduce further evidence, if so advised, and then to finally dispose of the application made by the employer under Section 33(2)(b).

6. The present appeal by special leave is filed by aggrieved workman. While granting leave this Court limited it to the question as to whether the principle in Cooper Engineering Ltd. v. P. P. Mundha ((1976) 1 SCR 361 : (1975) 2 SCC 661 : 1975 SCC (L&S) 443), applies to a situation where the management seeks approval of an order of dismissal under Section 33(2)(b) of the Act. That necessitates ascertainment of the principle enunciated by this Court in Cooper Engineering Ltd. case.

7. Before the contention raised in this appeal is adverted to, the limited nature of the controversy must be put in focus to avoid deviation from the central issue.

8. The challenge to penal termination of service of a workman by the employer whose undertaking is governed by the Act is likely to come before a Labour Court or Industrial Tribunal or National Tribunal for adjudication either by way of a reference under Section 10 or by way of an application by the employer under Section 33. Preceding domestic enquiry is implicit in both the situations. Where a workman is accused of misconduct a domestic enquiry has to be held against him in accordance with the provisions contained in the Standing Orders governing the industrial establishment or in the absence of such Standing Orders in accordance with the principles of natural justice. After such a domestic enquiry is held it would be open to the employer to impose a penalty including one of termination of service howsoever styled. If at the time of imposition of penalty no

other industrial dispute between the employer and its workmen as comprehended by Section 33 is pending before any of the authorities mentioned in that section it would be open to the workman to approach the appropriate Government to refer the industrial dispute arising out of termination of his service to an appropriate authority under the Act. But if at the relevant time a situation obtains such as is comprehended by Section 33, namely, pendency of a conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute touching the workmen of the employer, the employer before his order terminating service of the workman becomes effective has to seek either prior permission or subsequent approval of the action, as the case may be, under Section 33.

9. When the dispute comes before the Industrial Tribunal by way of a reference under Section 10 it is the aggrieved workman who has sought adjudication of the industrial dispute arising from the termination of his service. When the matter comes before the appropriate authority under Section 33 it is the employer who has moved for permission or approval of its intended action.

10. Where the reference is at the instance of a workman under Section 10 the Tribunal would call upon the workman to file his statement of claim and thereafter the employer would be called upon to file its written statement. Rule 10-B of the Industrial Disputes (Central) Rules, 1957 provides that within two weeks of the date of receipt of the order of reference, the party representing workmen and the employer involved in the dispute shall file with the concerned authority a statement of demands relating only to the issues as are included in the order of reference and shall also forward a copy of such statement to each one of the opposite parties involved in the said dispute. Similarly, when the employer seeks permission for taking the intended action or seeks approval of the action taken by it under Section 33 it has to make an application as provided by Rule 60 in either Form J or K as the case may be. Both the forms require that the necessity for and circumstances in which the proposed action is taken or is intended to be taken must be clearly and specifically set out and either express permission should be sought before taking the intended action or an approval of the already taken action must be sought.

11. The matter in this case came before the Tribunal upon an application made by the company under Section 33(2)(b) seeking approval of its action terminating service of the appellant. A copy of the application is not put on record of this appeal. However, it was stated at the Bar that in the application charges preferred against the appellant were set out. The fact that an enquiry and upon the findings recorded in the enquiry, order terminating the service of the workman was passed has also been set out in the application. The Tribunal was called upon to accord its approval to the action. The appellant appeared before the Tribunal and contested this application totally denying the charges.

12. It must be specifically noticed that the first respondent company in its application seeking approval of its action has set out in its application the charges preferred by it and the domestic enquiry held in respect of the charges. A prayer was made in the application that its action terminating service of the appellant be approved. Nowhere in this application either in express terms or by implication it was averred that in the event the Tribunal comes to the conclusion that the enquiry was defective, the employer first respondent company proposes to offer evidence for substantiating the charges. Neither such an averment was made in the application made to the Industrial Tribunal but till the Industrial Tribunal concluded its proceedings by saying that the matter is set down for making the Award any oral or written application was made on behalf of the company that over and above the record of enquiry it proposed to lead evidence in its possession in

respect of the charges to substantiate the same to the satisfaction of the Tribunal. Not only no such request was made at any time before the Award was made by the Industrial Tribunal but no such contention appears to have been taken before the learned Single Judge of the Calcutta High Court in writ petition filed by the company questioning the validity and correctness of the award made by the Industrial Tribunal declining to grant approval. Such an opportunity was sought for the first time before the Appellate Bench of the Calcutta High Court at the hearing of the Letters Patent Appeal preferred by the company.

