CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

(Circuit Bench) LUCKNOW.

T.A. No. 5 OF 1990 (TL)
(W.P. No. 2022 of 1985)
AND
T.A. No. 6 OF 1990 (TL)
(W.P. No. 4336 of 1985)

DATE OF DECISION _____

In TA No.5: Council of Scientific & Industrial Research, New Delhi & Ors.
In TA No.6: ~~Prem Raj Singh.~~ _____ Petitioners

In TA No.5: Shri A.N.Trivedi & Shri S.K.Kalia.
In TA No.6: Shri Amit ~~Bose.~~ _____ Advocate for the Petitioner(s)

Versus

In TA No.5: Labour Court UP Lucknow & Prem Raj Singh.
In TA No.6: ~~Labour Court UP Lucknow & Director~~ C.B.R.I. Lucknow. _____ Respondent

In TA No.5: ~~Shri Amit Bose~~ _____ Advocate for the Respondent(s)
In TA No.6: Shri A.N.Trivedi

CORAM :

The Hon'ble Mr. Justice Kamleshwar Nath, Vice Chairman.

The Hon'ble Mr. M.M. Singh, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

MGIPRRND—12 CAT/86—3-12-86—15,000

Rec'd copy for Advt. Mr. 13.3.91

T.A.No. 5 OF 1990 (TL)
(Writ Petition No.2022/85)

1. Council of Scientific and Industrial Research, Rafi Marg, New Delhi through its Legal Advisor.

2. The Director, Central Drug Research Institute, Mahatma Gandhi Marg, Lucknow.

..... Petitioners

(Advocate: Shri A.N. Trivedi & Shri S.K. Kalia)

Versus.

1. Labour Court, U.P. at Lucknow A.P. Sen Road, Lucknow.

2. Shri Prem Raj Singh, aged about 47 years, son of late Shri Raj Nath Singh, resident of B-6, C.S.I.R. Colony, Nirala Nagar, Lucknow.

..... Respondents.

(Advocate: Shri Amit Bose.)

W I T H

T.A.No. 6 OF 1990 (TL)
(Writ Petition No. 4336/85)

Prem Raj Singh,
son of late Shri Raj Nath Singh,
resident of B-6, C.S.I.R. Colony,
Nirala Nagar, Lucknow. ..... Petitioner.

(Advocate: Shri Amit Bose)

Versus.

1. The Labour Court U.P. Lucknow through its Presiding Officer.

2. The Director,
Central Drug Research Institute,
Lucknow. ..... Respondents.

(Advocate: Shri A.N. Trivedi)

J U D G M E N T

T.A.NO. 5 OF 1990 (TL)
(W.P. No.2022/85)

with

T.A.NO. 6 OF 1990 (TL)
(W.P.No. 4336/85)

Date:

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

1. Council of Scientific and Industrial Research, (CSIR for short) New Delhi through its Legal Advisor and Director, Central Drugs Research Institute (CDRI for short) filed Writ Petition No. 2022 of 1985 against Labour Court U.P at Lucknow and Shri Prem Raj Singh, in turn, filed Writ Petition No. 4336 of 1985 against the Labour Court, U.P, Lucknow, through its Presiding Officer and the Director CDRI. The two Writ Petitions impugn one and the same award of the Labour Court, U.P at Lucknow, namely, the award dated 13.2.1985 between the Director CDRI and Prem Raj Singh.

2. Prem Raj Singh, opposite party No.2 in Writ Petition No. 2022 of 1985, filed a Civil Misc. Application dated 2.5.1988 in the High Court praying that the Writ Petition, as it related to a service matter which, according to provisions of the Administrative Tribunals Act, 1985, the Central Administrative Tribunal had jurisdiction to decide, may be dismissed.

