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Government of West Bengal
Labour Department, I.R. Branch
N.S. Building, 12th Floor, 1, K.S. Roy Road, Kolkata – 700001

No. Labr./...../06/(LC-IR)/22015(15)/106/2019

Date : 03/01/2023

ORDER

WHEREAS an industrial dispute existed between M/s Hindustan Motors Ltd., Hind Motor, Hooghly, and its workman Mr. M. F. Khan, H.M. Security, Barrack, P.O. Hind Motor, Dist. - Hooghly regarding the issues being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14 of 1947);

AND WHEREAS the company has filed an application directly under Section 33(2)(b) of the Industrial Dispute act, 1947 (14 of 1947) to the Fifth Industrial Tribunal specified for this purpose under this Department Notification No. 101- IR dated 2.2.12;

AND WHEREAS the said Fifth Industrial Tribunal has submitted to the State Government its Order dated 30.11.2022 on the said Dispute vide Memo No. 1746 / L.T. dated 30.11.2022.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said Order as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,

Sd/-

Joint Secretary

to the Government of West Bengal

No. Labr./...../06/1(2)/(LC-IR)

Date : 03/01/2023

Copy forwarded for information to :

1. The Judge, Fifth Industrial Tribunal, N.S. Building, 3rd Floor, 1, K.S. Roy Road, Kolkata - 700001 with reference to his Memo No. 1746 / L.T. dated 30.11.2022.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

Sd/-

Joint Secretary

No. Labr./...../06/2(6)/(LC-IR) & enclos.

Date : 03/01/2023

Copy with a copy of the Order is forwarded for information & necessary action to:

1. M/s Hindustan Motors Ltd., Hind Motor, Hooghly.
2. Mr. M. F. Khan, H.M. Security, Barrack, P.O. Hind Motor, Dist. - Hooghly.
3. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building (11th Floor), 1, Kiran Sankar Roy Road, Kolkata – 700001.
- ✓ 4. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.
5. Office Copy.

Sd/-

Joint Secretary

CASE NO.- 01/2006, U/s. 33(2)(b)ORDER NO. – 259.Dated:- 30/11/2022.

This case has arisen out of an application U/s. 33(2)(b) of the Industrial Dispute Act., 1947 filed by the Hindustan Motors Limited against their workman Mr. M. F. Khan.

Briefly stated, the case of M/s. Hindustan Motors Limited as said out in the application U/s. 33(2)(b) of the Industrial Dispute Act., 1947 runs as follows:-

An issue regarding freezing of D.A. (Dearness Allowances) was pending before this Tribunals for adjudication vide Government Order of Reference No. 1355-IR, dated 16/08/2022 between the applicant and the workmen represented by the H. M. Khan & Hyderabad Industries Worker's Union along with other 3 Unions. The O.P./Workman of this case is concerned in such dispute and accordingly for the purpose of awarding punishment to the opposite party workman/management requires an approval of such punishment as per provision of U/s. 33(2)(b) of the Industrial Dispute Act, 1947. The present O.P./workman joined in the concerned on 25/10/1989 as Security Guard. While on duty as Security the O.P. / workman on 31/01/2006, at about 3.40 a.m. was viewed sleeping at sitting on a Tool and accordingly informed the incident to the present petitioner / management by a letter dated 02/02/2006, and then issued a charge sheet specifying the misconduct in terms of certificate of standing order of the petitioner/company. The O.P./Workman had given a reply to the Charge Sheet by a letter dated 04/02/2006. The company had considered the reply to the charge sheet given by the O.P./Workman and found the same not satisfactory and held a Domestic Enquiry regarding the charges leveled against the O.P./Workman and after conclusion of the enquiry, the Enquiry Officer had submitted his report of enquiry on 30/08/2006. In the said enquiry sufficient opportunity had given to the O.P./Workman for his self-defense after supplying the copy of Enquiry Proceedings to him and the Enquiry Officer also explained the same to the workman during the Enquiry Proceeding and he also put his signatures in the copies of the proceedings. Apart from that the O.P./Workman was also allowed to adduce evidence on his behalf and to cross-examine of the management witnesses.

