WORKMEN OF MOTIPUR SUGAR FACTORY (PRIVATE) LIMITED

v.

MOTIPUR SUGAR FACTORY

March 30, 1965

[P. B. GAJENDRAGADKAR, C J.; K. N. WANCHOO, M. HIDAYATULLAH AND V. RAMASWAMI, JJ.]

Industrial Disputes—Discharge of workmen on account of go-slow—Reference as to whether discharge justified—Tribunal, if could decide go-slow—No enquiry before discharge—If discharge could be justified before Tribunal.

The workers of the respondent started a go-slow in its sugar factory. Therefore, the respondent issued a general notice to those workmen and individually to each workman notifying that unless he recorded his willingness to discharge his duties faithfully and diligently so as to give a certain minimum output, he will be no longer employed; and that he must record his willingness in the office by a certain time, failing which he shall stand discharged from the service of the respondent without any further notice. Because the appellants, who were 119 of such workmen, failed to record their willingness, the respondent issued a notice discharging their services. The respondent held no enquiry as required by the Standing Orders before dispensing with the services of the appellants. A general strike followed resulting in a joint application by both the parties to the Government and the Government referred the question to the Tribunal, whether the discharge of the workmen was justified. The Tribunal came to the conclusion that there was go-slow during the period, and consequently held that the discharge of the workmen was fully justified. In appeal by Special Leave the appellant contended that (i) all that the Tribunal was concerned with was to decide whether the discharge of the workmen for not giving an undertaking was justified or not, and that it was no part of the duty of the Tribunal to decide whether there was go-slow which would justify the order of discharge; (ii) Since the respondent held no enquiry as required by the Standing Orders, it could not justify the discharge before the Tribunal and (iii) the finding of the Tribunal that go-slow had been proved was perverse and the Tribunal had ignored relevant evidence in coming to the conclusion.

HELD: The contentions must be rejected.

(i) Taking into account the wide terms of reference, the manner in which it was understood before the Tribunal, and the fact that it must be read alongwith the two notices, particularly because it was made soon thereafter at the joint application of the parties, the Tribunal was entitled to go into the real dispute between the parties, namely whether the discharge was justified on the ground that there was misconduct in the form of go-slow by the workmen concerned. [596D]

(ii) No distinction can be made between cases when the domestic enquiry is invalid and those where no enquiry has in fact been held.

This Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the Tribunal may give an opportunity

A to the employer to prove his case and in doing so the Tribunal tries the merits itself. [598A-C]

Case law referred to.

(iii) As the case involved the discharge of 119 workmen, this Court went into the evidence, and the evidence showed that the decision of the Tribunal was not wrong that there was go-slow and B that the discharge was fully justified. [598E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 108 of 1964.

Appeal by special leave from the Award dated May 11, 1962, of the Industrial Tribunal, Bihar, Patna in Reference No. 4 of C 1961.

Ranen Roy, Jai Krishan, G. S. Chatterjee, E. Udayarathnam for *A. K. Nag*, for the appellants.

Niren De, Addl. Solicitor-General and *Naunit Lal*, for the respondent.

D The Judgment of the Court was delivered by

Wanchoo, J. This is an appeal by special leave against the award of the Industrial Tribunal, Bihar. It relates to the discharge of 119 workmen of the respondent who were employed as cane carrier mazdoors or as cane carrier supervisors or jamadars. All these were seasonal workmen. It is necessary to set out in E some detail the circumstances leading to the discharge. The respondent is a sugar factory and the crushing season starts usually in the first half of November each year. We are concerned in the present appeal with November and December 1960. It appears that from the season 1956-57, the respondent introduced an incentive bonus scheme in the factory. The scheme continued there- F after from season to season with certain changes. It also appears that in the beginning of each season, the respondent used to put forward the incentive bonus scheme and consult the workmen. The same thing was done when the season 1960-61 was about to start in November 1960. But the scheme for this season proposed by the respondent contained certain changes which were apparently G not acceptable to the workmen. One of the features in the scheme was that the crushing of sugar cane per day should be 32,000 maunds. The general secretary of the union of the workmen suggested certain alterations for the consideration of the respondent on November 7, 1960, and one of the main alterations suggested was that the norm for per day's crushing should be 125,000 maunds H of cane and thereafter incentive bonus should be given at a certain rate. No agreement seems to have reached on the incentive bonus scheme, and the complaint of the respondent was that the secretary incited the workmen to go slow in consequence of the change in the scheme. Consequently mild go-slow in the cane carrier department which is the basic department in a sugar mill began from the very start of the season on November 10, 1960. The