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On this application the following order was made by the High Court :

> "This is an application moved on behalf of the opposite parties praying that the petition be dismissed in view of the Notification issued by the Central Government under Sub-Section (2) of Section 14 of the Administrative Tribunals Act. A copy of the notification has been annexed with the affidavit which indicates that council of Scientific and Industrial Research is one of the organisations in respect of which the matter is to be decided by the Central Administrative Tribunal. <u>The position has not been disputed on behalf of petitioner, rather it has been submitted that the matter is to be transferred to the Tribunal for decision.</u> It is, therefore, provided that the record of the case be transmitted to the Central Administrative Tribunal for decision."
> (emphasis provided)

Accordingly, in Writ Petition No. 4336 of 1985 also the following order was passed :

> "In the connected Writ Petition, namely W.P.No. 2022 of 1985 an order has already been passed for transmitting the record of the case for decision before the Central Administrative Tribunal. The same position is applicable to the present case as well. Let the record of this petition be transmitted to the Central Administrative Tribunal."

Thus received in this Tribunal under Section 29 of the Administrative Tribunals Act, 1985, Writ Petition No. 2022 of 1985 was numbered as T.A.No. 5 of 1990 (TL) and Writ Petition No. 4336 of 1985 as T.A.No. 6 of 1990(TL) in this Tribunal. Despite the above, the issue of jurisdiction of this Tribunal cropped up again in hearings before this Tribunal and an application was filed on behalf of Respondents in T.A.No. 6/90(TL) for retransferring the case to the High Court on the ground that this Tribunal had no jurisdiction. The parties were heard and, vide order dated 27.11.1990, this Tribunal held that the Tribunal had jurisdiction. Reliance was placed on decision of this Tribunal in Union of India V/s. Sarup Chand Singla (1989(9) A.T.C. 167).

3. CSIR's application No. 5/90(TL) disputes and challenges only the directions of the award of the Labour Court but not the findings.

4. Application No. 6/90(TL) of Prem Raj Singh disputes and challenges both the findings and the directions of the award of the Labour Court.

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5. The undisputed common facts are that Prem Raj Singh, an Upper Division Clerk in CLRI, was placed under suspension by order dated 16.2.1979 issued by the Director, CLRI in exercise of his powers under Rule 10(1) of the Central Civil Services (Classification, Control and Appeal) Rules (hereinafter referred to as Conduct Rules) and, at the end of a disciplinary inquiry in which Prem Raj Singh participated, removed him from service by an order dated 2.12.1980. Against this order he preferred appeal dated 10.1.1981 to the DG, CSIR which the DG rejected by an order dated 21.7.1981. He then preferred a review petition dated 14.9.1981 which was also rejected by an order dated 19.12.1981 for the reason that the same was not maintainable before the appellate authority, namely, the DG, and only the President CSIR was competent to entertain such review petitions. Before the disposal of his review petition, Prem Raj Singh raised an industrial dispute by making an application to the Secretary to the Government of U.P., Department of Labour, under section 10(2) of the Industrial Disputes Act.

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Government of U.P issued notification dated 30.9.1981 referring the dispute to the Labour Court, U.P, Lucknow. The Labour Court by order dated 4.11.1982, decided the framed preliminary issue holding that the principles of natural justice were not followed in the domestic inquiry and that Prem Raj Singh was prejudiced in his defence. The CSIR challenged this order by filing Writ Petition No. 742 of 1983 in the Lucknow Bench of Allahabad High Court. The Writ Petition was dismissed by order dated 24.2.1984. In further proceedings before it, the Labour Court, by order dated 21.3.1984, refused permission to CSIR to be represented through legal practitioner Shri C.C. Sharma. The CSIR challenged this order in Writ Petition No. 2171 in the High Court. This Writ Petition was allowed by order dated 14.11.1984. Thereafter oral evidence, including defence evidence of Prem Raj Singh, was recorded by the Labour Court. Followed the Labour Court award dated 13.2.1985 published on 23.3.1985 by which all the charges framed against Prem Raj Singh by Director CSIR were held as substantially proved. However, the

Labour Court, set aside the order of removal and acting under section 11-A of the Industrial Disputes Act, 1947, directed that Prem Raj Singh shall be reinstated on his post with continuity of service but shall be paid only 50% of the back wages. Both CSIR and Prem Raj Singh have challenged this direction of the Labour Court.

6. Rival standpoints taken on the same set of facts have necessarily to be supported on divergent understanding and interpretation of the laws and rules that apply and of related facts. This we notice is the marked feature of the rival averments and submissions made before us.