Ultimately, the Enquiry Officer in his Enquiry Report dated 30/08/2006, has found said delinquent workman Mr. M. F. Khan has guilty of the charges of the charge sheet and he also forwarded the Enquiry Report to the management. Thereafter, the management had forwarded the report of the Enquiry Officer to the Charge Sheeted person in order to give him further opportunities to meet the report of Enquiry Officer. Thereafter considering the report of the Enquiry Officer independently along with the representation dated 08/09/2006 submitted by the OP/Workman which found not convincing and as the report found well reason based on consideration of materials available in the enquiry, the management expected the report and considering the gravity of miss-conduct and past service record of the OP/Workman, proposed to dismiss him from service and accordingly notice dated

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24/09/2006 was issued where the OP/workman asked to show caused as to why the punishment of dismissal should not be awarded against him. As the explanation given by the OP/workman was not satisfactory and acceptable accordingly the management decided for dismissal of the workman and finally his dismissal order dated 14/11/2006, was issued on the same date.

In accordance with the provision of the Industrial Dispute Act., 1947 the OP/Workman had been paid the wages for One month without any direction. This application has been filed in accordance with the provision of Section 33(2)(b) of the Industrial Dispute Act., 1947. The management has prayed for according approval to the action taken against the OP/workman.

The OP/Workman namely Mr. M. F. Khan has contested the application by the filling a written statement. It has been contended an inter alia by the OP/workman that the dismissal order dated 14/11/2006, issued by the company against him is totally perverse and e-motivated and also contrary to the principal of natural justice. It also contended that the present OP/workman is the Vice-President of Hindustan Motors & Hyderabad Industries Limited Sangrami Shramik Karmochari Union and the management has filed the present application before this Tribunal as the Industrial Dispute Record "freezing of D.A. and adjournment of non production days against privilege or seek leave by the management" raised by the aforesaid union are pending for adjudication in spite of the direction of the Hon'ble High Court the said dispute still pending. The Hindustan Motors & Hyderabad Industries Limited Sangrami Shramik Union became the allocated soul of bargaining agent union with effect from 01/11/2002. From November, 2002, the company started illegal transfer for more than 200 members to various Dealers violating the standing order of the company. The aforesaid union in the meantime reportedly moved before the Hon'ble High Court in the year 2004 and 2005. To stop the Lawful Union activities of the said union the company on 20/04/2005, charge sheeted and suspended 124 above mentioned Union activist and also dismissed 13 nos. of 'Badli Workmen' with allocation of "Go Slow" when the Union with the aid of documentary evidence proved before the domestic enquiry that the allocation of "Go Slow" was false and fabricated the company on 2006 withdraw the suspension order of said 124 workmen and also re-instated the said 13 nos. of 'Badli Workmen' continue their charge sheet without concluding the domestic enquiry against 124 workmen and started to issue several charge sheet against the Secretary and other offices bears including the present OP/workmen. According to this O.P. the entire action and activities of the company regarding conduct of Domestic Enquiry is the violation of principal of Natural Justice. He also contended that the said union in spite of all reports written and verbal request to conduct the Domestic Enquiry either in Bengali or in Hindi Language, the company until conducted enquiry proceedings an English Language. It also stated that in spite of presence of Superior Officer of Mr. M. F. Khan namely Mr. Dilip Kumar at the time of the incident, the said officer did not lodge any written complaint against him.

