1957

September

MARTIN BURN LTD.

v.

R. N. BANERJEE.

(BHAGWATI, S. K. DAS and GAJENDRAGADKAR, JJ.)

Industrial dispute—Discharge of employee—Application for permission before labour Appellate Tribunal—Jurisdiction of the Tribunal—Power to set aside ex-parte order and restore application—Code of Civil Procedure (Act V of 1908), Or. 41, R. 21—Industrial Disputes (Appellate Tribunal) Act, 1950. (XLVIII of 1950), ss. 9(1)(10), 22.

The respondent was employed by the appellant company, but later on his work and conduct became very unsatisfactory and repeated warnings, both oral and written, did not show any improvement. A thorough inquiry into his record of service was made and a report was submitted which showed that he was unsuitable to be retained in its service. No formal enquiry, however, was held by submitting a charge-sheet to the respondent and giving him an opportunity to rebut those charges. The appellant gave him a choice either to terminate his services on payment of full retrenchment compensation, or if he refused to accept the same, to make an application for permission to terminate his services. Eventually, the appellant filed an application before the Labour Appellate Tribunal under section 22 of the Industrial Disputes (Appellate Tribunal) Act, 9150, for permission to discharge the respondent from its service. The application was originally heard *ex parte*, the respondent not appearing, and the Tribunal, by order dated October 14, 1955 allowed the application. Subsequently the respondent made an application for a review of the order under Or. 47, R. 1. for setting it aside under Or. 9. R. 13, and for restoration of the application under Or. 41, R. 21. Of the Code of Civil Procedure, The tribunal found that there was sufficient cause for the respondent not appearing when the application was called on for hearing, and set aside the *ex parte* order and restored the appelant's application. On a further hearing of the application, the parties adduced evidence and the Tribunal, after hearing them, rejected the application on the ground that a *prima facie* case had not been made out for permission to discharge the respondent. On appeal to the Supreme Court it was contended for the appellant (1) that the Labour Appellate Tribunal had no jurisdiction to review its own order and (2) that it exceeded its jurisdiction under section 22 of the Act, in discussing the evidence led before it in meticulous detail and coming to the conclusion that the appellant failed to make out a *Prima facie* case to discharge the respondent from its service.

Held : (1) that under s. 9. sub-ss.(1) and (10 of the Act the Labour Appellate Tribunal had jurisdiction to set aside the

ex parte order dated October 14, 1955, and restore the application to its file.

(2) that under s. 22 of the Act, the jurisdiction of the Labour Appellate Tribunal in considering whether a *prima facie* case has been made out by the employer, is to see whether the employer is acting mala fide or is resorting to any unfair labour practice or victimisation, and whether on the evidence led it is possible to arrive at the conclusion in question. Though the Tribunal may itself have arrived at a different conclusion it has not to substitute its own judgment for the judgment in question.

Atherton West & Co. Ltd., v. *Suti Mill Mazdoor Union and Others*, (1953) S.C.R. 780, *The Automobile, Products of India Ltd.* v. *Rukmaji Bala & others*, (1955) 1 S.C.R. 1241 and *Lakshmi Devi Sugar Mills Limited* v. *Pt. Ram Sarup* (1956) S.C.R. 916, relied on.

In the instant case, though the appellant was justified in making the application for permission to discharge the respondent on account of his work and conduct being demonstrably unsatisfactory, and the standard of proof which the Tribunal had applied for finding whether there was a *prima facie* case was not strictly justifiable, in view of the fact that no fromal inquiry into the charges against the respondent was held and the evidence on behalf of the appellant did not show that the respondent was given an opportunity to controvert the allegations made against him, the decision of the Tribunal was upheld.

CIVIL APPELLATE JURISDICTION : civil Appeal No. 92 of 1957.

Appeal by special leave from the judgment and order dated May 11, 1956, of the Labour Appellate Tribunal of India, Calcutta, in Misc. Case No. C-152 of 1955.

B. Sen, S. N. Mukherjee and *B. N. Ghosh*, for the appellants.

D. L. Sen Gupta (with him *Dipak Dutta Chowdhri*), for the respondent.

1957. September 20. The following Judgment of the Court was delivered by

BHAGWATI J.—This appeal with special leave against the decision of the Labour Appellate Tribunal of India, Calcutta, arises out of an application made by the appellant under s. 22 of the Industrial Disputes

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(Appellate Tribunal) Act, 1950 (hereinafter) referred to as "the Act" for permission to discharge the respondent.