7. The most vital conflict is about the application of the Conduct Rules. The CSIR avers and learned Advocate Shri Trivedi for the CSIR submits that the Conduct Rules have been adopted by the CSIR and the same are applied to the employees of CSIR and Prem Raj Singh therefore governed by the Conduct Rules. But Prem Raj Singh disputes this. According to him, the CSIR being an industry, in view of the decision of the Supreme Court in Bangalore Water Supply & Sewerage Board Vs. A. Rajappa (AIR 1978 SC 548) and Ministry of Labour, Government of

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India therefore advising that all research institutions financed and run by Government of India are industry, its employees are industrial workers and, in the absence of standing orders framed by CSIR, governed by the model standing orders of the Industrial Employment (Standing Orders) Act, 1946. He, accordingly, both before the departmental enquiry officer as well as the Labour Court, took the stand that the charges framed against him under the Conduct Rules were illegal. The preliminary award dated 4.11.1982 of the Labour Court held that the Conduct Rules did not apply. It is further his say that nevertheless in the final award the Labour Court held that the acts attributed to him amounted to misconduct. His further contention is that the preliminary award challenged by the CSIR by filing Writ Petition No. 742 of 1983 and the High Court, by order dated 24.2.1984, upholding the preliminary award, the award had received the confirmation of the High Court and the Labour Court erred in deviating from it on this most vital aspect of the matter.

8. It is in the record that Prem Raj Singh was earlier placed under suspension by an order

dated August 8, 1973. To quote from this order, ".....in exercise of the powers conferred by subrule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as made applicable to the employees of the Council of Scientific and Industrial Research,....." (emphasis supplied) placed Prem Raj Singh under suspension. The order of suspension of Prem Raj Singh dated 16.2.1979 is also issued in exercise of the powers of the Director under the Conduct Rules and the words "as made applicable to the employees of the Council of Scientific and Industrial Research" appeared in the order. All the further proceedings in the domestic enquiry including chargesheet are in exercise of the Director's powers under the Conduct Rules. Prem Raj Singh's representation regarding right to be represented in the departmental enquiry by a legal practitioner relies on the relevant provisions of the Conduct Rules. In the preliminary award of the Labour Court, the sole issue framed is "whether the enquiry was held in a fair and proper manner". No issue regarding whether the Conduct Rules apply

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came to be framed. The Labour Court, while referring to Prem Raj Singh's contention that he was not governed by the Conduct Rules (but nevertheless claiming the right to be represented by a legal practitioner as provided for in the very Rules) said :-

> "The departmental proceedings had been undertaken rightly or wrongly under Central C.C.A. Rules the workman had protested that these rules do not apply to him, as his employers have been held to be an industry. This request was not heeded to by the authorities and starting from the charges the proceedings were purported to have been held under Central C.C.A. Rules. Obviously, these rules do not apply. As the proceedings were held under these rules on the 13th June the workman applied for permission engage a legal practitioner. The copy of the Central C.C.A. rules shown to me at the time of arguments does have a provision to the effect that a legal practitioner may be permitted if so considered necessary. However this application was not disposed of before the proceedings of the enquiry concluded the workman had made a request to the Enquiry Officer to postpone the proceedings till the disposal of his application. The enquiry officer did not allow the adjournment nor did the authorities concerned disposed of his application till the 19th of June when the proceedings before the Enquiry Officer concluded. It was necessary that this application should have been disposed of before the conclusion of the enquiry, so that if the request was rejected the workman

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could obtain the help from some departmental official to assist him, as such requests had been allowed on previous occasions....."

