

KAMS060000382023



BEFORE THE INDUSTRIAL TRIBUNAL AT MYSURU

DATED THIS THE 2nd DAY OF APRIL 2026

Present:- Smt. Sandhya Rao P, B.Sc.,LL.B.,
Presiding Officer,

Sl.Appl.No.1/2023

Applicant: **M/s TRC Engineering (India) Pvt.Ltd.,**
Plot No.66 & 67-D,
Hootagalli Industrial Area,
Mysuru-570 018.

(By Sri.J.Purushotham, Advocate)

-Vs-

Opposite Party: Smt.N.Mangamma,
W/o. Nagesh,
No.161/2, Aralimara Road,
Koorgalli,
Mysuru-570018.

(By Sri.Mohankumar S.V, Advocate)

ORDERS ON PRELIMINARY ISSUE

The applicant company has filed the present application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short, 'the Act') for approval of its action of termination of respondent.

2. Notice was issued to the respondent. The respondent appeared through her Advocate and filed her objections to the application.

3. It is the case of the applicant that, the respondent has been working as a permanent employee in the house keeping Department of the applicant management. The respondent was kept under suspension pending enquiry vide order dated 06.04.2022 and subsequently issued with a detailed charge sheet cum show cause notice dated 13.04.2022, as she had indulged in serious acts of misconduct which involves willful insubordination or disobedience whether alone or in combination with another, of any lawful or reasonable orders of superiors, negligent and arrogant behaviour while discharging the assigned duties and responsibilities, using mobile phone while on duty, refusal to receive official communication, absenting from duty, etc. Subsequently, an enquiry was initiated vide Notice of enquiry dated 26.04.2022. The enquiry officer submitted his report and findings of the enquiry holding the respondent guilty of all the charges leveled against her. The applicant further submitted that the management has issued

2nd show cause notice dated 21.03.2023 and she was communicated the proposed punishment of dismissal from the services of the company. The respondent submitted her explanation to the second show cause notice dated 30.03.2023 and also failed to substantiate as to why the proposed punishment of dismissal should not be imposed on her. The management by considering various aspects, decided to impose a punishment of termination from the services of the company. Hence, the services of respondent is terminated w.e.f. the closing hours of 28.06.2023, for the proven acts of misconduct.

4. The applicant further submitted that the Mysuru Division Industrial Workers General Union has raised a dispute before this Tribunal vide Ref.No.1/2023 and the said Union has sought for settlement of charter of demands for its members in the said dispute. Since the opposite party is one of the persons involved in above referred case, the application for approval U/s.33(2)(b) of Industrial Disputes act, 1947, is being filed as an abundant caution, without prejudice to any contention and defence of applicant management.

5. The applicant further submitted that, it has paid a sum of Rs.19,016/- by NEFT on 28.06.2023, through Axis Bank, J.P.Nagar branch, Bengaluru towards 28 days salary and one month gross salary payable in compliance with Sec.33(2)(b) of the Industrial Disputes Act, 1947. Therefore, the applicant prayed for approval of the action taken by the applicant in terminating the respondent from her services by holding that the domestic enquiry conducted by the enquiry officer against her was fair and proper.

6. Per contra, the respondent filed objections to the application and contended that she had worked in the house keeping department of the applicant-company since 9 years without any complaints. Despite the same, the applicant issued charge-sheet cum show cause notice dated 13.04.2022. She replied to the said charge sheet and denied the charges leveled against her. The applicant was not satisfied with her reply and initiated enquiry by appointing an enquiry officer to conduct the domestic enquiry. the enquiry officer after conclusion of the enquiry, submitted his report holding that the charges leveled

against her stood proved. The enquiry officer unlawfully without appreciating the materials brought on record at the time of enquiry, had submitted his findings to the management. The motive of termination of services of the respondent was the reason behind conducting the enquiry and hence, the charge sheet itself is unfair and improper. Further, the enquiry officer has not followed the principles of natural justice while conducting the enquiry. Even while submitting his findings, the enquiry officer had not appreciated the merits on the side of respondent and without any basis, appreciated the evidence of the applicant. The findings of the enquiry officer was without any proper reasoning, biased and one-sided. The enquiry officer has failed to follow the procedural aspects while conducting the enquiry. Under such circumstances, the domestic enquiry conducted against the respondent was not fair and proper. The respondent was not in the habit of speaking rudely in high tone to her superiors. She had never committed misconduct as alleged in the charge sheet. The charges leveled against the respondent were created with an intention of terminating the opposite party. The issuance of charges sheet by the applicant

to the respondent was with an intention of victimizing her as she was actively involved with the team of Siddarju in raising charter of demands. The domestic enquiry conducted by the enquiry officer being ill-motivated and against the principles of natural justice and the procedures of conducting domestic enquiry, the same ought to be held as illegal and not valid. The respondent therefore, prayed for setting aside the action of the management in the interest of justice.