respondent's case further was that on. November 27, 1960, the workmen in the cane carrier department started in combination with one another to go-slow deliberately and wilfully and in a planned manner and thus reduced the average daily crushing to 26,000 maunds cane which was much less than the average crushing in previous seasons. This conduct of the workmen was said to be highly prejudicial to the respondent and besides being technically unsafe, had brought into existence an acute shortage in the fuel position which might have resulted in the complete stoppage of the mill and a major breakdown of the machinery. When the position became serious the respondent issued a general notice on December 15, 1960 inviting the attention of the workmen concerned to this state of affairs which had been continuing of any rate since November 27, 1960. This notice was in the following terms:—

"At the instigation of Shri J. Krishna, the General Secretary of your Union, you since the very beginning of this season, have been failing in your duty to ensure adequate and regular loading of the cane carrier, and with effect from the 27th November, 1960, you, in combination with each other, have deliberately and wilfully resorted to a clear 'go-slow' tactics, a fact openly admitted by the above-named General Secretary of your Union in presence of the Labour Superintendent and Labour Officer Muzzffarpur, in course of discussions held on the subject in the office of the Assistant Labour Commissioner on the 6th December, 1960. You have deliberately reduced the average daily crushing to more or less 26,000 maunds out of which more than 2,000 maunds is due to the newly introduced device of direct feeding of the cane carrier by cane carts weighed during nights and not attributable to any effort on your part. Thus the actual crushing given by you is practically something between 23,000 and 24,000 maunds only which is highly uneconomical and technically unsafe for this factory with the installed crushing capacity of more than 1,200 tons a day.

"About 14,000 bales of extra bagasse kept in stock as reserve have already been consumed in the past 12 days or so and now the factory is faced with a situation when at any moment its boilers may go out of steam for want of bagasse-fuel leading to an abrupt stoppage of the mills and finally resulting into a major breakdown of machineries.

"It is therefore hereby notified that unless you voluntarily record your willingness individually to discharge your duties faithfully and diligently by feeding the cane carrier so as to give a minimum average daily crush of 32,000 maunds, excluding stoppages other than those

A due to overloading or underloading of the cane carrier, you will be considered to be no longer employed by the company. You must record your willingness in the office of the Factory Manager on or before 4 P.M. of Saturday the 17th December, 1960, failing which you shall stand discharged from the service of the company
B without any further notice with effect from 18-12-1960 and your place will be filled by recruiting other labour to man the cane carrier station."

This notice was put on the notice-board along with translations in Hindi and Urdu and it was also sent individually to the workmen in cane carrier department. A copy was also sent to the
C Secretary of the union with the workmen concerned to submit their willingness as desired by the respondent in the notice in question either individually or even collectively through the union. The secretary of the union replied to this notice on the same day and said that it was "full of maliciously false and mischievous state-
D ments". The secretary also denied that the workmen had adopted go-slow tactics or that he had advised the workmen to adopt such tactics. Finally the secretary said that it was simply fantastic to ask a worker to give an undertaking to crush at least 32,000 maunds per day and if the service of any workman was terminated on his not giving the undertaking, the responsibility would be
E that of the respondent itself. The respondent's case was that three workmen gave undertakings as required in the notice while the rest did not. Thereafter the situation in the factory deteriorated and the workmen grew more and more unruly and even started entering the factory without taking their attendance token. In consequence of this attitude of the workmen, the respondent issued
F a notice at 5 p.m. on December 17, 1960 which was in the following terms:

"The following workers of the cane carrier station who failed to record their willingness in factory manager's office by 4 p.m. this day the 17th December, 1960, to work faithfully and diligently in accordance with the
G management's notice dated 15-12-1960, stand discharged from the company's service and their names have been struck off the rolls with effect from 18th December 1960. From now on, the workers concerned have forfeited their right to go to and occupy their former place of work and any action contrary to this on their
H part will make them liable to prosecution for criminal trespass.

"Their final account will be ready for payment by 4 p.m. on the 19th December 1960, when, or whereafter, they may present themselves at the company's Office for receiving payment of their wages and other dues, if any, during working hours", and then mentions the names of 119 workmen of the cane carriers department.