13. Mr. Tarkunde, learned Counsel for the company formulated his contention thus : When an industrial dispute touching the punitive termination of service of a workman is brought before the Labour Court or the Industrial Tribunal, either under Section 10 or Section 33 of the Act, irrespective of the fact whether the employer has made any express or implied request in its application or in the course of proceedings either orally or in writing, the Labour Court or the Industrial Tribunal must as an obligation in law at the initial stage of the proceeding frame a preliminary issue as to whether the domestic enquiry was in fact held and if held, was in accordance with the Standing Orders or the principles of natural justice or was in any manner defective. If this issue, urged Mr. Tarkunde, is answered in favour of the workman and against the employer, a preliminary finding to that effect should be recorded and then notwithstanding the fact that the employer has not made any request in its original application or in the course of proceedings before the Tribunal it is the duty and obligation of the Tribunal to call upon the employer by giving it a specific opportunity to lead evidence if it so chooses to do, to substantiate the charges preferred against the workman. Failure to give such an opportunity either on request of the employer or suo motu by the Tribunal, the proceedings would be vitiated. According to Mr. Tarkunde this proposition is no more res integra and is concluded by the decision of this Court in Cooper Engineering Ltd. case, (supra).

14. As this contention was sought to be substantiated on some of the cases decided by this Court it would be advantageous to examine the proposition first on precedent and then, if it is open, on principle.

15. In Bharat Sugar Mills Ltd. v. Shri Jai Singh ((1962) 3 SCR 684 : (1961) 2 LLJ 644 : 21 FJR 118), the matter came before this Court questioning an Award of the Industrial Tribunal by which the Tribunal declined to grant permission under Section 33 except in respect of one workman holding that the domestic enquiry was not proper and that the employer was guilty of mala fide conduct and victimisation. Before this Court the workman contended that once the domestic enquiry was found to be improper, the Tribunal had to dismiss the application and it could not take independent evidence and arrive at a finding of its own as to the guilt of the workman. It may be mentioned that there was no preliminary issue framed in this case by the Tribunal about the validity of the enquiry. Yet the employer had adduced evidence to substantiate the charges against the workman simultaneously relying upon the papers of domestic enquiry. Negativing this contention of the workman this Court observed as under : (SCR pp. 690-91)

> Where there has been a proper enquiry by the management itself the Tribunal, it has been settled by a number of decisions of this Court, has to accept the findings arrived at in that enquiry unless it is perverse and should give the permission asked for unless it has reason to believe that the management is guilty of victimisation or has been guilty of unfair labour practice or is acting mala fide. But the mere fact that no enquiry has been held or that the enquiry has not been properly conducted cannot absolve the Tribunal of its duty to decide whether the case that the workman has been

> guilty of the alleged misconduct has been made out. The proper way for performing this duty where there has not been a proper enquiry by the management is for the Tribunal to take evidence of both sides in respect of the alleged misconduct. When such evidence is adduced before the Tribunal the management is deprived of the benefit of having the findings of the domestic tribunal being accepted as prima facie proof of the alleged misconduct unless the finding is perverse and has to prove to the satisfaction of the Tribunal itself that the workman was guilty of the alleged misconduct. We do not think it either just to the management or indeed even fair to the workman himself that in such a case the Industrial Tribunal should refuse to take evidence and thereby drive the management to make a further application for permission after holding a proper enquiry and deprive the workman of the benefit of the Tribunal itself being satisfied on evidence adduced before it that he was guilty of the alleged misconduct.

16. The question again surfaced in Management of Ritz Theatre (P) Ltd. v. Its Workmen ((1963) 3 SCR 461 : AIR 1963 SC 295 : (1962) 2 LLJ 498 : 23 FJR 171). The matter came before this Court challenging an award of the Industrial Tribunal by which the Industrial Tribunal in a reference under Section 10 directed reinstatement of two workmen who were dismissed after holding a domestic enquiry against them. When the matter was before the Tribunal the employer relied not only on the papers of domestic enquiry but 11 witnesses were examined on behalf of the employer and an equal number of witnesses was examined on behalf of the workmen. In the appeal by the employer a contention was raised on behalf of the workmen that once the employer adduced evidence before the Industrial Tribunal to substantiate the charges against the workmen, that by itself would amount to a concession on behalf of the employer that the enquiry held by it was not proper or was defective and, therefore, the employer cannot then rely upon the fact that the enquiry being proper the Tribunal cannot go into the merits of the case. Negativing this contention after referring to Bharat Sugar Mills case (supra), this Court expressed an opinion that there is no authority for the proposition that whenever the employer seeks to lead additional evidence before the Tribunal in respect of dismissal of its employee it must necessarily follow that he has given up his stand based on the previous departmental enquiry and the Tribunal is entitled to examine the dispute on merits itself and on the principles of fair play and justice the proposition is unsound. In reaching this conclusion this Court made some pertinent observations which may be extracted : (SCR pp. 469-70)

