

EMPLOYERS IN RELATION TO THE MANAGEMENT OF
WEST BOKARO COLLIERY OF M/S. TISCO LTD.

v.

THE CONCERNED WORKMAN, RAM PRAVESH SINGH
(Civil Appeal No. 892 of 2008)

FEBRUARY 1, 2008

(ASHOK BHAN AND DALVEER BHANDARI, JJ.)

Labour Law:

Disciplinary proceedings – Initiated against delinquent workman – For indecent, riotous and disorderly behaviour – Dismissal from service as a result of domestic inquiry – Labour Court holding the domestic inquiry as fair and proper – But, relying on acquittal of workman in criminal case, setting aside order of dismissal and directing his reinstatement holding that Management failed to substantiate charges beyond reasonable doubt – HELD: Where two views are possible on the evidence on record, Industrial Tribunal should be very slow in substituting its opinion and conclusion for those of the domestic tribunal – Standard of proof in criminal case and in departmental proceedings is different – Acquittal in criminal case would not operate as bar in drawing up disciplinary proceedings against the delinquent – Order of Labour Court set aside and that of disciplinary authority restored.

The respondent-workman was dismissed from service as charges of leaving the work without permission and indecent, riotous and disorderly behaviour with a superior as well as a coworker, leveled against him were found to have been established in the domestic inquiry. The Labour Court held that the domestic inquiry conducted by the Management was fair, proper and in accordance with the principles of natural justice. However, relying upon the order of acquittal of the workman in the criminal case, the Labour Court set aside the order of

A dismissal and ordered his reinstatement with 50% back wages holding that the Management had failed to substantiate the charges beyond reasonable doubt. The Management having remained unsuccessful in the writ petition and the consequent Letters Patent Appeal, filed the instant appeal.

Allowing the appeal, the Court

HELD: 1.1 In a case where two views are possible on the evidence on record, the Industrial Tribunal should be very slow in substituting its opinion for that of the domestic tribunal and coming to a different conclusion. [para 20] [255-F, G]

Divisional Controller, KSRTC (NWKRTC) vs. A.T. Mane (2005) 3 SCC 254; U.P. State Road Transport Corporation vs. Vinod Kumar 2007 (13) SCALE 690 – relied on.

The Workmen of M/s. Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. vs. The Management & Ors. [(1973) 1 SCC 813] and South Indian Cashew Factories Workers' Union vs. Kerala State Cashew Development Corpn. Ltd. & Ors. (2006) 5 SCC 201 – cited.

1.2 It has repeatedly been held by this Court that the acquittal in a criminal case would not operate as a bar for drawing up of disciplinary proceedings against a delinquent. It is well settled principle of law that yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in departmental proceedings is preponderance of probabilities. [para 19] [255-B, C, D]

1.3 In the instant case, the Labour Court has set aside the report of the Enquiry Officer and the order of dismissal passed by the Punishing Authority by observing that the charges against the respondent were not proved beyond reasonable doubt and interfered with the findings

recorded by the domestic Tribunal as if it was the appellate A
tribunal. There was evidence present on record regarding
indecent, riotous and disorderly behaviour of the
respondent towards his superiors. The witnesses who
were present at the scene of occurrence have
unequivocally deposed about the misbehaviour of the B
respondent towards his superiors. Their evidence has
been discarded by the Tribunal by observing that in the
absence of independent evidence, the statements of the
workmen who were present at the scene of occurrence
could not be believed. The Labour Court fell in error in C
discarding the evidence produced by the Management
only because the independent witnesses were not
produced. Statements of the fellow workmen had
established the misconduct of the respondent. The
Enquiry Officer accepted the testimony of the witnesses D
produced by the Management who had clearly implicated
the respondent. It was a legitimate conclusion which could
be arrived at and it would not be open to the Labour Court
to substitute the said opinion by its own opinion.
[para 17] [254-A-F]

1.4 The Labour Court fell into factual as well as legal E
error in setting aside the findings recorded by the
domestic Tribunal. The Single Judge as well as the
Division Bench of the High Court have simply affirmed
the findings recorded by the Labour Court. Orders passed F
by the High Court as well as the Labour Court are set aside
and those of the domestic tribunal and the punishing
authority are restored. [para 21, 22] [255-G; 256-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 892
of 2008. G

From the final Judgment/Order dated 15.6.2006 of the High
Court of Jharkhand at Ranchi in L.P.A. No. 389/2004.

Raju Ramachandran, M.K. Dua for the Appellant. H

A Sunil Kumar, Amitesh Chandra Mishra and Alok Kumar
for the Respondent.

The Judgment of the Court was delivered by

BHAN, J. 1. Leave granted.

