

BOMBAY HIGH COURT

Ziakh

Vs

Firestone Tyre

(Chagla, C.J. Dixit, J.)

19.10.1953

JUDGMENT

Chagla, C.J.

1. This is an appeal from an order of Mr. Justice Desai dismissing a petition for a writ of certiorari against the Labour Appellate Tribunal. The petitioner was an employee of the first respondent company. An appeal was pending in the Labour Appellate Tribunal in respect of certain disputes in which the petitioner was concerned and pending that appeal the first respondent wanted to dismiss, the appellant from its service. It thereupon applied to the Labour Appellate Tribunal under Section 22 of the Industrial Disputes (Appellate Tribunal) Act and the Tribunal gave permission to the first respondent company to dismiss the petitioner. On that the petitioner was dismissed from the service of the first respondent company. The petitioner has filed this petition challenging the order of the Labour Appellate Tribunal granting permission to the first respondent company to dismiss the petitioner from its service.

2. The charge against the petitioner was that he wilfully slowed down the performance of his work and his work consisted in building tyres. The tribunal was satisfied that a proper inquiry had been held in respect of this charge, that misconduct had been proved and that the punishment intended to be meted out to the petitioner was a proper punishment in view of the seriousness of what the petitioner was alleged to have done. The petitioner is a piece-rated worker, which means that he is paid according to the work turned out by him, he is not a time-rated worker, which means that he is not paid irrespective of what he produces; and that is an important distinction which Mr. Chari on behalf of the petitioner has emphasized and his first contention is that a piece-rated worker can never be held to be guilty of blowing down production. Standing orders have been framed by the first respondent company and they have been duly sanctioned by the labour authorities, and under standing Order 23 various acts and omissions are set out which constitute misconduct on the part of a worker, and Clause (c) of that standing order, provides "wilful slowing down in performance of work, or abetment, or instigation thereof," and the

contention of Mr. Chari is that the nature of this misconduct is such that it can only apply to a time-rated worker and cannot possibly apply to a piece-rated worker. Mr. Chari says that when a man takes employment and, he is paid according to the work that he does, it is open to him to produce more and obtain better wages; it is equally open to him to produce less and obtain less wages. In the case of a time-rated worker he is said to devote a particular time to the service of his employer and therefore it is obligatory upon him to work with average speed and normal skill, and if he refuses to do so and slows down, his conduct would be prejudicial to the interest of the employer and he would be guilty of misconduct within the meaning of standing Order 23(c). In our opinion the contention of Mr. Chari is not tenable. In this particular case the petitioner has been employed to serve the first respondent company for a certain number of hours every day. We have been Informed that there are three shifts of eight hours each and the petitioner has got to work in one shift or other. Therefore the employer is entitled to eight hours' service from the petitioner. It must also be borne in mind that the petitioner is paid dearness allowance for the number of days that he works and that dearness allowance is irrespective of what work the petitioner turns out; Therefore, both in the case of a piece-rated worker and in the case of a time-rated worker, during the time that the employee has to work the employer is entitled to expect from him average speed and normal skill. In the case of the petitioner, if he is paid according to the work done by him, it is rather as an incentive to do more work than to do less work. An employer expects a certain minimum, but as an incentive to an employee he says: "We will pay you according to the work you do because the more you work and the more you produce the more you will be paid," and that obviously would act as an impetus or an incentive to the employee to put forward his best. It is perfectly true that a piece-rated worker may on occasions put into his work every ounce of energy that he possesses. He may reach heights which it is not possible to reach every day, he may surpass himself on certain occasions, and nobody suggests that if a piece-rated worker does not maintain the same standard throughout he could be guilty of slowing down. But without reaching those heights it is expected even of a piece rated worker that during that time that he is serving his employer he must at least use his normal skill and average speed. If the charge against the petitioner was that he did not use skill which was more than normal or that he did not work at speed which was more than average, undoubtedly Mr. Chari would be right because it would be left to the petitioner if he wanted to earn more to use more than normal skill and to work at more than average speed. But in this particular case there cannot be the highest doubt that the petitioner has not worked according to normal skill or average speed. He has made admissions in the enquiry which leave no doubt on the subject whatsoever. What he was charged with and what he has been found guilty of is wilful slowing down of work. "Wilful" conveys deliberation and calculation, it even conveys an intention to prejudice the interest of the employer. "Wilful" rules out any possibility of the slowing down being accidental or unintentional and there can be no doubt as we just said that on the admissions

of the petitioner himself he slowed down the work not because he was ill, not because he did not feel up to the mark, but because he intentionally and deliberately did not wish to use his normal skill and work with average speed.

