

IMPORTANT SUPREME COURT AND HIGH COURT JUDGMENTS RELATING TO DOMESTIC ENQUIRY

Article 311 (2) (b) of the Constitution

Union of India and Another and Tulasiram Patel

In the said case, the Supreme Court has held that a Government Servant can be dismissed or removed from service without holding an enquiry under Art. 311 (2) (b) of the Constitution provided it was in the interest of the public.

The Court observed, "Government Servants who are inefficient, dishonest, corrupt or have become a security risk should not continue in service and should be summarily dismissed or removed from service and instead of being allowed to continue in it at public expense and at public detriment."

The above ruling was given by a Constitution Bench with a 4-1 majority. The judgment was written by Justice D.P. Madon Pathok, Mr. Justice Thakkar, dissented. The Judges overruled the ruling of a three Judge Bench of the Supreme Court in **Challappan's Case** which held that a delinquent Government Servant could be dismissed or removed from service only after he was given an opportunity to be heard.

Conditions Laid Down Under Article 311 (2): Stipulates three conditions where an enquiry need not be held before the dismissal or removal of a Government Servant.

- (i) Where a person is dismissed, removed or reduced in rank on the ground of misconduct which has led to his conviction on a criminal charge.
- (ii) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be

recorded by that authority in writing, it is not reasonably practicable to hold such an enquiry.

(iii) Where the President or the Governor as the case may be is satisfied that in the interest of the Security of the State, it is not expedient to hold such enquiry.

Referring to Article 311 (2) (b), the judges have pointed out that sometimes by not taking prompt action might result in the situation worsening and at times becoming uncontrollable. This could also be construed by the trouble makers and agitators as a sign of weakness on the part of the authorities.

It would not be reasonably practicable to hold an inquiry where the Government Servant terrorises, threatens or intimidates disciplinary authority or the witnesses to the effect that they are prevented from taking action or giving evidence against him. It would not be reasonably practicable to hold the enquiry where an atmosphere of violence or general indiscipline and insubordination prevails.

Referring to article 311 (2) (b) the judges said it would be better for the disciplinary authority to communicate to the Government Servant its reason for dispensing with the inquiry. The Court also observed that the stipulated clause regarding no inquiry in certain case was **Mandatory** and not **Directory**.

Justice R. Krishna Iyer on Evidence Act and Domestic Enquiry

It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. **All materials which are logically probative for a prudent mind are permissible. There is no allergy to heresay evidence provided it has reasonable nexus and creditability.** 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.

The essence of a judicial approach is: objectivity, exclusion of extraneous materials and consideration and observance of natural justice. Of course, fair play is the basis and if independence of judgment vitiates the conclusion reached, such findings even though of a domestic tribunal cannot be held good.

The simple point is, was there some evidence or was there no evidence - not in the sense of technical rules governing regular court proceedings but in a fair/common sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. (1982 II LLJ **State of Haryana v Rattan Singh** 46, SC).

Supreme Court on Evidence Act And Domestic Enquiry

The Evidence Act does not apply to enquiries conducted by the tribunals even though they may be judicial in character. The law requires that such tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that which obtains in a court of law (**Union of India and T.R. Varma** Vol. 13 FJR 237 SC)

Will the Omission to Produce the Preliminary Reports Vitate the Enquiry?

The omission by the company to produce the preliminary reports on the strength of which the charges against these workmen were found will not vitiate the enquiry. Those reports were collected by the company to satisfy itself whether disciplinary action against the workmen should be launched or not. They did not form part of the evidence before the enquiry officer nor were they relied on by them for arriving at their findings. That being so, it was not obligatory on the company to disclose them and the omission could not be ground for holding that

their non-disclosure was non-observance of the rules of natural justice.
Tata Engineering & Locomotive Co. 1960 IILLJ 812 SC.

Resignation Pending Disciplinary Action

By entering into contract of employment a person does not sign a bond of slavery and a permanent employee cannot be deprived of his right to resign. A resignation by an employee would however normally require to be accepted by the employer, in order to be effective. It can be read in certain circumstances an employer would be justified in refusing to accept an employee's resignation as for instance when an employee wants to leave in the middle of a work in which his presence and participation are necessary.