Thus the services of the workmen concerned stood discharged from December 18, 1960 under this notice. This was followed by a general strike in pursuance of the notice served on the respondent by the union on December 17, 1960. The strike continued upto December 22, 1960 when as a result of an agreement it was decided that the case of the discharged workmen and the question of wages for the strike period be referred to adjudication. Consequently a joint application by both parties was made to Government on December 21, 1960. The Government then made a reference of the following two questions to the tribunal on January 25, 1961:—

1. Whether the discharge of workmen mentioned in the Appendix was justified. If not, whether they should be re-instated and/or they are entitled to any other relief?
2. Whether the workmen be paid wages for the period 16-00 hrs. on December 18, 1960 to 8-00 hours on December 22, 1960?

It may be mentioned that the respondent had held no enquiry as required by the standing Orders before dispensing with the services of the workmen concerned. Therefore, when the matter went before the tribunal, the question that was tried was whether there was go-slow between November 27, 1960 and December 15, 1960. The respondent led evidence, which was mainly documentary and based on the past performance of the factory to show that there was in fact go-slow by the workmen concerned during this period. The appellants on the other hand also relying on the record of the respondent tried to prove that the cane carrier department had been giving normal work in accordance with what had happened in the past in connection with cane crushing. That is how the tribunal considered the question on the basis of the relevant statistics supplied by both parties and also oral evidence whether there was go-slow during this period or not. After considering all the evidence it came to the conclusion that there was go-slow during this period. Consequently it held that the discharge of the workmen was fully justified. It therefore answered the first question referred to it in favour of the respondent. The second question with respect to wages for the strike period was not pressed on behalf of the appellants and was therefore decided against them. Thereafter the appellants came to this Court and obtained special leave ; and that is how the matter has come up before us.

We are concerned in the present appeal only with the first question which was referred to the tribunal. Learned counsel for the appellants has raised three main contentions before us in support of the appeal. In the first place it is contended that the tribunal misdirected itself as to the scope of the reference and that all that the tribunal was concerned with was to decide whether the discharge of the workmen for not giving an undertaking was justified

A or not, and that it was no part of the duty of the tribunal to decide whether there was go-slow between the relevant dates which would justify the order of discharge. Secondly, it is urged that the respondent had given no charge-sheets to the workmen concerned and had held no enquiry as required by the Standing Orders. Therefore, it was not open to the respondent to justify the discharge before B the tribunal, and the tribunal had no jurisdiction to go into the merits of the question relating to go-slow. Lastly it is urged that the finding of the tribunal that go-slow had been proved was perverse and the tribunal had ignored relevant evidence in coming to that conclusion. We shall deal with these contentions *seriatim.*

Re. (1).

C We have already set out the relevant term of reference and it will be seen that it is wide and general in terms and asks the tribunal to decide whether the discharge of the workmen concerned was justified or not. It does not mention the grounds on which the discharge was based and it is for the tribunal to investigate the D grounds and decide whether those grounds justify discharge or not. So if the tribunal finds that the discharge was due to the use of go-slow tactics by the workmen concerned it will be entitled to investigate the question whether the use of go-slow tactics by the workmen had been proved or not.

But the argument on behalf of the appellants is that the notice E of December 17 gives the reason for the discharge and the tribunal is confined only to that notice and has to consider whether the reason given in that notice for discharge is justified. We have already set out that notice and it certainly says that the workmen mentioned at the foot of the notice had failed to record their willingness to work faithfully and diligently in accordance with the F respondent's notice of December 15, 1960, and therefore they stood discharged from the respondent's services and their names had been struck off the rolls from December 18, 1960. So it is argued that the reason for the discharge of the workmen concerned was not go-slow but their failure to record their willingness to work faithfully and diligently. The tribunal had therefore to see G whether this reason for the discharge of the workmen was justifiable, and that it had no jurisdiction to go beyond this and to investigate the question of go-slow.

