

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

**The Hon'ble Justice T. S. Sivagnanam
and**

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 1375 OF 2018

Eastern Coalfields Ltd.

Vs.

Shri Gourinath Banerjee & ors.

For the Appellant : Mr. Soumya Majumder
Ms. Sanchita Barman
Ms. Shagun Baid Advocates

For the Respondent : Mr. Madhusudan DuttaAdvocate

Heard on : 02.03.2022

Judgment on : 30.03.2022

Hiranmay Bhattacharyya, J.:-

1. This Intra Court mandamus appeal is at the instance of the writ petitioner/ Eastern Coal Fields Ltd. (for short "ECL") and is directed against an order dated August 27, 2018 passed by a learned Single Judge in WP 15750 (W) of 2010. An industrial dispute between the appellant and the respondent no. 1 was

referred before the Central Government Industrial Tribunal-cum-Labour Court, Asansol (for short “the Tribunal”) giving rise to reference case no. 15 of 1998 for adjudicating whether action of the management of Nakrakonda Colliery in dismissing the respondent no. 1 from service with effect from 23.01.1996 is legal and justified. By the order impugned the learned Single Judge refused to interfere with the award passed by the Tribunal in reference case no. 15 of 1998 directing reinstatement in service along with back wages and all consequential benefits due to him.

2. After being served with notice the respondent no. 1 filed its written statement before the Tribunal. It is the specific case of the workman that he was a permanent employee under ECL and was posted at Nakrakonda Colliery. A charge sheet dated 15.07.1994 was issued with allegation of theft, fraud or dishonesty in connection with the employer’s business. The specific allegation of misconduct was that the respondent no. 1 fraudulently fabricated papers and documents showing his transfer from Ajay-II, Colliery to Nakrakonda areas though, the respondent no. 1 was never posted at Ajay-II, Colliery. It was alleged that on the basis of the said fabricated document the respondent no. 1 allegedly managed his posting at Nakrakonda Colliery as a transferred employee and continued to work there getting usual promotion. The respondent no. 1 was put under suspension and a show cause notice was issued to him. He

replied to the said show cause notice and also challenged the issuance of charge sheet by filing a writ petition before this Court and ultimately the said charge sheet was set aside giving liberty to the management to issue fresh charge sheet in accordance with law. The management issued another charge sheet and based on an enquiry report dismissed the workman from service by order dated January 23, 1996. It was alleged by the respondent no. 1 that proper opportunity to defend in the enquiry proceedings was not afforded to respondent no. 1. Respondent no. 1 challenged the enquiry report and the consequent dismissal and prayed for his reinstatement in service along with all consequential benefits.

3. ECL contested the said reference case by filing a written statement denying the allegations contained in the written statement filed by the respondent no. 1. It was specifically stated in the said written statement that complaints were received by the management of Nakrakonda Colliery that respondent no. 1 joined in the Nakrakonda Colliery by using fake and fabricated documents like LPC, transfer order etc. The management after making enquiries with the concerned authority of Ajay-II Colliery issued a charge sheet against respondent no. 1 on the ground of fraud that the said charge sheet was revoked by an order passed by this Hon'ble Court. Thereafter a fresh charge sheet was issued. The reply given by respondent no. 1 to the charge sheet

was found to be unsatisfactory and accordingly a domestic enquiry was held. The respondent no. 1 duly participated in the enquiry proceedings and in the said enquiry proceedings respondent no. 1 was found to be guilty of the charges. He was dismissed by an order dated 23.01.1996.