> If the view taken by the Tribunal was held to be correct, it would lead to this anomaly that the employer would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the Tribunal to deal with the merits for itself, because as soon as he asks for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Otherwise, it may have to be held that in all such cases no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need be cited by the employer; if the finding on the said issue is against him; permission will have to be given to the employer to cite additional evidence, instead of following such an elaborate and somewhat cumbersome procedure; if the employer seeks to lead evidence in addition to the evidence adduced at the departmental enquiry and the employees are also given an opportunity to lead additional evidence, it would be open to the Tribunal first to consider the preliminary issue and then to proceed to deal with the merits in case the preliminary issue is decided against the employer. That, in our opinion, is the true and correct legal position in this matter.

17. It may be noted that in this case evidence was adduced by the employer before any preliminary finding was recorded on the validity of the enquiry. In fact, application for adducing additional evidence was made by the employer much before the Tribunal proceeded to examine the validity of the enquiry and evidence was recorded before recording a preliminary finding that the enquiry was improper or defective. The observations in this case have to be understood in the context of the facts found.

18. In Workmen v. Motipur Sugar Factory ((1965) 3 SCR 588 : AIR 1965 SC 1803 : (1965) 2 LLJ 162 : 27 FJR 376), the workmen contended before this Court that as respondent employer held no enquiry as required by the Standing Orders before dispensing with the services of the appellants by way of discharge on the grounds that the appellants had resorted to 'go slow' in the sugar factory, the Tribunal in a reference under Section 10 of the Act way of discharge on the ground that the appellants had resorted to 'go-slow' tactics and the respondent was justified in discharging them from service. The specific contention raised was that where no domestic enquiry is held before terminating services of a workman as required by the Standing Orders all that the Tribunal was concerned with was to decide whether the discharge of the workman was justified or not and that it was no part of the duty of the Tribunal to decide that there was go-slow which would justify the order of discharge. Negativing this contention, the Court held as under : (SCR pp. 596-597)

> 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 SCR 667 : AIR 1958 SC 130 : (1958) 1 LLJ 260 : 13 FJR 377)). But also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to M/s. Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan (1959 Supp 2 SCR 836 : AIR 1959 SC 923 : (1959) 2 LLJ 388 : 17 FJR 1); Phulbari Tea Estate v. Its Workmen ((1960) 1 SCR 32 : AIR 1959 SC 1111 : (1959) 2 LLJ 663 : 17 FJR 9); and The Punjab National Bank Limited v. Its Workmen ((1960) 1 SCR 806 : AIR 1960 SC 160 : (1959) 2 LLJ 666 : 17 FJR 199). These (sic) three cases were further considered by this Court in Bharat Sugar Mills Ltd. v. Shri Jai Singh (supra), and reference was also made to the decision of the Labour Appellate Tribunal in Shri Ram Swarath Sinha v. Belcund Sugar Co. (1954 LAC 697). It was pointed out that "the important effect of omission to hold an enquiry was merely this : that the Tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out". It is true that three of these cases, except Phulbari Tea Estate case, were on applications under Section 33 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the Tribunal for approval under Section 33 or on a reference under Section 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the Tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. Phulbari Tea Estate was on a reference under Section 10, and the same principle was applied there also, the only difference being

> that in that case, there was an enquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the Tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the Tribunal that on facts the order of dismissal or discharge was proper.

19. The Court rejected the contention that as there was no enquiry in this case it was not open to the respondent company to justify the discharge before the Tribunal. It may be noted that in the situation as was disclosed in this case there was no question of deciding a preliminary issue and then giving an opportunity to the employer to adduce additional evidence justifying the punitive action on merits. This Court went into the allegations of go-slow tactics resorted to by the workmen as canvassed on behalf the employer and agreed with the finding of the Tribunal that the allegations were proved and accordingly upheld the order of discharge and affirmed the Award.