We are of opinion that there is no force in this argument. Apart from the question that both parties before the tribunal went into the question of go-slow and voluminous evidence was led from H both sides either to prove that there was go-slow or to disprove the same, it appears to us that it would be taking much too technical a view to hold that the discharge was due merely to the failure of the workmen to give the undertaking and that the go-slow had nothing to do with the discharge. We are of opinion that the two notices of December 15 and December 17 have to be read together and it may be pointed out that the notice of December 17th does refer to the earlier notice of December 15th. If we read the two

notices together, there can be in our opinion be no doubt that though the discharge is worded as if it was due to the failure to record their willingness to work faithfully and diligently, it was really due to the workmen concerned using go-slow tactics. Notice of December 15, is in two parts. The first part sets out the facts and states what the workmen had been doing from the very beginning of the season and particularly from November 27, 1960. It states that on the instigation of the secretary of the union, the workmen had been failing in their duty to ensure adequate and regular loading of the cane carrier from the very beginning of the season. It further charges that with effect from November 27 they had in combination with one another deliberately and wilfully resorted to a clear go-slow, a fact said to have been openly admitted by the secretary in the presence of the Labour Superintendent and Labour Officer, Muzaffarpur, in course of discussions held in the office of the Assistant Labour Commissioner on December 6, 1960. The notice then says that the average daily crushing is 26,000 maunds out of which more than 2,000 was due to the newly introduced device of direct feeding of the cane carrier by cane carts weighed during nights and not attributable to any effort on the workmen's parts; thus the actual crushing had been practically reduced to something between 23,000 to 24,000 maunds per day, which was highly uneconomical and technically unsafe for the factory which had an installed crushing capacity of more than 1,200 tons a day *i.e.* over 32,000 maunds a day. The notice also says that about 14,000 bales of extra bagasse kept in stock as reserve and already been consumed in the last twelve days and the factory was faced with a situation when at any moment its boilers might go out of steam for want of bagasse-fuel leading to an abrupt stoppage of the mill and finally resulting in a major break-down of machinery.

These facts which were given in the first part of the notice dated December 15, 1960 really show the charge which the respondent was making against the workmen concerned. Having made this charge of go-slow in the manner indicated in the first part of the notice (and it may be mentioned that this notice was not only put on the notice-board but was given to each workmen individually), the respondent then indicated in the second part what action it intended to take. In this part the respondent told the workmen concerned that unless they voluntarily recorded their willingness individually to discharge their duties faithfully and diligently by feeding the cane carrier so as to give a minimum average daily crush of 32,000 maunds, excluding stoppages other than those due to over-loading or under-loading of the cane carrier, they would be considered to be no longer employed by the respondent. They were given time up to 4 p.m. on December 17, 1960 to record their willingness failing which they would stand discharged from the respondent's service without any further notice with effect from December 18, 1960. The second part of the notice thus indicated to the workmen concerned how much they had to crush every

A day to avoid the charge of go-slow. It further indicated that the respondent was prepared to let bygones be bygones if the workmen concerned were prepared to give an undertaking in the manner desired. Assuming that this course adopted by the respondent was unjust and even improper, reading of the two parts of the notice of December 15, 1960 shows that in the opinion of the res-
B pondent was the normal cane crushing per day and what was the charge of the respondent against the workmen concerned in the matter of go-slow and what the respondent was prepared to accept if the workmen were agreeable to the claim of the respondent. It is clear therefore from the notice which was given on December 15, 1960 that the respondent thought that 32,000 maunds should be the
C normal crush every day excluding stoppages other than those due to over-loading or under-loading of the cane carrier. It also charged the workmen with producing much less than this for the period from November 27, 1960 to December 15, 1960, though it was prepared to 1st bygones be bygones, provided the workmen in future undertook to give normal production. It is in the
D background of this charge contained in the notice of December 15, 1960 that we have to read the notice of December 17, 1960. That notice says that the workmen had failed to record their willingness to work faithfully and diligently in accordance with the notice of December 15, 1960 and therefore they stood discharged, meaning thereby that the respondent was charging the workmen with go-
E slow as indicated in the notice of December 15, 1960 and that as they were not prepared to give normal production even in future they were being discharged. Therefore, though in form the notice of December 17, 1960 reads as if the workmen were being discharged for not giving the undertaking as desired, the real basis of the notice of discharge of December 17, 1960 is the use of go-
F slow which had already been indicated in the notice of December 15 given to each workman individually also.

The reference was made on the joint application of both parties. If all that the workmen desired in their joint application for reference was that it should only be considered whether the discharge of the workmen for refusing to give an undertaking was
G justified, there was nothing to prevent the workmen to insist that in the joint application this matter should be specifically mentioned. In the joint application the first matter which was specified was in these terms:

> "Whether the discharge of workmen mentioned in the ap-
H pendix was justified? If not, whether they should be reinstated and/or they are entitled to any other relief?"