The respondent had been appointed as a pay-clerk in the appellant's cash department on April 30, 1945, and had been confirmed in service with effect from August 1, 1945. Since the beginning of 1949, the respondent was found to have become negligent and careless in his work and he was also disobedient and slow in the performance of the duties that were allotted to him. Repeated verbal and written warnings were given to him but they had no effect whatever. Consequently the Chief Cashier by his letter dated October 24, 1949, addressed to the Manager of the appellant complained that he was very negligent and careless in his work, and habitually showed sulkiness, that he was also disobedient, and shirked the duties that were allotted to him and that recently, he was careless enough to keep the Company's money in an open drawer of a safe, and go home, without locking the same. The Management thereupon asked for his written explanation which he submitted on October 28, 1949, stating that if there was anything wrong on his part that was due to his ill health, hard work and mental anxiety. He, therefore, asked to be excused and stated that he would take much more care in future about his work. On November 17, 1949, the Chief Cashier again complained against the respondent stating that he had not only registered no improvement but was grossly negligent in his duties, in spite of repeated warnings, and was in the habit of absenting himself on flimsy grounds, and always tried to avoid duties that were entrusted to him and was very insolent in his behaviour and conduct. A charge-sheet was submitted to him on November 18, 1949, and he was suspended till the final disposal of the enquiry. On November 19, 1949, the respondent wrote a letter to the Managing Director of the appellant pleading not guilty to the charges framed against him and asking for an interview so that he may have a chance to represent his grievances personally. The respondent was granted an interview with the Manager of

the appellant who investigated the case of the respondent and found him guilty of the charge framed against him. The respondent had admitted having been rude to his superior officer in fit of temper but appeared to be repentent of his conduct and had tendered an apology to the Chief Cashier. He also submitted on November 29, 1949, a letter asking to be excused. Under the circumstances, the manager of the appellant recommended in his report dated November 29, 1949, that the respondent be given one more opportunity to prove himself of good behaviour but having regard to the request made by the respondent in that behalf suggested that he be transferred to the Mechanical Engineering Department. The Manager also stated at the end of the said report that he had warned the respondent that if he got any further adverse report about his work or conduct, his services would be terminated forthwith. Following upon that report a letter was addressed by the appellant to the respondent on the same day intimating that the appellant had decided to give him one more chance of working in the organization on the distinct understanding that should there be any further adverse report about his work or conduct, his services would be terminated forthwith. He was directed on that understanding to report to Mr. Hooper of the M. E. Department, where he was being transferred with effect from the next day.

In spite of these chances being given to him the respondent did not improve and he was again found seriously neglecting his work. There were also complaints from the typists to the effect that the respondent's chatter interferred with their work. Mr. Hooper after giving him verbal warnings on several occasions without any effect ultimately gave him a written warning on February 9, 1951 recording the above facts and asking that the respondent should show immediate improvement in his conduct failing which he would take the matter further. The respondent replied by his letter dated February 16, 1951 denying the allegations contained in the said letter of Mr. Hooper. He pleaded that he was not negligent in his duties inasmuch

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as he had to discharge the arrears of work which were outstanding at the time when he took over the work of writing parcel challans and he was also asked to do other work of the clerks who were absent on leave. He however admitted that he had occasionally talked with his co-workers though he contended that that was not in such a way as would prompt his co-workers to complain against him. He further asked to be excused for the faults, if any and gave an assurance that he was trying and would try his level best to improve further.

The respondent however did not show any improvement and again there were complaints against him that his work had not been done properly and also that he had been noisy, causing disturbance to the other clerks' work and that he had been twice found by his superior officer Mr. Girling with his head on his arms apparently sleeping. On September 3, 1952 Mr. Girling on behalf of the appellant gave the respondent a warning to which he replied on September 8, 1952, denying all the allegations except that of his being found with his head on his arms but excused himself by stating that he was ill and it was under the advice of Mr. Girling himself that he consulted the office doctor who had advised him rest. He however promised to endeavour his utmost to give every satisfaction in the discharge of his duties.