4. The order of dismissal dated 23.01.1996 was the subject matter of challenge in the Reference Case.
5. The learned Tribunal passed an award dated March 10, 2010 holding that the action of ECL in dismissing the respondent no. 1 with effect from 23.01.1996 is not legal and justified. He was directed to be reinstated in service from the date of his dismissal along with back wages and all consequential benefits due to him as if in service since then. ECL challenged the said award before this Hon'ble Court by filing the writ petition being WP no. 15750 (W) of 2010. The learned Single Judge by the order impugned dismissed the writ petition. Being aggrieved, ECL has preferred the instant appeal.
6. Mr. Majumder, learned Counsel for the appellant submitted that the learned Tribunal passed the award without giving any opportunity to ECL to prove the charges by leading evidence before the Tribunal. He contended that since a domestic enquiry was held in the instant case, learned Tribunal ought to have decided the validity of the domestic enquiry as a preliminary

issue. If the finding on such preliminary issue is against the management, Tribunal was duty bound to give an opportunity to the management to prove the charges by leading evidence. In support of such contention Mr. Majumder placed reliance on a decision in the case of *Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh* reported at (1972) 1 SCC 595. He contended that the procedure adopted by the Tribunal in declaring the award without deciding the preliminary issue separately amounted to gross procedural miscarriage. He further contended that the learned Single Judge failed to appreciate the ratio laid down by the Hon'ble Supreme Court in the case of *Shankar Chakravarti vs. Britannia Biscuit Company and another* reported at AIR (1979) SC 1652. Mr. Majumder, concluded by submitting that since the Tribunal after holding that the charges against the respondent no. 1 could not be established in the domestic enquiry did not afford any opportunity to ECL to prove the charges by leading evidence, the matter is to be remanded back to the Tribunal to decide the matter afresh after giving an opportunity to the parties to lead evidence.

7. Mr. Dutta, learned counsel appearing for the respondent seriously disputed the contentions raised by Mr. Majumder. He contended that the learned Tribunal after considering the documentary evidences on record held that the action of the management in dismissing the respondent no. 1 is not legal and

justified. The learned Single Judge affirmed the said award and such concurrent findings should not be interfered with in this appeal. He contended that ECL did not make any prayer before the Tribunal for grant of an opportunity to adduce evidence and as such there is no obligatory duty in law upon the Tribunal to afford such opportunity and failure to give such opportunity will not vitiate the proceedings. In support of such contention he relied upon the judgment of the Hon'ble Supreme Court of India in the case of *Shankar Chakravarti vs. Britannia Biscuit Company and another (supra)*. He further contended that the workman cannot be asked to prove that he has not committed any act tantamounting to misconduct in the first instance. In support of such contention he relied upon a judgment of the Hon'ble Supreme Court of India in the case of *Amar Chakravarty and ors. vs. Maruti Suzuki India Ltd.* reported at 2011(1) LLJ 251.

8. Heard the learned advocates for the parties and perused the materials placed. It is not in dispute that the parties did not adduce any oral evidence before the Tribunal. However, before the tribunal, ECL produced records and documents which were part of the enquiry proceedings.

9. The short question which arises for consideration in the instant appeal is whether the learned Tribunal was justified in passing the award without giving an opportunity to ECL to lead evidence to prove the charges.

10. In the instant case a domestic enquiry has been held by the management. The management also placed reliance upon the said domestic enquiry in the proceedings before the Tribunal. The respondent no. 1 has challenged the validity of such domestic enquiry before the Tribunal. It is well settled that in such event it was incumbent upon the tribunal to decide the issue as to the validity of the domestic enquiry as a preliminary issue. If the finding of the Tribunal on the preliminary issue is in favour of the management then no additional evidence is required to be produced by the management but if the finding on the preliminary issue is against the management the Tribunal ought to have given an opportunity to the employer to prove the charges by leading evidence and a similar opportunity is to be given to the employee to lead evidence to the contrary.

