

# CALCUTTA HIGH COURT

National Tobacco Co. of India Ltd

Vs.

Fourth Industrial Tribunal

Matter No. 38 of 1959

(D.N. Sinha, J.)

19.11.1959

## ORDER

**D.N. Sinha, J.**

1. The facts of this case are shortly as follows : There are three companies before me as petitioners - The National Tobacco Company of India Ltd., the West Bengal Power Supply Co. Ltd. and the Agarpara Co. Ltd. The first petitioner carries on the business of manufacture and sale of cigarettes and tobacco products. The second petitioner carries on the business of supplying electricity. The third petitioner carries on the business of manufacture and sale of jute fabrics. They have a common Managing Agent, Messrs. B. N. Elias and Co. Private Ltd. At all material times, until they were dismissed, the respondents Nos. 4, 5, 6, 7, 8 and 9 were employed as clerks by the first petitioner. The respondents Nos. 10 and 11 were employed as clerks by the second petitioner and respondents Nos. 12 and 13 were employed as clerks by the third petitioner. The office space at the Head Office situate at 1-2, Old Court House Corner in Calcutta is divided into two wings, one occupied by the first petitioner (known as the "N.T.C. side") and the other wing is occupied by the other companies managed by the said B. N. Elias and Co. Private Ltd. as the Managing Agents, including the second and third petitioners. Prior to January, 1958 the employees of the first petitioner used to record their attendance by signing in an attendance register. In January, 1958 it was decided to install an "Autograph", This is a machine containing a roll of paper and a sealed-in clock. As each clerk came in, he had to sign on the roll and to pull a lever. This automatically recorded the date and time against his signature and it was not possible to alter the same without opening the machine. It appears that the clerks resisted the introduction of this machine and the position became such that conciliation proceedings had to be started. On the morning of 17-1-1958 there was an incident at the N.T.C. wing of the Head Office where the clerks were standing in a queue to record their respective signatures in the machine. As the queue increased and the tail of it reached the door, Mr. T. K. Biswas, the Chief Accountant of the company, who was in charge of the machine, directed one of his subordinate staff to close the door between the main hall where the recorder was situated and the waiting room. This led to an explosive situation and there was a certain disturbance. Ten of the leading participants in the disturbance, being respondents Nos. 4 to 13 in this application, were definitely identified and charge sheeted. The exact wording of the charge-sheets which are in identical

terms, is important and the relevant part thereof is set out below :

"It has been reported by Mr. T. K. Biswas, Chief Accountant, National Tobacco Co. that you on 17-1-58 at about 9.45 A.M. along with many others joined an unruly assembly of clerks of this office and also of B. N. Elias and Co. Ltd., had entered the room of Mr. T. K. Biswas in a highly excited mood shouting slogan, abusing him thwarting him with an intention to assault him. The Management had good reason to believe that you all had combined to execute a common purpose to manhandle and humiliate him by threat and assault and that had not other officers ran to his rescue, Mr. Biswas would have to face a grave crisis. You had all in combination had thus misbehaved with a view to coerce him to withdraw the Automatic Time Recorder and stifle any attempt on the part of the Management to enforce discipline for the smooth working conditions in the office.

Annexed please also find the report of Mr. T. K. Biswas. Chief Accountant which will speak for itself and it is being treated as part of the charges brought against you.

You are charged with the above offence which is to be treated as gross breach of discipline which constitutes grave misconduct. You are hereby required to explain in writing the circumstances alleged against you within 24 hours of the receipt of this Charge Sheet. Pending further enquiry you are suspended forthwith."

2. In his report Mr. Biswas gave the following story of the incident that happened, consequent to the closing of the door as aforesaid :

"No sooner the bearer stood near the door and closed it, the clerks who were waiting for an opportunity immediately became rowdy and at about 9.45 A.M. about 15 clerks out of which I could recognize the following clerks of National Tobacco Co. and B. N. Elias Co. all in an excited mood entered my office and in a very insulting manner began to abuse me. They used objectionable language and with a threat to my personal safety demanded immediate withdrawal of the "Automatic Time Recorder."

Mr. T. P. Bhattacharjee and a large number of clerks who were standing just outside the room were challenging me to come out of the room using most filthy language, all the time and shouting 'beat him first before we speak'. Their attitude and behaviour was so severely threatening that had not Mr. A. K. Ghose the Accountant and Mr. S. K. Basu the A.T.M. along with some of the bearers rushed inside my office to protect me, I would have been severely manhandled. This is a serious misconduct and the clerks of the office were I believe all bent to take 'direct action' against the introduction of 'Automatic Time Recorder'. Their sole intention was to force me and coerce me to withdraw the reasonable order of introduction of Automatic Time Recorder and also with a view to stifle any attempt on my part to enforce discipline for smooth working conditions in the office."

3. The enquiry was entrusted to Mr. A. S. Gubbay, a senior Executive of the Managing Agents. After explanations were submitted, a large number of witnesses were examined and cross-examined and the enquiry lasted for a number of days. As a result of the enquiry, Mr. Gubbay