Now if all that was desired was that the tribunal should go into the question whether the discharge of the workmen on the ground that they had failed to give the undertaking should be investigated, it would have been easy to put this term only in the reference in the joint application thus: "Whether the discharges of the workmen mentioned in the appendix on the

ground of their failure to give an undertaking was justified?" The very fact that the matter specified as in dispute was put in the wide words already quoted above shows that the parties did not wish to confine their dispute only to the question whether the discharge on the ground of failure to give an undertaking was justified. Further we have already indicated that both parties understood the dispute to be whether go-slow was justified or not and that is why voluminous evidence was led before the tribunal. The wide terms in which the reference was made along with the notice of December 17th read with the notice of December 15th leave no doubt in our mind that the reference included investigation of any cause which might have led to the discharge of the workmen. There is no doubt in this case that even though notice of discharge was pharsed as if the discharge was being made on account of the failure to give an undertaking the real reason for the discharge was that the workmen had been guilty of go-slow between November 27 and December 15 and were not prepared in spite of the respondent's giving them a chance to improve to show better results. Therefore taking into account the wide terms of reference, the manner in which it was understood before the tribunal, and the fact that it must be read along with the two notices of December 15 and 17, 1960, particularly because it was made soon thereafter at the joint application of the parties, we have no doubt that the tribunal was entitled to go into the real dispute between the parties, namely whether the discharge was justified on the ground that there was misconduct in the form of go-slow by the workmen concerned between November 27, 1960 workmen therefore on this head must be rejected.

Re. (11).

Then we come to the question whether it was open to the tribunal when there was no enquiry whatsoever by the respondent to hold an enquiry itself into the question of go-slow. It was urged on behalf of the appellants that not only there was no enquiry in the present case but there was no charge either. We do not agree that there was no charge by the respondent against the workmen concerned. The first part of the notice of December 15, 1960 which was served on each individual workmen was certainly a charge by the respondent telling the workmen concerned that they were guilty of go-slow for the period between November 27 and December 15, 1960. It is true that the notice was not headed as a charge and it did not specify that an enquiry would follow, which is the usual procedure when a formal charge is given. Even so, there can be no doubt that the workmen concerned knew what was the charge against them which was really responsible for their discharge from December 18, 1960.

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.

A In such a case the employer would not have the benefit which he had in cases where domestic inquiries have been held. The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic inquiry has been properly held (see *Indian Iron & Steel Co.* v. *Their workmen*(1) but also to satisfy B itself on the facts adduced before it by the employer whether the dismissal or discharge was justified. We may in this connection refer to *M/s Sasa Musa Sugar Works (P) Limited* v. *Shobrati Khan*(2), *Phulbari Tea Estate* v. *Its Workmen*(3) *and the Punjab National Bank Limited* v. *Its Workman*(4) There three cases were further considered by this court in *Bharat Sugar Mills Limited.* v. C *Shri Jai Singh*(5), and reference was also made to the decision of the Labour Appellate Tribunal in *Shri Ram Swarath Sinha* v. *Belaund Sugar Co.* (6) It was pointed out that "the import effect of commission 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 D the charges have really been made out". It is true that three of these cases, except *Phulbari Tea Estate's case*(3), were on applications under s. 33 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the tribunal for approval under s. 33 or on a reference under s. 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is E 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's*(3) was on a reference under s. 10, and the same principle was applied there also, the only difference being that in that case, there was an F 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.

G 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 H the employer would be entitled to rely upon the enquiry which he had held in the mean-time. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry given. On the other hand, if in such cases the employer is given an opportunity to justify the

(1) [1958] S.C.R. 667.
(2) [1959] Supp. S.C.R. 836.
(3) [1960] 1S.C.R. 32.
(4) [1960] 1 S.C.R. 806.
(5) [1962] 3 S.C.R. 684.
(6) [1954] L.A.C. 697.

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 no enquiry has in fact been held. We must therefore reject the contention that as there was no enquiry in this case it was not open to the respondent to justify the discharge before the tribunal.

Re. (*iii*)

The question whether there was go-slow during the period from November 27 to December 15, 1960 is a question of fact and the tribunal has come to the conclusion that there was go-slow during this period. Ordinarily this Court does not go into findings of fact recorded by a tribunal unless there are special reasons, as, for example, where the finding is based on no evidence,—which of course is not the case here. Learned counsel for the appellants however urges that the finding of the tribunal that the workmen concerned were guilty of go-slow is perverse and that evidence which was relevant and material has been ignored. As the case involves the discharge of as many as 119 workmen we have decided to go broadly into the evidence to see whether the finding of the tribunal is patently wrong.