In spite of these warnings the respondent showed no improvement in his work and conduct and continued neglecting his duties and indulging in insubordination with the result that by its letter dated February 9, 1953, the Management of the appellant wrote to him that the only course left to it was to dispense with is services but as a measure of leniency it had decided to give him another chance to show satisfactory improvement and in doing so it had also decided to stop his annual increment. The respondent protested against the stopping of his annual increment by his letter dated February 17, 1953, and contended that the charges levelled aginst him were absolutely groundless and asked the Management to re-consider his case. The Labour Directorate of the Government of Wes

Bengal was approached on his behalf but that body also refused to intervene. The Management asked Mr. Hooper to report upon the respondent's work and conduct by May 31, 1953 and intimated to the respondent that unless definite improvement was reported by that date his services with the appellant would be terminated as from June 30, 1953. Mr. Hooper observed the respondent's work and conduct and not finding them satisfactory, by his memo. dated August 19, 1953, reported on the same to the Management of the appellant. No action was however taken immediately against the respondent and on May 4, 1954, Mr. Hooper made his final report to the Management on the strength of which the appellant wrote to the respondent its letter dated May 10, 1954, in which it stated that on receipt of the complaint from Mr. Hooper it had made a thorough enquiry into his record of service, had found that he was unsuitable to be retained in its service and had, therefore decided to terminate his service on payment of full retrenchment compensation. It asked the respondet to choose one of the two alternatives, *viz.*, that it may forthwith terminate his services if he was agreeable to accept payment of retrenchment compensation or in case he refused to accept the same to make an application before the Fifth Industrial Tribunal for permission to terminate his service. The respondent failed and neglected to send any reply with the result that by its letter dated June 21, 1954 the appellant intimated to the respondent that it was approaching the Tribunal for permission to terminate his service as per its letter dated May 28, 1954. The appellant thereafter filed on September 21, 1954, an application before the Fifth Industrial Tribunal, West Bengal, under s. 33 of the Industrial Disputes Act, 1947 for permission to discharge the respondent. The Fifth Industrial Tribunal however became *functus officio* on the expiry of thirty days from the publication of its Award in the dispute which was then pending before it with the result that the said application could not be disposed of and was accordingly struck off.

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The appellant eventually filed an application under s. 22 of the Act before the Labour Appellate Tribunal of India at Calcutta for permission to discharge the respondent from its service. This step became necessary as there was an appeal being No. Cal. 152 pending before the Labour Appellate Tribunal to which the appellant and the respondent were parties. The Labour Appellate Tribunal consisting of Shri M.N. Gan (President) and Shri P. R. Mukherji (Member) heard the appellant *ex parte* and by its order dated October 14, 1955, allowed the said application and granted the permission to discharge the respondent holding *inter alia* that a *prima facie* case had been made out for permission to dismiss the respondent. The appellant accordingly on November 11, 1955, wrote a letter to the respondent stating that the necessary permission had been granted by the Labour Appellate Tribunal, to discharge him from the appellant's service and that the decision of the Management of the appellant dated May 28, 1954, to terminate his service was therefore given effect to on the terms communicated to him in that letter.

On December 6, 1955, the respondent filed an affidavit before the Labour Appellate Tribunal Calcutta, praying for a review of the order dated October 14, 1955, for setting it aside and for restoration of the application under s. 22 of the Act.

The Labour Appellate Tribunal presided over by Mr. M. N. Gan and Mr. V. N. Dikshitulu heard the parties concerned and by its order dated March 6, 1956, allowed the respondent's application and restored the appellant's case to its file. On a further hearing of that application the parties adduced evidence and after hearing both the parties the Labour Appellate Tribunal presided over this time by Mr. V. N. Dikshitulu rejected the application under s. 22 of the Act by its order dated May 11, 1956, and refused to the appellant permission to discharge the respondent from its service.

The appellant being aggrieved by the said decision of the Labour Appellate Tribunal of India, Calcutta

applied for and obtained special leave to appeal to this Court.

Mr. Sen on behalf of the appellant raised two contentions : (i) that the Labour Appellate Tribunal had no jurisdiction to review its own order which it had passed on October 14, 1955, and (ii) that the Labour Appellate Tribunal had exceeded its jurisdiction under s. 22 of the Act in coming to the conclusion that the appellant had failed to make out a *prima facie* case to discharge the respondent from its service.