came to the conclusion that all the respondents Nos. 4 to 13 were guilty of the offences with which they were respectively charged. He recommended that each of them should be dismissed. Upon a consideration of his report, the Directors decided to dismiss all the said respondents. Thereafter, leave of the Conciliation Officer was obtained for such dismissal and an order was made dismissing the respondents Nos. 4 to 13. Thereupon, an industrial dispute was raised which was referred to the adjudication of the 4th Industrial Tribunal, by an order of reference dated 21-3-1958 between the petitioners and their employees represented by B. N. Elias and Co. Ltd. Employees Union. The dispute that was raised was whether the dismissal of the respondents 4 to 13 was justified and to what relief they were entitled. The 4th Industrial Tribunal made its award on 5-2-1959 which was published on 14-2-1959. The award directed that all the said respondents were to be reinstated in service. It was further directed that 6 of the respondents were to get half-pay only for a period of three months and the rest would get half-pay for a period of two months only. The period of unemployment was to be treated as special leave without pay but without break in service. It is against this award that this application is directed. Before the Tribunal, it was urged on behalf of the company that the scope of enquiry in the reference was very limited. It was argued that it was limited to the decision whether or not the Management had acted in good faith, whether there was victimization or unfair labour practice, or whether the Management was guilty of any basic error or violation of the principles of natural justice and whether on the materials, the Management's finding on the charge of misconduct was completely baseless or perverse. It was claimed that if the Tribunal found the above in favor of the company, then in that case, it should not interfere with the decision of the Management. The Tribunal held that in this case the Management was not taking action against the offending clerks under the provisions of any Standing Orders, or for the matter of that any Service Rules having the force of a contract and therefore, the Tribunal had jurisdiction in an enquiry of this kind, to scrutinize all the circumstances of the case and to allow appropriate relief to the aggrieved party. It further held that even if the Management had conducted the enquiry into the charges fully and fairly, giving full opportunity to the clerks to meet charges, still the Tribunal could interfere with the decision of the Management where the punishment was found to be unjust and unduly excessive, being out of proportion to the misconduct committed. It finally observed as follows :

"This Tribunal" has jurisdiction to go into the merits of the matter in dispute and decide it. It is not precluded from allowing the appropriate reliefs including reinstatement, where necessary."

4. The Tribunal follows this up by considering the matter upon the merits, dealing with the evidence in its own light and coming to its own conclusion, both on the question of the guilt of the delinquents as well as the punishment to be awarded. Before I proceed further. I must point out the view of the Tribunal as to the manner in which the domestic enquiry was conducted.

"In this connection it is also necessary to note that nothing has been said against the Enquiry Officer, who was authorized to hold this enquiry into the charges of this case.....In fact, the enquiry in this case appears to me to be very fair and complete and the proceedings revealed anxiety and carefulness on the part of the officers to arrive at the truth."

5. About the incident itself the Tribunal made the following remarks :

"A small number of them could have easily approached "Sri Biswas for information on the point and telling him that order was unjust and asking him to withdraw it. But then, they behaved otherwise. Their conduct, during the incident, was to say the least, highly improper and amounting to misconduct. Their conduct, according to the Union's own evidence, was disorderly and boisterous. This was certainly not conducive to office discipline. The clerks, in my opinion, not only exceeded the limits of decency, but also of good conduct, which can be reasonably demanded of them for prompt and proper despatch of work.....On a consideration of this evidence I find the clerks, on B.N.E.'s side, are guilty of trespassing into Sri Biswas's room with other demonstrators from N.T.C's side, without permission of their superiors and of having angry exchanges with Sri Biswas and shouted slogans and demanded apology from him. Sri Sudhir Banerjee is further guilty of holding out threats to the Telephone Operator. Sri Nirmal Ganguly is also guilty of disobedience to his superior officer for not returning to his seat."

6. Thus, it will be seen that the Tribunal came to the conclusion that the delinquents were guilty of misconduct and also came to the conclusion that the enquiry on behalf of the Management was impartial. Still, it set aside the decision of the Management altogether and reinstated the delinquents. It will be necessary briefly to indicate the grounds upon which it has purported to do so. As far as I can see, such grounds may be summarized as follows :

- (1) The Tribunal held that the incident which took place on 17-1-1959 was not a part of any threatened direct action on the side of the Union.
- (2) The evidence of Sri Biswas was to be accepted with due caution, because he was the complainant. Curiously enough, it was also held that the evidence on behalf of the accused persons was to be considered with the same caution. In view of this, the Tribunal states that the issues between the parties have got to be considered in the light of probabilities.
- (3) That Sri Biswas was guilty of giving provocation to the demonstrators by his unfortunate decision of closing the door of the office room which was an indiscreet act, having regard to the strained feelings over the introduction of the Time Recorder Machine. Thus, although the clerks of the N.T.C. side were guilty of highly improper conduct for having entered the room of Sri Biswas in an excited mood and having an angry exchange with him and for having demanded an apology for his action, the Tribunal concludes that they were not guilty of either thwarting or abusing him in filthy language or threatening assault to him.
- (4) That the charges regarding the demand for the withdrawal of Time Recorder Machine, had not been established by any reliable evidence.
- (5) There was victimisation, because the dismissed clerks had either been the officers of the Union in the past, or were acting as such officers at the present. Sri Biswas changed his attitude towards them after the Union had succeeded in obtaining the special leave of

the Supreme Court to Appeal against the award of an Industrial Tribunal on a bonus dispute. He went to the length of threatening to break up the existing Union and to have a separate Union for the N.T.C. employees only. The initiation of the proceedings against the clerks two or three days after the incident, supported the view that the Management was considerably influenced by the report of Biswas to victimise these people for their union activities in raising an industrial dispute. According to the Tribunal, the punishment meted out to them on the facts and circumstances of the case lent support to the view that the clerks were being victimised for their union activities.

(6) The punishment of dismissal from services was unjust and excessive. The Tribunal said as follows :

"The clerks also, in making the demonstration inside Sri Biswas's room and in extracting a written apology from him, undoubtedly went beyond the limits of decency and good conduct, which are expected of them within the office. For this, disciplinary action was rightly taken. But in punishing them the management clearly overlooked its own lapses in the matter, as also the admittedly clean and satisfactory record of past service of the persons concerned."

