

## **Luxco Electronics (Paper Cone) Vs Presiding Officer, Industrial Tribunal (1) and Others**

**Court:** Allahabad High Court

**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

as 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.