

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION NO. 17024/2020.

**M.P. RASHTRIYA MANGANESE MAZDOOR SANGH
VS.
MANGANES ORE (INDIA) LTD.**

Shri Rajneesh Gupta -Advocate for the petitioner.
Shri Anoop Nair Senior Advocate with Shri Shreyas Dubey & Ms.
Gunjan Naik- Advocates for the respondent.

(O R D E R)
(02/12/2024)

By way of the present petition the workman has challenged the award Annexure P/1 dated 05.12.2019 passed by the CGIT cum Labour Court, Jabalpur in Case No. R/81-2000 whereby the termination of services of the petitioner workman has been found to be legal and justified.

2. It is contended by learned counsel for the petitioner that the petitioner was employee with the respondent Manganes Ore (India) Ltd. and his services were terminated vide order dated 02.01.1997. It is the case of the petitioner that termination was on the ground of absence of duties unauthorizedly which was stated to be a major

misconduct as per the standing order as applicable to the respondents.

3. Learned counsel for the petitioner has preliminary stressed on the aspect that the preliminary issue was framed by the CGIT in relation to validity of the enquiry proceedings and other preliminary issue was decided on 30.09.2015 vide order Annexure P/2 and it was held that since the petitioner had been transferred from Bharveli Mines in District Balaghat to Chickla Mines in District Balaghat within the same district and he had never joined at the transferred place of posting which lead to allegations of unauthorized absence, the supervisor of Chikla Mines was not having jurisdiction to exercise managerial powers/ supervisory power about services of the petitioner and the charge-sheet issued by the Superintendent of Chikla Mines appears to be without authority and therefore, held that the enquiry conducted by the authority not competent as vitiated. Thus, it is contended that thereafter the management could not have been given opportunity to prove misconduct by adducing evidence before the Labour Court because it was not a simplicitor case of enquiry being vitiated but it was a case where the very charge-sheet was held to be unauthorized by the CGIT. Therefore, the only logical conclusion was the reinstatement of the petitioner because the entire enquiry proceedings based on the charge-sheet had to go.

4. It was also argued by learned counsel for the petitioner that the Labour Court even otherwise could not have given opportunity to the management to lead evidence in support of misconduct alleged against the petitioner because the permission to lead evidence in support of misconduct has to be pleaded in the written statement at the very first instance and since no such permission was sought in the very first instance, therefore, the management could not have been granted opportunity to lead evidence in support of misconduct alleged.

5. *Per contra*, it is contended by learned senior counsel appearing for the respondent that the petitioner was transferred from Bharveli Mines to Chikla Mines on 15.09.1993 but he never joined on the transferred place of posting which lead to issuance of charge-sheet on 01.05.1996, even after which he did not join at transferred place of posting though he was not in suspension and could have reported on duty. He was ultimately dismissed from service after enquiry. It is further contended that even in course of conciliation proceedings, the respondent offered to re-employ the petitioner but he refused and also the petitioner has since than immediately after being dismissed from service of the respondent on 02.01.1997, got himself enrolled as an Advocate with M.P. State Bar council on 29.06.1997 and is regularly practicing before the District Court Balaghat since then. It is further contended by

learned senior counsel that at present the age of petitioner is 64 years and he has passed the age of superannuation.

6. Heard.

7. The contention of the petitioner is taken up first wherein it is alleged that the Labour Court could not have granted chance to the Management to lead evidence in support of misconduct because the very charge-sheet issued by the Management was held to be unauthorized vide order dated 30.09.2015. In that regard it is argued that the management never challenged the said order dated 30.09.2015 either at that point of time or even by filing a petition for challenging the said order in any other manner even after the final award was passed, therefore, very charge sheet having wiped out, the petitioner should be ordered to be reinstated in service or as he has crossed the age of superannuation he should be granted full or some part of back wages as compensation.