(6a) The punishment is so unjust that the remedy is called for in the interests of justice.

7. The position, therefore, before me is as follows : This is not a Court of Appeal and therefore, I cannot consider the case purely on merits. If, however, there is an error on the face of the record I can interfere. If the Tribunal has approached the case in the wrong manner and ignored the principles laid down for the purpose, it is an error on the face of the proceedings and this Court can interfere. It is necessary therefore to examine what those principles are and whether there has been any violation thereof. In considering the decided cases it is necessary to bear in mind one aspect of the matter. Under the Industrial Disputes Act, industrial disputes are referred for adjudication by the appropriate Government under Sec. 10. This is a normal method of reference. Section 33 of the said Act deals with a particular contingency. It lays down that during the pendency of any proceeding before a Tribunal, no employer shall, in regard to any matter connected with the disputes, alter the conditions of service or dismiss any workman for any misconduct connected with the dispute. I am not considering the provisions except as is relevant for our purpose. Where the employer acts in violation of the provisions of this section, the employee concerned may make an application under section 33A, to the Tribunal concerned and the Tribunal is to adjudicate upon the complaint as if it were a dispute referred to it. There has been a series of cases laying down the principles to be applied in cases of such adjudication. Confining ourselves to the question of the dismissal of an employee, it would be recollected that employers are now required to have in operation certain rules and regulations known as "Standing Orders". Before an employee is dismissed from his service for misconduct, there is a managerial enquiry held under the provisions of the Standing Orders, where there are Standing Orders and in its absence, according to the rules of natural justice. The question has arisen in many cases as to the extent to which the Tribunal can overrule the findings of this domestic enquiry. If a case arises in which there has been a domestic enquiry ending in dismissal and thereafter there is a reference to a Tribunal over the question of dismissal under section 10, no question of an application under section 33A arises. The question is whether in such a case the

principles adumbrated above are applicable. The present case is a direct reference to the Tribunal from a dismissal arising out of a domestic enquiry. It is, therefore, of the greatest importance to consider the extent to which these principles can be extended to such cases. It has been argued before me that although in the case of sections 33 and 33A, the principles are well established by decisions of the Supreme Court, these principles do not apply where there are no Standing Orders, as in the present case and secondly, where there has been a direct reference under section 10 against the order of dismissal made pursuant to a domestic enquiry. I shall now proceed to consider the authorities. The first case to be considered is *Atherton West and Co. Ltd., Kanpore v. Suti Mill Mazdoors Union*<sup>1</sup> In this case, clause 23 of a Notification issued by the U. P. Government under the U. P. Industrial Disputes Act (28 of 1947) was considered. Under this clause, it was provided that, save with the written permission of the Regional Conciliation Officer, no employer shall discharge or dismiss any workman during the continuance of an enquiry or an appeal pending before the Conciliation Board or the Industrial Court and pending the issue of orders of the State Government upon the findings thereof. The question was as to the extent of the jurisdiction of the Regional Conciliation Officer in granting such permission. Mahajan J., said as follows :

"It is clear that clause 23 imposed a ban on the discharge or dismissal of any workman pending the enquiry of an industrial dispute before the Board or an appeal before the Industrial Court and the employer, his agent or manager could only discharge or dismiss workman with the written permission of the Regional Conciliation Officer or the Assistant Regional Conciliation Officer concerned. Even if such written permission was forthcoming, the employer, his agent or manager might or might not discharge or dismiss the workman and the only effect of such written permission would be to remove the ban against the discharge or dismissal of the workmen during the pendency of those proceedings. The Regional Conciliation Officer..... would institute an enquiry and come to the conclusion whether there was a prima facie case made out for the dismissal of the workmen and the employer, his agent or manager was not actuated by any improper motives or did not resort to any unfair practice or victimisation in the matter of the proposed discharge or dismissal of the workmen. But he was not entrusted, as the Board or the Industrial Court would be with the duty of coming to the conclusion whether the discharge or dismissal of the workman during the pendency of the proceedings was within the rights of the employer, his agent or manager.....The effect of the written permission was not to validate the discharge or the dismissal but merely to remove the ban on the powers of the employer, his agent or manager to discharge or dismiss the workmen during the pendency of the proceedings."

8. The next decision of the Supreme Court in point of time is *Automobile Products of India Ltd. v. Rukmaji Bala*<sup>2</sup>. This was a case which dealt with Sections 22 and 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950. It was held that these provisions were in pari materia with sections 33 and 33A of the Industrial Disputes Act, 1947. In this case, there was no question of a domestic enquiry having been held prior to a dismissal. The employer made an application for permission to retrench certain workmen. As there was an appeal pending before the Labour Appellate Tribunal the application was made under section 22. After holding that the provisions

of sections 22 and 23 of the Appellate Tribunal Act were in pari materia with sections 33 and 33A of the Industrial Disputes Act, Das J., proceeded to state as follows :

<sup>1</sup> AIR 1953 SC 241

<sup>2</sup> AIR 1955 SC 258

"It is also clear that under section 33A of the 1947 Act the authority is to adjudicate upon the complaint "as if it were a dispute referred to or pending before it' and under section 23 of the 1950 Act the authority is to decide the complaint 'as if it were an appeal pending before it'. These provisions quite clearly indicate that the jurisdiction of the authority is not only to decide whether there has been a failure on the part of the employer to obtain the permission of the authority before taking action, but also go into the merits of the complaint and grant appropriate reliefs .....in short these two sections give to the workmen a direct right to approach the Tribunal or Appellate Tribunal for the redress of their grievances without intervention of the appropriate Government which they did not possess before 1950 and they provided for speedy determination of disputes and avoided multiplicity of proceedings by giving complete relief to the workmen in relation to their grievances arising out of action taken by the employer in contravention of the provisions of the relevant sections. In other words, it was held that the duty of the Tribunal concerned was not merely to grant or withhold permission but to determine all matters connected with the action complained of."