B 2. Management is in appeal.

C 3. The respondent-workman was working as Senior
Dumper Operator under the Management of the appellant. The
workman was deputed at Open Caste Mine, West Bokaro on
D 2nd of March, 1994 during the first shift from 5.00 a.m. to 1.00
p.m. Respondent left the place of his duty before the end of his
shift duty and went to Rajiv Nagar area where Shri Harbans
Kumar, Senior Officer (Security), along with a number of security
personnel and other workers, was discharging his duties in
E connection with prevention of unauthorized constructions on the
company's land. The respondent-workman along with few others
approached Shri Harbans Kumar and shouted at him using
abusive language and threatened him with dire consequences
in case the unauthorized construction was demolished. The
respondent-workman, on being asked not to behave in the said
manner, assaulted Shri Harbans Kumar with his hands and also
resorted to brick-bating as a result of which Shri Harbans Kumar
and Shri S.P. Yadav sustained injuries on the face and other
parts of the body.

F 4. Appellant-Management issued a charge sheet to the
respondent-workman whereby he was asked to show-cause as
to why disciplinary action should not be taken against him under
Clause 22(18) and 22(5) of the Standing Orders of the Company
for the following misconduct: -

G "(a) leaving work without permission

(b) indecent, riotous and disorderly behaviour with a
superior as well as co-worker."

H 5. The respondent-workman submitted his reply denying
all charges brought against him. The Management decided to

conduct an enquiry and accordingly appointed Shri Madhusudan Das, Deputy Manager (Personnel) as Enquiry Officer. The Enquiry Officer after giving full opportunity to the respondent-workman came to the conclusion that the charges levelled against him were established beyond reasonable doubt and submitted his report.

6. The Punishing Authority after going through the Enquiry Report and related enquiry papers, satisfied himself that charges levelled against the respondent had been established and recommended the dismissal of the respondent from the Company with immediate effect. The workman was accordingly dismissed on 23/25th of April, 1994.

7. The respondent raised an industrial dispute and the Government of India, Ministry of Labour, in exercise of its powers under Section 10(1)(d) of the Industrial Disputes Act, 1947 (for short 'the Act'), referred the following dispute to the Tribunal for adjudication:

"THE SCHEDULE

"Whether the action of the Management of West Bokaro Collieries of M/s. TISCO Ltd. PO-Ghatotand, Dist. Hazaribagh in dismissing Shri Ram Pravesh, Ex. Sr. Dumper Operator from the services of the Company w.e.f 25.4.1994 is justified? If not, to what relief the workman is entitled?"

8. The respondent on 3rd of October, 2003, made a statement before the Labour Court that he did not want to challenge the legality, fairness and propriety of the domestic enquiry. On this statement being made, the Labour Court, after careful consideration of the facts and circumstances and the submissions advanced by the Counsel for the respondent, held that the domestic enquiry conducted by the Management was fair, proper and in accordance with the principles of natural justice. The matter was adjourned to 14th of December, 2001 for hearing argument on merit.

A 9. The Industrial Tribunal set aside the order of dismissal
passed against the respondent by holding that the Management
had failed to substantiate the charges brought against the
concerned workman beyond reasonable doubt. Accordingly,
order of dismissal passed against the concerned workman was
B set aside and he was ordered to be reinstated with 50% back
wages.

10. Management, thereafter, filed the Writ Petition before
the High Court which was dismissed by the Learned Single
Judge, aggrieved against which Management filed Letters
C Patent Appeal which has also been dismissed by the impugned
order.

11. Learned Senior Counsel, Mr. Raju Ramachandran,
appearing for the Management submitted that the findings
D recorded by the domestic Tribunal based on the evidence cannot
be set aside or interfered with by the Industrial Tribunal or the
Courts by substituting their substantive opinion in place of the
one arrived at by the domestic Tribunal. It is further contended
that the Tribunal applied the standard of proof of beyond
E reasonable doubt which is required to be proved in criminal
cases whereas in the domestic enquiry and Civil Courts, the
standard of proof is of preponderance of probabilities. It is
further contended that the Tribunal erred in relying upon the
order of acquittal passed in favour of the respondent by the
F Criminal Court as in the criminal cases, the standard of proof
required to prove a charge is materially different than in civil
matters.

12. As against this, Learned Counsel for the respondent
contended that the Industrial Tribunal was fully justified in coming
G to the different conclusions in exercise of its powers under
Section 11A of the Act.