8. The opportunity to the management to lead evidence in support of misconduct was considered by the Hon'ble Supreme Court in the case of **Workmen Vs. Firestone Tyre & Rubber Co. of India (P) Ltd. (1973)1 SCC 813** wherein the Hon'ble Supreme Court in para 32 has held as under:-

32. From those decisions, the following principles broadly emerge:

“(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) *Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.*

(3) *When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.*

(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, had 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 to adduce evidence contra.*

(5) *The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. **A case of defective enquiry stands on the same footing as no enquiry.***

(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 has never been recognised that the Tribunal should straightaway, 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.*

(9) *Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.*

(10) *In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *Management of Panitole Tea Estate v. Workmens* [(1971) 1 SCC 742] within the judicial decision of a Labour Court or Tribunal."*

(Emphasis supplied)

9. The Supreme Court in para 32 (4) held that even if no enquiry was held by the employer or if the enquiry held by him is found to be defective, the tribunal in order to satisfy itself of legality and validity of the order has to give opportunity to the employer and employee to adduce evidence before it. The basic objective is that the Labour court is called upon to decide upon the industrial dispute and not merely to decide the validity of dismissal or termination order or any action taken against the workman.

10. It was held by the Supreme Court as far back in the year 1965 in the case of **Workmen V. Motipur Sugar Factory, reported in AIR 1965 SC 1803** that once the dismissal is set-aside by the industrial tribunal only on the ground of dismissal being without holding a valid enquiry and without holding the enquiry then the employer will immediately thereafter proceed to hold the enquiry against the dismissal order against the employee which will rise another industrial dispute and this will only delay the settlement of the Industrial Dispute which has been raised before the Industrial Tribunal. In the case of **Firestone Tyre (supra)** this issue was also dealt with in para 28. In para 26 to 29 of the aforesaid judgement, it was held as under:-

26. The powers of a tribunal when a proper enquiry has been held by an employer as well as the procedure to be adopted when no enquiry at all has been held or an enquiry held was found to be defective, again came up for consideration in Management of Ritz Theatre (P) Ltd. v. Workmens [AIR

1963 SC 295 : (1963) 3 SCR 461 : (1962) 2 Lab LJ 498] Regarding the powers of a Tribunal when there has been a proper and fair enquiry, it was held:

“It is well settled that if an employer serves the relevant charge or charges on his employee and holds a proper and fair enquiry, it would be open to him to act upon the report submitted to him by the enquiry officer and to dismiss the employee concerned. If the enquiry has been properly held, the order of dismissal passed against the employee as a result of such an enquiry can be challenged if it is shown that the conclusions reached at the departmental enquiry were perverse or the impugned dismissal is vindictive or mala fide, and amounts to an unfair labour practice. In such an enquiry before the Tribunal, it is not open to the Tribunal to sit in appeal over the findings recorded at the domestic enquiry. This Court has held that when a proper enquiry has been held, it would be open to the enquiry officer holding the domestic enquiry to deal with the matter on the merits bona fide and come to his own conclusion.”

Again regarding the procedure to be adopted when there has been no enquiry or when there has been a defective enquiry, it was stated:

“It has also been held that if it appears that the departmental enquiry held by the employer is not fair in the sense that proper charge had not been served on the employee or proper or full opportunity had not been given to the employee to meet the charge, or the enquiry has been affected by other grave irregularities vitiating it, then the position would be that the Tribunal would be entitled to deal with the merits of the dispute as to the dismissal of the employee for itself. The same result follows if no enquiry has been held at all. In other words, where the Tribunal is dealing with a dispute relating to the dismissal of an industrial employee, if it is satisfied that no enquiry has been held or the enquiry which has been held is not proper or fair or that the findings recorded by the enquiry officer are perverse, the whole issue is at large before the Tribunal. This position also is well-settled.”

It was further held that it is only where a Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the finding recorded is perverse that the Tribunal derives jurisdiction to deal with merits of the dispute, when permission has to be given to an employer to adduce additional evidence.

27. The right of an employer to lead evidence before the Tribunal to justify his action was again reiterated in Khardah Co. Ltd. v. Workmen [AIR 1964 SC 719 : (1964) 3 SCR 506 : (1963) 2 Lab LJ 452] as follows:

“It is well-settled that if the enquiry is held to be unfair, the employer can lead evidence before the Tribunal and justify his action, but in such a case, the question as to whether the dismissal of the employee is justified or not,

would be open before the Tribunal, and the Tribunal will consider the merits of the dispute and come to its own conclusion without having any regard for the view taken by the management in dismissing the employee."