9. The next case to be considered is *Lakshmi Devi Sugar Mills Ltd. v. Ram Samp*<sup>3</sup>, In this case a dispute was pending between the company and 76 employees employed by it in its Sugar Mill, before the Labour Appellate Tribunal, Calcutta. Pending the appeal, these workmen threatened to resort to violent measures. The General Manager served these workmen with a charge-sheet, charging them with having committed misconduct within the provisions of the Standing Orders. They were called upon to show cause at an open enquiry as to why disciplinary action should not be taken. The workmen were suspended till the conclusion of the enquiry. The workmen refused to attend the enquiry and the employer made an application to the Appellate Tribunal at Lucknow where the appeal was actually pending, for permission under section 22 to dismiss the said workmen, Bhagwati J., said as follows :

"The next question that falls to be determined is whether the enquiry which was held by the management on 6-6-1952 was a fair enquiry.... If full and free opportunity was given to the respondents to present themselves at the enquiry and defend themselves it could not be said that the enquiry was anything but fair. No principles of natural justice were violated and the management was at liberty to come to its conclusion in regard to the culpability of the respondents and also to determine what punishment should be meted out to the respondents for the misconduct and insubordination proved against them."

10. The learned Judge referred to the two earlier decisions of the Supreme Court and decided that the Tribunal before whom an application for permission is made has not to adjudicate upon any industrial dispute arising between the employer and the workmen but has only got to consider whether the ban which is imposed on the employer in the matter of altering the condition of

employment or punishment, whether by dismissal or otherwise, during the pendency of the proceeding, should be lifted. A prima facie case has to be made out by the employer for the lifting of such ban and the only jurisdiction which the Tribunal has is either to give such permission or refuse it, provided the employer was not acting mala fide or was not resorting to any unfair practice or victimisation. It could

<sup>3</sup> AIR 1957 SC 82

not impose conditions on the employer before such permission was granted nor could it substitute another prayer for the one which the employer had asked for. On the question of punishment the learned Judge said as follows :

"The Tribunal before whom such an application for permission is made under section 22 of the Act would not be entitled to sit in judgment on the action of the employer if once it came to the conclusion that a prima facie case has been made for dealing out punishment to the workmen. It would not be concerned with the measure of the punishment nor with the harshness or otherwise of the action proposed to be taken by the employer except perhaps to the extent that it might bear on the question whether the action of the management was *bona fide* or actuated by the motive of victimisation. If on the materials before it the Tribunal came to the conclusion that a fair enquiry was held by the management in the circumstances of the case and it had *bona fide* come to the conclusion that the workman was guilty of the misconduct with which he had been charged. A prima facie case would be made out by the employer and the Tribunal under the circumstances be bound to give the requisite permission to the employer to deal out punishment to the workman. If the punishment was harsh or excessive or was not such as should be dealt out by the employer having regard to all the circumstances of the case, dealing out of such punishment by the employer to the workman after such permission was granted would be a subject-matter of an industrial dispute to be raised by the workman and to be dealt with as aforesaid. The Tribunal however, would have no jurisdiction to go into that question and the only function of the Tribunal under section 22 of the Act would be either to grant the permission or to refuse it."

11. The next case is *Caltex (India) Ltd. v. E. Farnandes*<sup>4</sup>, In this case, which was also under section 33, Bhagwati J. noticed all the earlier cases decided by the Supreme Court and said as follows :

"We have clearly laid down there that the Industrial Tribunal has no jurisdiction while entertaining an application under section 33 of the Industrial Disputes Act, 1947, to consider whether the punishment sought to be meted out by the employer to the workmen is harsh or excessive. The measure of punishment to be so meted out is within the sole discretion of the employer who is to judge for himself what is the punishment commensurate with the offence which has been proved against the workmen. The only jurisdiction which the Industrial Tribunal has under Section 33 is to determine whether a prima facie case for the meting out of such punishment has been made out by the employer and the employer is not actuated by any mala fides or unfair labor practice or victimisation. Once the Industrial Tribunal came to the conclusion in the present case that

the enquiry which was conducted by the appellants was fair and no principles of natural justice had been violated in the conduct of the enquiry and the appellants *bona fide* came to the conclusion that the dismissal was the only punishment which should be meted out by them to the first respondent, the Industrial Tribunal had no power to substitute another punishment for the one which was sought to be meted out by the appellants to the first respondent nor to impose any condition on the appellants

<sup>4</sup> AIR 1957 SC 326

before the requisite permission could be granted to them."

12. The next case is *Martin Burn Ltd. v. R. N. Banerji*<sup>5</sup>, This was an application under Section 33 of the Industrial Disputes Act and later on under Section 22 of the Appellate Tribunal Act. In this case, Bhagwati J. referred to the principles laid down in the earlier cases and explained what was meant by "a prima facie case". He said as follows :

"The Labour Appellate Tribunal had to determine on these materials whether a prima facie case had been made out by the appellant for the termination of the respondents's service. A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is laid in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence laid it was possible to arrive at the conclusion in question and not whether that was not only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record."