For this purpose we may first refer to the past history of the working of the respondent factory. It appears that till this court condemned the practice of go-slow in the case of *Bharat Sugar Mills*(1). It was not unusual in the State of Bihar for workmen to give notice of go-slow to employers as if it was a legitimate weapon to be used in matters of dispute between the employers and the workmen. In the present case the respondent had complained as far back at 1950 that go-slow was being resorted to. In 1950 a court of enquiry was constituted to enquire into this question and it made a report that there was a slow-down on the part of the workman for several days in February-March 1950. It also came to the conclusion that the slow-down was instigated and sponsored by union leaders. In 1951, the workmen gave notice of go-slow in case their demands were not fulfilled (vide Ex. A-1) Similar notices were given in 1952 (vide Ex. A-2), In 1954 (vide Ex. A-3 and A-4) and in 1955 (vide Exs. A-5, A-6 and A-7 and on some occasions threats of go-slow did actually materialise. Besides these notices the management had occasion to complain in 1955, 1957, and 1958 more than once that go-slow was being

(1) [1962] 3 S.C.R. 684.

A resorted to at the cane carrier. Thus it appears that resorting to go-slow was a common practice in this factory.

It is in the background of this persistent attitude of the workmen that we have to see what happened in November 1960. We have already referred to the fact that the workmen were dissatisfied with the new incentive bonus scheme proposed by the res-
B pondent. It is not necessary to go into the merits of this new scheme which was proposed in September 1960. But it appears that when there was dispute in the 1959-60 season on the question of how much cane should be crushed, the secretary of the union had accepted in a conference with the Assistant Labour Commissioner that there had been a drop in the amount of cane
C crushed, though he maintained that it was still the average crush. He had also stated then that the workmen were dissatisfied with the incentive bonus scheme in that season and had withdrawn the extra efforts they were putting in after the introduction of the incentive scheme for the first time in 1956-57. Further it was admitted by the secretary in his evidence that when the bonus
D scheme was proposed in 1960-61, it was considered by the workmen in a meeting and it was decided that if the new system was introduced without the consent of the workmen they would not put in any extra effort for giving more than what was the normal crush in the mill. The evidence also shows that there were conferences about the new scheme and at one stage the respondent
E suggested that the norm should be 30,000 maunds crush per day while the union was agreeable to 29,500 maunds per day. But there was no agreement in this behalf and so that workmen carried out their resolve not to put in extra efforts to give more than the average normal crushing per day. Thus the season which began in November 1960 started with the withdrawal of extra efforts by
F the workmen which in plain terms means that the workman were not prepared to do what they had been doing in this previous season 1959-60 and were slowing down production as compared to what it was in 1959-60. It is in the background of this history and this admission that we have to look broadly into the evidence to see whether the tribunal's conclusion that there was go-slow is
G justified.

The main contention on behalf of the respondent in this connection is that that one has to see is that is called crushing speed for a day of 24 hours and it is this crushing speed which would determine whether there was go-slow during the period in dispute. It has been urged that crushing speed per 24 hours is different
H from the actual crushing per day or the average crushing for a period, for the actual crushing per day from which the crushing speed is arrived at depends on a number of factors, particularly it depends on the amount of stoppages that take place during the day and if there are more stoppages the actual crushing on a particular day would necessarily go down. Crushing speed per twenty-four hours on the other hand is arrived at by excluding the stoppages and then working out what would be the amount of cane

crushed in 24 hours if there had been no stoppages. The case of the respondent further is that when it gave the notice on December 15, 1960 asking for a crush of 32,000 maunds per day it really meant that the workmen should work in such a way as to give a crushing speed of 32,000 maunds per day, though the words "crushing speed" were not actually used in the notice. It is however pointed out that the notice when it mentions 32,000 maunds as the normal crush expected per day excluded stoppages other than those due to over-loading or under-loading of the cane carrier. Therefore, the respondent wanted the workmen to give a crushing speed of 32,000 maunds per day which would exclude stoppages, the only exception being stoppages due to over-loading or under-loading, which, according to the respondent, is due to the deliberate action of the cane carrier workmen to cause stoppages, We think that this explanation of what the respondent meant when it gave the notice of average daily crush of 32,000 maunds is reasonable, for it is impossible to accept that 32,000 maunds were required to be crushed irrespective of stoppages, beyond the control of the workmen. Further it is not in dispute that the labour force was more or less the same throughout these years, and therefore we have to see whether during the period from November 27 to December 15, 1960 there was any significant drop in the crushing speed. If there was such a significant drop that could only be due to go-slow tactics which have been euphemistically called withdrawal of extra efforts.