An employer can also refuse to accept resignation when there is a disciplinary enquiry pending against an employee. If he is allowed to resign when an enquiry is pending against him, it would enable him to escape the consequences of adverse findings against him. Therefore on such occasion the employer is justified in not accepting the resignation. (**Central Inland Water Transport Corporation Ltd. and Tarunkanti Sengupta and Another** 1986 II LLJ 171 SC).

Should an Advocate be Permitted in all Domestic Enquiries?

In the **Board of Trustees v Nadkarni** case reported in 1983 I LLJ Page 1 - the Supreme Court stated that in the past there was informal atmosphere before a domestic enquiry forum and that strict rules of procedural law did not hamstring the enquiry. We have moved far away from this stage. The situation is where the employer has on his pay rolls Labour Officers, Legal Advisors, Lawyers in the garb of employees and they are appointed as Presenting Officers and the delinquent employee pitted against such legally trained personnel has to defend himself.

The weighted scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer. It applies with equal vigour to all those who must be responsible for fairplay. When the Bombay Port Trust Advisor and Junior Assistant Legal Advisor would act as the Presenting cum Prosecuting Officer in the enquiry, the employee was asked to be represented by a person not trained in law, was held utterly unfair and unjust. The employee should have been allowed to appear through legal practitioner and failure vitiated the enquiry.

Bombay High Court Decision

Apart from the provisions of law, it is one of the basic principles of natural justice that the enquiry should be fair and impartial. Even if there is no provision in the Standing Orders or in Law, wherein an enquiry before the domestic mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to a denial of reasonable request to defend himself and the essential principles of natural justice would be violated (**Ghatge Patil Transport pvt. Ltd. and B.K. Patel and others** 1984 II LLJ Bombay High Court, Page 121).

Calcutta High Court Decision

Though the court should discourage involvement of legal practitioners in simple domestic enquiries, like disciplinary enquiries, for avoiding complications and delays, yet the court's refusal of such representation would constitute failure of the enquiry itself. Principles of Natural Justice demands conceding to such a claim. No general rule can be laid down in this respect but the issue must be left for the consideration in the light of the facts and circumstances of each individual case (**India Photographic Co. v Saumitra Mohan Kumar** 1984 I LLJ 471 HC)

Scope of Investigation by Labour Courts and Industrial Tribunals

In cases of termination, generally the tribunal would be required to find out whether the same amounts to victimisation or unfair labour practice or was it so capricious or unreasonable as to lead to an inference that it has been based on some ulterior motives. In other words, it is to enquire into the bonafides of the management (**Assam Oil Co.** 1960 ILLJ SC, **Chartered Bank** 1960 ILLJ 222 SC),

The Indian Iron and Steel Case (1958 I LLJ 260 SC) and subsequent decisions have laid down that there could be an interference:

- (i) When there is want of good faith,
- (ii) When there is victimisation or unfair labour practice,
- (iii) When the management head been guilty of a basic error or violation of principles of natural justice, and
- (iv) When, on the materials before the tribunal, the finding is found to be completely baseless or perverse.

In the Industan Construction Case, 1965 (10) FIR, the Supreme Court again laid down that the tribunal cannot substitute its own appraisal of the evidence for that of the officer conducting the domestic enquiry.

Want of Good Faith: This only means that on the evidence available the conclusion must have come objectively - not having made up one's mind to find the worker concerned guilty. It was pointed out in the **Mackenzie Co.** (1959 ILLJ 285 SC), the management must have materials before them to base its conclusions.

Victimisation or Unfair Labour Practice : The Supreme Court in the **Bharat Sugars case** (AIR 1950 188 SC), observed that the word Victimisation was not a term of Act or Law and it only meant that a certain person has become a victim and that he has been unjustly dealt with.

Where the punishment imposed was shockingly disproportionate to the misconduct, victimisation is inferred. In (1061 ILLJ 644 SC), **Bharat Sugars Case**, the Supreme Court held that before an industrial adjudication can find an employer guilty of an intention to victimise, there must be reason to think that the employer was intending to punish workmen for their union activities while purporting to take action ostensibly for some other activity.