It is clear from the above that on the one had the Labour Court said that "obviously these rules do not apply" on the other hand, the Labour Court proceeded taking the very rules for basing the preliminary finding that the principles of natural justice have been violated. In the face of this seeming inconsistency of the Labour Court, we have to understand contextually what the Labour Court really intended to convey to find the final position on such determination. To us, it would be seen from our analysis that follows, the words "obviously these rules do not apply" in the preliminary award appear innocuous in the burden and bearing of the preliminary and final awards taken as a whole. The High Court judgment dated 24.2.1984 in CSIR's Writ Petition No. 742 of 1983 covers the ground on a limited question, namely, whether the Labour Court's preliminary finding that principles of natural justice were denied was proper. With the Labour Court award containing no finding regarding the applicability or not of the Conduct Rules, the award is not liable to be construed as having

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decided the issue. It therefore logically follows that the High Court also had no occasion to decide on this issue. Indeed the High Court has given its conclusion with reference to the provisions of the Conduct Rules on a provision of which the Labour Court relied for the preliminary award. We thus do not find acceptable the submission of learned counsel that it can be held that the High Court should be taken to have held or implied that the Conduct Rules were applicable to Prem Raj Singh. On the contrary, the High Court judgment proceeds on the basis of the provisions of the Conduct Rules on which provisions rests the preliminary award of the Labour Court.

9. Bangalore Water Supply case, supra, lays down the wide legal import of the word 'industry' as defined in Section 2(j) of the Industrial Disputes Act. But once an activity is held to be an industry, ipso facto the Conduct Rules are not to be or cannot be applied to those employed on the activity is a contention which does not arise from this case law. On the contrary, section 13(b) of the Industrial Employment (Standing Orders) Act 1946 provides as follows:

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> 13-B. Act not to apply to certain industrial establishment :- Nothing in this Act shall apply to an Industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Services) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

It is clear from the above Section that an activity may well be an industry in the eyes of law and yet the provisions of the Conduct Rules - and in fact other statutory rules - may apply to the employees on such an activity. Though not shown to us by both the parties, we find the Supreme Court judgment in JJSY Board V/s. Hari Shankar (AIR 1979 SC 65) apt. The Supreme Court, while examining the import of the above section, held that :

> "Therefore, the expression "workmen..... to whom..... any their rules and regulations that may be notified in this behalf" means, in the context of Section 13-B, workmen enjoying a statutory status, in respect of whose conditions of service the relevant statute authorises the making of rules and regulations. The expression cannot be construed too narrowly as to mean Government servants only nor can it be construed so broadly as to mean workmen

employed by whomsoever including private employers, so long as their conditions of service are notified by the Government under S.13-A".

Para 16 of the Labour Court's final award dated 13.2.1985 (Annexure-A.24 in WP 6/86) contains the following on the aspect of applicable conduct rules:

"Before coming to a consideration of the charges it may be mentioned here that the charges were framed and the enquiry made under the provisions of Central Civil Services (Conduct) Rules 1964 as made applicable to the employees of C.S.I.R. Bye-law 1974 gives the conditions of service of officers and staff of the society and states that the Central Civil Services (Classification, Control and Appeal) Rules and the Central Civil Services (Conduct) Rules for the time being in force shall apply so far as may be to the officers and establishment in the service of the society subject to the modification with reference to the President and the Govt. servant in these rules shall be construed as references to the President of the Society and the officers and establishment in the service of the Society respectively. The workman has contended that being a workman within the meaning of the Industrial Disputes Act he is not governed by these rules. Without entering into that controversy whether these rules would become applicable to the workman or not the point to be noted here is that the charges were framed on account of misconduct of the workman, according to

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> these rules and the enquiry was made accordingly. The question before us is to see whether and if so to what extent the allegations as contained in the charge sheet have been proved and they make out any case of misconduct."

It is obvious that the Labour Court did not persevere in adhering to the words in the preliminar award "obviously this rules do not apply" right upto the final award and by, consciously, "without entering into that controversy....."

