

(2004) 01 AHC CK 0086

Allahabad High Court

Case No: C.M.W.P. No. 16580 of 1999

Luxco Electronics (Paper Cone)

APPELLANT

Vs

Presiding Officer, Industrial
Tribunal (1) and Others

RESPONDENT

Date of Decision: Jan. 27, 2004

Acts Referred:

- Industrial Disputes Act, 1947 - Section 11A

Citation: (2004) 2 AWC 1656 : (2004) 101 FLR 73 : (2004) 2 UPLBEC 1179

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: Vijay Bahadur Singh, J.A. Khan and C.S. Lal Srivastava, for the Appellant;
Shekhar Kumar Yadav and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

1. This writ petition has been filed challenging the award dated 1.8.1998 passed by Industrial Tribunal, Allahabad in Adjudication Case No. 3 of 1997 connected with two other adjudication cases referred by State Government in respect of two other workmen regarding same incident and were numbered as Adjudication Case Nos. 1 and 2. All these cases were consolidated and Adjudication Case No, 3 of 1997 was taken as leading case.

2. The dispute relates to an incident alleged to have taken place on 8.3.1994. The management issued a charge sheet to all the three workers. Smt. Sheo Kumari, respondent No. 4, is alleged to be the Secretary of the Union of the workers. The case of the workers is that the Union Secretary filed a complaint against employers on 16.2.1994 to the Deputy Labour Commissioner, Allahabad. The officers of Labour Department carried out an inspection and several irregularities were found as a result of which management felt annoyed and planned to terminate the services of

the union workers. It is further alleged by the workers that on 8.3.1994 one worker Hari Mohan Sharma was assaulted by the Manager as he was demanding bonus. It is further alleged by them that Shri Sharma was pushed out of the gate when other workers protested. Smt. Sheo Kumari made complaint to the Manager who misbehaved with her and assaulted her. The Manager Sri C. S. Lal Srivastava threatened other workers also. Report to police was made but was not registered. The report was registered on 11.3.1994 on intervention of officers and after charge sheeting 3 workers dismissed them after holding ex parte enquiry by order dated 31.10.1996. 3. The case of the employer is that the respondent-workmen committed gross misconduct for which they were charge sheeted and on holding a proper enquiry they were dismissed from service as charges were found proved in the enquiry.

4. It may be noted that neither copy of charge sheet has been filed with writ petition nor the allegations of charges have been disclosed in the written statement of the employers, which is Annexure-1 to the writ petition.

5. The Tribunal framed preliminary issue regarding legality of the domestic enquiry. The Tribunal by order dated 27.4.1998 held that the enquiry was not fair and according to principles of natural justice, hence it allowed the parties to produce evidence on merits of the case. The management examined Sri C.S. Lal Srivastava as witnesses but workers examined no witness. The Tribunal after considering documentary and oral evidence disbelieved the case of employer and held that "employees have miserably failed to prove the charges against 3 charged workers Smt. Sheo Kumari Devi, Udai Bhana Singh and Bachchu Lal. They are victims of illegal action of the employers". On this finding the Tribunal awarded reinstatement with full back wages by the impugned award dated 17.8.1998.

6. The learned counsel for the petitioner submits that the order of the Tribunal holding that the enquiry was not fair and legal is perverse and against the evidence on record and the award of the Tribunal holding that the management has failed to prove charges against the workers before him is also perverse.

7. A perusal of order dated 27.4.1998 (Annexure-9) shows that the Tribunal considered the facts and evidence on the point. It held that the date mentioned in the charge sheet was 8.3.1993 when no such incident had taken place. The charge sheet was prepared on 8.3.1994. The domestic enquiry started on 14.5.1994 and was prolonged for about 2-years and was concluded after workers resorted to strike from 9.1.1995 to 16.1.1995. The workers were not informed of the time and date of the enquiry in spite of request by workers. They were not permitted to adduce evidence in defence though specific request in this regard was made by letter dated 25.2.1996 for examining 5 witnesses. It is alleged that the Enquiry Officer Sri H. A. Khan was highly biased and prejudiced, as he happened to be the authorised representative of employers in several cases. Above all his son Sri J, A. Khan was representing the management in this case. The workers were not informed of

procedure to be adopted in enquiry and the enquiry report was not given to them. Copy of Company's standing order was not given and copy of only one page of some other Company's standing order was given. They asked for certain papers, which were also not supplied. The workers made complaint to the Enquiry Officer that their witnesses are being threatened but the Enquiry Officer did not, take any action and rather no information of dates, time and place was given to them or it was given so late that it could not reach them in time. On these amongst other facts the Tribunal held that domestic enquiry was not fair and legal.

8. The learned counsel for the petitioner submits that in the charge sheet it is not necessary to disclose the name of Enquiry Officer and relationship of the Enquiry Officer and presented officer, as father and son cannot be the basis of apprehension of bias. In my opinion the contention is unacceptable. The Tribunal has held that such a person cannot be termed as independent person. It is settled law that even domestic enquiry is quasi-judicial proceeding and the Enquiry Officer has to perform his function independently. The finding of the Tribunal is based on natural feelings and cannot be termed as arbitrary or illegal. Apprehension of bias cannot be ruled out. The apprehension is based on admitted facts and has been rightly weighed by the Tribunal.

9. The burden of proving charges lay on the employers. They examined oral witnesses and filed a large number of documents. The Tribunal has considered the evidence in length. Appreciation of evidence and believing it or not is in the sole Jurisdiction of the Tribunal. The findings so recorded cannot be re-examined by this Court under Article 226 of the Constitution. Non-examination of witnesses by the workers in rebuttal has no importance if the evidence of employers does not make out a case. The Tribunal has disbelieved the case of employers of inciting workers or resorting to violence by chasing the Manager. It has recorded finding of victimisation by employers on the basis of evidence produced before it. The petitioner has relied upon the case of Neeta Kaplesh [Neeta Kaplish Vs. Presiding Officer, Labour Court and Another](#), in which the Apex Court has considered the scope of words "fresh evidence" and material on record occurring in Section 11A of the Industrial Disputes Act. The Apex Court held that according to Section 11A of the Industrial Disputes Act when the Tribunal allows management to produce evidence before it, after holding domestic enquiry is illegal, the evidence given by the employers in domestic enquiry is wiped out and the Tribunal has to record finding on the basis of evidence produced before it. The Tribunal has followed the law laid down in above case. The evidence of workers recorded during enquiry constituted "material on record" and the Tribunal could take it into consideration the evidence produced before it.

10. In view of the facts and circumstances of the case stated above the award impugned and the order dated 27.5.1993 cannot be said to be arbitrary or perverse and cannot be interfered with.

11. The petition is dismissed. The interim order dated 22.4.1999 is vacated. No order as to costs.