

HIGH COURT OF CHHATTISGARH, BILASPUR
WP No.5289 of 2005

Smt. Chandrika Khare Aged about ____ year Widow of Late Hiralal Khare,
 Behind Kanji House, Parsabhatha, P.O. Balco, Korba (CG)

---- Petitioner

Versus

- 1.** Dy.General Manager (Mechanical Maint./Fabrication) Bharat Aluminium Company Ltd., Korba (CG)
- 2.** Asstt. Personnel Officer, Bharat Aluminium Company Ltd., Korba (CG)
- 3.** The State Industrial Court, Through:- Its Chairman, Industrial Court, Raipur (CG)
- 4.** The Presiding Officer, Labour Court, Bilaspur (CG)

---- Respondents

For Petitioner	:	Mr.Vinod Deshmukh, Advocate
For Respondents No.1 & 2	:	Mr.N.K.Vyas, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

16/1/2018

- 1.** This writ petition is directed against the order dated 17.8.2005 (Annexure P/3) passed by the Industrial court, Raipur in Appeal No.258/MPIR Act/98, whereby the Industrial Court has set aside the order passed by the Labour Court, Bilaspur on 15.10.98 (Annexure P/2) and reinstated the employee (since deceased) with back wages.
- 2.** The deceased employee was charge-sheeted on 28.11.1994 for committing theft of company's property as he was caught red handed by the CISF persons carrying 6 kg. of aluminium ball. Considering the act to be major misconduct as per clause 29(II) of the Certified Standing Order of the Company, enquiry was initiated against him and in the said enquiry, charges were found proved and he was inflicted punishment of dismissal from service, which he challenged before the Labour Court. The Labour Court

declared the domestic enquiry to be illegal and gave an opportunity to the management to lead evidence and to establish the charges. Upon conclusion of enquiry, the Labour Court directed reinstatement of the deceased employee with back wages. Feeling aggrieved against that order, respondents No.1 and 2 preferred an appeal before the Industrial Court. The Industrial Court by the impugned order dated 17.8.2005 allowed the appeal holding that documents Ex.D/1 to D/4 have not been considered and set aside the order passed the Labour Court. Feeling aggrieved against the order of the Industrial Court, this writ petition has been filed by the petitioner herein.

- 3.** Mr.Vinod Deshmukh, learned counsel for the petitioner, would submit that documents Ex.D/1 to D/4 have not been proved by respondent Company as author of those documents have not been examined and there is no evidence on record to hold that the deceased employee is guilty of committing theft of the company's property. No officer either author of First Information Report or author of documents Ex.D/1 to D/4 has been examined to prove the alleged misconduct against the deceased employee and only the Deputy Manager of the Company has been examined who has given self-serving statement. He would further submit that the Industrial Court has committed grave error in relying upon the documents Ex.D/1 to D/4 which have not been proved in the course of enquiry. Therefore, the impugned order passed by the Industrial Court is liable to be set aside.
- 4.** On the other hand, Mr.N.K.Vyas, learned counsel for respondents No1 and 2, would submit that the strict and sophisticated rules of evidence under the Evidence Act may not apply and even the

evidence of hearsay witness is permissible to be relied upon to reach a finding of misconduct. Therefore, the writ petition deserves to be dismissed. He would rely upon the judgment of the Supreme Court in the matters of **State of Haryana and another Vs. Rattan Singh**¹, **J.D. Jain Vs. The Management of State Bank of India & Anr.**² and **Management of Bharat Heavy Electricals Ltd. Vs. M. Mani**, decided on 9.11.2017.

5. I have heard learned counsel appearing for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.
6. The question for consideration is whether the rules of evidence particularly Section 3 of the Indian Evidence Act, 1872 would be applicable in domestic enquiry or not.
7. In **Rattan Singh** (supra), the Supreme Court has clearly held that strict and sophisticated rules of evidence under the Evidence Act may not apply. It was observed as under:-

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good.....”

1 AIR 1977 SC 1512

2 AIR 1982 SC 673

8. The aforesaid principle of law laid down in **Rattan Singh** (supra) has been followed further by the Supreme Court in **J.D. Jain** (supra). Para 10 of the report states as under:-

“10..... The word 'hearsay' is used in various senses. Some times it means whatever a person is heard to say; some times it means whatever a person declares on information given by someone else. (See Stephen on Law of Evidence).

The Privy Council in the case of Subramaniam v/s. Public Prosecutor, observed: "Evidence of a statement made to a witness who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of that is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made. The fact that it was made quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or some other persons in whose presence these statements are made.""

9. Reverting to the facts of the present case, it would appear that the Industrial Court has mainly relied upon the documents Ex.D/1 to D/4 to set aside the order of the Labour Court. Ex.D/1 is the letter written by CISF to the Executive Director (Works), BALCO, Korba on 19.11.94 informing that the deceased employee was caught red handed with 6 kg. of aluminium ball. Neither author of the document nor any other person to prove the contents of this document have been examined. Likewise, Ex.D/2 is the First Information Report lodged by O.P. Pandey, CISF, Balco, however, he has not been examined. Likewise, Ex.D/3 is seizure memo, which has also not been proved and Ex.D/4 is statement of the deceased employee, who in his evidence has rebutted that it is not his signature and as such, this is a case of no evidence. The self-serving statement of Shri Virendra Narayan, who is Deputy Manager of BALCO Company who has clearly stated that he has

not lodged the report and he has only got information from the other officers/employees.

- 10.** It is true that the strict and sophisticated rules of evidence under the Evidence Act is not applicable, but the fact remains that this is a case of no evidence at all. Serious allegation of theft cannot be held to be proved merely on the basis of statement of Deputy Manger of the Company. There must be some evidence on record to hold that the employee has committed theft.
- 11.** For the foregoing reasons, the impugned order passed by the Industrial Court setting aside the well reasoned order of the Labour Court on the basis of documents Ex.D/1 to D/4 deserves to be and is hereby set aside and the order of the Labour Court is hereby restored.
- 12.** The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-