10. The Government of India had set up the Board of Scientific and Industrial Research and the Industrial Research Utilisation Committee in early nineteenforties. Then, feeling the need of a body that could coordinate and generally exercise administrative control over the work of the two organisations, the Government of India constituted CSIR on a permanent footing as a registered society with promotion, guidance and coordination of scientific and industrial research as one of its several important functions. Its accounts are to be audited annualy by the Controller & Auditor General exercising the same rights, priveleges and authorities as in connection with the audit of government accounts. The Prime Minister of India is the President of the Council. The CSIR is one

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of the several research organisations under the CSIR. Its bye-law 12 reads as follows :

> Conditions of Services of Officers & Staff of the Society.
>
> 12. The Central Civil Services (Classification, Control & Appeal) Rules and the Central Civil Services (Conduct) Rules, for the time being in force, shall apply, so far as may be to the officers and establishments in the service of the Society, subject to the modification that :
>
> a) reference to the 'President' & "Government Servant" in the Central Civil Services (Classification, Control & Appeal) Rules, shall be construed as reference to the "President of the Society" and "Officer & Establishments in the service of the Society" respectively; and
>
> b) reference to "Government" & "Govt. Servant" in the Central Civil Services (Conduct) Rules, shall be construed as reference to the "Society" & "Officers establishments in the service of the Society"respectively."

The above in and about the constitutional frame work and rules of the CSIR read with the ratio laid down in UIC Board case about the applicability of Section 13-A of the Industrial Employment (Standing Orders) Act, supra, imports, in our view, the employees of the CSIR if not the classification of government servants surely the classification of workmen to whom the Conduct Rules can and have

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been applied. We are of the view that the Conduct Rules apply to Pram Raj Singh and the award of the Labour Court cannot be faulted on this ground.

11. Coming to the next vital controversy, namely the Labour Court illegally granting, suo moto, opportunity to the CBI to lead evidence to prove the charges, the Labour Court ended the preliminary award with the sentence "the employers shall be permitted to adduce the evidence in regard to the misconduct and date shall be fixed for the same". Learned counsel Shri Lyer submitted that the Labour Court was in error in suo moto permitting the CBI to lead evidence to prove the charges. He relied on Delhi Cloth & General Mills Co. V/s. Ludh Budh Singh (AIR 1972 SC 1031), Workmen of M/s.Firestone Tyre Rubber Co. V/s. The Management (AIR 1973 SC 1227), Shanker Chakravarti V/s. Brittania Biscuit Co.Ltd. (1979 SCC (L&S) 279) and Shambhu Nath Goel V/s. Bank of Baroda & Ors. (1984 SCC (L&S) 1).

12. In Delhi Cloth & General Mills case, the management had filed an application, after the enquiry proceedings had closed and the judgment was

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reserved, praying that if the inquiry proceedings are found to be defective, it should, be given an opportunity to adduce evidence. In Firestone Tyre case, the Delhi Cloth Mills case was relied upon with regard to the stage at which the employer has to ask for opportunity to lead evidence. In Shanker Chakraverti case no preliminary issue about the validity of the inquiry was decided by the Industrial Tribunal before which the matter came up on an application made by the company under section 33(2)(b) of the Industrial Disputes Act seeking approval of its action terminating the service of the workman and the application containing no express or implied averment that in the event the Tribunal comes to the conclusion that the enquiry is defective, the management would offer evidence to substantiate the charges. The Supreme Court also observed in this case, after most anxiously considering on precedent and on principle, that there is no duty cast on Industrial Tribunal or Labour Court while adjudicating upon a penal termination of service of a workman either under section 10 or under section 33 to call upon the employer to adduce additional evidence to substantiate the charge of misconduct by giving some specific opportunity after decision on the preliminary issue whether the domestic enquiry

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was at all held, or if held, was defective in favour of the workman. To quote from the judgment "It is both the right and obligation of the employer, if it so chooses, to adduce additional evidence to substantiate the charges of misconduct. It is for the employer to avail of such opportunity by the specific pleading or by specific request. If such opportunity is sought in the course of the proceeding, the Industrial Tribunal or Labour Court, as the case may be, should grant the opportunity to lead additional evidence to substantiate the charges. But if no such opportunity is sought nor there is any pleading to that effect no duty is cast on the Labour Court or the Industrial Tribunal suo moto to call upon the employer to adduce additional evidence to substantiate the charges." In Shambhu Nath Goyal's case, the application seeking opportunity to lead further evidence was filed before the Tribunal for the first time on February 8, 1979 when the matter was before the Tribunal for the second time on having been remanded by the Supreme Court by an order dated Feb. 2, 1979 rejecting the management's contention that the dispute was not an industrial dispute. Shambhu Nath Goyal was placed under suspension in July, 1965 and