3. Now, the petitioner had the reputation of being one of the best and fastest builders in the department. He had built as many as 22 to 23 tyres a day. This production fell on 3 October 1952 to 14 tyres, on 15 October the production fell to 11 tyres, in November it fell to 10 tyres, and towards the end of December it went down as much as 8 tyres. So there was a drop from 22 to 23 tyres to building of 8 tyres, and let us see how in the inquiry held the petitioner explains this drop. When he was asked about the drop in production to 8 tyres towards the end of December, his answer is rather significant; "When every one was making 8 tyres, how could I make 10?" And when he is asked why he could not make 10 he says, "How can I go against all the people?" Therefore, in lowering the production to 8 tyres he was working in the interest of the solidarity of labour rather than in the interest of the employer. Then again he informs the officer holding the enquiry, when it is pointed out to him that because of the slow-down his earnings had fallen, that this depends upon his volition, and says : "At this time of the year my sweet will does not desire that I earn more money." He has also said that he works when he is happy, suggesting thereby that if he is not happy or he does not feel happy he does not do the work properly. It is clear on these admissions that the petitioner wilfully reduced the work and was guilty of misconduct of slowing down.

4. Mr. Chari has argued that it was incumbent upon the employer to fix a limit below which the production of the employee should not fall, and if such a minimum had been fixed then any deviation from that minimum may constitute a misconduct within the meaning of this standing order. It is perfectly true that in this case no minimum is prescribed by the contract of service, but we refuse to accept the position that because no minimum is prescribed it is open to the employee to produce what he like and to work as he likes and to disregard the interest of the employer. Even though a minimum may not be prescribed, the conditions of service must require that during the time that the employee is in the service of his employer he must at least give to the employer what he is entitled to, viz., the minimum of his ability and of his skill and of his time. If he deliberately refuses to give that minimum, he is as much guilty of misconduct as he would have been if he did not come up to the minimum if such a minimum had been prescribed under the contract of service.

5. Mr. Chari has then drawn our attention to standing Order 31 and that is to the following effect: Nothing contained in these standing orders shall operate in derogation of any law applicable or to the prejudice of any right of workmen under an agreement, settlement or award for the time being in force or contract of service, if any, or custom or usage of the

establishment. We fail to see how this standing order can possibly help Mr. Chari. It cannot be suggested that it is the right of a workman under the agreement with his employer to resort to slowing-down tactics, nor can it be suggested that it is the usage of the Firestone Company, Ltd., to have workmen resorting to slow-down tactics. All that standing order 31 means is that if workmen have got any rights, those rights cannot be affected or prejudiced by anything provided in the standing orders. But what Mr. Chari has got in the first instance to establish is that an employee who is a piece-rated worker has the right to produce what he likes and to slow-down his production at his own sweet will. In our opinion a piece-rated worker has no such right.

6. The next contention urged by Mr. Chari is that the chargesheet which was furnished to the petitioner was not in accordance with the Standing orders. Standing Order 24(4) provides: A workman against whom an enquiry has to be held shall be given a chargesheet clearly setting forth the circumstances appearing against him and requiring explanation. He shall be given an opportunity to answer the charge and permitted to be defended by a workman working in the same department as himself. The whole object of furnishing a chargesheet is to give an opportunity to the person who is charged with misconduct to give an explanation and to defend himself. We are sorry to observe that the chargesheet that was furnished in this case by no means complies with the mandatory provisions of standing Order 24(4). It is not sufficient for the first respondent company to tell its employee that he was wilfully slowing down the performance of his work. That may convey nothing at all to the employee. It is incumbent upon the employer under this standing order to give him sufficient particulars which would enable him to give a proper explanation and to defend himself properly. What is the employee to understand by this chargesheet? He does not know on what days he slowed down; what is the norm that the employer expects; how he has fallen below that norm. There are absolutely no particulars whatever which would enable the employee to defend himself properly. We would have taken a very serious view of this chargesheet but for the fact, as already pointed out, that the petitioner in the course of the enquiry has clearly pleaded guilty to the charge, and it is difficult to accept the contention of Mr. Chari that an accused person who pleads guilty to the offence with which he is charged can make a grievance of the charge that the charge was not a proper one. Apart from that, as observed by the learned Judge below, the questions and answers which form the subject-matter of the inquiry did give to the petitioner the fullest information about what he was charged with. He understood the nature of the charge and he has given an explanation with regard to the charge. All that the rule of natural justice requires is that a person charged with an offence should know the nature of the offence and should be given an opportunity to defend himself and to give a proper explanation. Looking at the questions and answers it would be difficult to say either that the petitioner did not understand what he was charged with or that he did not offer an explanation. As a matter of fact he has offered the most eloquent answer to why he slowed down