13. I have already stated that these cases were dealing with the provisions of Sections 33 and 33A of the Industrial Disputes Act and the corresponding Sections 22 and 23 of the Appellate Tribunal Act. The principles that are to be deduced from these cases may be tabulated as follows :

1. An application by the employer for permission under Section 33 or 23 is for the removal of the ban imposed by the statute.
2. Before the Tribunal, all that the employer has to do is to make out a prima facie case for the lifting of such ban.
3. Where there has been a domestic enquiry, the Tribunal in such an application does not act as a Court of Appeal. A prima facie case does not mean a case proved to the hilt, but a case which can be said to be established if the evidence which is laid in support of the same were believed. In other words, whether on the evidence laid it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence, or that the Tribunal itself would have arrived at a different conclusion. It has only got to consider whether the view taken on the evidence on record is a possible view.

4. The Tribunal in such a case would not be concerned with the measure of punishment not with the harshness or otherwise of the action proposed, except to establish mala fides.

5. The Tribunal will however see that there has been a fair enquiry and that the employee has been given every opportunity to defend himself.

6. The Tribunal can however interfere in the following cases:

<sup>5</sup> AIR 1958 SC 79

(a) Where there has been no fair enquiry and there has been a violation of the principles of natural justice.

(b) Where there is mala fides. The harshness or otherwise of the punishment in so far as it may go to establish mala fides may be considered.

(c) Where there is vindictiveness or victimisation.

(d) Where there is unfair labour practice.

(e) Where there has been a basic error and/or upon the materials on record the findings of the domestic enquiry are completely baseless or perverse.

7. In such an application the Tribunal is called upon only to lift the ban. If permission is given, the ban is lifted, but it does not follow that the employer is bound to take any further step against the employee. If, however, it does so and if the employee disputes the action taken, on the merits, he can raise an industrial dispute which may itself be referred to adjudication. The Tribunal cannot impose conditions while granting permission.

14. The main question that has been argued in this case and which falls for determination is whether these principles are to be applied where the case is not one under Section 33 or 33A of the Industrial Disputes Act, or Sections 22 and 23 of the Appellate Tribunal Act. In other words, supposing that there was a domestic enquiry on a charge of misconduct and then the employer had not come to the Tribunal, asking for permission to dismiss, because no proceeding was pending, but had actually passed the order of dismissal, against which the employee raised a dispute and the matter was referred to adjudication under Section 10, in such a case, could the Tribunal ignore the results of the managerial enquiry and decide the matter entirely on its own? In such a case, could it interfere on the ground of harshness of the punishment? It has been argued that in the case mentioned above, the Tribunal can go into the whole matter and grant appropriate relief. It is contended that where no question of granting permission arises, the Tribunal can and must necessarily go into, the whole matter and grant appropriate relief. In other words, once there has been a reference to the Tribunal under Section 10, it must go into the whole matter and its hands are not tied by the results of the domestic enquiry. From this point of view, it will be necessary to consider three decisions of the Supreme Court. The first case is *Indian Iron and Steel Co. Ltd. v. Their Workmen*<sup>6</sup>, These were appeals by special leave arising out of labour disputes between the employer Messrs. Indian Iron and Steel Co. Ltd. and the Indian Standard Wagon Co. Ltd., Burnpore, Assansole on the one side and some of their employees on the other. The cases related to a large number of workmen. For the purpose of the present case, we are not however concerned with the cases of all of them. It is necessary to consider only the case of two workmen. The first is Samar Sen, who as a result of a regular and proper domestic enquiry, was found guilty of unauthorized absence and insubordination and,

therefore, the company dismissed him. The Tribunal found that this was a case of victimization, because he was the Secretary of the Action Committee which was like a red rag to the bull so far as the company was concerned. The Tribunal set aside the dismissal. The Supreme Court refused to interfere on the ground that an argument on the merits could not be accepted at that stage upon this point. S. K. Das. J. said as follows :

"The argument advanced by the learned Attorney General might have been urged acceptably to a Court or Tribunal of the first instance; but we are not such a Court  
<sup>6</sup> AIR 1958 SC 130  
or Tribunal and in the absence of exceptional or special circumstances or of grave injustice, we shall not be justified in interfering with what really is a finding of fact."

15. The case of another employee, Avarani Devi, who was employed as a nurse in the Burnpore Hospital is even more to the point. The charge against her was of instigating a sweeper not to attend to his duties. She was found guilty of the charge and dismissed. The Tribunal found that the charge against her was completely baseless and the enquiry report against her made a mountain of a mole hill. The learned Judge said as follows :

"Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute arises, the Industrial Tribunal having given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the Tribunal does not, however, act as a Court of Appeal and substitute its own judgment for that of the management. It will interfere (i) when there is want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or violation of a principle of natural justice and (iv), when on the materials, the finding is completely baseless or perverse."

16. The next case to be considered is *G. McKenzie and Co. Ltd. v. Its Workmen*<sup>7</sup>, This was a dispute between the company and a number of its workmen. It appears that during the pendency of a reference the workmen concerned acted in a manner subversive of discipline, displaying wilful insubordination and disobedience inasmuch as they surrounded, by forming a kind of cordon round E. L. D. Cruze, the Acting Works Manager of the company, illegally confining him in a small place in the factory premises. Proceedings were taken against these workmen who were served with a charge sheet followed by a managerial enquiry. The workers were found to be guilty and the company terminated the services of all the 64 workmen. Thereafter an industrial dispute arose upon the question of dismissal and a reference was made by the Government to a Tribunal for adjudication. The Tribunal held that some of the workmen had not been properly served and they should be reinstated, but with regard to the others, it held that there was evidence to establish the identity of persons who had taken part in the strike and who had wrongfully confined the Works Manager and said as follows :

"Since there was evidence and it was a possible view, the Tribunal must accept the finding and hold that the dismissal of those workmen was justified."