Re : (i) It was contended that once the Labour Appellate Tribunal pronounced its order on October 14, 1955, it had become *functus officio* and thereafter it had no jurisdiction to review its own order. The circumstances, moreover, did not bring the application which was made by the respondent on December 6, 1955, strictly within the provisions of O. 47, r. 1 of the Code of Civil Procedure and no application for review could therefore be maintained.

It is significant, however, to remember that the application made by the respondent on December 6, 1955, was an omnibus one and was intituled as one under O.47 r. 1 of the Code of Civil Procedure for review ; under O.41 r. 21 of the Civil Procedure Code for restoration and under O.9, r. 13 of the Code of Civil Procedure for setting aside the permission granted *ex parte* and to restore the respondent in his original position. The respondent evidently sought to rely upon one or the other of the provisions above set out in order to obtain the relief which he sought in that application.

Whether one or more of these provisions of the Code of Civil Procedure could be availed of by the respondent depends upon what are the powers which are vested in the Labour Appellate Tribunal when hearing the matters which come before it. The Labour Appellate Tribunal is the creature of the statute and all its powers must be found within the four corners of the statute. The constitution and functions of the Labour Appellate Tribunal are to be found in Chapter II of the Act. Sections 4 to 6 of the Act lay down the

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constitution and functions of the Labour Appellate Tribunal and s. 7 prescribes its jurisdiction in appeal from awards or decisions of the Industrial Tribunals. Section 9 lays down the powers and procedure of the Labour Appellate Tribunal. The provisions of s. 9 so far as they are relevant for the purpose of this appeal may be set out here.

Section 9. Powers and procedure of the Appellate Tribunal.

(1) The Appellate Tribunal shall have the same powers as are vested in a civil court, when hearing an appeal, under the Code of Civil Procedure, 1908 (Act V of 1908).

.....

(10) The Appellate Tribunal shall follow such procedure as may be prescribed, and subject thereto, it may, by order, regulate its practice and procedure and the provisions of the Code of Civil Procedure, 1908 (Act V of 1908), shall, so far as they are not inconsistent with this Act, or the rules or orders made thereunder, apply to all proceedings before the Appellate Tribunal.

It may be noted that the Labour Appellate Tribunal not only exercises appellate jurisdiction by way of hearing appeals from the awards or decisions of the Industrial Tribunals but also exercises original jurisdiction when applications are made to it under s. 22 of the Act to obtain its permission in writing to alter the conditions of service applicable to the workman or to discharge or punish whether by dismissal or otherwise any workman concerned in appeals pending before it. If an employer contravenes the provisions of s. 22 during the pendency of the proceedings before the Labour Appellate Tribunal, it also entertains complaints in writing at the instance of the employees aggrieved by such contravention and the Labour Appellate Tribunal decides these complaints as if they are appeals pending before it in accordance with the provisions of the Act. This is also an exercise of original jurisdiction though under the express terms of the section the exercise of that jurisdiction is assimilated to the

exercise of appellate jurisdiction by the Labour Appellate Tribunal. Whatever be the nature of the jurisdiction thus exercised by the Labour Appellate Tribunal—whether original or appellate—that jurisdiction is exercised by it by virtue of the provisions of the Act: And s. 9 of the Act has reference to the exercise of the whole of that jurisdiction when it talks of the powers and procedure of the Labour Appellate Tribunal. In regard to such powers and procedure no distinction is made between the exercise of original jurisdiction and the exercise of appellate jurisdiction by the Labour Appellate Tribunal and these provisions apply equally to the jurisdiction exercised by it whether under ss. 7, 22, or s. 23 of the Act.

