

CASE NO.:
Appeal (civil) 892 of 2008

PETITIONER:
Employers Management West Bokaro Colliery of TISCO Ltd.

RESPONDENT:
Concerned Workman, Ram Pravesh Singh

DATE OF JUDGMENT: 01/02/2008

BENCH:
ASHOK BHAN & DALVEER BHANDARI

JUDGMENT:
JUDGMENT
(Arising out of S.L.P. (C) No. 13281 of 2006)
BHAN, J.

1. Leave granted.

2. Management is in appeal.

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 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 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.

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: -

(a) leaving work without permission
(b) indecent, riotous and disorderly
behaviour with a superior as well
as co-worker.

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:

\023THE SCHEDULE

\023Whether 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?\024

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.

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 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 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 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 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 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 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 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: -

\023From 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]\024

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 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 \026 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\022 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 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.

JUDIS