Basic Error : If the evidence in disciplinary proceedings instituted in respect of a concerted action shows that 'A' was guilty actually, but quite erroneously the decision of the enquiry officer states that 'B' was guilty, it will be a basic error of fact.

Baseless or Perverse Findings: It has been pointed out by the courts that the findings could be said to be perverse only if it is shown that such a finding is not supported by any evidence or is entirely opposed to whole body of the evidence adduced **Doom Dooma Tea Case** (1960 ILLJ 56 SC) and **Hamdard Dawakhana Case** (1962 IILLJ 762 SC). Merely that the authority could possibly come to a different view on the evidence recorded would not make the finding of the domestic tribunal perverse. **The Calcutta High Court** (1966 IILJ 535) said 'a wrong finding is not necessarily a perverse finding'.

Personal Bias: The principles governing the doctrine of 'bias' are:-

- (a) No man shall be a judge in his won case; and
- (b) Justice should not only be done, but manifestly and undoubtedly seen to be done, (Subba Rao. J AIR 1959 SC 1378)

There is authority for the view that, where there are certain rules governing the procedure of enquires, the mere violation of such rules will not give a party a cause of action unless there has been, in consequence, prejudice caused. **Veerabadreshwar Rao & Oil Mill Vs Collector, Central Excise**, (AIR 1966).

Protection During Pendency of Proceedings (Sec. 33 ID ACT.) :

Under this section when a proceeding is pending before a Conciliation Officer, Labour court, Arbitrator or Industrial Tribunal, no workman concerned in the industrial dispute pending before the said authorities could be punished by way of dismissal or discharge except under conditions :

- (a) If the misconduct with which the workman had been charged is connected with the dispute pending, he cannot be discharged or otherwise punished except with the express permission of the authority before whom the proceeding is pending.
- (b) Where misconduct is not connected with the proceeding pending, the workman could be dismissed or discharged for the misconduct provided he is paid or tendered a month's wages and D.A. and an application is simultaneously made before the authority concerned for approval of the action taken.
- (c) Protected workmen cannot be discharged or punished whether by dismissal or otherwise except, with the express permission in writing of the authority concerned.

Any violation of the provisions stated above during pendency of proceedings before labour court or tribunal can be taken up by the employee as complaint under sec. 33A to be adjudicated and an award passed.

Section 2 A of Industrial Disputes Act: Previously individual workman could not raise industrial disputes with reference to their dismissal or discharge. It can only be by collective action. As a result of the introduction of this section on 1st December 1965, even individual workman could directly approach the conciliation officer / Government claiming relief for dismissal or discharge and this claim is deemed to be an 'industrial dispute'.

Quantum of Punishment: With the introduction of sec. 11A of I.D. Act, with effect from 15.12.1971 the absolute right of the employer to decide on the quantum of punishment has been abridged and the tribunals will have power for the first time to differ both on a finding of misconduct arrived at and also on the punishment imposed by the employer. **Firestone Case** (1973 ILLJ 278 SC).

Evidence before the Tribunal : If no domestic enquiry is at all held or if the enquiry is in any defect it is optional for the management to adduce evidence before the tribunal and justify the dismissal or hold an enquiry afresh, if the domestic enquiry is set aside on technical grounds **Motipur Sugar Case** (1965 ILLJ 162 SC). It has also been held by the Supreme Court in the Ritz Theatre Case (1962 ILLJ 498) that the adduction of evidence before the tribunal may be without prejudice to the management's stand that the domestic enquiry was complete and proper in itself.

Discrimination: An act of discrimination could only occur if amongst those equally situated an unequal treatment is meted to one or more of them. While some of the workmen participated in an illegal strike instigating others also to participate and also intimidated the officers were charge sheeted leaving others who participated, the same cannot be said to be discrimination. **Motor Industries Case** (1969 ILLJ 673 SC.)

Retrospective Dismissal: Punishment with retrospective effect will be invalid and inoperative, if it is not specifically provided for in the standing orders. In such cases, the employer would be at liberty to set right the situation by issuing another order prospectively. The workman would be entitled to wages for the intervening period.