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was dismissed from service in December 1965 which was over 13 years before the application to lead further evidence made by the management. The Supreme Court observed in this case that for a reference under Section 10 of the Industrial Disputes Act, the management has the opportunity to look into the written claim statement of the workman to file its written statement of defence and could make the request for the opportunity to lead further evidence in that statement itself which not made, the management cannot be allowed to do so at any later stage by filing an application for the purpose. In the supplement to this judgment, Hon'ble Desai,J. elucidated the ambit of the ratio decided in Shankar Chakravarti case. The relevent portion of the elucidation reads as follows :

> "The statement that if an application is made during the pendency of the proceedings does not mean that some independent right to make an application at any time is conferred on the employer. Ordinarily, where a party claims relief, it must plead for the same. The pleading can be incorporated in a statement of claim or a written statement of defence. It was not for a moment suggested that an application at any stage of the proceedings without explaining why the relief was not claimed in the

original pleading has to be granted. If a separate application is made, it would be open to the Labour Court/Industrial Tribunal to examine the question whether it should be granted or not depending upon the stage when it made, the omission to claim the relief in the initial pleading, the delay and the motivation for such delayed action. Without being specific, it can be said that such an application has to be examined as if it is an application for amendment of original pleadings keeping in view all the aforementioned considerations and if it does not appear to be bona fide or has been made after a long unexplained delay or the explanation for the omission of claiming the relief in the initial pleading is unconvincing, the Labour Court/Industrial Tribunal would be perfectly justified in rejecting the same. The observation was not made to lay down a proposition of law that as and when it suits the convenience of the employer at any stage of the proceedings, it may make an application seeking such opportunity and the Labour Court/ Industrial Tribunal was obliged to grant the same."

13. The burden and substance of the above case law is that though the management has right to adduce evidence, it has to move for permission to do so which the Tribunal or the Labour Court has to take into consideration on merits and that if no such move is made by the management, the Tribunal or Labour Court is not obliged or duty bound to either suo moto give the opportunity or to even inform the management of its this right. With regard to merits, the main

consideration to weigh is the timing of the move for permission to exercise the right and the stage of the proceedings before the Tribunal or the Labour Court.

14. Examining the record in the matter it is seen that Prem Raj Singh, by his application dated 14.2.1983 to Labour Court (Annex.No.27 in TA 6/90) submitted that the CBSI, neither in written statement nor in their rejoinder affidavit nor in their arguments at the preliminary issue hearing having requested for opportunity to produce evidence, the CBSI "..... cannot be provided opportunity to produce any evidence before the Hon'ble Court to prove the charges....." On this submission, it was prayed in this application that the termination of his service should be declared illegal and inoperative accompanied by order of reinstatement with full back wages and other benefits. The CBSI filed counter affidavit dated 31.3.1984 (Annex.29 in TA 6/90) claiming that Shri U.C. Sharma, CBSI's advocate "had made an oral prayer" before the Labour Court "at the time of argument that the CBSI Lucknow reserves its right to lead evidence in support of the charges against Prem Raj Singh". The counter affidavit

further says that this oral submission had been accepted by the Labour Court in giving the preliminary award dated 4.11.1982 with the above stipulation in it. However, the final award dated 13.2.1985 makes no reference to Prem Raj Singh's above objection and reply to it filed by CMRI and the award proceeds on the basis of the evidence adduced by the parties before the Labour Court. And the Labour Court, referring to Prem Raj Singh's objection and CMRI's counter affidavit, clarified what led the Labour Court to incorporate in the preliminary award the words "the employers shall be permitted to adduce the evidence in regard to the misconduct and date shall be fixed for the same", there would perhaps have remained no scope for the two parties to raise strong controversy on this score in their respective challenge to the final award. With that not having happened, we have to decide in the controversy by our reasoned views in the light of the law and the evidence in the record. Regarding the law, there is no doubt that the employer has the right to adduce evidence. There is also no doubt that in case the employer makes a request in that regard at the proper time, the Tribunal

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Labour Court is required to give opportunity to the employer to adduce evidence.