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He also stated that the MW-1 stated before the Enquiry Officer that throughout the long service of Mr. M. F. Khan never committed any such type of negligence in his duty and he also disposed security Gumti has created by the company to protect by the protected Security Guard and from the natural calamity. The company never produced any standing order before the Domestic Enquiry Officer from which it found his security guard will never kept an opportunity to sit on the tool inside the Security Gumti. It also stated by him till date the Security Guard of the company used to sit on the tool inside security post when there is no specific job. He also stated that MW-2 deposed before the Enquiry Officer that the Gumti is cover from 3 sides and in another side there is a transparent glass and regarding the use of said Gumti, the evidence of MW-1 and MW-2 are contradictory. It also stated that the company has issued an illegal dismissal order based on false charge sheet dated 02/02/2006, as the workman Mr. M. F. Khan protest against illegal claim by a special application by MW-1, regarding sanction of leave on 29/01/2006 and the company has taken vindictive attitude against the various illegal activities of the company. He further stated that on 14/11/2006, this O.P./workman was on duty from 5.45 a.m. to 9.45 a.m. at out boundary gate and from 5.45 p.m. to 9.45 p.m. at wear house inside "Store" which will be evident from Security Guard staff duty register and from the pay slip from the month of November, it would reveal that he was paid wages for 14/11/2006. On 15/11/2006, when he reported for duty he was not allowed to join without assigning any reason and paying denied all employment for which he lodged the complaint before O. C. of Uttarpara – Police Station. From the dismissal letter dated 14/11/2006 it will reveal that he was dismissed with effect from 14/11/2006. The management allowed to join and performing his duty on 14/11/2006, and on the face of the dismissal letter dated 14/11/2006 it is stipulated that his service was dismissed with effect from 14/11/2006 as such the alleged dismissal ipso-facto stands invalid and in-operative in the eye of Law. Accordingly, the workman prays for rejection of the prayer of the company as delineated in the application U/s. 33(2)(b) of the Industrial Dispute Act, 1947.

DECISION

Section 33(2)(b) of the Industrial Disputes Act., 1947 lays down:-

"(2) During the pendency of any such proceeding in respect of an Industrial Dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman:-

(b) For any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:"

Proviso to Section 33(2)(b) of the Industrial Dispute Act, 1947 provides that "Provided that no such workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."

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Judge,
5th Industrial Tribunal
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So, it is clear from perusal of the above mentioned proviso to section 33(2)(b) of the Industrial Dispute Act, 1947 that in order to get approval of the action taken by the employer, three conditions need to be fulfilled;

- (i) Action of discharge or dismissal;
- (ii) Payment of wages for one month; and
- (iii) Making of an application for approval of the action taken by employer.

Exhibit-7 is the order of dismissal issued by the then factory manager of Hindustan Motors namely Indrish Chandra on 14/11/2006. Said exhibit reveals that the workman Mr. M. F. Khan was dismissed from his service of the company with immediate effect from 14/11/2006. It appears that the order of dismissal was communicated to the workman namely Mr. M. F. Khan namely by register speed post as well as by under certificate of posting Vide the Registration Slip No. EE 508334723IN, dated 14/11/2006. It appears from the further cross examination of OPW-1 of Mr. M. F. Khan that the order of dismissal was issued to him. Exhibit-7 is the order of dismissal was duly admitted by him. Therefore, it can be said that the order of dismissal was duly received by the workman.

Exhibit-7 is the order of dismissal gives out that one month wages without any deduction was sent to the workman namely Mr. M. F. Khan by way of cheque. Exhibit-7/a shows the photocopy of says amounting of Rs. 6377/-, dated 14/11/2006. But According to OPW-1 he had return the cheque as it was deficient in amount. According to OPW-1 at that relevant time his gross pay was more than Rs. 6,000/- Per month, but he fail to say his gross pay at that time and he also not made any whisper in his written statement that he returned his cheque.

Further it reveals from Paragraph-10 of the written statement of the company that at all materials time the wages payable to the opposite party workman is Rs. 6377/- which includes Basis, D. A., H.R.A., Attendance allowance, production incentives, Medical Allowance and Education Allowance and admittedly the present workman Mr. M. F. Khan practically did not disputes this contention of the company in his written statement or his additional written statement. So, it can be safely presume that on the day of dismissal, One Month's salary was offered to the workman.

The application for approval of the action of dismissal of the workman from service was filed by the company before the Tribunal on 14/11/2006.

Therefore, it can be said that the statutory requirement as per proviso to Section 33(2)(b) of the Industrial Disputes Act., 1947 have been full filled by the company.

Now the Question as to the validity of the domestic enquiry needs to be considered and thrashed out.

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In Cholan Roadways Ltd. Vs. G. Thirugnanasambandam reported in (2005) 3 Supreme Court Cases 241 and adverted to by the Learned Advocate for the company, it has been held in para-18 that "The jurisdiction of the Tribunal while considering an application for grant of approval has succinctly been stated by this Court in Martin Burn Ltd. V. R. N. Banerjee.