17. Against this order, an appeal was taken to the Appellate Tribunal which held that the only evidence was that of Mr. D. Cruze and therefore the decision of the management was perverse. The order of the Tribunal was set aside and the workmen were ordered to be reinstated with back wages. Against this order there was an appeal to the Supreme Court. Kapoor J., held that the Appellate Tribunal proceeded on the erroneous belief that the proceedings were under Section 33 or 33A of the Act. The learned Judge pointed out that the proceedings were under Section 10 of the Act. Reliance was placed on the case of AIR 1958 Supreme Court 130 (Supra), which was a case of a reference under Section 10

<sup>7</sup> AIR 1959 SC 389

and on the decision of AIR 1957 Supreme Court 82 (Supra) which was a case under Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, no distinction being made between the two classes of cases. The learned Judge said as follows :

"It is for the management to determine what constitutes major misconduct within its Standing Orders sufficient to merit the dismissal of a workman, but in determining such misconduct it must have facts upon which it based its conclusion and it must act in good faith without caprice or discrimination and without motives of vindictiveness, intimidation or resorting to unfair labor practice and there must be no infraction of the accepted rules of natural justice. When the management does have facts from which it can conclude misconduct its judgment cannot be questioned provided the above mentioned principles are not violated. But in the absence of these facts or in case of violation of the principles set out above its position is untenable. In our opinion, the Industrial Tribunal proceeded on a correct principle as to its power in regard to an enquiry held by the management and the Labor Appellate Tribunal seems to have approached this question as if it was sitting in an appeal against the decision taken by the management in regard to the termination of services of their workmen. In the instant case, none of the principles which have been laid down by the Labor Courts as well as by this Court in regard to the enquiry by the management into the misconduct of their workmen, have been violated and the Labor Appellate Tribunal was in error in setting aside the order of the Industrial Tribunal on the ground that it was unable to accept the testimony of D'Cruze as to the identity of persons who had taken part in wrongfully confining him on the day of the illegal strike. It appears to have proceeded as if it was sitting in appeal against the decision of the managerial enquiry and further it was under misapprehension as to the nature of the proceedings before the Industrial Tribunal and before itself."

18. The third and the latest case to be considered is *Balipara Tea Estate v. Its Workmen*<sup>8</sup>. One Nandeswar Bora was employed by the company as a Mohorir in respect of female labour employed by the Tea Estate. Certain irregularities in the books kept by him having been detected, he was charge-sheeted by the management and asked to show cause why he should not be dismissed from service. Thereupon, there was an enquiry and the manager dismissed Bora, whereupon the workmen of the Tea Estate represented by their Trade Union raised an industrial dispute. The Government of Assam then referred the dispute to a Tribunal for adjudication under Section 10. The company claimed that the dismissal orders were passed by the manager after

holding a *bona fide* enquiry and upon a finding that the workman was guilty of gross misconduct in respect of the company's funds. The Industrial Tribunal made an award directing that Bora should be reinstated with all back wages from the date of dismissal. It went into the evidence itself and held that the charge referred against the workman had not been conclusively proved. Sinha, J. (as he then was) said as follows :

"It has been contended on behalf of the appellant, in our opinion rightly, that the Tribunal has misdirected itself in so far as it has judged the case against the workman concerned afresh on its merits as if it was a trial for a criminal offence for the falsification of accounts and misappropriation of funds and that in so doing

<sup>8</sup>(1959) 2 Lab LJ 245 : AIR 1960 SC 191

the Tribunal was not only sitting as a Court of Appeal on the order of dismissal passed by the management even though it had not found any mala fides or want of good faith or any irregularity in the proceedings taken by the management against the workman concerned, but it had also laid down a wrong line of approach to the case. The Tribunal misdirected itself in so far as it insisted upon conclusive proof of guilt to be adduced by the management in the enquiry before it. It is well settled that the Tribunal has to find only whether there was justification for the management to dismiss an employee and whether the case of misconduct has been made out at the enquiry held by it."

19. The learned Judge then proceeded to hold that even on the merits the Tribunal has misdirected itself and its finding with regard to the field book was wrong, the error being apparent on the face of the record. The learned Judge concluded as follows :

"In this case the award suffers from the inherent weakness of the approach made by the Tribunal in determining the controversy before it. It has not got to decide itself whether the charge framed against the workman concerned had been established to its satisfaction; it had only to be satisfied that the management was justified in coming to the conclusion that the charge against the workman was well founded. If there had been a finding by the Tribunal that the management had been actuated by any sinister motive, or had indulged in unfair labor practice, or that the workman had been victimized for any activities of his in connection with the Trade Union, it might have had reasons to be critical of the enquiry held by the management. But that is not so on the finding of the award itself."

20. The appeal was accordingly allowed and the award was set aside.

21. It is clear therefore, that the principles enunciated by the Supreme Court in respect of applications under Sections 33, Or 33A of the Industrial Disputes Act or of Sections 22 and 23 of the Appellate Tribunal Act, in so far as they lay down the limitations to be observed by a Tribunal in cases where there has been a managerial enquiry, apply also to the cases of reference under Section 10, *mutatis mutandis*. In other words, where there has been a managerial enquiry and provided that the rules of natural justice have been observed and that there has been a full and fair enquiry and in the absence of any basic error, mala fides, victimization or unfair labor practice, the conclusions arrived at by the domestic forum cannot be disturbed. The Tribunal in