28. *In Workmen of Motipur Sugar Factory (P) Ltd. v. Motipur Sugar Factory [AIR 1956 SC 1803 : (1965) 3 SCR 588 : (1965) 2 Lab LJ 162] the employer had charge-sheeted certain workmen and without conducting any enquiry, as required by the standing orders, passed orders discharging the workmen. Before the Tribunal, the employer adduced evidence justifying the action taken against the workmen. The workmen were also given an opportunity to adduce evidence in rebuttal. After a consideration of such evidence, the Tribunal held that the workmen were guilty of misconduct alleged against them and that the orders of discharge passed by the employer were fully justified. Before this Court it was contended on behalf of the workmen that when no enquiry whatsoever had been conducted by the employer, as required by the standing orders, before passing an order of dismissal or discharge, the Tribunal had no jurisdiction to hold an enquiry itself by permitting the employer to adduce evidence before it for the first time. In rejecting this contention, it was held:*

"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 enquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited question open to a tribunal where domestic enquiry has been properly held ... but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified.... 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.... 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."

28-A. *The reasons for allowing an employer to lead evidence before the Tribunal justifying his action have been stated thus:*

"If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the Industrial Tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits of his case being

considered by the tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so the tribunal tries the merits itself. This view is consistent with the approach which industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in the disposal of industrial disputes. Therefore, we are satisfied that no distinction can be made between cases where the domestic enquiry is invalid and those where the enquiry has in fact been held."

29. The rights of an employer to avail itself of an opportunity to satisfy the Tribunal by adducing evidence, when an enquiry held by it was found to be defective or when no enquiry at all has been held, have been stated in *State Bank of India v. R.K. Jain* [(1972) 1 SCR 755] as follows:

"It should be remembered that when an 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 a 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 adduce 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 it is for the management to avail itself of the said opportunity.”

(Emphasis supplied)

11. The entire law was again considered by a 3-judge Bench of the Supreme Court in the case of **Engineering Laghu Udyog Employees Union Vs. Judge, Labour Court and Another**, reported in **2003 (12) SCC 1** and it was held as under :-

“10. In Workmen v. Motipur Sugar Factory (P) Ltd. [Workmen v. Motipur Sugar Factory (P) Ltd., AIR 1965 SC 1803 : (1965) 3 SCR 588] this Court held: (AIR p. 1808, para 11).

11. 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. Ltd. v. Workmen [AIR 1958 SC 130 : 1958 SCR 667]) 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 Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan [AIR 1959 SC 923 : 1959 Supp (2) SCR 836] , Phulbari Tea Estate v. Workmen [AIR 1959 SC 1111 : (1960) 1 SCR 32] and Punjab National Bank Ltd. v. All India Punjab National Bank Employees' Federation [AIR 1960 SC 160 : (1960) 1 SCR 806] . These three cases were further considered by this Court in Bharat Sugar Mills Ltd. v. Jai Singh [(1962) 3 SCR 684 : (1961) 2 LLJ 644] and reference was also made to the decision of the Labour Appellate Tribunal in Ram Swarath Sinha v. Belsund 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 [AIR 1959 SC 1111 : (1960) 1 SCR 32] , 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 case [AIR 1959 SC 1111 : (1960) 1 SCR 32] , 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.”

The employer, thus, has got a right to adduce evidence before the Tribunal justifying its action, even where no domestic inquiry whatsoever has been held.

11. Yet again in Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd. [(1973) 1 SCC 813 : 1973 SCC (L&S) 341 : (1973) 3 SCR 587] this Court while interpreting the provision of Section 11-A of the Act held that in terms thereof, the management need not necessarily rely on the materials on record as while introducing Section 11-A of the Act, the legislature must have been aware of the decisions of this Court which are operating in the field for a long time. This Court enunciated several principles bearing on the subject and, therefore, it held that it was difficult to accept that the expression “materials on record”, used in the proviso to Section 11-A was set at naught. The Court formulated the propositions of law emerging from the decisions rendered by this Court, the relevant portions whereof are as under: (SCC pp. 827-28, para 32)

“32. From those decisions, the following principles broadly emerge:

*(1)-(3)****

(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 to adduce evidence contra.

*(5)****

(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 has 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)***”*

Even in Firestone case [(1973) 1 SCC 813 : 1973 SCC (L&S) 341 : (1973) 3 SCR 587] no distinction, thus, has been made between a defective inquiry and no inquiry.