While exercising jurisdiction under Section 33(2)(b) of the Act, the Industrial Tribunal is required to see as to whether a prima facie case has been made out as regards the validity or otherwise of the domestic enquiry held against the delinquent, keeping in view the fact that if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriate proceeding before the Industrial Tribunal in terms of the provision of the Industrial Dispute Act."

In the case Martin Burn Ltd. Vs. R. N. Banerjee as reported in A.I.R. 1958 Supreme Court 79, it has been held at Para – 27 that "A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record.

Therefore, it can be gathered from the aforesaid decision that the Industrial Tribunal is required to see as to whether the prima facie case has been made out as regards the validity of the domestic enquiry held against the workman.

In Sur Enamel & Stamping Works Ltd. & their workmen reported in 1963-II-LJ-367 and referred to by the Learned Advocate for the company it has been held by the Hon'ble Apex Court at page 369 that "an enquiry can not be said to have been properly held unless:-

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Judge,
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- (i) the employee proceeded against has been informed clearly of the charges leveled against him,
- (ii) the witnesses are examined-ordinarily in the presence of the employee-in respect of the charges,
- (iii) the employee is given a fair opportunity to cross-examine witnesses,
- (iv) he is given a fair opportunity to examine witnesses including himself in his defense if he so wishes on any relevant matter, and
- (v) the enquiry officer records his findings with reasons for the same in his report."

Exhibit-1 is the charge sheet issued by the company against the workman on 02/02/2006. The charges leveled against the workman run as follows:-

"It has been reported to the undersigned by your superior, Lt. Col. R. K. Deb (Retd.) that on 31st January, 2006 at around 3.40 a.m. he himself and the duty officer Mr. Dilip Kumar while on surprise visit found that you were sitting on a tool inside on a post and you were asleep.

They stood there for 10 minutes to observe you but you were asleep. This is a grave disregard to the responsibility and duty of ensuring the safety and security of our MD inside the Banglo and Company's Property as well that was entrusted to you as Security Guard.

Your such alleged act, as mentioned above constitutes major misdemeanor under item no. 5 & 8 of Appendix "D" of the Certified Standing Order of the company in force which read inter alia as under:-

Item No. 5 (Major) "Sleeping on Duty".

Item No. 8 (Major) "Failure to carry out work in accordance with general or specific instruction given by the Officer of the Company".

As such please explain in writing to the undersigned within 48 hours why disciplinary action will not be taken against you".

Exbt.-2 is the reply to the charge sheet given by the delinquent workman Mr. M. F. Khan. In the said exhibit, the workman admitted having received the charge sheet but he denied the allegation against him and practically stated that one conspiracy made against him by the management. He also stated in his reply that the incident on 31/01/2006 was that he went to join his duty one day late from the stipulated date as his father was very ill and he was also unwell and when he went to file his sick leave in prescribed form to Mr. Deb who said that the workman has to file in writing the reason for one day delay but the workman did not file the same, as a reaction to that incident Mr. Deb came to the workman around 4.00 a.m. and told that unless the workman made a separate application in writing he would not allow the workman to join his duty. From exhibit-3 of enquiry proceedings it reveals that said Mr. Deb has deposed as MW-1 and when he was cross examined by the workman's representative that whether he asked to give a separate application with the sick leave form stating the reason of leave his reply was he could not remember of any such communication. Again when he was cross examined by the representative of the workman that was there any written rule in the company regarding giving separate application for sitting reasons of leave along with leave form Mr. Deb reply was referred the certified standing order and leave rules.

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Judge,
5th Industrial Tribunal
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It also reveals from the enquiry proceedings (Exhibit-3) that on 01/03/2006, the management representative place the following documents before the enquiry officer which are:-

1. Complaint letter dated 31/01/2006 (Exhibit-A marked by the enquiry officer).
2. Charge sheeted dated 02/02/2006 (Exhibit-B marked by the enquiry officer).
3. Reply to the charge sheet dated 04/02/2006 (Exhibit-C marked by the enquiry Officer).
4. Notice of enquiry dated 28/02/2006 (Exhibit-D marked by the enquiry officer).