such cases does not sit as a Court of Appeal and is not entitled to deal with the case, ignoring the proceedings before the domestic forum and the conclusions arrived at by the Enquiring Officer. If the evidence given at the managerial enquiry, if believed, justifies the conclusion arrived at, then there should be no interference on the ground that the Tribunal itself would like to arrive at a different conclusion. Perhaps the only distinction to be made between the two classes of cases is this : Where the employer asked for permission to dismiss, it was sufficient, if before the managerial enquiry a prima facie case had been made out, because in such proceedings it was a question of lifting the ban and an exhaustive enquiry was not essential. In the case of an adjudication under Section 10, the question is not one of prima facie evidence merely but of evidence justifying the finding, because the proceeding in such cases is not intended to be summary. Apart from this, the other principles are all applicable. That being so, it remains for me to apply these principles to the facts of this case and to find out whether the finding of the Tribunal can be supported. I have already pointed out, that according to the Tribunal itself, the managerial enquiry was conducted properly. The Tribunal has recorded that the enquiry in the case appeared to be "very fair and complete". It further pointed out that the proceedings revealed anxiety and carefulness on the part of the officer to arrive at the truth. That being so, the principle of approach laid down by the Tribunal was basically incorrect. The Tribunal held that it had jurisdiction to scrutinize all the circumstances of this case and to allow appropriate relief to the aggrieved party. It relied on the case of AIR 1957 Supreme Court 82 (Supra) in aid of that conclusion. The Tribunal then goes into the merits of the case, examines the evidence afresh and is of the opinion that the conclusions arrived at the managerial enquiry were all wrong. It also found that the punishment was unjust and unduly excessive, being out of proportion to the misconduct committed. It also held that there was victimization. It held that the Tribunal had jurisdiction to go into the merits of the matter in the dispute and decide it. It was not precluded from allowing appropriate reliefs, including reinstatement where necessary. Before I proceed further, I must mention that the Tribunal upon an examination upon its own came to the conclusion that although there was no question here of any violation of the Standing Orders, because no Standing Orders existed, still the conduct of the workmen was, to say the least, 'highly improper and amounting to misconduct'. The Tribunal itself made the express finding that their conduct, according to the Union's own evidence, was disorderly and boisterous, which was certainly not conducive to office discipline. In the opinion of the Tribunal, the clerks not only exceeded the limits of decency but also good conduct which could be reasonably demanded of them for prompt and proper dispatch of work. In spite of this finding, the Tribunal goes into the evidence itself and comes to its own conclusion and has held that on the company's side there was provocation inasmuch as Mr. Biswas asked the door to be closed. Leaving apart the question of victimization, which I shall presently consider, it appears to me that the approach of the Tribunal has been entirely in violation of the principles laid down by the Supreme Court. The Tribunal has relied on Lakshmi Devi's case AIR 1957 Supreme Court 82 (Supra) and also the case of the Indian Iron and Steel Co. Ltd., AIR 1958 Supreme Court 130 (Supra), but has failed to appreciate correctly the principles laid down therein. It is for that reason that I have set out above all the relevant cases in their chronological order. The paragraph relied on in Lakshmi Devi's case AIR 1957 Supreme Court 82 (Supra) if read in isolation is likely to mislead and unfortunately, the Tribunal, not having looked into all the cases which are relevant, has come to an erroneous conclusion as to the principles to be observed in such cases. In short, the Tribunal seems to think that in a reference under Section 10 the whole thing is open and in spite of there being a managerial enquiry the hands of the Tribunal are not tied in any manner. I have shown above that this is not the correct position in law. Even on the merits, the finding of the Tribunal

upon many points seems to be erroneous on the face of the record. One of the points which was strongly argued by Mr. Roy on behalf of the workmen is that the charge against the workmen was that they had all combined and misbehaved with a view to coerce Mr. Biswas to withdraw the automatic time recorder and that that the clerks abused and thwarted him with an intention to assault him, in furtherance of a well-planned action to withdraw the time recorder machine. Mr. Roy argued that there may be evidence that the clerks went into the room of Mr. Biswas and took a violent attitude, but there was no evidence to show that it was with a view to have the time recorder machine withdrawn. The Tribunal also says that apart from the evidence of Mr. Biswas, this point has not been established by any evidence. In this the Tribunal seems to have misread the evidence. In his evidence M. N. Mukherjee

(brief of exts. pages 96, 97 and 98) said as follows :

"I particularly marked Mr. M.N. Mukherjee and Mr. P.K. Sarkar in a very angry mood and they asked Mr. Biswas to withdraw the recorder, to which, Mr. Biswas said that at the conciliation meeting it was decided to continue the use of the recorder. So he should not in any way withdraw that."

22. This evidence clearly shows that some of the clerks not only entered the room of Mr. Biswas in a violent manner, but also asked him to discontinue the recorder. It is significant that the witness was offered for cross-examination but cross-examination was declined. Another witness, A. J. Sultoon (brief of exts. page 101) distinctly said that the clerks, after having entered into the room of Mr. Biswas, asked him why the time recorder was being introduced. It is not necessary for me to enter into the evidence in detail. I have merely given an illustration to show that the treatment by the Tribunal of the evidence is in itself not satisfactory. The established facts are that upon Mr. Biswas taking an administrative action which was well within his competence, the clerks, not only in the N. T. C. side but also from the other wing, resorted to violent action, invaded his room and deported themselves in a disorderly and boisterous manner exceeding the limits of decency and good conduct. They forced him to write down a written apology and even went to the extent of threatening the lady telephone operator. These are serious matters to be considered and I do not see how they can be wiped out on the allegation that the order passed by Mr. Biswas was an act of provocation. This is a conclusion which is entirely unjustified. Since the managerial enquiry was properly carried out and in the opinion of the employers the workmen were guilty of such insubordination as to render their continuance in office prejudicial to the interests of the company, there is no reason why the Tribunal should ignore all this and try the case de novo and come to its own conclusions. Even with regard to punishment, the harshness thereof could only be mitigated by the Tribunal if there was any finding of mala fides or want of good faith on the part of the employer. There is no such finding. As has been laid down in *Burn and Co. Ltd. v. Their Workmen*<sup>o</sup>, the workers who flout the lawful authority of their employers merit dismissal.