Section 9(1) of the Act invests the Labour Appellate Tribunal with the same powers as are vested in a civil court, when hearing an appeal, under the Code of Civil Procedure, 1908 (Act V of 1908). A question was mooted before us whether the words "when hearing an appeal" were to be read with the words "Appellate Tribunal" or with the words "a civil court". It was argued that these words went with the words "Appellate Tribunal" and, therefore, the powers of a civil court under the Code of Civil Procedure were to be exercised by the Labour Appellate Tribunal only when it was exercising its appellate jurisdiction and hearing matters which fall within the purview of s. 7 or s. 23 of the Act and not when it was exercising original jurisdiction and hearing applications under s. 22 of the Act. This construction of the provisions of s. 9(1) of the Act however suffers from this disability that it takes no count of the fact that the Labour Appellate Tribunal under the provisions of the Act itself exercises both original as well as appellate jurisdiction and if such a construction was put on these provisions the result would be that there would be no provisions as regards the powers of the Labour Appellate Tribunal when it is exercising original jurisdiction. The powers of the Labour Appellate Tribunal which are sought to be provided in s. 9(1) of the Act are not limited only to the exercise

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of appellate jurisdiction by it but have reference to the whole of the jurisdiction which is vested in the Labour Appellate Tribunal under the provisions of the Act. The words "when hearing an appeal" have, moreover, been used between the words "a civil court" and "under the Code of Civil Procedure, 1908" which in the context in which they have been used could only have been meant to refer to a civil court. Whatever the jurisdiction the Labour Appellate Tribunal is exercising—whether original or appellate—it is vested with the powers as are vested in a civil court under the Code of Civil Procedure, 1908, when it is hearing an appeal. The very juxtaposition of the words "when hearing an appeal" with the words "a civil court", is sufficient, in our opinion to invest the Labour Appellate Tribunal while exercising its jurisdiction—whether original or appellate—with the same powers as are vested in a civil court under the Code of Civil Procedure when it is exercising its appellate jurisdiction, and hearing appeals. [See *Burmah-Shell Oil Storage Case* (1) and the *New Union Mills Ltd. Case* (2)].

If this is the true construction to be put on the provisions of s. 9(1) of the Act, the provisions of O. 41 r. 21 of the Code of Civil Procedure are attracted forthwith. Order 41 r. 21 provides :

Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the appellate court to re-hear the appeal, and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

When the Labour Appellate Tribunal heard the application under s. 22 of the Act *ex parte* on October 14, 1955 the summons had not been served on the respondent owing to its being addressed to him at a wrong place. There was sufficient cause therefore for the respondent not appearing when the application was called on for hearing and on this

(1) 1953 L.A.C. 522. (2) 1954 L.A.C. 252.

circumstance being established he was entitled to a re-hearing of the application and setting aside of the *ex parte* order made against him. The Labour Appellate Tribunal was, therefore, right in making the order which it did on March 6, 1956.

There is also another aspect of the question which may be dealt with at this stage and it is that under the provisions of s. 9, sub-s. (10) of the Act the Labour Appellate Tribunal is enjoined to follow such procedure as may be prescribed, and subject thereto it may, by order, regulate its practice and procedure and the provisions of the Code of Civil Procedure, 1908 (Act V of 1908), shall, so far as they are not inconsistent with the Act or the rules or orders made thereunder, apply to all proceedings before it. Pursuant to the powers conferred upon it by this sub-section the Labour Appellate Tribunal has made orders to regulate its practice and procedure and O. 3 r. 4 provides:

"Nothing in these rules shall be deemed to limit or otherwise affect the inherent power of the Tribunal to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

This provision is analogous to that which is contained in s. 151 of the Code of Civil Procedure which relates to the inherent powers of the Court and even apart from the applicability of O. 41 r. 21 of the Code of Civil Procedure as hereinbefore set out it was open to the Labour Appellate Tribunal to pass the order which it did on March 6, 1956, as it was evidently necessary for the ends of justice or to prevent the abuse of the process of the Court.

We are, therefore, of opinion that the Labour Appellate Tribunal had jurisdiction to set aside the *ex parte* order dated October 14, 1955, and restore the appellant's application under s. 22 of the Act to its file. This contention of the appellant therefore is without any substance and must be negatived.

Re: (ii) It was next contended that even though the Labour Appellate Tribunal had jurisdiction to hear an application under s. 22 of the Act it misconceived

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its jurisdiction and in the exercise of it, launched into an inquiry which it was not competent to do and erroneously came to the conclusion that the appellant had failed to make out a *prima facie* case for terminating the service of the respondent.