Further it reveals that in the proceeding dated 28/03/2006 the MW-1 Mr. R. K. Deb has placed 3 more documents before the enquiry officer which were:-

1. Charge sheet with suspension dated 25/07/2002 (Exhibit-D marked by the enquiry officer).
2. Letter of suspension dated 19/09/2002 (Exhibit-E marked by the enquiry officer).
3. Another letter relating to letter of suspension dated 22/09/2002 (Exhibit-F marked by the enquiry officer).

From the enquiry proceedings it reveals that MW-1 Mr. R. K. Deb was asked in the proceeding dated 28/03/2006 vide question no. 12 that in reference to Question No. 11 whether he got any previous incident of Mr. M. F. Khan involved in indiscipline in which he replied that he filed the aforesaid 3 documents. Now on perusal those aforesaid 3 documents nothing has transpired before this Tribunal that Mr. M. F. Khan was earlier alleged for any indecent incident. More over from page 30A of the enquiry proceedings it reveals that the workman's representatives made a request to hand over him the copy of standing order of the company and accordingly it was handed over to him on that day. Thereafter, in the proceeding dated 12/05/2006 the MW-1 Mr. R. K. Deb was cross examined by the workman's representatives by putting a question that "Is anything mentioned about the duties and responsibilities of the Security Guard in the Certified Standing Order of the Company?" Against which MW-1 reply that the appropriate authority has specified the area to be included the binding order and accordingly the standing order have been prepared and certified and is applicable to the entire unit and not to a particular department.

No where MW-1 has mentioned that in the certified standing order there is specifically mentioned about the duties and responsibility of the Security Guard.

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30/10/2022
Judge,
5th Industrial Tribunal,
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From page 43A of the enquiry proceeding it reveals that in the cross examination of MW-2 Mr. Dilip Kumar, in Question No. 18 it was asked to him that on 31/01/2006 was the light inside the Gumti was working in which he replied that the light inside the Gumti was not working. Secondly in question no. 20 it was asked MW-2 Mr. Dilip Kumar that "Did you see through the Glass Window that Mr. M. F. Khan was Sleeping?" in which he replied that "I did not see but my superior saw through the Glass Window" which clearly denotes that MW-2 Mr. Dilip Kumar personally did not see Mr. M. F. Khan in sleeping condition in the night on 31/01/2006.

It was also asked MW-2 Mr. Dilip Kumar that whether he knew that there is a written order in the company that security guard will keep standing in their duty on which he replied that Yes, it has given in the standing order of the company. Now from the photocopy of the standing order nothing has transpired before this Tribunal that Security Guard will keep standing in their duty hours.

Now from the enquiry report i.e. Exhibit-4 it reveals that in page – 3 it has mentioned that the evidence of Mr. Dilip Kumar i.e. MW-2 fully corroborated the evidence with Lt. Col. R. K. Deb in the surprise visit and they together found that Mr. M. F. Khan sleeping inside the Gumti at the gate of the Executive Banglo. The enquiry officer also stated in page 3 of his report that on careful perusal of the evidence of the management witnesses did not show that their evidence had in any way been shaken during their cross examination by the representative of the charge sheeted employee, but it has already discussed that the MW-2 in his cross examination before the enquiry proceeding dated 15/05/2006 MW-2 replied that he did not see but his superior saw through glass window which clearly denotes that MW-2 Mr. Dilip Kumar personally did not see Mr. M. F. Khan in sleeping condition inside the Gumti. Therefore, the finding of the enquiry officer that the evidence of the MW-2 Mr. Dilip Kumar fully corroborated the evidence of the Lt. Col. R. K. Deb is not at all correct and acceptable before this Tribunal. More over from the evidence of MW-2 Mr. Dilip Kumar from Question No. 18 it is already clear that the light inside the Gumti was not working on 31/01/2006. The MW-2 Mr. Dilip Kumar also stated in reply of Question No. 28, dated 15/05/2006 that Mr. M. F. Khan on 31/01/2006 was wearing a woolen coat and he was wearing something in his head but he could not remember what it was. Again in Question No. 29 when he was asked that whether he saw Mr. M. F. Khan was sleeping, going near the Gumti then he replied that he was standing at a distance of 6 to 8 feet from the Gumti.