15. We may first examine assuming that the oral request was not made. In that examination, the question that arises is whether it is impermissible under law for a labour court or labour tribunal to give the permission suo motu. No law to support that it is impermissible for a labour court or labour tribunal to do so suo motu or that such a court is prohibited from doing so suo moto has been shown to us. The case law shown to us is to the effect that the Court is not obliged to give such permission unsolicited. Though the nature of proceeding before such courts and tribunals is adversary proceeding and the court or tribunals not duty bound to give an unsolicited right to the management and not to be faulted if they do not, we think it is one thing to say that a redressable grievance in the eyes of law arises if the court fails to give an unsolicited opportunity to the management, it is another thing to say that opportunity if given is impermissible under law or that the party adversely affected by such a permission gets a redressible grievance only on account of the permission so given. No precedent

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to support the latter aspect has also been shown to us. Judicial concern in such cases has to reflect scrutiny that principles of natural justice have been followed and that the workman has not been or sought to be harassed by the management adopting tactics like dilatory tactics to achieve that end. The Labour Court examined the first aspect by framing only one issue, namely, whether the inquiry was held in a fair and proper manner and decided by a reasoned finding that it was not so held. As the domestic inquiry was found to be vitiated, the Labour Court held it before the Court giving, in the preliminary award itself, permission to the management to adduce evidence about the misconduct of the workman. The workman therefore knew from the preliminary award what he has to meet in the proceedings for the final award and, it seems from absence of any contrary allegation by the workman, was given adequate opportunity by the Labour Court to do so. With the permission to management to adduce evidence of misconduct given in the preliminary award and the principles of natural justice observed by the Labour Court in the inquiry for final award, we do not agree with the view that the suo moto permission

to management to adduce evidence without the inquiry held by the Labour Court for the final award. The uppermost concern of judicial scrutiny thus is whether principles of natural justice have been followed. In State of Gujarat Vs. K.C. Teredesai & Anr.(1976) 1 SCR 251, the view is that while the inquiry officer in a departmental inquiry is not obliged or duty bound to make recommendation regarding the punishment to be inflicted, in case a recommendation is made, it must be disclosed to the delinquent so that he can represent against that also and not that the inquiry will be vitiated if recommendation on punishment is made by inquiry officer not obliged or duty bound to do so.

16. We feel that had the request of the CMI, albeit oral and claimed to have been made at the time of arguments in the preliminary issues not been before the Labour Court, the latter would not have inaugurated "the employers shall be permitted to adduce the evidence" in the preliminary award. The definitive tenor of the words in the preliminary award in this adversary proceeding imply a request which preceded the permission and which met with permission. This likelihood finds further support in the fact that the Labour Court did not refer to Prem Raj Singh's objection in this regard in the final award. May be, the absence of required recitals in the preliminary award in this regard gave rise to the objection and the Labour Court should have properly disposed of the objection in the final award. Existence of any other possibility, like that either the Labour Court deliberately omitted to make the reference in order to favour the CMI or, having committed any error initially, [illegible]

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in it despite the objection by omitting reference to the objection in the final award, has not been alleged. We thus are of the view that the circumstancial evidence in the record is consistent with the possibility of oral request for permission to lead evidence about misconduct being made at the time of hearing in preliminary award.

17. The next controversy, namely regarding the application of the model standing orders in the absence of any standing orders framed by the CSIR, has already been resolved, supra. We have held that the Conduct Rules are applicable to the CSIR/CLRI employees. So far as the matters covered by the Conduct Rules are concerned, undoubtedly the provisions of the Conduct Rules will apply and not the provisions on the subject in the model standing orders. Learned advocate Shri Bose relying on M/s. Glaxo Laboratories Ltd. V/s. Presiding Officer Labour Court, Meerut (1984 SCC (L&S) 42) is of no avail to him as the ratio in that case is of avail only when the standing orders are found to apply.

