

**SUPREME COURT OF INDIA**

Indian Refrigeration Industries

Vs.

Ram Rattan Sharma

C.A.No.1242 of 2008

(Ashok Bhan and Dalveer Bhandari,JJ.)

12.02.2008

**ORDER**

(Arising out of SLP(C) No.6642 of 2006)

1. Leave granted.
2. Management is in appeal.
3. Respondent-workman, hereinafter called the 'respondent', was dismissed from service by the appellant in the year 1996 after holding a domestic enquiry. Enquiry was held by one Mr. Ramesh Nagpal, who was the standing counsel for the management and also appeared for the management in the present proceedings. Respondent raised an industrial dispute. The competent authority made a reference to the Industrial Tribunal to the following effect and the same was registered as ID No.68/96.

"Whether the termination of services of Sh. Ram Rattan Sharma by the management is illegal and/or unjustified and if so to what relief is he entitled and what direction are necessary in this respect?"

4. The Presiding Officer of the Industrial Tribunal vide its award dated 1st February, 2003 held that the enquiry was vitiated inasmuch as the enquiry officer was the standing counsel for the appellant and had appeared for the management in these proceedings which shows that he was bias. Accordingly, it recorded a finding that the termination of the respondent in pursuance to the enquiry was not proper and valid. The Tribunal directed reinstatement of the respondent with full back wages and continuity of service. The Tribunal also observed that the management had not pleaded in the written statement that it be allowed to lead evidence to justify the termination of the respondent in case the enquiry was found to be improper and invalid. No prayer was made before the Industrial Tribunal to lead evidence to prove the charges against the respondent.

5. Aggrieved against the award passed by the Industrial Tribunal, appellant filed a writ petition before the High Court which came up for hearing before a learned Single Judge. The point that the impugned award of the Tribunal be set aside and the case be remitted back to the Tribunal for passing a fresh award after affording an opportunity to the management to lead evidence to prove the charges against the respondent was not argued before the Single Judge. The learned Single Judge upheld the award made by the Industrial Tribunal. Aggrieved against the order of the learned Single Judge, appellant filed Letters Patent Appeal before the Division Bench which has been dismissed by the impugned order. Even before the Division Bench, the point that the appellant be permitted to lead evidence to prove the charge was neither taken nor argued.

6. Counsel appearing for the appellant, relying upon a judgment of this Court in the case of Divyash Pandit vs. Management, NCCBM reported in (2005) 2 SCC 684, contends that even if the management does not ask for an opportunity to lead evidence, the Tribunal should have granted an opportunity to the management to lead evidence to prove the charges levelled against the respondent. Facts of the aforesaid case are materially different from the facts of the present case. In the aforesaid case, management in its writ petition had pleaded that it may be allowed to lead evidence. This submission was accepted by the High Court and order of the labour court was set aside and the case was remitted to the labour court for deciding the matter afresh after permitting the management to lead evidence to prove the charge. Against the order of the High Court, an appeal was preferred by the workman in this Court which was dismissed on 13th January, 2005. It would be seen that in the aforesaid case, the management was all through arguing and pressing that it be allowed to lead evidence to prove the charge on merits as the domestic enquiry was held to be bad in law whereas in the present case no such plea had been taken by the management. As this point had not been argued either before the Industrial Tribunal or the learned Single Judge or the Division Bench, we cannot permit the management to raise this point for the first time before this court. Accordingly, we do not find any merit in this appeal and dismiss the same leaving the parties to bear their own costs.

7. Counsel for the appellant states that the respondent has already been reinstated in service which is not disputed by the counsel appearing for the respondent. He further states that 50% of the back wages have been deposited in the High Court. Respondent shall be at liberty to withdraw the same. The remaining 50% back wages shall be paid to the respondent within six weeks from today.