So from the above peace of the evidences of MW-2 Mr. Dilip Kumar it is clear that the light inside the Gumti was not working on 31/01/2006, he personally did not see Mr. K. F. Khan in sleeping condition and he also admitted that he was 6 to 8 feet away from the Gumti. Therefore, it can't be said that both the management witnesses i.e. MW-1 & MW-2 has corroborated their evidence in true sense.

Accordingly, as per the decision of the Hon'ble Apex Court reported in the Sur Enamel & Stamping Works Ltd. and their workmen (1963 – II – LLJ – 367) the guide line in Point-(V) has given by the Hon'ble Apex Court i.e. "the enquiry officer records his findings with reasons for the same in his report" has not been followed completely in this case by the concerned enquiry officer. Therefore, having regards to the facts and circumstances of this case and also considering the materials on record discussed earlier and also with due respect to the decision of the Hon'ble Apex Court and Hon'ble High Court of various states it appears before this Tribunals that the enquiry officer acted illegally in gross violation of the principal of natural justice which caused enough to prejudice to the workman by recording his findings without proper reasons and grounds for the same mentioned in his report.

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Judge,
5th Industrial Tribunal
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The charges as stated earlier it reveals from the report of the Enquiry Officer that the management has failed to prove its charges by adducing corroborative evidences. Accordingly this Tribunal hold that the enquiry report dated 30/08/2006 has got no legal sanction and it is invalid as it is perverse in violation of rule of principal of natural justice and is not binding upon the charge sheeted workman. In the facts and circumstances of the case it can be said that the enquiry was not properly made by the enquiry officer and also the conclusion has not been correctly drawn by the enquiry officer. Though it is the settled principal of law that in a case like this nature, the Tribunal does not sit as a court of appeal and the duty is not cast upon the Tribunal to weigh and re-appreciate the evidence but the Tribunal duty is to examine the finding of the enquiry officer on the evidence in the domestic enquiry to find out whether there is a prima facie case. The finding of the enquiry officer is perverse.

In the present case the management had adduced oral evidence by placing two witnesses i.e. PW-1 Sri Aloke Roy Choudhury who was the then Chief Safety Officer of the company and MW-2 Sri Shyamal Kumar Biswas, the then Assistant General Manager-H.R. of the company. Said Aloke Roy Choudhury in his cross examination has categorically stated that he was not directly connected with the enquiry as at that time he was posted at H.R. Department and he has no personal knowledge about the contents of the documents filed by him and he has also no personal knowledge even regarding the documents filed by him. From the above piece of cross examination of MW-1 Sri Aloke Roy Choudhury it clearly denotes that before this Tribunal management has palpably failed to prove the content of its case.

Further, PW-2 Sri Shyamal Kumar Biswas also stated in his cross examination that he was not associated with an incident as mentioned in the charge sheet dated 12/02/2006 issued to the workman and he was also in no way connected with the disciplinary proceedings and he also did not know the result of the disciplinary proceeding initiated against the workman. He also stated that he has no direct knowledge about those proceedings and he could not say whether the report of the Enquiry Officer was based on reasons.

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30/11/2022
Judge
5th Industrial Tribunal
Govt. of West Bengal

From the above piece of evidence of PW-1 and PW-2 it can be safely presumed that both the management witnesses have no personal knowledge regarding the disciplinary proceeding and enquiry took place against the delinquent workman Mr. M. F. Khan. Even they also have no personal knowledge about the contents of the documents filed by them before this Tribunal. Admittedly the Enquiry Officer has not been examined before this Tribunal, so the workman did not get any opportunity to cross examine the Enquiry Officer regarding the enquiry proceeding and enquiry report. It has already discussed earlier that none of the management witnesses in this case i.e. PW-1 & PW-2 has any personal knowledge regarding the enquiry proceedings and its report. Therefore, the enquiry proceeding and the report of the enquiry officer is in true sense are not proved by the aforesaid two management witnesses before this Tribunal.

Ld. Advocate for the management has filed his written notes of arguments along with some decisions of Hon'ble Apex Court as well as Hon'ble High Courts of different states but surprisingly he has withdrawn himself at the stage of argument. It reveals that Ld. Advocate for the management has referred the decisions reported in 1979 Lab IC – 1279.