20. In State Bank of India v. R. K. Jain ((1972) 1 SCR 755 : (1972) 4 SCC 304), in a reference made by the Central Government the Industrial Tribunal held that the respondent R. K. Jain was not afforded a reasonable opportunity to produce evidence in his defence during the enquiry and that the management was not justified in terminating his service on the basis of the report of the enquiry officer. This Award was questioned in an appeal to this Court, inter alia, on the ground that even assuming that the domestic enquiry conducted by the bank was in any manner vitiated, the Tribunal erred in law in not giving an opportunity to the management to adduce evidence before the Tribunal to establish the validity of the order of discharge. The contention in terms raised was that the Tribunal has first to consider whether the domestic enquiry on the basis of which the order of termination has been passed has been conducted properly and bona fide by the management and if it comes to the conclusion that the domestic enquiry is vitiated, it is only then that the stage is set for giving an opportunity to the management to adduce evidence before the Tribunal to support the order of termination. In support of this contention reliance was placed on the decision of a Division Bench of the Orissa High Court in M/s. Hindustan Steel Ltd. v. Their Workmen ((1970) Lab IC 102 : (1970) 1 LLJ 337 (Ori HC)). A contrary view taken by the Madhya Pradesh High Court in Madhya Pradesh State Road Transport Corporation v. Industrial Court, Madhya Pradesh ((1970) Lab IC 10 : 1970 MPLJ 62 (MP HC)), was also brought to the notice of the court. Attention of the court was also drawn to a decision of a learned Single Judge of the Delhi High Court in Prem Nath Motors Workshop Pvt. Ltd. v. Industrial Tribunal Delhi ((1971) 22 FLR 370 (Del HC)), which accepted the view of the Madhya Pradesh High Court. The conflict of decisions may be noticed first. The Orissa High Court was of the opinion that there was no obligation in law on the part of the Labour Court to indicate its mind about the infirmities in the enquiry at any stage before it gave its findings and the Award. Contrary view expressed by the Madhya Pradesh and Delhi High Courts was that it is a healthy practice that after coming to the conclusion that the domestic enquiry was not proper the Industrial Tribunal or Labour Court should give an opportunity to the employer to produce evidence to satisfy the authority that the action taken by it is justified. Thus this Court in R. K. Jain case was clearly seized of the conflict of opinion and the controversy raised was whether there was any obligation in law on the Industrial Tribunal or the Labour Court, notwithstanding that no such request was made by the employer, to call upon the employer to adduce additional evidence to sustain the charges after a formal preliminary order is recorded that either there as no domestic enquiry or the one held was defective. Negativing this contention this Court held as under : (SCC p. 321, para 35)

> It should be remembered that when order of punishment by way of dismissal or termination of service is effected by the management, the issue that is referred is whether the management was justified in discharging and terminating the service of the workman concerned and whether the

workman is entitled to any relief. In the present case, the actual issue that was referred for adjudication to the Industrial Tribunal has already been quoted in the earlier part of the judgment. There may be cases where an inquiry has been held preceding the order of termination or there may have been no inquiry at all. But the dispute that will be referred is not whether the domestic inquiry has been conducted properly or not by the management, but the larger question whether the order of termination, dismissal or the order imposing punishment on the workman concerned is justified. Under those circumstances it is the right of the workman to plead all infirmities in the domestic inquiry, if one has been held and also to attack the order on all grounds available to him in law and on facts. Similarly the management has also a right to defend the action taken by it on the ground that a proper domestic inquiry has been held by it on the basis of which the order impugned has been passed. It is also open to the management to justify on facts that the order passed by it was proper. But the point to be noted is that the inquiry that is conducted by the Tribunal is composite inquiry regarding the order which is under challenge. If the management defends its action solely on the basis that the domestic inquiry held by it is proper and valid and if the Tribunal holds against the management on that point, the management will fail. On the other hand, if the management relies not only on the validity of the domestic inquiry, but also adduces evidence before the Tribunal justifying its action, it is open to the Tribunal to accept the evidence adduced by the management and hold in its favour even if its finding is against the management regarding the validity of the domestic inquiry. It is essentially a matter for the management to decide about the stand that it proposes to take before the Tribunal. It may be emphasised that it is the right of the management to sustain its order by adducing also independent evidence before the Tribunal. It is a right given to the management and and it is for the management to avail itself of the said opportunity.

21. The Court also in terms held that by and large this Court was in agreement with the view expressed by the Orissa High Court meaning thereby that no such obligation in law is fastened on the Labour Court or the Industrial Tribunal to indicate its mind about the infirmities in the enquiry before it gave its finding and the award and then calling upon the employer to start the next round of leading evidence in its attempt to sustain the charges alleged against the workman.

22. If the matter were to rest here, the contention of the appellant must fail on precedent. But it was urged that the point has been re-examined in later cases to which we may now turn.