the production. But Mr. Chari is right that here we are concerned not only with the violation of the rule of natural justice but also with the non-compliance with the mandatory provisions of the procedure required in an enquiry like this. As we said below, had it not been for what we consider to be a plea of guilty by the petitioner, we would certainly have taken the view that the employer has not complied with the mandatory provisions and in not complying with the mandatory provisions it has not held the inquiry which the standing orders require that he should hold.

7. Mr. Chari has also drawn our attention to a letter which the petitioner submitted to the officer who held the inquiry on the day when the inquiry was to be held, and this letter requested the manager of the first respondent company to give him in writing a real and regular chargesheet giving specific details of alleged slow-down to enable him to defend himself. Now, although the charge-sheet was sent to the petitioner on 9 January 1953, this letter was handed over to the officer making the inquiry on the day of the inquiry itself, and when he was asked as to whether he understood what the contents of the letter were the petitioner said he did not know what the letter contained, and it is further to be noted that at no stage of the enquiry did the petitioner ask for any time to consider the questions put to him or to have an opportunity of defending himself. Not only he understood the nature of the questions, but he was quite prepared with the answers which he gave to those questions. Therefore, really, in substance no prejudice has been caused to the petitioner by the non-compliance with the mandatory provisions contained in standing Order 24(4).

8. The next contention urged by Mr. Chari is that there has been a contravention of standing Order 24(6), This standing order requires that in awarding punishment the manager shall take into account the gravity of the misconduct, the previous record, if any, of the workmen and any other extenuating or aggravating circumstances that may exist. Mr. Chari says that the petitioner had a very, fine previous record, that as admitted by the company itself he was the best and fastest builder of tyres and that the punishment of dismissal was much too severe and according to Mr. Chari if the previous record of the petitioner had been taken into consideration, very likely the employer would not have meted out this drastic punishment. Now, unfortunately, the petitioner when he filed his affidavit in reply to the application made by the employer for permission under Section 22 never suggested that this standing order had not been complied with. If such a suggestion had been made the employer would have had an opportunity of adducing necessary evidence to establish that this standing order had been complied with. The standing order does not require that the fact that certain facts have been taken into consideration before punishment is meted out should be either communicated to the petitioner or that It should appear in any record. It is a mandatory direction to the manager and that mandatory direction has got to be complied with, but it may be complied with without a written record being made of it,

and therefore if it had been suggested that there had been non-compliance of this particular standing order it would have been possible for the manager to give evidence and satisfy the Tribunal that he had taken into consideration the factors which it was obligatory upon him to take into consideration. Perhaps it would have been better if the first respondent company itself in its petition had stated that these factors had been taken into consideration because the first respondent company was asking the permission of the Appellate Tribunal to the course it proposed to take by dismissing the petitioner and it had to satisfy the tribunal that dismissal was the proper punishment under the circumstances of the case. Therefore it would have been much more satisfactory and desirable if the first respondent company had made it clear to the tribunal that in deciding to dismiss the petitioner it had taken into consideration all the relevant facts and circumstances. In this connexion we may point out that the Tribunal itself has taken the view that slow-down in production is a very serious act and it is calculated to bring? about indiscipline and also to undermine industry, and the Tribunal takes the view that under the circumstances it could not withhold the permission sought by the petitioner.

9. Now, one very important fact should be borne in mind. The legislature has left it to the discretion of the Appellate Tribunal whether to give permission or not to give permission and we are really being asked to sit in appeal over the discretion exercised by the Tribunal. Mr. Chari is right that every discretion which a statute confers upon a judicial tribunal must be exercised judicially and in conformity with certain well-established rules and principles. The right to exercise a discretion does not mean the right to exercise is arbitrarily or capriciously. But we would need much stronger evidence and much stronger case before we could come to the conclusion that in this particular case the Tribunal has exercised its discretion arbitrarily and capriciously because we must go to the length of holding that in law there has been no exercise of the discretion at all by the Tribunal. It is only then that on an application under Article 226 or 227 we would quash the order of the Tribunal and hold that no discretion has been exercised as required by the tribunal.

10. The result is that the appeal fails and must be dismissed. No order as to costs.

Cases Referred.

1(1944) 47 Bom. L.R. 174