

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.580 OF 2000

TATA Engineering and Locomotive Petitioner
Company Limited

Vs.

Mr. Nimba Dhondu Deore & Anr Respondents

**ALONGWITH
WRIT PETITION NO. 583 OF 2000**

TATA Engineering and Locomotive Petitioner
Company Limited

Vs.

Mr. Sambhaji Anna Chavan & Anr Respondents

Mr. Kiran Bapat alongwith Mr. Hemant Telkar i/by Haresh Mehta &
Co., Advocate for the Petitioner.

Mr. Rajesh Datar alongwith Mr. Pralhad Paranjpe i/by Mr. Ruturaj
Pawar, Advocate for Respondent no.1.

Coram : Smt. R.P. SondurBaldota, J.

Date : 7th August, 2015.

P.C.

1 The above two petitions are being disposed off by this common order, since they give rise to common questions of law for consideration of the court.

2 It is most unfortunate that after a long gap of 15 years, the references in these two petitions are required to be remanded to the Labour Court for fresh consideration on account of the error committed by the Labour Court in the procedure followed for deciding the references.

3 The two references in question filed by the respondents challenge their dismissal from service after enquiry into the misconducts alleged against them. By the orders dtd.19th July, 1996 and 30th August, 1995, the Labour Court held that the enquiry conducted by the petitioner into the misconduct was fair and proper in both the references. However, at that time it did not consider the aspect of the propriety of the inference of guilt drawn by the Enquiry Officer. Therefore, the petitioner filed applications dtd. 13th December, 1996 requesting for decision on the propriety of the findings of the Enquiry Officer. The Labour Court, however dismissed applications by it's separate orders dtd.4th March, 1997. Then, by it's orders dtd. 5th November, 1999, the Labour Court held that the misconduct alleged on

the part of the respondents was not proved before the Enquiry Officer as well as before the Court and that further the punishment imposed upon them was disproportionate.

4 In the above facts, Mr. Bapat, the learned advocate for the petitioner rightly submits that the Labour Court is in error in firstly not giving a specific finding as regards the propriety of conclusions drawn by the Enquiry Officer on the basis of the material before him before taking up the question of the propriety of the punishment awarded to the respondents and then not giving an opportunity the the petitioner to lead evidence before it to establish the allegations in the charge-sheet against the respondents. It is well established position in law that in the event of the court giving adverse finding either as regards propriety of the procedure of the domestic enquiry or as regards the findings of the Enquiry Officer, it must give an opportunity to the employer to lead evidence before the court. Failure to give such an opportunity vitiates the award and justifies the order of remand.

5 As regards the respondent in the first petition, the reference at his instance involved two charge-sheets, one is dtd.16th May, 1989 and the other dtd.5th September, 1990. The respondent in the second petition is party to the charge-sheet 5th September, 1990. The Labour Court has held the charges against the respondent in the first petition under charge-sheet dtd. 16th May, 1989 stand established.

Hence, the directions for remand are needed only for charge-sheet dtd. 5th September, 1990.

6 For the reasons stated above, the petitions are allowed. The orders impugned in the petitions limited to the charge-sheet dtd. 5th September, 1990 are set aside. The references are remanded to the Labour Court to consider the matters afresh on the inference of guilt drawn by the employer. In the event, the Labour Court finds that the inference is not supported by material, the Labour Court shall give an opportunity to the petitioner to lead evidence on the question and thereafter decide references. The Labour Court shall decide the matter within six months.

(Smt. R.P. SondurBaldota, J.)