It is necessary therefore to look at the charts produced in this case to determine this question. The appellants mainly relay on chart Ex. W-3. That is however a chart of actual crushing per day during the period from 1954-55 to 1960-61 and has nothing to do with crushing speed which in our opinion would be the determining factor in finding out whether there was go-slow. The actual crush may vary as we have already said due to so many factors, particularly due to stoppages for one reason or the other. The respondent produced another chart Ex. W-4 which shows the crushing speed for the entire season from 1954-55 to 1959-60. We consider that it would not be proper to take the figures for the years 1956-57 to 1959-60 in which years incentive bonus schemes were in force and which according to the workmen resulted in extra efforts on their part. But the figures of 1954-55 and 1955-56 would be relevant because in these years there was no incentive bonus scheme and no night weighment of carts. The workmen have also produced a chart showing cane crushed, actual crushing days and crushing per day; but this chart does not show the crushing speed and does not take into account the stoppages. It merely shows the actual number of working days and the average per day. That however would not be an accurate way of finding out whether in fact there was go-slow during the period with which we are concerned. The respondent's chart Ex. W-4 while showing the same amount of actual crushing also shows what would be the crushing

A speed per 24 hours after excluding stoppages. This chart in our opinion is the proper chart for determining whether there was go-slow during the revelant period. Now according to this chart (Ex. W-4) the daily average crushing speed in 1954-55 was 29,784 maunds and in 1955-56, 30,520 maunds without incentive bonus and without night weighment of carts. It appears that from the B middle of 1959-60 season night weighment of carts started and it is not in dispute that that resulted in an increase in the daily crushing and this increase is put at over 2,000 maunds per day by the respondent; the secretary of the union admitted that this would result in an increase of about 2,500 maunds per day. We have already said that in the years 1954 and 1955 there was no incentive C bonus and if these figures are accepted as giving the average crushing speed per day (when there was no incentive bonus and no weighment of carts at night) it would in our opinion be not improper to accept that the crushing speed with night weighment of carts would be in the neighbourhood of 32,000 maunds per day in view of the admission that night weighment of carts resulted in an D increase of crushing by about 2,000 maunds to 2,500 maunds per day. Therefore, when the respondent gave notice on December 15, 1960 that the average crushing per day should be 32,000 maunds excluding stoppages (except those due to over-loading or under-loading of the cane carrier, for which the workmen would be responsible) it cannot be said that the respondent had fixed something E which was abnormal. It is true that when negotiations were taking place in connection with the incentive bonus scheme for the year 1960-61, the respondent was prepared to accept a crushing speed of 30,000 maunds per day above which the incentive bonus scheme would apply. That is however easily understood for a proper incentive bonus scheme always fixes a norm which is slightly lower than F the average in order that there may be greater incentive to labour to produce more than the average. Even so, when the incentive bonus scheme for 1960-61, was not acceptable to the workmen and they had already decided to withdraw what they called extra effort, the respondent would not be unjustified in asking for the full average crushing speed based on the production of the years G 1954-55 and 1955-56, when there was no incentive bonus scheme and no night weighment of carts.

It has been urged on behalf of the appellants that the crushing speed of 32,000 maunds per 24 hours is not correctly arrived at for it does not take into account half hour's rest per shift which is permissible under s. 55(1) of the Factories Act, No. 63 of 1948. H Thus, according to the appellants, crushing speed should be worked out on 22½ hours per day and the crushing will then be less by 1/16th and will only come to 30,000 maunds per day. Reliance in this connection is placed on s. 55(2) of the Factories Act, which lays down that "the State Government......may by written order and for the reasons specified therein, exempt any factory from the provisions of sub-section (1) so however that the total number of hours worked by a worker without an interval does not exceed

six. It is therefore urged that the workmen were entitled to half an hour's rest per shift in any case because the shift was for eight hours. The respondent on the other hand relies on s. 64(2) (d) for the Factories Act and its case is that the State Government had made rules under that provision in connection with sugar factories, which apply to it. Section 64(2) (d) is in these terms:—

> "The State Government may make rules in respect of adult workers in factories providing for the exemption, to such extent and subject to such conditions as may be prescribed—
>
> . . . .
>
> (d) of workers engaged in any work which for technical reasons must be carried on continuously from the provisions of sections 51, 52, 54, 55 and 56;
>
> . . . . .