23. I now come to the question of victimisation. The Tribunal held that the dismissed clerks had been officials of the Union or still are members of the Union Committee. It further held that after the Union had succeeded in obtaining special leave of the Supreme Court to appeal against an award of an Industrial Tribunal in connection with the payment of bonus, Mr. Biswas took a different attitude and even threatened to break up the existing Union of the workmen and to have

a separate Union formed for the National Tobacco Co. only. From this it comes to the conclusion that there was victimization. As far as I can see, victimization means one of two things. The first is where the workmen concerned is innocent and yet he is being punished because he has in some way displeased the employer, for example, by being an active member of an Union of workmen who were acting prejudicially to the employer's interest. The second case is where an employee has committed an offence but he is given a punishment quite out of

<sup>9</sup> AIR 1959 SC 529

proportion to the gravity of the offence, simply because he has incurred the displeasure of the employer in a similar manner as mentioned above. But where it is found that the employee is guilty of gross misconduct then there cannot be any question of victimization because it merits dismissal by itself. In this case, the reasons for holding that there was victimization are unconvincing by themselves. Firstly, the Tribunal has not tried to ascertain with precision as to who amongst the workmen concerned was or were guilty of any particular act which had incurred displeasure of the employer. It lumps them up by saying that some of them were members and some were ex-members of the Union. Surely it is too remote to hold that there was victimization because a person had been in the past a member of the Union, although he had ceased to be so at the relevant time. With regard to the threat by Mr. Biswas, the Tribunal has not appreciated the evidence correctly. The evidence is not that Mr. Biswas threatened to break up the Union because there was an appeal to the Supreme Court, but the evidence is that he suggested that the breaking up of Union into two would be beneficial to the workers themselves with regard to bonus. The evidence of Bimal Kumar Chatterji on this point is as follows :

"He wanted to break the Union and suggested to have a separate Union for National Tobacco Co. Ltd. employees with hope to secure for us better bonus."

24. It is true that the Tribunal was entitled to set aside the findings of the domestic forum if there was victimization. But as I have pointed out, if there is a finding that there has been a gross misconduct which by itself merits dismissal, then there is no scope for applying the principle of victimization, because upon that finding the employer and/or the Enquiring Officer was entitled to come to the conclusion that the workman concerned should be dismissed. Since it has done so *bona fide* after giving every opportunity to the workmen to be heard in their defense, its findings ought not be disturbed and the punishment awarded ought not to be varied.

25. Apart from the legal technicalities, the facts of this case are shortly as follows : The clerks of the petitioner No. 1 were in the habit of signing the attendance register every day as evidence of the time when they joined their duty. According to the rules, they were to join by 10-30 A.M. after which no grace period was allowed. As the system was found to be defective, the company introduced a machine. The machine was a simple one. There was a roll of paper on which the employee had to sign as he came in. As soon as he pulled the lever, the time clock enclosed in the machine stamped the date and the time and the signature together with the date and time could not thereafter be altered without opening the machine, which automatically became ready for the next signature. The clerks violently opposed this innovation and the reason is obvious. It did not suit them to have too accurate a record of their arrival for work. The attitude was such that conciliation proceedings had to be started. Even when such proceedings were pending, the incident in question happened. On that day, a queue formed in front of the machine and by 10-30 A.M. it had extended upto the door of the room through which people were entering. At that

stage Mr. Biswas gave orders that the doors should be closed and the reason is equally obvious. Those that came afterwards would not be entitled to the period of grace. Therefore, he wished to make a distinction and wanted the employees who had attended within time to finish their signature before others were allowed to use the machine. This simple action gave rise to a retaliation on the part of the employees which the Tribunal has characterized as 'disorderly', 'boisterous' and conduct "exceeding the limits of decency". They were joined by the employees in the other wing and Mr. Biswas was threatened and abused and compelled to write a letter of apology. Even the lady telephone operator was threatened. This conduct on the part of the employees is obviously subversive of all discipline. No institution can possibly be run by employing workmen who are capable of such action. In my opinion, it is wholly inconsistent to hold as a fact that such conduct has been proved and yet to 'exonerate' the employees. I have used the word 'exonerate' advisedly, because the punishment proposed by the Tribunal is so grossly disproportionate to the offence that it cannot be said to be a corrective punishment in any sense of the word. The Tribunal states that these employees had a clean record. If so, it is all the more regrettable that there was such a serious lapse. There was no regret expressed on their behalf at any stage. Even before me, an attempt is made to justify their conduct. In my opinion, the conduct of the employees can only be characterized as gross misconduct and the only possible punishment is dismissal. It is impossible to expect the employer company to keep in its employment, persons who are capable of taking the law into their own hands and are guilty of boisterous and violent acts of indiscipline which exceed the limits of decency and good conduct. It is easy to see that if such people are continued in employment the standard of behavior of the employees in that company would be utterly debased. In my opinion, the Tribunal was not entitled to set aside the decision of the management, which ought to have been upheld.

26. The result is that this rule must be made absolute and the award of the 4th Industrial Tribunal dated 5-2-1959 should be set aside and/or quashed by a writ in the nature of certiorari and there should be a writ in the nature of mandamus directing the respondent not to give effect to it. There will be no order as to costs.

Rule made absolute.