Criminal and Domestic Enquiry Proceedings: The scope of these two is different. The degree of proof varies. Just as criminal judgment is not binding upon a Civil Court, acquittal by a Criminal Court of a

person does not bar the domestic authority to pursue the enquiry proceedings or to come to a different conclusion.

Gherao : In **Jay Engineering Case** (AIR 1968 Cal. 407), the Calcutta High Court defined Gherao as a physical blockade of a target either by encirclement or forcible occupation accompanied by wrongful confinement as also unlawful assembly. Distinctive character of Gherao is existence in it of coercive method. It is an offence punishable under the Indian Penal Code. The employer will have every right to take disciplinary action against employees for participation in Gherao whether peaceful or disorderly and punish them after holding a fair and proper enquiry.

Refusal to Obey Transfer Orders: Where the contract of employment provides for transfer, the order of dismissal for refusal to obey the transfer order will be justified except, where the order was punitive, malafide or in the nature of victimisation. Where the service rule provided for the transfer of an employee from one company to another company under the same owners, the dismissal for disobeying the order of transfer was held justified by the Supreme Court in **Madhuband Colliery Case** (1966 IILJ 738).

Discharge of Probation: Discharge of a probationer without assigning reason during the period of probation as per contract of service or standing order will be valid, except where it is held to be punitive or malafide.

Losing of Lien: Where an employee lost his lien on employment by operation of standing order for continuous absence or over-stayed of leave, the same does not amount to termination by employer. Losing of lien in such a case is not by any positive action by the employer but by automatic operation of standing order.

SUPREME COURT ON SEC. 11 A OF INDUSTRIAL DISPUTES ACT, 1947.

Section 11 A:

Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen:

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and. In the course of the adjudication proceedings the Labour Court Tribunal or National Tribunal as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions. if any, as it thinks fit, or give such other relief to the Workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on' record and shall not take any fresh evidence in relation to the matter.

The legal position as on 15.12.1971 (When Sec. 11 A introduced in the Industrial Disputes Act) was brought into force regarding the power of labour court or Industrial Tribunal when deciding the dispute arising out of dismissal or discharge of a workman could be summarised as follows:

(i) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power if action of the employer is justified:

(ii) Before imposing the punishment, the employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(iii) When a proper enquiry has been held by an employer, and the finding misconduct is the plausible conclusion flowing from the evidence adduced at the said enquiry, the tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body.

(iv) Even, if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the tribunal in order to satisfy itself about the legality and validity of the order has to give an opportunity to the employer and employee to adduce evidence before it.

It is open to the employer to adduce evidence for the first time justifying his action; and it is open to the employee too to adduce evidence.

(v) The effect of an employer not holding an enquiry is that the tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved.

In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(vi) The tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(vii) It has never been recognised that the tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(viii) An employer who wants to avail himself of the opportunity of adducing evidence for the first time before the tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the tribunal has no power to refuse.

The giving of an opportunity to an employer to adduce evidence for the first time before the tribunal is in the interest of both the management and the employee and to enable the tribunal itself to be satisfied about the alleged misconduct.

(ix) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a tribunal for the first time, punishment imposed cannot be interfered with by the tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(x) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this court in **Management of Panitole Tea Estate v The Workman (ILLJ 233, 1971)**, within the judicial decision of a labour court or tribunal.

To invoke Sec.11 A, it is necessary that an industrial dispute of the type mentioned therein should have been referred to an Industrial Tribunal for adjudication the tribunal has to be satisfied that the order of discharge or dismissal was not justified.

If it comes to such a conclusion, the tribunal has to set aside the order and direct reinstatement of the workman on such terms as it thinks fit. The tribunal has also power to give any other relief to the workman including the imposition of a lesser punishment having due regard to the circumstance. The proviso casts a duty on the tribunal to rely only on the section, in our opinion it indicates a change in the law, as laid down by this court, has been affected.