7. On the basis of the aforesaid rival contentions, this Tribunal framed Issues to be decided in the present case. Out of the said issues validity of domestic enquiry which runs as follows was taken up for consideration as a preliminary issue:

Does the applicant prove the validity of the domestic enquiry held against the respondent?

8. The applicant in order to establish before this Tribunal that the domestic enquiry conducted against the respondent was fair, proper and valid, examined the enquiry officer Sri.H.C.Nagaraju as AW-1 and got marked documents Ex.A-1 to A-16. On the other hand, the respondent did not lead any oral

or documentary evidence on his behalf in support of the said issue.

9. Heard arguments.

10. This Tribunal answers the aforesaid preliminary issue in the ***Affirmative*** for the following-

REASONS

11. The applicant-company issued a charge sheet cum show cause notice to the respondent dated 13.04.2022, for serious acts of misconduct. In order to establish the fact that the domestic enquiries conducted were fair and proper, the applicant examined the enquiry officer, H. C. Nagaraju as A.W-1. AW-1 in his affidavit in lieu of examination-in-chief has stated that he had commenced the enquiry in respect of the charge sheet regarding serious acts of misconduct on 04.05.2022 and the respondent had participated in the enquiry. On the said day he explained the procedure of conducting enquiry to the respondent and read over the charges to the respondent. The respondent fully participated in the enquiry and he gave her reasonable opportunities to participate in the enquiry and to defend herself on the charges leveled against

her. The Management representative examined 3 witnesses during the enquiry and got marked documents M-1 to 25. The Management witnesses were cross-examined by the co-worker of the respondent Sri. Raju B.R. Thereafter the respondent examined herself and got marked documents Ex.D-1 to D-9. He thereafter concluded the domestic enquiry on 05.01.2023. Upon completion of the enquiry, he submitted his enquiry findings vide Ex.A-16 to the Management by holding that the respondent was guilty of the charges alleged in the charge-sheet.

12. Before proceeding further, it is relevant to highlight the decision of the Hon'ble Apex Court, in the case of ***Sur Enamel and Stamping works Ltd Vs Their Workmen, 1968 SC 1914***, wherein, the Court delved deeply into the merits of natural justice, outlining essential criteria for conducting a fair enquiry as follows:

*“An enquiry cannot be said to have been properly held unless,
(i) the employee proceeded against has been informed clearly of the charges levelled against him,
(ii) the witnesses are examined-ordinarily in the presence of the employee-in respect of the charges,*

*(iii) the employee is given a fair opportunity to cross-examine witnesses,
(iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and
(v) the enquiry officer records his findings with reasons for the same in his report.”*

Thus from the principles laid down in the aforesaid decision, it is apparent that the enquiry contemplated U/s. 33(2)(b) of the I.D.Act with respect to the validity and legality of the domestic enquiry is very limited in nature and it can disregard the findings of the enquiry officer only if they are perverse.

13. Keeping in mind the principles laid down in the aforesaid decision, let us now examine the factual aspects of the present case. The charge sheet cum show cause notice dated 13.04.2022, Vide Ex.A-1, came to be issued to the respondent. The respondent replied to the said chargesheet. Dissatisfied with the reply given by the respondent, the management, appointed AW-1 as the enquiry officer and Sri.Anil Kumar K R, Division Manager as the presenting officer. Further, the order sheet at Ex.A-7 reveals that the enquiry commenced on 4.05.2022 and on the said day, the enquiry officer explained the articles of charges and the procedure of enquiry to the

respondent. The respondent was permitted to engage a co-employee to defend her case. Thereafter, in the subsequent dates of enquiry the management examined its witness MW-1 to MW-3 and got marked the documents. The enquiry officer provided an opportunity to the first party to cross-examine the management witnesses. Thereafter, the statement of the respondent came to be recorded and she was cross-examined by the presenting officer. He thereafter, submitted his enquiry findings to the applicant management vide Ex.A-16, holding that the misconducts alleged against the opposite party stood proved.

14. From the evidence of AW-1 and the enquiry documents furnished before this Tribunal, it is apparent that the enquiry was conducted by the enquiry officer in accordance with the standing orders of the applicant-company and also by following the principles of natural justice.