The nature and scope of the enquiry before the Labour Appellate Tribunal under s. 22 of the Act has been the subject-matter of decisions of this Court in *Atherton West & Co. Ltd.* v. *Suti Mill Mazdoor Union and others* (1), *The Automobile Products of India Ltd.* v. *Rukmaji Bala & others* (2) and *Lakshmi Devi Sugar Mills Limited* v. *Pt. Ram Sarup* (3). In the last mentioned case this Court succinctly laid down the principles governing such enquiry and observed at p. 935 :

"The Tribunal before whom an application is made under that section has not to adjudicate upon any industrial dispute arising between the employer and the workman but has only got to consider whether the ban which is imposed on the employer in the matter of altering the conditions of employment to the prejudice of the workman or his discharge or punishment whether by dismissal or otherwise during the pendency of the proceedings therein referred to should be lifted. A *prima facie* case has to be made out by the employer for the lifting of such ban and the only jurisdiction which the Tribunal has is either to give such permission or to refuse it provided the employer is not acting *mala fide* or is not resorting to any unfair practice or victimization."

We have, therefore, got to consider whether in the instant case a *prima facie* case was made out by the appellant for terminating the service of the respondent and whether in giving the notice dated November 11, 1955, terminating the respondent's service the appellant was motivated by any unfair labour practice or victimization.

The facts as they appear from the narration of events in the earlier part of this judgment go to establish that the respondent was grossly negligent in

(1) [1953] S.C.R. 780. (3) [1956] S.C.R. 916.

(2) [1955 1 S.C.R. 1241.

the performance of his duties, was in the habit of absenting himself on flimsy grounds, was also insolent in his behaviour and conduct and in spite of repeated warnings oral as well as written, addressed to him by the Management of the appellant did not show any signs of improvement. The incidents of 1949, 1951, and 1952 culminating in the stoppage of his annual increment in February, 1953, were sufficient to demonstrate that the Management of the appellant dealt with the respondent very leniently in spite of his work and conduct not being at all satisfactory. The appellant would have been well within its rights if it had taken action against the respondent on each of the several occasions above referred to, but out of sheer compassion went on giving him one opportunity after the other so that he would register an improve ment in his work and conduct. The respondent, however, persisted in his behaviour and the two reports made by Mr. Hooper—one on August 19, 1953, and the other on May 4, 1954, were considered by the Management and it came to the conclusion that the respondent was unsuitable to be retained in the appellant's service and even then instead of deciding to dismiss him without anything more, it offered him the choice of one of the two alternatives, *viz.*, that it may forthwith terminate his service if he was agreeable to accept the term of full retrenchment compensation or if he refused to accept the same to make an application before the Fifth Industrail Tribunal for permission to terminate his service. The whole of the correspondence ending with the respondent's letter dated February 17, 1953, was sufficient to prove without anything more the unsatisfactory nature of his work and conduct and the appellant was evidently of the opinion that the records of the respondent taken along with the reports made by Mr. Hooper afforded sufficient material to justify it in taking the step which it ultimately decided to do. It was under these circumstances that the appellant did not consider it necessary to furnish to the respondent a charge-sheet and to hold a formal enquiry into the work and conduct of the respondent.

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This circumstance was considered by the Labour Appellate Tribunal as sufficient to entitle it to determine for itself whether a *prima facie* case for the termination of the respondent's service was made out by the appellant. It was open to the appellant to submit a charge-sheet to the respondent and institute a formal inquiry into his work and conduct. If that had been done and the appellant had, after holding such formal enquiry, come to the conclusion that the respondent was guilty of the charges which were levelled against him and had then decided to terminate his service, the Tribunal could not have intervened and on its coming to the conclusion that a *prima facie* case for the termination of the service of the respondent was thus made out, it would have granted the appellant the permission asked for. Unfortunately for the appellant, in spite of the work and conduct of the respondent being demonstrably unsatisfactory and, therefore, justifying the conclusion that he was unsuitable to be retained in its service, the appellant did not hold any formal enquiry of the nature indicated above and did not afford to the respondent an opportunity to have his say in the matter of the charges levelled against him. The Labour Appellate Tribunal therefore rightly took upon itself the burden of determining whether on the material submitted before it by the appellant a *prima facie* case for the termination of the respondent's service was made out by the appellant.