It is well settled that in constructing the provisions of a welfare legislation, the court should adopt, what is described as a beneficent rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees has to be preferred. Another principle to be borne in mind is that the Act in question which intends to improve and safeguard the service conditions of an employee, demands an interpretation liberal enough to achieve the legislative purpose. But the court should not also lose sight of another canon of interpretation that a statute, or for that matter, even a particular section, has to be interpreted according to its plain words and without doing violence to the language used by the legislature. Another aspect to be borne in mind will be that there has been a long chain of decisions of this court, referred to exhaustively earlier, laying down various principles in relation to adjudication of disputes by Industrial Courts arising out of orders of discharge or dismissal.

Therefore, it will have to be found from the words of the section whether it has altered the entire law, as laid down by the decision, and if so, whether there is a clear expression of that intention in the language of the section.

The limitations imposed on the powers of the tribunal by the decision in **Indian Iron & Steel Co. Ltd. Case** (Supra) can no longer be invoked by an employer. The tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct, but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so, and now it is the satisfaction of the tribunal that finally decides the matters.

If there has been no enquiry held by the employer or if the enquiry is held to be defective, it is open to the employer even not to adduce evidence for the first time before the tribunal justifying the order of discharge or dismissal. The court is not inclined to accept the contention on behalf of the workman, that the right of the employer to adduce evidence before the tribunal for the first time recognised by this court in its various decisions has been taken away. There is no indication in the section that the said right has been abrogated. If the intention of the legislature was to do away with such a right, which has been recognised over a long period of years, as will be noticed by the decisions referred to earlier it would have been differently worded. Admittedly there are no express words to that effect and there is no indication that the section has impliedly changed the law in that respect.

Therefore, the position is that even now the employer is entitled to adduce evidence for the first time before the tribunal even if he had held no enquiry or the enquiry held by him is found to be defective. Of course, an opportunity will have to be given to the workman to lead evidence contra. The state at which the employer has to ask for such an opportunity has been pointed out by this court in **Delhi and General Mills Co. Ltd.** (Supra). No doubt, this procedure may be time consuming, elaborate and cumbersome. As pointed out by this court in the decision just referred to above, it is open to the tribunal to deal with the validity of the domestic enquiry, if one has been held as a preliminary issue. If its finding on

the subject is in favour of the management, then there will be no occasion for additional evidence justifying his action. This right in the management to sustain its order by adducing independent evidence before the tribunal, if no enquiry has been held or if the enquiry is held to be defective has been given judicial recognition over a long period of years. It was agreed that even after Sec. 11 A the employer and employee can adduce evidence regarding legality or validity of the domestic enquiry, if one had been held by the employer.

Having held that the right of the employer to adduce evidence continues under the new section, it is needless to state that, when such evidence is adduced for the first time, it is the tribunal which has to be satisfied on such evidence about guilt or otherwise of the workman concerned. The law, as laid down by this court that under such circumstances the issue about the merits of the impugned order of dismissal or discharge is at large before the tribunal and that it has to decide for itself whether the misconduct alleged is proved, continues to have full effect. In such a case, as laid down by this Court, the exercise of managerial functions does not arise at all.

Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the tribunal considers the matter on the evidence before it for the first time, the satisfaction under Sec. 11 A, about the guilt or otherwise of the workman concerned, is to come to a conclusion one way or other.

Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

Under Sec. 11 A, the Industrial Tribunal or the Labour Court may hold that the proved misconduct does not permit punishment by way of discharge or dismissal and in cases under such circumstances award to the workmen any lesser punishment instead.

The power to interfere with the punishment and alter the same has now been conferred on the tribunal by Sec.11A. From the wording of the proviso to Sec.11A it could not be inferred that the right of the employer to adduce evidence for the first time has been taken away as the tribunal is obliged to confine its scrutiny only to the materials available at the domestic enquiry.

The expression materials on record occurring in the proviso cannot be confined only to the matters which were available at the domestic enquiry. On the other hand the materials on the record in the proviso must be held to refer to materials on record before the tribunal.

They take in:

1. the evidence taken by the management at the enquiry, or
2. the above evidence and, in addition, any further evidence before the tribunal,
or
3. evidence placed before the tribunal for the first time in support of the action taken by an employer as well as the evidence adduced by the workmen contra.