13. Counsel for the parties have been heard at length.

14. The Tribunal in its order on re-appreciation of evidence
H came to the conclusion that in the absence of any independent

evidence other than of fellow workman, the charge of indecent, riotous and disorderly behaviour with superior and co-worker was not proved. Insofar as the absence from the duty is concerned, Tribunal came to the conclusion that according to the workman, he had left the place of work at 12.25 P.M. and as the incident allegedly had taken place at 12.30 P.M., the respondent could not have reached the place of incident at 12.30 P.M. after collecting his other associates. In para 14 of its order, the Tribunal concluded that Management had failed to substantiate the charges brought against the workman beyond reasonable doubt.

15. This Court in *Divisional Controller, KSRTC (NWKRTC) vs. A.T. Mane* [(2005) 3 SCC 254], held that: -

“From the above it is clear that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of *Rattan Singh* [(1977) 2 SCC 491] is not a condition precedent. We may herein note that the judgment of this Court in *Rattan Singh* has since been followed by this Court in *Devendra Swamy vs. Karnataka SRTC* [(2002) 9 SCC 644]”

16. In *U.P. State Road Transport Corporation vs. Vinod Kumar* [2007 (13) SCALE 690], this Court again observed that in the absence of a challenge to the legality or fairness of the domestic enquiry, the Court should be reluctant to either interfere with the finding recorded by the Enquiry Officer or the punishment

A awarded by the Punishing Authority.

17. After going through the order of the Industrial Tribunal, we are of the opinion that the Tribunal has interfered with the findings recorded by the domestic Tribunal as if it was the Appellate Tribunal. There was evidence present on record regarding indecent, riotous and disorderly behaviour of the respondent towards his superiors. The Management witnesses who were present at the scene of occurrence have unequivocally deposed about the misbehaviour of the respondent towards his superiors. Their evidence has been discarded by the Tribunal by observing that in the absence of independent evidence, the statements of the workmen who were present at the scene of occurrence could not be believed. Industrial Tribunal fell in error in discarding the evidence produced by the Management only because the independent witnesses were not produced. It is nobody's case that the independent witnesses were available at the scene of occurrence and the Management had failed to produce them. It is possible that at the time of occurrence, only the workers of the Management and the persons who were trying to put up the construction unauthorizedly were the persons present and no independent evidence was available. Statements of the fellow workmen had established the misconduct of the respondent. Enquiry Officer accepted the testimony of the witnesses produced by the Management who had clearly implicated the respondent. It was a legitimate conclusion which could be arrived at and it would not be open to the Industrial Tribunal to substitute the said opinion by its own opinion.

18. Findings recorded by the Tribunal that the workman had left the place of duty at 12.25 P.M. and, therefore, could not have reached the place of occurrence at 12.30 P.M. after collecting his other associates, is not based on any evidence. The case of the Management is that the respondent had left his place of duty at 12.05 P.M. and reached the place of occurrence at 12.30 P.M. after collecting his fellow workmen. There was sufficient time for the workman to reach the place of occurrence

within half an hour as the distance between the place of duty and the place of occurrence was only 1 k.m. The duty of the respondent-workman was upto 1.00 O'clock. Even if, it is accepted that he left the place of duty at 12.25 P.M., then also, he left the place of duty during his duty hours.

19. Tribunal has set aside the report of the Enquiry Officer and the order of dismissal passed by the Punishing Authority by observing that the charges against the respondent were not proved beyond reasonable doubt. It has repeatedly been held by this Court that the acquittal in a criminal case would not operate as a bar for drawing up of a disciplinary proceeding against a delinquent. It is well settled principle of law that yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the standard of proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance of probabilities.

20. Learned Counsel for the respondent cited two cases – *The Workmen of M/s. Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. vs. The Management & Ors.* [(1973) 1 SCC 813] and *South Indian Cashew Factories Workers' Union vs. Kerala State Cashew Development Corpn. Ltd. & Ors.* [(2006) 5 SCC 201], to contend that the Labour Court in exercise of its jurisdiction under Section 11A could have come to a different conclusion. There is no quarrel with this proposition of law. The Labour Court could have awarded lesser punishment in the given facts and circumstances of the case. In a case where two views are possible on the evidence on record, then the Industrial Tribunal should be very slow in coming to a conclusion other than the one arrived at by the domestic Tribunal by substituting its opinion in place of the opinion of the domestic Tribunal.

21. Labour Court fell into the factual as well as legal error in setting aside the findings recorded by the domestic Tribunal. Learned Single Judge as well as the Division Bench have simply

A affirmed the findings recorded by the Tribunal.

22. For the reasons stated above, we accept this appeal, set aside the order passed by the High Court as well as the Labour Court. Accordingly, the Order passed by the domestic Tribunal and the Punishing Authority is restored. There should be no orders as to costs.

B

R.P.

Appeal allowed.