(emphasis supplied)

12. Therefore in view of the above, even if the very charge-sheet was held to be incompetent by CGIT, the CGIT was not required to mechanically set-aside the order of termination and on account of absence from duties, a Industrial Dispute had obviously arisen and the CGIT was required to decide the industrial dispute and therefore, no fault can be found in the CGIT granting opportunity to the respondents to prove misconduct by adducing evidence before CGIT.

13. The other issue raised was that the respondents had not sought opportunity to lead evidence in support of the misconduct in the very first instance before the CGIT and by the order Annexure P/2 dated 30.09.2015 the CGIT initially refused to grant such opportunity and fixed the case for final arguments but later on the CGIT allowed to the management, a chance to lead evidence by order dated 07.06.2016 which could not have been done by the CGIT. Such argument was countered by learned senior counsel for respondent by submitting that such a objection is hyper technical in nature because after the enquiry had been held to be vitiated the management can make a request to grant opportunity to lead evidence in support of the misconduct and in para 32(8) of the judgment in the case of **Firestone Tyre** (supra) the aforesaid issue has been decided and it has been held that the Labour court has no power to refuse such a request.

14. Even otherwise it is contended that this issue does not even arise for consideration before this Court because in para 19 of the written statement filed before CGIT at the first instance, a pleading was made that in case the inquiry was found to be vitiated on any reason whatsoever then the management seeks permission to prove misconduct before the tribunal. In para 19 of the written statement the following averments were made by the management.

“19. It is submitted that the services of the workman were terminated on the charges proved against him in the departmental enquiry conducted against him. That for any reason whatsoever the Hon’ble Court comes to the conclusion that the enquiry is liable to be vitiated, the management seeks permission to prove the misconduct before the tribunal.”

15. In view of the above, the Labour court does not seem to have erred in granting opportunity to the management to lead evidence in support of the misconduct.

16. The undisputed facts brought on record in the present case show that the petitioner was initially appointed in service in the year 1989 and he was transferred to Bharveli Mines on 12-07-1992 and was transferred to Chikla Mines on 15.09.1993 but he never joined at Chikla Mines. It was on the pretext that one of his family member was suffering from Sickle Cell Anemia and he was required to remain at Bharveli Mines where the medical facilities were better. He never joined at Chikla Mines till the charge sheet was issued to him on 01.05.1996 and even after that, till dismissal order was passed on 02.01.97, he never joined at Chikla Mines. Thus for the period of more than 3 years till dismissal order was

passed the petitioner never joined at Chikla Mines and therefore finding of unauthorized absence in terms of certified standing order applicable to the respondent can not be found fault with.

17. Learned counsel for the petitioner also did not dispute the averments made by the respondents that the petitioner was offered re-employment after termination during the conciliation proceedings but he refused the said reemployment. It was also not disputed by the learned counsel for the petitioner that the petitioner has been enrolled as an Advocate with M.P. State Bar Council on 29.06.1997 itself and he has been practicing before the District Court Balaghat since then.

18. The petitioner had also filed writ petitions before this court challenging the transfer orders but he had failed to get any relief from this court and this Court had only directed the management to consider his representation sympathetically which was rejected by the management which led the petitioner to file another writ petition in which the directions was issued by this Court to consider his representation in the light of the requirement of medical facility, which was then rejected by the management. The contention of the management which has been found proved by the CGIT is that Chikla Mines has a full fledged hospital with qualified medical staff and treatment of Sickle Cell Anemia was possible even at Chikla Mines Hospital and the workman was assured that whenever any vacancy arises in mines near Balaghat, his request for transfer to

nearby place will be considered but inspite of that the workman absented from duties without permission, any intimation and leave being sanctioned.

19. The CGIT has held that the factum of absence is undisputed and only the issue was whether the absence was unauthorized and willful. The CGIT in view of the aforesaid facts held that looking to the facts of the case workman was expected to join at a place where he was transferred and also that the transferred place at Chikla Mines Balaghat is also having certain medical facilities which could be availed for getting treatment of Sickle Cell Anemia.

20. In view of the aforesaid this court does not find any illegality or perversity in the factual findings recorded by the CGIT.

21. Petition being devoid of merits, deserves to be and is hereby **dismissed**.

(VIVEK JAIN)
JUDGE

MISHRA