11. The question, therefore, arises as to whether grant of opportunity to lead evidence in such case is automatic or a request for such permission to adduce evidence is required. The law on this issue is no longer *res integra*. In *Delhi Cloth and General Mills* (supra) it has been held that if the management wants to avail itself of its rights of adducing additional evidence it has either to adduce evidence simultaneously with its reliance on the domestic enquiry or should ask the Tribunal to consider the validity of the domestic enquiry as a preliminary issue with a request to grant permission to adduce evidence if the decision of preliminary issue is against the

management. The Hon'ble Supreme Court in the said reported decision held thus-

“.....We have already emphasised that the enquiry proceeding before the Tribunal is a composite one, though the jurisdiction of the Tribunal to consider the validity of the domestic enquiry and the evidence adduced by the management before it, are to be considered in two stages. It is no doubt true that the management has got a right to adduce evidence before the Tribunal in case the domestic enquiry is held to be vitiated. The Tribunal derives jurisdiction to deal with the merits of the dispute only if it has held that the domestic enquiry has not been held properly. But the two stages in which the Tribunal has to conduct the enquiry are in the same proceeding which relates to the consideration of the dispute regarding the validity of the action taken by the management. Therefore, if the management wants to avail itself of the right, that it has in law, of adducing additional evidence, it has either to adduce evidence simultaneously with its reliance on the domestic enquiry or should ask the Tribunal to consider the validity of the domestic enquiry as a preliminary issue with a request to grant permission to adduce evidence, if the decision of preliminary issue is against the management. An enquiry into the preliminary issue is in the course of the proceedings and the opportunity given to the management, after a decision on the preliminary issue, is really a continuation of the same proceedings before the Tribunal.”
(emphasis supplied)

12. However, three Hon'ble judges of the Supreme Court of India in the case of *Shankar Chakravarti* (supra) held that if the employer

does not seek any opportunity to adduce additional evidence to substantiate the charges of misconduct nor there is any pleading to that effect, no duty is cast on the Labour Court or the Industrial Tribunal *suo motu* to call upon the employer to adduce evidence to substantiate the charges.

13. The Hon'ble Supreme Court in the said reported decision held thus-

“34. Having given our most anxious consideration to the question raised before us, and minutely examining the decision in Cooper Engineering Ltd. case (supra) to ascertain the ratio as well as the question raised both on precedent and on principle, it is undeniable that there is no duty cast on the Industrial Tribunal or the Labour Court while adjudicating upon a penal termination of service of a workman either under s. 10 or under s. 33 to call upon the employer to adduce additional evidence to substantiate the charge of misconduct by giving some specific opportunity after decision on the preliminary issue whether the domestic enquiry was at all held, or if held, was defective, in favour of the workman. Cooper Engineering Ltd. case (supra) merely specifies the stage at which such opportunity is to be given, if sought. It is both the right and obligation of the employer, if it so chooses, to adduce additional evidence to substantiate the charges of misconduct. It is for the employer to avail of such opportunity by a specific pleading or by specific request. If such an opportunity is sought in the course of the proceeding the Industrial Tribunal or the Labour Court, as the case may be, should grant the opportunity to lead additional evidence to substantiate the charges. But if no such opportunity is sought nor there is any pleading to that effect no

duty is cast on the Labour Court or the Industrial Tribunal suo motu to call upon the employer to adduce additional evidence to substantiate the charges.” (emphasis supplied)

14. Thus, the settled legal proposition is that if the employer chooses to adduce additional evidence to substantiate the charges of the misconduct, the employer has to avail such opportunity by a specific pleading or by specific request. It is only then that the Tribunal is bound by law to grant the opportunity to the employer to lead additional evidence to substantiate the charges.

15. In *Shankar Chakravarti* (supra) it was specifically observed that there was neither a pleading in which any such claim for adducing evidence was made nor any request was made before the industrial tribunal till the award was made.

16. This court perused the written statement filed by ECL before the Tribunal in order to find as to whether there was any specific pleading for adducing additional evidence. After going through the written statement this Court finds that it has been pleaded by ECL that if for any reason the Tribunal finds that the enquiry is otherwise than fair and proper then all opportunity should be given to the employers to prove the charges on merit.

17. In view of such specific pleading it was incumbent upon the tribunal to decide the issue as to the validity of the domestic enquiry as a preliminary issue and thereafter grant an opportunity

to ECL to prove the charges on merit by leading evidence as the finding on the preliminary issue is against ECL in the case on hand.