15. The respondent during the course of arguments has vehemently contended that, the enquiry officer had not followed the principles of natural justice at the time of enquiry and while appreciating the material brought on record lopsidedly

considered the same in favour of the applicant. However, during the course of cross-examination of AW-1, the respondent has only put forth vague suggestions and not pin pointed the specific procedural lapses that the enquiry officer had committed or the manner in which the respondent was deprived of any opportunity to put forth her defence.

16. Thus, from the aforesaid analysis it is clear that, the enquiry officer had complied with the first four conditions propounded by the Hon'ble Apex Court in the case of ***Sur Enamel and Stamping Works Ltd.***, referred to supra. Now in so far as the last condition laid down in the said decision, i.e., with regard to the perversity in the reasoning of the enquiry officer in returning the finding of misconduct proved, it is necessary to meticulously examine the findings of the enquiry officer. The enquiry officer in his enquiry findings has in detail discussed the evidence brought on record in respect of the seven charges leveled against the opposite party. The enquiry officer meticulously evaluated the oral evidence of the management witnesses, found them to be credible and unimpeachable despite lengthy cross-examination by the

opposite party. Furthermore, the enquiry officer, upon carefully examining the oral and documentary evidence brought on record by the opposite party arrived at a conclusion that, the same was not believable. Overall, after, the enquiry officer examined the evidence brought on record he arrived at the finding that the respondent was guilty of the charges alleged against her in respect of willful insubordination and disobedience to the lawful and reasonable orders of her superiors; showing disrespect to the superiors; refusing to receive official communication and shouting against the HR head; gross negligence and dereliction in discharge of the duties assigned; use of mobile during working hours and habitually remaining unauthorizedly absent from work. The enquiry findings is clearly based on legal evidence brought on record.

17. In the case of ***John D'Souza V/s. Karnataka State Road Transport Corporation, Civil Appeal No.8042 of 2019, dated 16.10.2019***, the Hon'ble Supreme Court of India has in length discussed the scope of the Tribunals while exercising jurisdiction under Section 33(2)(b) of the Act as follows:

“31. This Court in the above cited decisions has, in no uncertain terms, divided the scope of enquiry by the Labour Court/Tribunal while exercising jurisdiction under Section 33(2)(b) in two phases. Firstly, the Labour Court/Tribunal will consider as to whether or not a prima facie case for discharge or dismissal is made out on the basis of the domestic enquiry if such enquiry does not suffer from any defect, namely, it has not been held in violation of principles of natural justice and the conclusion arrived at by the employer is bona fide or that there was no unfair labour practice or victimisation of the workman. This entire exercise has to be undertaken by the Labour Court/Tribunal on examination of the record of enquiry and nothing more. In the event where no defect is detected, the approval must follow. The second stage comes when the Labour Court/Tribunal finds that the domestic enquiry suffers from one or the other legal ailment. In that case, the Labour Court/Tribunal shall permit the parties to adduce their respective evidence and on appraisal thereof the Labour Court/Tribunal shall conclude its enquiry whether the discharge or any other punishment including dismissal was justified. That is the precise ratio – decendi of the decisions of this Court in (i) Punjab National Bank, (ii) Mysore Steel Works Pvt. Ltd. and (iii) Lalla Ram’s cases (supra).

32. A Division Bench of this Court in Cholan Roadways Ltd. v. G. Thirugnanasambandam, also went into the issue of jurisdiction exercisable under Section 33(2)(b) of the Act and relying upon the Martin Burn Ltd.(supra), it has opined as follows:-

“18. The jurisdiction of the Tribunal while considering an application for grant of approval has succinctly been stated by this Court in Martin Burn Ltd. v. R.N. Banerjee[AIR 1958 SC 79 : 1958 SCR 514]. While exercising jurisdiction under Section 33(2)(b) of the Act, the Industrial Tribunal is required to see as to whether a prima facie case has been made out as regards the validity or otherwise of the

domestic enquiry held against the delinquent, keeping in view the fact that if the permission or approval is granted, the order of discharge or dismissal which may be passed against the delinquent employee would be liable to be challenged in an appropriate proceeding.

5. (2005) 3 SCC 241 before the Industrial Tribunal in terms of the provision of the Industrial Disputes Act.” [Emphasis applied] The Court then observed that:

“19. It is further trite that the standard of proof required in a domestic enquiry visa-vis a criminal trial is absolutely different. Whereas in the former “preponderance of probability” would suffice; in the latter, “proof beyond all reasonable doubt” is imperative.