We are of opinion that this provision in s. 64(2) (d) being a special provision will over-ride both sub-ss. (1) and (2) of s. 55, for it gives power to the State Government by making rules to exempt certain types of factories from the application of the whole of s. 55, subject to such conditions and to such extent as the rules may provide. It appears that rules were framed in this behalf by the Government of Bihar in 1950 by which sugar factories were exempted from the application of s. 55 for purposes of handling and crushing of cane, among others, subject to the condition that the workers concerned shall be allowed to take light refreshment or meals at the place of their employment, or in a room specially reserved for the purposes or in a canteen provided in the factory, once during any period exceeding four hours. Thus cane crushing operations are exempt from s. 55(1) and s. 55(2) subject to the condition mentioned above. We may also refer to s. 64(5) which lays down that the rules made under this section shall remain in force for not more than three years. The rules to which reference has been made are of 1950; but there is nothing to show that these rules were not continued after every interval of three years and the position that the exemption applies to sugar factories even now as provided in these rules was not disputed. We shall therefore proceed on the basis that the exemption applied to sugar factories in Bihar. In view of this, the workmen cannot claim half an hour's rest per shift as urged on their behalf, though sometime must be allowed for refreshment or light meals as provided in the provision granting exemption. This means that a few minutes would be allowed to each individual in turn in each shift for light refreshment or meals in such a way that the work does not stop. If we make a total allowance of half an hour or so in this connection the average crushing speed would be reduced to slightly over 31,000 maunds per day and that is all the adjustment that the appellants can claim in view of the exemption under s. 64(2) (d).

Let us now turn to the actual position between November 27 and December 15, 1960. This will appear from chart Ex. W-7.

A That chart shows a crushing speed of 29,859 maunds per day from November 10 to 26, when, according to the respondent, there was only mild go-slow. We are however concerned with the period from November 27 to December 15, 1960 and the crushing speed for 24 hours during that period was 27,830. Now if we take the average crushing speed as 32,000 maunds per 24 hours without any B adjustment or even a little over 31,000 maunds with adjustment following upon the rule relating to exemption from s. 55, there is certainly a significant drop in average crushing speed during this period. Further we find that there is a significant drop even as compared to the period between November 10 to 26, 1960, inasmuch as the drop was over 2,000 maunds per day. Therefore it cannot C be said that the tribunal was incorrect in its conclusion that there had been go-slow during the period from November 27 to December 15. It may be added that when comparisons are made on the basis of crushing speed and labour force is more or less constant, as is the case here, other minor factors to which our attention was drawn on behalf of the appellants during argument do not matter D at all. Even if we take the figure of 30,000 maunds as the crushing speed which the respondent had put forward at the time of the discussion on the incentive bonus scheme, we find that though there was not much difference during the period from November 10 to November 26, there was a significant drop of over 2,000 maunds per day from November 27 to December 15. Looking at E the matter in this broad way—and that is all that we are prepared to do, for we are examining a finding of fact of the tribunal—we cannot say that its conclusion that there was go-slow between November 27 and December 15 is not justified.

Finally, it is urged that notice was given to the workmen on December 15 and they were discharged on December 17, 1960 F without giving them a change to give the necessary production as desired in the notice. But as we have already indicated, the charge in the notice of December 15 was that the workmen had been going slow from November 27 and they were asked to give an undertaking to improve and the respondent was apparently willing to overlook the earlier lapse. Even assuming that the demand of G an undertaking was unjustified, it does appear that the attitude of the workmen was that they would do no better; and in those circumstances they were discharged on December 17, 1960 on the basis of misconduct consisting of go-slow between November 27 and December 16, 1960. That misconduct has been held proved by the tribunal and in our opinion that decision of the tribunal H cannot be said to be wrong. In the circumstances the tribunal was justified in coming to the conclusion that the discharge was fully justified.

In this view of the matter, the appeal fails and is hereby dismissed. In the circumstances we order parties to bear their own costs.

Appeal dismissed.