The evidence led by the parties before the Labour Appellate Tribunal consisting as it did of the affidavit and oral evidence was not such as would enable it to come to the conclusion that a *prima facie* case for the termination of the respondent's service was made out by the appellant. In paragraphs 8 and 9 of the application the appellant had pointed out that after receipt of Mr. Hooper's report dated May 4, 1954, to the effect that there will be no improvement of work in the department unless the respondent was removed from the same, the matter was further investigated and the old records of the respondent were carefully considered and the appellant found that enough consideration

had been shown to the respondent but without any effect and in the interest of discipline and good work it was necessary that he should be discharged from service. These allegations were denied by the respondent in his affidavit in reply and he contended that on no occasion whatever the warnings, letters, suspension or stoppage of increment resorted to by the appellant were done after establishing his guilt or by following the usual methods, *viz.*, by issuing a charge-sheet with specific allegations and on enquiry based on such a charge-sheet and explanations rendered by him. He contended that the whole thing was arbitrary, without any basis and in violation of the principles of natural justice and was by way of unfair labour practice or victimization. An affidavit in rejoinder was filed on behalf of the appellant by Shri Ramani Ranjan Dhar, a Senior Assistant of the Appellant. He denied these allegations of the respondent and affirmed that the application of the appellant sufficiently disclosed the offences for which it sought the permission of the Labour Appellate Tribunal to dismiss the respondent. He stated that the appellant was thoroughly satisfied, after full enquiry and investigation and after the respondent was given more than ample opportunity to explain the charges levelled against him, and after he was given more than one chance at his own prayer to improve his conduct on various occasions that the respondent was guilty of the charges brought against him. This affidavit evidence was followed by the oral evidence of Mr. Hooper led on behalf of the appellant. Mr. Hooper, however, did not carry the case of the appellant any further. Even though the appellant had an opportunity when Mr. Hooper was in the witness-box to produce his reports dated August 19, 1953, and May 4, 1954, and have them proved through him, or, in any event, if the absence or loss of those reports was satisfactorily accounted for to lead oral evidence as to their contents the appellant did not do so and beyond a bare reference to his report of May 4, 1954, without disclosing the contents thereof there was nothing in the deposition of Mr. Hooper which would

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even go to show that the contents of that report were prejudicial to the respondent. In cross-examination also he admitted that before reporting on May 4, 1954, against the respondent he did not draw up a charge-sheet as it was for the appellant to do so.

The Labour Appellate Tribunal had to determine on these materials whether a *prima facie* case had been made out by the appellant for the termination of the respondent's service. A *prima facie* case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a *prima facie* case had been made out the relevent consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in questions. It has only got to consider whether the view taken is a possible view on the evidence on the record. [See *Buckingham and Carnatic Co., Ltd. Case* (1)].

The Labour Appellate Tribunal in the instant case discussed the evidence led before it in meticulous detail and came to the conclusion that no *prima facie* case was made out by the appellant for the termination of the service of the respondent. It applied a standard of proof which having regard to the observations made above was not strictly justifiable. If the matter had rested there it may have been possible to upset the finding of the Labour Appellate Tribunal. But if regard be had to the evidence which was actually led before it, there is such a lacuna in that evidence that it is impossible to come to the conclusion that even if the evidence was taken at its face value a *prima facie* case was made out by the appellant. Mr. Hooper's evidence did not go to show what were the contents of his report dated May 4, 1954, and it contained only a bare reference to that report

(1) 1952 L.A.C. 490.

without anything more. This was not enough to prove the contents of that report, much less to give the respondent an opportunity of controverting the allegations made against him. If, therefore, these essential ingredients were wanting, it cannot be said that the evidence led by the appellant before the Labour Appellate Tribunal was sufficient to establish a *prima facie* case for the termination of the respondent's service. This contention also does not therefore avail the appellant.