20. The Tribunal while exercising its jurisdiction under Section 33(2)(b) of the Industrial Disputes Act was required to bear in mind the aforementioned legal principles. Furthermore, in a case of this nature the probative value of the evidence showing the extensive damages caused to the entire left side of the bus; the fact that the bus first hit the branches of a tamarind tree and then stopped at a distance of 81 ft therefrom even after colliding with another bus coming from the front deserved serious consideration at the hands of the Tribunal. The nature of impact clearly demonstrates that the vehicle was being driven rashly or negligently.”

33. The Three-Judge bench decisions of this Court in Punjab Nation Bank and Mysore Stee; Works Pvt. Ltd.(supra), as well as the Division Bench judgment in Lalla Ram (supra) were unfortunately not cited before this Court in Cholan Roadways Ltd. There is yet no conflict of opinion as in Cholan Roadways Ltd. (supra) also this Court reiterated the past consistent view that while exercising jurisdiction under Section 33(2)(b) of the Act, the Industrial Tribunal is required to see only whether a prima facie case has been made out as regard to the requirement of domestic enquiry. Cholan Roadways nonetheless deals with only 1st phase of the jurisdiction exercisable under

Section 33(2)(b) and it falls short to elucidate as to whether, in the event of a defective domestic enquiry, the Labour Court/Tribunal can also the parties to adduce evidence. The 2nd phase of Jurisdiction exercisable under Section 33(2)(b) was not debated in Cholan Roadways (supra) apparently for the reason that on facts this Court was satisfied that the delinquent workman was guilty of the misconduct attributed and proved against him in the domestic enquiry. On the other hand, Mysore Steel Works Pvt. Ltd. and Lalla Ram have gone a step ahead to hold that the Tribunal can permit the parties to adduce evidence if it finds that the domestic enquiry suffers from any defect or was violative of the principles of natural justice or was marred by unfair labour practice, it may then independently examine the evidence led before it to embark upon the question whether or not the punitive action deserves to be accorded approval.

34. It, thus, stands out that though the Labour Court or the Tribunal while exercising their jurisdiction under Section 33(2)(b) are empowered to permit the parties to lead evidence in respect of the legality and propriety of the domestic enquiry held into the misconduct of a workman, such evidence would be taken into consideration by the Labour Court or the Tribunal only if it is found that the domestic enquiry conducted by the Management on the scale that the standard of proof required therein can be 'preponderance of probability' and not a 'proof beyond all reasonable doubts' suffers from inherent defects or is violative of principles of natural justice. In other words, the Labour Court or the Tribunal cannot without first examining the material led in the domestic enquiry jump to a conclusion and mechanically permit the parties to lead evidence as if it is an essential procedural part of the enquiry to be held under Section 33(2)(b) of the Act."

18. In the aforesaid decision, the Hon'ble Apex Court, relied upon the decision in the case of **Cholan Railways Ltd. Vs G**

Thirugnanasambadam, (2005), 3 SCC 241 and held that the Industrial Tribunal is only required to see as to whether a prima facie case has been made regards the validity or otherwise of the domestic enquiry held against the delinquent employee and the standard of proof would be that of preponderance of probability rather than proof beyond reasonable doubt. The enquiry findings in the instant case, is in conformity with the principles propounded with the aforesaid decision and that in the case of ***Sur Enamel & Stamping Works Ltd.*** referred supra.

19. In the instant case, the respondent apart from cross-examining the AW-1 has not led any evidence to prove victimization or unfair labour practice on the part of the management. The facts of the case clearly indicate that there was no violation of principles of natural justice during the course of domestic enquiry as alleged by the respondent. Furthermore, it is seen that the findings of enquiry officer in the instant case is supported by legal evidence and apparently there is no perversity in the findings. It is clear that the applicant from the oral and documentary evidence on record before this

Tribunal has proved that the domestic enquiry conducted by the enquiry officer was just, proper and in accordance with the principles of natural justice. On the other hand, the respondent has failed to highlight and establish the lapses on the part of the enquiry officer in conducting the domestic enquiry, which had thereby caused prejudice to her defence. Hence, in view of the aforesaid discussion, this Tribunal is of the opinion that the domestic enquiry conducted against the respondent was fair, proper and valid. With the above observation, this Tribunal proceeds to answer the preliminary issue in the ***affirmative*** and hence, the following-

ORDER

**The Domestic Enquiry conducted
against the respondent is fair, proper
and valid.**

(Dictated to the Stenographer, transcribed by her, then corrected, signed and pronounced by me in the open court on this the **2nd day of April, 2026**)

sd/-
(SANDHYA RAO P)
Presiding Officer,
Industrial Tribunal, Mysuru