23. In Delhi Cloth and General Mills Co. v. Ludh Budh Singh ((1972) 3 SCR 29 : (1972) 1 SCC 595 : (1972) 1 LLJ 180), the appellant company questioned the correctness of the decision of the Industrial Tribunal refusing permission to dismiss the respondent as he was held guilty of misconduct in a domestic enquiry conducted by the appellant. The question of seeking permission arose because Section 33 was attracted as an industrial dispute between the appellant company and its workmen was then pending before the Industrial Tribunal. Before the Tribunal pronounced its order rejecting the application for permission under Section 33, an application was made on the day next after the date on which the respondent filed his written statement before the Tribunal requesting in clear and unambiguous terms the Tribunal that in case the Tribunal held that the enquiry conducted by it was defective, it should be given an opportunity to adduce evidence before the Tribunal to justify the action proposed to be taken against the respondent. Neither party examined any witness before the Tribunal. The appellant merely produced the papers of enquiry. The Tribunal reached the conclusion that the enquiry proceedings had not been conducted against the respondent in accordance with the principles of natural justice and that the findings recorded by the enquiry officer were not in accordance with the evidence adduced before him. In accordance with these findings the Tribunal concluded that the appellant had not made out a case for permission for dismissing the respondent and the application was rejected. It may be noticed that there was no

reference to the application made by the appellant for adducing additional evidence in the order rejecting permission and no order appears to have been made on the application whether it was granted or rejected. Before this Court the appellant contended that the Tribunal was in error in law in not permitting the appellant to adduce evidence before it, to justify the action proposed to be taken against the respondent. After an exhaustive review of the decisions bearing on the question and affirming the ratio in R. K. Jain case (supra), this Court extracted the emerging principles from the review of decisions. Propositions 4, 5 and 6 would be relevant for the present discussion. They are as under : (SCC pp. 616-617)

> (4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.
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> (5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.
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> (6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decided the matter. If the Tribunal decides that the domestic enquiry has not been held

> properly, it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it.

24. The point worthy of note is that the contention of the appellant that there is something like an obligatory duty of the Industrial Tribunal to call upon the employer to adduce additional evidence if it so chooses after recording a specific finding on the preliminary issue whether there was no enquiry or the one held was defective has been, in terms and demonstrably negative. As a corollary a principle was enunciated that such an opportunity should be availed of by the employer by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been asked for by the management before the proceedings are closed the employer can make no grievance that the Tribunal did not provide such an opportunity. The ghost of any obligatory duty cast on a quasi-judicial authority, viz., Labour Court or Industrial Tribunal to notify one of the parties to the proceedings before it, what it should do or what are its rights and by what procedure it should prove its case, even when the party is a well entrenched employer, ably assisted by the best available talent in the legal profession, was laid to rest. We would presently examine Cooper Engineering Ltd. case (supra) where the employer made some attempt to infuse life into that ghost but that decision rests on the facts of the case. In this case the fact that before the final order was pronounced by the Tribunal a written request was made on behalf of the employer for adducing additional evidence to sustain the charge on which the Tribunal appears to have passed no order, was held insufficient by this Court to entertain a contention that the employer was denied any such opportunity.

25. Reference was next made to Workmen v. Messrs. Firestone Tyre and Rubber Company of India (P) Ltd. ((1973) 3 SCR 587 : (1973) 1 SCC 813, 828 : 1973 SCC (L&S) 341, 356). Contention raised therein was that by the introduction of Section 11-A with its proviso in the Act the Legislature has once and for ever put its final seal upon the controversy whether the employer who has failed to hold proper, legal and valid domestic enquiry before taking punitive action, was entitled to adduce fresh evidence when the matter is brought before the Labour Court or the Industrial Tribunal either under Section 10 or under Section 33 of the Act. The proviso to Section 11-A provides that the Labour Court or the Industrial Tribunal in a proceeding under Section 11-A shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter. This contention was in terms negatived by this Court observing that at the time of introducing Section 11-A in the Act the Legislature must have been aware of the long line of decisions of this Court enunciating several principles bearing on the subject and therefore it is difficult to accept that by a single stroke of pen by the expression used in the proviso of Section 11-A all these principles were set at naught. This Court then exhaustively reviewed all the previous decisions bearing on the subject and formulated the principles emerging therefrom. The relevant principles are 4, 6, 7 and 8. They read as under : (SCC p. 828, Para 32)

> (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee and adduce evidence contra.
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> (6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It was never been recognised that the Tribunal should straight away, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

26. The noticeable feature of principle 8 is that an employer who wants to avail himself of the opportunity of adducing evidence of the first time before the Tribunal to justify his action should ask for it at the appropriate stage. If any such opportunity has been asked for the Tribunal has no power to refuse. But it is not for a moment suggested that there is some duty or obligation as a matter of law cast upon the Tribunal to call upon the employer to adduce additional evidence even if no such opportunity is sought by the employer. At page 610 the Court has observed that the stage at which the employer has to ask for such an opportunity has been pointed out by the Court in Delhi Cloth & General Mills Co. case (supra) and the ratio of the decision was affirmed.