The above items by and large should be considered to be the materials on record as specified in the proviso. The court is not inclined to limit that expression as meaning only that material that has been placed in a domestic enquiry. The provision only confines the tribunal to the materials on record before it as specified above, when considering the justification or otherwise of the order of discharge or dismissal.

It is obliged to consider whether the misconduct is proved and the further question whether the proved misconduct justifies the punishment of dismissal or discharge. It also prohibits the tribunal from taking any fresh evidence either for satisfying itself regarding the misconduct or for altering the punishment.

From the proviso, it is not certainly possible to come to the conclusion that when once it is held that an enquiry has not been held or is found to be defective; an order reinstating the workman will have to be made by the tribunal. Nor does it follow that the proviso deprives an employer of his right to adduce evidence for the first time before the tribunal.

The expression "fresh evidence" has to be read in the context in which it appears, namely, as distinguished from the expression materials on record. If so read, the proviso does not prevent any difficulty at all.

The Legislature in Sec. 11 A has made a departure in certain respects in law as laid down by this court. For the first time, power has been given to a tribunal to satisfy itself whether misconduct is proved. This is particularly so, as already pointed out by us, regarding even findings arrived at by an employer in an enquiry properly held.

The tribunal has also been given power, also for the first time, to interfere with the punishment imposed by an employer. When such wide powers have been now conferred on tribunals, the legislature obviously felt that some restrictions have to be imposed regarding what matters could be taken into account. Such restrictions are found in the proviso.

The proviso emphasises that the tribunal has to satisfy itself one way or other regarding misconduct, the punishment and the relief to be granted to workman only on the basis of the materials on record before it. The tribunal, for the purposes referred to above, cannot call for further or fresh evidence, as an appellate authority may normally do under a particular statute, when considering the correctness or otherwise of an order passed by a subordinate body. The matter in the proviso refers to the order of discharge or dismissal that is being considered by the tribunal.

The court should not be understood as laying down that there is no obligation whatsoever on the part of an employer to hold an enquiry before passing an order of discharge or dismissal. This court has consistently been holding that an employer is expected to hold a proper enquiry according to the standing orders and principles of natural justice.

It has also been emphasised that such an enquiry should not be an empty formality. If a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the tribunal, even though it has no power to differ from the conclusions arrived at by the management will have to give every cogent reasons for not accepting the view of the employer.

Further, by holding a proper enquiry, the employer will also escape the charge of having acted arbitrarily or malafide. It cannot be over-emphasised that conducting of a proper and valid enquiry, will improve the relationship between him and the workmen and it will serve the cause of industrial peace. Further, it will also enable an employer to persuade the tribunal to accept the enquiry as proper and the finding also as correct.

Notes to Section 11 A

This section has no retrospective operation and therefore does not apply to disputes which had been referred prior to the 15th December, 1971, on which date Sec. 11A was brought into operation. **(Workmen of Firestone tyre & Rubber Co. of India (P) Ltd. v The Management and others - 1973 (1) LLJ 278, The Gujarat Mineral Development Corporation v P.H. Brahmbhatt - 1974 (1) LLJ 97 and East India Hotels v Their Workmen and others - 1974 LIC 532)**

A direction withholding payment of back wages either fully or partially is undisputably penal in nature. An award directing reinstatement of an employee without back wages and without any other kind of punishment specified in the regulations of the management is not bad merely because the employee was found guilty of misconduct, it in the opinion of the tribunal the misconduct is not so grave as to warrant the extreme penalty of discharge or dismissal.

The term lesser punishment in the section cannot be restricted by reading words which are not contained in the section. This section does not state that the lesser punishment should be one which is provided in the Regulations or Standing Orders of the management. The provision takes in its sweep all punishments lesser than discharge or dismissal, whether provided for in the Regulations or Standing Orders of the management or not. **(Andhra Pradesh State Road Transport Corporation v Labour Court, Guntur, and another - 1978 LIC. 359)**

Very wide powers have been conferred by the legislature on the tribunals to decide the questions between the workmen and the employer. They can even re-appraise the evidence laid before the enquiry officer and examine the correctness of his finding.