This Tribunal has gone through said judgment and with due respect this Tribunal is of the view that decision is not applicable with the present case as the fact of both cases are not similar and Paragraph-17 of that decision clearly stated that the materials on record should be considered. He also referred another decision reported in 2005(1) LLJ which is also not applicable in this case as the facts of both the cases are different. More over the enquiry officer in the present case did not do his job properly and he also did not consider the evidence of the workman as well as the employer thoroughly.

Another case referred by the Ld. Advocated for the management reported in AIR 1963(SC) 1914 but this case is related with Section 10 of the Industrial Dispute Act, and not related with Section 33(2)(b) of this Act, and accordingly not applicable in this case. Another case reported in "Laws (SC) 2011 Page-119" is related with Departmental Enquiry and the instant case is related with the Domestic Enquiry, so this case is not applicable in the present case as Domestic Enquiry and Departmental Enquiry are not similar. The decisions referred in "Laws (SC) 2011 Page-1026" and in CDJ 2012(SC) 656 and in CDJ 2013 (SC) 216 and in "Laws (SC) 2011 Page-938" and in 2020(12) SCALE are all related with the Departmental Enquiry and are not applicable in this case.

The criteria for praying the approval U/s. 33(2)(b) of the Industrial Disputes Act, against the workman is in no way applicable in view of the fact and circumstances of the present case and the citation made by the Ld. Advocate for the management in this case.

Ld. Advocate for the workman also files his written notes of arguments along with some decision of the Hon'ble Apex Court as well as the Hon'ble High Court of various states which are as follows:- 1) 1962 LLJ(I) Pg. 420 SC, (2) 1997 LLJ (I) Pg. 1209, (3) 2002 (2) SCC at Pg. 244 SC, (4) 2018 LLR Pg. 1218 SC, (5) 2003 (I) SCC Pg. 390 / AIR 2003 (SC) Pg. 195 SC, (6) 2009 SCC Pg. 236 / 2018 (2) SCC (L&S) Pg. 698 SC & (7) 1972 FLR Vol. 25 C Pg. 1.

From the aforesaid decisions this Tribunal has gone through the decision reported in **1972 FLR Vol. 25 C Pg. 1**, the Hon'ble Apex Court holds in Paragraph-61 (3) which is as follows:-

When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management are valid and proper.

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Judge,
5th Industrial Tribunal,
Govt. of West Bengal

If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held that he derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

Paragraph -61(5) of that decision stated as follows:-

The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

With due regards to the above decision of the Hon'ble Apex Court this Tribunal is of the view that on the basis of the oral as well as documentary evidences this Tribunal already holds that the enquiry proceedings and its report was not proper. It also discussed earlier that the management had adduced evidences before this Tribunal who were PW-1 & PW-2 and practically those two witnesses had stated nothing regarding the enquiry proceedings or its report before this Tribunal from which this Tribunal can hold that the charges leveled against the delinquent workman has been sufficiently proved.

In view of the facts and circumstances as well as the evidences both oral and documentary as discussed earlier and also in the light of the decision of the Hon'ble Apex Court as referred above this Tribunal is of the view that the domestic enquiry in the instant case was held not in compliance with the principal of natural justice and the enquiry officer acted illegally in gross violation of the principal of natural justice and has got no legal sanction and it is invalid as it is perverse and is not binding upon the charge sheeted workman and the evidence recorded by the Enquiry Officer establishing the delinquent workman Mr. M. F. Khan as guilty is not proper and as such the instant application U/s 33(2)(b) of the Industrial Dispute Act, 1947 filed by the company has got no merit and ought to be rejected.


Hence,

ORDERED


that the application Under Section 33(2)(b) of the Industrial Dispute Act, 1947 filed by M/s. Hindustan Motors Ltd. is rejected on contest but without cost. The action taken by the company against it's workman namely Md. Fakhruddin Khan by way of his dismissal from his service is not approved.

This is the ordered of this Tribunal.

Dictated & corrected by me.


Judge 30/11/2022
5th Industrial Tribunal
Kolkata.

Judge,
5th Industrial Tribunal
Govt. of West Bengal


Judge
5th Industrial Tribunal
Kolkata
30/11/2022

Judge,
5th Industrial Tribunal
Govt. of West Bengal