27. In the quest of the principle bearing on the subject we come to the last decision relying on which the Division Bench of the Calcutta High Court in Letters Patent Appeal allowed a contention to be raised for the first time and remanded the matter back to the Industrial Tribunal. It was said that the point decided by the Division Bench of the Calcutta High Court is no more res integra and is concluded by the decision in Cooper Engineering Ltd. case (supra). In that case the workman was dismissed by the employer and an industrial dispute arising out of the termination of service was referred to the Labour Court. The Labour Court found that the domestic enquiry was defective and directed reinstatement of the workman. In appeal by the employer company it was contended that the Labour Court failed to give an opportunity to the employer to adduce additional evidence to sustain the charge after recording a finding that the domestic enquiry held by the employer was defective. This Court referred to propositions nos. 4, 5 and 6 in the Delhi Cloth and General Mills Co. case and propositions nos. 4, 6, 7 and 8 in the case of Messrs. Firestone Tyre and Rubber Co. of India (P) Ltd. case and posed to itself a question as to what is the appropriate stage, specifically adverted to in the Delhi Cloth and General Mills Co. case when the Court is not required to seriously consider that the opportunity should be given to the employer to adduce evidence. The Court then recorded its opinion as under : [(1975) 2 SCC 661, 667, para 22]

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 proceedings to raise the issue.

28. It was contended that this Court has in unambiguous and incontrovertible terms laid down that there is an obligatory duty in law fastened on the Labour Court or the Industrial Tribunal dealing

with a case of punitive termination of service either under Section 10 or Section 33 of the Act, irrespective of the fact whether there is any such request to that effect or not, to raise a preliminary issue as to whether domestic enquiry allowed to have been held by the employer is proper or defective and then record a formal finding on it and if the finding is in favour of the workman the employer should be called upon which must demonstrate on record, without waiting for any such request or demand or pleading from the employer, to adduce further evidence to sustain the charge of misconduct if it so chooses to do. We are afraid that much is being read into the observation of this Court which is not either expressly or by necessary implication stated. There is nothing to suggest that in Cooper Engineering Ltd. case this Court specifically overruled the decision in R. K. Jain case where the Court in terms negatived the contention of the employer that there is an obligatory duty in law on the Labour Court or the Industrial Tribunal to give an opportunity to the employer irrespective of the fact whether it is asked for or not to adduce additional evidence after recording a finding on the preliminary issue that either no domestic enquiry was held or the one held was defective. It would be advantageous to refer to an observation of this Court in Delhi Cloth and General Mills Co. case at page 53 (SCC p. 614, para 55) where after examining the ration of the decision in R. K. Jain case this Court held that there was no question of opportunity to adduce evidence having been denied by the Tribunal as the appellant therein had made no such request and that the contention that the Tribunal should have given an opportunity suo motu to adduce evidence was not accepted in the circumstances of that case. This observation in fact rejects the contention that there is any such obligatory duty cast by law on the Labour Court or the Industrial Tribunal to give such an opportunity to the employer and then leave it to the sweet will of the employer either to avail it or not. This view in R. K. Jain case was reaffirmed in Delhi Cloth and General Mills Co. case and there is nothing in the decision in Cooper Engineering Ltd. case that that case overrules the two earlier decisions. It was not possible so to do because the decision in the Ritz Theatre case (supra) wherein even though the application for adducing additional evidence was given before the Tribunal passed its final order, this Court declined to interfere saying that such a request was made at a very late stage and that is the decision of three judges and the dec__ision in Cooper Engineering Ltd. case is equally a decision of three judges. Further, the decision in Cooper Engineering Ltd. case does not propose to depart from the ratio of the earlier decisions because this Court merely posed a question to itself as to what is the appropriate stage at which the opportunity has to be given to the employer to adduce additional evidence, if it so chooses to do. Merely the stage is indicated, namely, the stage after decision on the preliminary issue about the validity of the enquiry. Cooper Engineering Ltd. case is not an authority for the proposition in every case coming before the Labour Court or Industrial Tribunal under Section 10 or Section 33 of the Act complaining about the punitive termination of service following a domestic enquiry that the Court or Tribunal as a matter of law st first frame a preliminary issue and proceed to decide the validity or otherwise of the enquiry and then serve a fresh notice on the employer by calling upon the employer to adduce further evidence to sustain the charges if it so chooses to do. No section of the Act or the Rules framed thereunder was read to pin-point such an obligatory duty in law upon the Labour Court or the Industrial Tribunal. No decision was relied upon to show that such is the duty of the Labour Court or the Industrial Tribunal. This Court merely indicated the stage where such opportunity should be given meaning thereby if and when it is sought. This reading of the decision in Cooper Engineering Ltd. case is consistent with the decision in Ritz Theatre case because there as the application for permission to adduce additional evidence was made at a late stage the Tribunal rejected it and this Court declined to interfere. Now, if the ratio of the Cooper Engineering Ltd. case is to be read to the effect that in every case as therein indicated it is an obligatory duty of the Industrial Tribunal or the Labour Court to give an opportunity after recording the finding on the preliminary issue adverse to the employer to adduce additional evidence it would run counter to the

