

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.14753 of 2009

***Management of M/s. Hindustan
Aeronautics Ltd.***

....

Petitioner

Mr. S.K. Mishra, Advocate

-versus-

Shri Sudhir Kumar Nayak and another

....

Opposite Parties

None

CORAM:

THE CHIEF JUSTICE

JUSTICE R. K. PATTANAİK

ORDER

22.02.2022

Order No.

17. 1. This is the second round of litigation at the instance of the Management. In the initial round, aggrieved by an interim order on merits against it by the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar (Tribunal), the Management came to this Court with W.P.(C) No.9927 of 2007 in which an order was passed on 2nd January 2008 setting aside the said interim order and remanding the matter to the Tribunal “to take up Issue No.2 as preliminary issue and record its finding thereon” and thereafter to proceed in accordance with the guidelines framed by the Apex Court in the case of the *Cooper Engineering Ltd. v. P.P. Mundhe (1975) II LLJ 379 SC*.
2. As a result of the above order, the Tribunal on remand took up the preliminary issue first i.e. the fairness of the domestic enquiry held by the Management prior to dismissal of the Workman. In the impugned Award dated 18th December 2008, the Tribunal came to

the conclusion that the domestic enquiry was not fairly held. The reasoning was as under:

“12. Furthermore, as the law demands, the delinquent is always to be provided with necessary documents basing on which charges have been framed so that he will be in a position to give his reply. If such documents cannot be supplied along with a charge-sheet, the delinquent is at best to be kept informed that he can go through the same for the purpose of his reply. The Standing Order item No.27 2(a) in fact contains such a provision allowing the delinquent to inspect the record and the documents to be produced in the enquiry. But if he is intimated of such facts in the charge-sheet it itself would amount to non-compliance of the principles of natural justice. The letter of the workman dated 22.10.1998 (Ext.-M) and the letter of the Management marked Ext.-3/2 show that after receipt of the charge-sheet the delinquent in his above letter had asked for the document on the basis of which he was charge-sheeted. On receipt of such letter the Management drafted a letter on 9.11.1998 for supply of the required documents but in practice gave it to the workman on 8.5.2003 i.e. after the proceeding was closed. This coupled with the findings given in the previous para clearly spells out that the delinquent was not given sufficient opportunity to defend himself and the manner of enquiry was devoid of natural justice, rendering the entire findings of the enquiry officer and the punishment awarded illegal and infructuous. In view of the above, especially considering the charges to be more serious, I, instead of directing reinstatement of the disputant, direct the Management to enquire into the matter afresh after giving full opportunities to the workman to defend himself in the proceeding to be started afresh. The workman should be treated as on suspension as before for the purpose of enquiry.”

3. Mr. S.K. Mishra, learned counsel appearing for the Petitioner insists that the Tribunal had erred in not proceeding with the merits of the matter by permitting the Management to adduce evidence on merits notwithstanding that it held that the enquiry was not fair. According to him, the direction issued by the Tribunal is contrary to the decision of the Supreme Court of India in ***Karnataka State Road Transport Corporation v. Lakshmidevamma AIR 2001 SC 2090.***

4. This Court has carefully perused the said judgment. In interpreting the decision in ***Cooper Engineering Limited (supra)***, the Supreme Court in ***Karnataka State Road Transport Corporation (supra)*** observed as under:

“14. As is seen from the above, this Court in *Cooper Engineering’s* case held that when the Tribunal/Labour Court was called upon to decide the validity of the domestic enquiry same has to be tried as a preliminary issue and thereafter, if necessary, the management was to be given an option to adduce fresh evidence. But the problem did not stop at that.”

5. The Supreme Court in ***Karnataka State Road Transport Corporation (supra)*** then discussed the decision of the Supreme Court in ***Shambu Nath Goyal v. Bank of Baroda (1983) II LLJ 415 SC*** wherein the Supreme Court had observed as under:

“The rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either under Section 10 or Section 33 of the Industrial Disputes Act questioning the legality of the order terminating the service must be availed of by the employer by making a proper request of the time when it files its statement of claim or written statement or makes an application

seeking either permission to take certain action or seeking approval of the action taken by it.”

6. It then reiterated the principles in *Shambu Nath Goyal (supra)* where after discussing the above decision in *Cooper Engineering Limited (supra)* and earlier cases, it was explained thus:

“We think that the application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to adduce further evidence to substantiate the charge or charges framed against the workman referred to in the above passage in the application which may be filed by the management during the pendency of its application made before the Labour Court or Industrial Tribunal seeking its permission under section 33 of the Industrial Disputes Act, 1947 to take a certain action or grant approval of the action taken by it. The management is made aware of the workman's contention regarding the defeat in the domestic enquiry by the written statement of defence filed by him in the application filed by the management under section 33 of the Act. Then, if the management chooses to exercise its right it must make up its mind at the earliest stage and file the application for that purpose without any unreasonable delay. But when the question arises in a reference under section 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support of the charge or charges framed against the workman, for the defeat in the domestic enquiry is pointed out by the workman in his written claim statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into that statement before it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request for the opportunity in the written

statement itself. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman and compel him to surrender which he may not otherwise do.”

7. Finally, in ***Karnataka State Road Transport Corporation*** (supra), summarizing the above position it was held as under:

“17. Keeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the opinion that the directions issued by this Court in *Shambu Nath Goyal's* case need not be varied, being just and fair. There can be no complaint from the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal could get prolonged. In our opinion, the procedure laid down in *Shambu Nath Goyals* case is just and fair.”

8. As the Court understands it, the above procedure was to balance the rights of both the employer and the workman. If the employer succeeded in showing that the domestic enquiry was fair, that would not bring matters to an end since it would still have to show that the dismissal on merits was sustainable. It was with this in view that it was observed that the Management should be permitted to lead evidence prior to the beginning of the trial both on the question

of fairness of the domestic enquiry as well as on the merits of the dismissal. Conversely, if the workman was able to show that the domestic enquiry itself was unfair then the consequences had to flow without again waiting for the entire merits of the dismissal to be gone into. In effect, therefore, evidence had to be led at one stage and not at several stages.

9. In the present case, the submissions of Mr. Mishra, learned counsel for the Petitioner that notwithstanding the Management having failed on the preliminary issue, no benefits should be granted to the Workman and that the Management should still be permitted to lead evidence on merits is based on a misconception of what the Supreme Court has held in all the above decisions. It can never be that despite showing that the domestic enquiry was unfair and illegal, the Workman will still get no relief whatsoever as a result thereof. That is not what the decision in *Shambu Nath Goyal (supra)* reaffirmed by the Supreme Court in *Karnataka State Road Transport Corporation (supra)* says.

10. In the present case, the Management itself came to this Court and insisted that the fairness of the domestic enquiry should be decided as a preliminary issue and accepting that plea, this Court remanded the matter to the Tribunal. Having not succeeded on the issue on remand before the Tribunal, the Management cannot insist that the said order should not be given effect to and that it should still be permitted to lead evidence on merits. The Court therefore rejects that argument.

11. In the impugned Award, the Tribunal has proceeded to give the Management another chance at setting right the legal error of an unfair domestic enquiry by permitting it to hold an enquiry afresh by placing the Workman under suspension. Since this is at the instance of the Management, the Court is not inclined to interfere with the said relief given to it in the present petition. In other words, the impugned Award of the Tribunal does not call for any interference. The writ petition is dismissed. The interim order dated 23rd October 2009 passed in the present petition stands vacated.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge



S.K. Guin