18. This Court is of the considered view that the learned Tribunal after arriving at a finding against the ECL with regard to the domestic enquiry ought to have afforded an opportunity to ECL to prove the charges on merit by leading evidence. Failure to afford such opportunity amounts to jurisdictional error committed by the tribunal thereby vitiating the proceedings before the tribunal.

19. Being conscious of the limited scope of interference against an award passed by the industrial tribunal this court finds that the procedure adopted by the tribunal while passing the impugned award without granting any opportunity to the management to prove its charges after holding the domestic enquiry to be illegal is against the law settled by the Hon'ble Supreme Court as observed hereinbefore. The procedure adopted by the Tribunal vitiated the entire decision making process. Adoption of such defective procedure amounts to jurisdictional error enabling the writ court to interfere. It is well settled that a writ court in exercise of powers under judicial review, can interfere in such case (see *Electrical Rengali Hydro Electrical Project vs. Giridhari Sahu* reported at (2019) 10 SCC 695).

20. The learned Single Judge dismissed the writ petition upon holding that the industrial tribunal did not misconduct the

proceedings as it had materials before it in the form of documentary evidence to make its decision. The materials that were available in the records of the tribunal were the documents and records pertaining to domestic enquiry. Such documents and records were relevant only for the purpose of deciding the preliminary issue. This court finds that the finding of the tribunal insofar as the validity of the domestic enquiry is concerned calls for no interference as the same was based on materials available in the records and the learned Single Judge was justified in not interfering with such finding. Since we have observed hereinbefore that ECL prayed for an opportunity to prove the misconduct by adducing evidence in case the decision on the preliminary issue is against ECL, this court is of the considered view that the learned writ court failed to exercise its jurisdiction by not interfering with the award of the Tribunal directing reinstatement with back wages and consequential benefits.

21. There is no quarrel to the proposition of law laid down in *Amar Chakravarty* (supra) wherein it has been held that the burden of proving misconduct by the workman lies upon the employer but the issue involved in the instant appeal is not upon whom such burden lay but as to whether the procedure adopted by the tribunal suffers from any jurisdictional error. Thus, the said decision cannot be of any assistance for deciding the issue raised in the instant appeal.

22. The finding of the tribunal in the award dated March 10, 2010 in so far as the validity of the domestic enquiry is concerned should be treated to be a finding on the preliminary issue and it is made clear that such finding is not interfered with by this court. However, since the Tribunal did not afford any opportunity to ECL to prove the charges on merit by adducing evidence in spite of a specific prayer made in the pleadings, this court is of the considered view that the part of the award dated March 10, 2010 declaring the dismissal to be illegal and unjustified and the consequential direction for reinstatement in service with back wages and all consequential benefits and monetary benefits is required to be set aside. The appeal, thus, stands allowed. The order dated 27.08.2018 passed by the learned Single Judge in WP 15750 (W) of 2010 as well as the last part of the award dated 10.03.2010 passed by the Tribunal in reference case no. 15 of 1998 directing reinstatement with consequential and monetary benefits after setting aside the order of dismissal also stand set aside. The learned Tribunal is directed to decide the reference case no. 15 of 1998 afresh from the stage of the decision on the preliminary issue in accordance with law and in the light of the observations made hereinbefore after giving an opportunity to the employer to cite additional evidence as well as to the respondent no. 1 to lead contrary evidence. The learned Tribunal shall take a decision on the dispute referred to it for adjudication on the basis of the evidence adduced by the parties in terms of this order and without being

influenced by the fact that this Court has set aside the award directing reinstatement with consequential and monetary benefits. Since the reference case is of the year 1998, the entire exercise is to be completed within a period of six months from the date of communication of this order without granting unnecessary adjournments to either of the parties.

23. There shall be, however, no order as to costs.

24. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

(P.A.- SANCHITA)