decision in Ritz Theatre case. Such is not the ratio in Cooper Engineering Ltd. case. When read in the context of the propositions called out in Delhi Cloth & General Mills Co. case and the Firestone Tyre & Rubber Co. of India (P) Ltd. case, the decision in Cooper Engineering Ltd. case merely indicates the stage at which an opportunity is to be given but it must not be overlooked that the opportunity has to be asked for. Earlier clear-cut pronouncements of the Court in R. K. Jain case and Delhi Cloth and 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 is no duty in law cast on the Industrial Tribunal or the Labour Court suo motu to give such an opportunity notwithstanding the fact that none was ever asked for are 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 Section 10 or Section 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 on the Labour Court or the Industrial Tribunal to give such a opportunity and if there is no such obligatory duty in law failure to give any such opportunity cannot and would not vitiate the proceedings.

29. Having examined the matter on precedent it would be worthwhile to examine the matter on principle. The Labour Court or Industrial Tribunal to which either a reference under Section 10 or an application under Section 33 for permission to take an intended action or approval of an action already taken is made, would be exercising quasi-judicial powers, which would imply that a certain content of the judicial power of the State is vested in it and it is called upon to exercise it (see Bharat Bank Ltd. v. Employees of Bharat Bank Ltd. (1950 SCR 459 : AIR 1950 SC 188 : 1950 LLJ 21 : 2 FJR 1)). A quasi-judicial decision presupposes an existing dispute between two or more parties and involves presentation of their case by the parties to the dispute and if the dispute between them is on a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of arguments by or on behalf of the parties on the evidence (see Cooper v. Wilson ((1937) 2 KB 309)). Parties are arrayed before these quasi-judicial Tribunals either upon a reference under Section 10 or Section 33. There is thus a lis between the parties. There would be assertion and denial of facts on either side. With the permission of the Tribunal and consent of the opposite side, parties are entitled to appear through legal practitioners before these quasi-judicial Tribunals. The system adopted by these Tribunals is an adversary system, a word as understood in contradistinction to inquisitorial system. This also becomes clear from Rule 10-B(1) of the Industrial Disputes (Central) Rules, 1957, which provides that when a reference is made to the Labour Court or Industrial Tribunal, within two weeks of the date of receipt of the order of reference the parties representing workmen and the employer involved in the dispute shall file with the Labour Court or the Industrial Tribunal a statement of demands relying only upon issues which are included in the order of reference and shall also forward a copy of such statement to each one of the opposite parties involved in the dispute. Sub-rule (2) provides that within two weeks of receipts of the statement referred to in sub-rule (1) the

opposite party shall file its rejoinder with the Labour Court or the Industrial Tribunal as the case may be and simultaneously forward a copy thereof to the order party. Sub-rule (4) provides that the hearing of the dispute shall ordinarily be continued from day-to-day and arguments shall follow immediately after the closing of the evidence. Sub-rule (6) casts a duty on the Labour Court or the Industrial Tribunal, as the case may be, to make a memorandum of the substance of the proceedings of what the witnesses depose and such memorandum shall be written and signed by the Presiding Officer.

31. Rule 15 confers power to admit or call for evidence. Rule 16 enables the Labour Court or Industrial Tribunal to administer oath. Rule 60 prescribes the form of application to be made under Section 33. The application has to be in Form J or K, as the case may be, and has to be on verification. The cause-title in the prescribed form requires that the applicant and the opposite party should be specifically described in the application. These forms are more or less analogous to a plaint in a suit and the reply to be filed would take more or less the form of a written statement. Where the parties are at variance for facility of disposal, issues will have to be framed. It is open to it to frame an issue and dispose it of as a preliminary issue as held in M/s. Dalmia Dadri Cement Ltd. v. Its Workmen (1970 Lab LC 350 : ILR (1969) 2 Punj 7 (P&H HC). Parties have to lead evidence. Section 11-C confers power of a civil court under the Code of Civil Procedure on the Labour Court or Industrial Tribunal in respect of matters therein specified. The Labour Court or Tribunal would then proceed to decided the lis between the parties. It has to decide the lis on the evidence adduced before it. While it may not be hide bound by the rules prescribed in the Evidence Act it is nonetheless a quasi-judicial Tribunal proceeding to adjudicate upon a lis between the parties arrayed before it and must decide the matter on the evidence produced by the parties before it. It would not be open to it to decide the lis on any extraneous considerations. Justice, equity and good conscience will inform its adjudication. Therefore, the Labour Court or the Industrial Tribunal has all the trappings of a Court.