Mr. Sen endeavoured to draw a distinction between discharge on the one hand and punishment by way of dismissal or otherwise on the other, in clause (b) of s. 22 of the Act. He contended that no *prima facie* case need be made out when an employee was sought to be discharged *simpliciter* by the employer. A charge-sheet was required to be submitted to the workman and an enquiry thereon required to be made in conformity with the principles of natural justice only in those cases where the workman was sought to be punished by dismissal or otherwise. That was not the case when the workman was sought to be discharged without assigning any reason whatever and such a case did not fall within the category of punishment at all. For the purpose of the present case we need not dilate upon this; it is sufficient to point out that Shri Ramani Ranjan Dhar in his affidavit in rejoinder filed on behalf of the appellant categorically stated that the respondent was sought to be "dismissed" by reason of his having been found guilty of the various charges which had been levelled against him. Even at the *ex parte* hearing of the application under s. 22 of the Act before the Labour Appellate Tribunal the case of the appellant was that it had made out a *prima facie* case for permission to "dismiss" the respondent. This distinction sought to be drawn by Mr. Sen is therefore of no consequence whatever and need not detain us any further.

Mr. Sen also relied upon the circumstances that after the Labour Appellate Tribunal had on the *ex parte* hearing of the application under s. 22 of the Act granted to the appellant permission to terminate the

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Martin Burn Ltd. v. *R. N. Banerjee*

Bhagwati J.

service of the respondent on October 14, 1955, the appellant had implemented the same and by its notice dated November 11, 1955 actually terminated the service of the respondent offering him full retrenchment compensation. In so far as the appellant had acted upon such permission and implemented the same, it was contended that the respondent's service was irrevocably terminated and nothing more was to be done thereafter, except the possible raising of an industrial dispute by the respondent on the score of his service having been wrongfully terminated. It was submitted that after such an irrevocable step had been taken by the appellant terminating the respondent's service, the Labour Appellate Tribunal ought not to have reconsidered its decision and restored the application under s. 22 of the Act to its file and that the further decision of the Labour Appellate Tribunal had no effect so far as the actual termination of the service of the respondent was concerned. We do not propose to go into these interesting questions for the simple reason that the only question which arises for our consideration in this appeal is whether on the evidence led before it the decision of the Labour Appellate Tribunal dated May 11, 1956, dismissing the appellant's application under s. 22 of the Act was correct. As a matter of fact no such contention had been urged by the appellant before the Labour Appellate Tribunal when it finally heard the application under s. 22 of the Act and the only point to which the attention of the Labour Appellate Tribunal was invited was whether the appellate had made out a *prima facie* case for the termination of the respondent's service. Whatever rights and remedies are available to the appellant by reason of these circumstances may just as well be asserted by the appellant in appropriate proceedings which may be taken hereafter either at the instance of the appellant or the respondent. We are not at present concerned with the same.

Under the circumstances, we are of opinion that the decision arrived at by the Labour Appellate Tribunal

which is the subject-matter of appeal before us was correct.

It is no doubt true that the Labour Appellate Tribunal recorded a finding in favour of the appellant that in terminating the service of the respondent as it did, the appellant was not guilty of any unfair labour practice nor was it actuated by any motive of victimization against the respondent. That finding, however, cannot help the appellant in so far as the Labour Appellate Tribunal held that the appellant had failed to make out a *prima facie* case for terminating the service of the respondent.

We, therefore, hold that the decision of the Labour Appellate Tribunal refusing permission to the appellant under s. 22 of the Act was correct and this appeal is liable to be dismissed. It will accordingly be dismissed with cost.

Appeal dismissed.

STATE OF U.P.

v.

MANBODHAN LAL SRIVASTAVA.

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September 20

(S. R. DAS, C. J., VENKATARAMA AYYAR, B. P. SINHA, J. L. KAPUR and A. K. SARKAR, JJ.)

Covernment Servant—Disciplinary proceedings—Enquiry—Show-cause notice under Art. 311(2) *of the Constitution —Consultation of Public Service Commission—Whether mandatory—Constitution of India, Arts.* 311(2), 320(3)(*c*).

The respondent was an employee under the appellant, the State of Uttar Pradesh, and as it was discovered that he had allowed his private interests to come in conflict with his public duties, a departmental inquiry was held wherein charges were framed against him. He was called upon to submit his written statement of defence and given an opportunity to adduce evidence in support of it. After considering the report of the enquiry, in which the charges were found to be true, the appellant called upon the respondent, under Art. 311(2) of the Constitution of India, to show cause why he should not be demoted and compulsorily retired, and the respondent submitted a written explanation setting out his defence and objecting to the procedure