32. If such be the duties and functions of the Industrial Tribunal or the Labour Court, any party appearing before it must make a claim or demur the claim of the other side and when there is a burden upon it to prove or establish the fact so as to invite a decision in its favour, it has to lead evidence. The quasi-judicial tribunal is not required to advise the partly either about its rights or what it should do or omit to do. Obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be who would fail if no evidence is led. It must seek an opportunity to lead evidence and lead evidence. A contention to substantiate which evidence is necessary has to be pleaded. If there is no pleading raising a contention there is no question of substantiating such a non-existing contention by evidence. It is well settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side has no notice of it and if entertained it would be tantamount to granting an unfair advantage to the first mentioned party. We are not unmindful of the fact that pleadings before such bodies have not to be read strictly, but it is equally true that the pleadings must be such as to give sufficient notice to the other party of the case it is called upon to meet. This view expressed in Tin Printers (Private) Ltd. v. Industrial Tribunal ((1967) 2 LLJ 677, 680 (Punj HC), commends to us. The rules of fair play demand where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleading there is no question of proving something which is not pleaded. This is very elementary.

33. Can it for a moment be suggested that this elementary principle does not inform industrial adjudication ? The answer must be an emphatic 'no'.

34. The employer terminates the services of a workman. That termination raises an industrial dispute either by way of an application under Section 33 of the Act by the employer or by way of a reference by the appropriate Government under Section 10. If an application is made by the employer as it is required to be made in the prescribed form all facts are required to be pleaded. If a relief is asked for in the alternative that has to be pleaded. In an application under Section 33 the employer has to plead that a domestic enquiry has been held and it is legal and valid. In the alternative it must plead that if the Labour Court or Industrial Tribunal comes to the conclusion that either there was no enquiry or the one held was defective, the employer would adduce evidence to substantiate the charges of misconduct alleged against the workman. Now, if no such pleading is put forth either at the initial stage or during the pendency of the proceedings there arises no question of a sort of advisory role of the Labour Court or the Industrial Tribunal, unintended by the Act to advise the employer, a party much better off than the workman, to inform it about its rights, namely, right to lead additional evidence and then give an opportunity which was never sought. This runs counter to the grain of industrial jurisprudence. Undoubtedly, 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 proceeding there is no duty cast by 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, namely, the right to adduce additional evidence to substantiate the charges when it failed to make good the domestic enquiry and then to give an opportunity to it to additional evidence. This, apart from being unfair to the workman, is against the principles or rules governing the procedure to be adopted by quasi-judicial Tribunal, against the grain of adversary system and against the principles governing the decision of a lis between the parties arrayed before a quasi-judicial Tribunal.

35. Having given our most anxious consideration to the question raised before us, and minutely examining the decision in Cooper Engineering Ltd. case to ascertain the ratio as well as the question raised both on precedent and on principle, it is undeniable that there is no duty cast on the Industrial Tribunal or the Labour Court while adjudication upon a penal termination of service of a workman either under Section 10 or under Section 33 to call upon the employer to adduce additional evidence to substantiate the charge of misconduct by giving some specific opportunity after decision on the preliminary issue whether the domestic enquiry was at all held, or if held, was defective, in favour of the workman. Cooper Engineering Ltd. case merely specifies the stage at which such opportunity is to be given, if sought. It is both the right and obligation of the employer, if it so chooses, to adduce additional evidence to substantiate the charges of misconduct. It is for the employer to avail of such opportunity by a specific pleading or by specific request. If such an opportunity is sought in the course of the proceeding the Industrial Tribunal or the Labour Court, as the case may be, should grant the opportunity to lead additional evidence to substantiate the charges. But if no such opportunity is sought nor there is any pleading to that effect no duty is cast on the Labour Court or the Industrial Tribunal suo motu to call upon the employer to adduce additional evidence to substantiate the charges.

36. Viewed from this angle, in the present case there was neither a pleading in which any such claim for adducing additional evidence was made, nor any request was made before the Industrial Tribunal till the proceedings were adjourned for making the Award and till the Award was made. The case squarely falls within the ratio of Delhi Cloth and General Mills Co. case. Therefore, the Division Bench of the Calcutta High Court was clearly in error in granting such a non-sought opportunity at the stage of the Letters Patent Appeal.

37. Accordingly, this appeal is allowed and the judgment of the Calcutta High Court in Letters Patent Appeal No. 80 of 1974 is set aside and the Award of the Industrial Tribunal is restored with costs quantified at Rs. 2000. Tribunal is restored with costs quantified at Rs. 2000.

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