18. Coming to the contention that even though Model Standing Orders are not to apply, the evidence

before the Labour Court is insufficient to hold that the charges framed against Prem Raj Singh are proved by evidence, we agree with the submissions of learned advocate Shri Trivedi who relied on State of A.P. V/s. C. Venkata Rao (AIR 1975 SC 2151) in which has been laid down the jurisdiction of the High Court when dealing with departmental inquiries. In view of the recording by and appreciation of evidence so recorded by the Labour Court in the enquiry the Labour Court held, we find no acceptable grounds to undertake appreciation of evidence afresh. To quote from this judgment :

> "The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled

> themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is also wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226."

In this view of our role, we are not persuaded by learned counsel Shri Jose's canvassing, relying on B.R. Singh V/s. Union of India (1990 SCC (L&S) 4), for his submissions that management had discriminated in dealing with various agitators and that the ratio in Sabhajit Tiwari case (AIR 1975 SC 1329) could not be stretched to such discrimination. The management has, in rejoinder statement dated 16.3.1992 (Annex. No. 11 in OA 6/90) clarified what steps and why were taken against the various erring members of the staff. With no such issue framed by the Labour Court, we cannot look into the allegation of discrimination at this stage. The facts of B.R. Singh's case are distinguishable and in that case, the Supreme Court had before it the

the report of the Labour Court that the strike was legal and justified, peaceful and non-violent and for a period of only three days. The agitation was by daily rated and other casual workmen and the management had taken penal actions without enquiry exercising powers under a service rule in that regard. Learned counsel Shri Bose's further submission that permission of Director CDRI be inferred from his initials on the notice of meeting for 15.2.1979 made relying on the judgment of Delhi High Court in S.L. Sharma V/s. Trade Fair Authority of India (1985(1) AIRLJ 160) (that once notice of meeting has been given, it cannot be alleged that the meeting held pursuant to the notice was without permission) is of no avail to him. A case of knowing about meeting but not giving direction that it should not be held has to be distinguished from a case of holding meeting without permission despite direction that no meeting should be held without permission. Shri Bose's another submission that mere giving call for strike is not misconduct under the Model Standing Orders and only going on illegal strike is and Prem Raj Singh has not been charged with

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reporting to illegal strike remains of no avail to him in view of the ruling, supra, that the Conduct Rules apply.

19. Shri Jain strongly assailed the CLRI office memorandum dated 3.10.1979 (Annexure 26 in TA 6/90) contending that the right to demonstrate is a fundamental right. Relying on All India Bank Employees Association V/s. National Industrial Tribunal (AIR 1962 SC 171), Kameshwar Prasad V/s. State of Bihar (AIR 1962 SC 1166) relied upon by Delhi High Court in S.B.Sharma's case (supra), he argued that ban on every type of demonstration be it peaceful also is breach of fundamental right granted by Article 19(1). These submissions are not acceptable. The office Memorandum reminds the employees about the instructions dated 13.2.1979 that no meeting should be held in CLRI premises without prior permission and cautions that serious view will be taken on such meeting and those who organise and/or call such meeting will render themselves liable to disciplinary action under the Conduct Rules. Now, directing that no meetings shall be held is not the same thing as saying that no

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meetings shall be held without prior permission in the premises of [illegible]. It is only the former situation which may amount to breach of fundamental right and not the latter which becomes a step in regulation. We in this respect, agree with the submissions of learned counsel Shri Trivedi that the fundamental rights in Article 19(1) of the Constitution are to be enjoyed subject to the restrictions appearing in the subsequent sub clauses of Article 19. He reinforced his such submissions relying on Railway Board V/s. Dhanjan Singh (AIR 1969 SC 966) in which it was held that unless law or a usage to the contrary is shown to exist, employees have no right to hold their meetings in the employers' premises - Railways in this case - and no basis can be seen for objecting to the direction of the management given against holding such a meeting.

20. The next controversy is about the order portion of the award. While learned counsel Shri Trivedi submitted that the Labour Court had no acceptable and justifiable grounds, after holding that the workmen is guilty of the charges

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levelled by the management against him, to reduce the punishment awarded by the management, learned counsel Shri Bose, on the contrary, submitted that the Labour Court had no grounds before it except to award no punishment. Shri Bose relied upon India General Navigation & Rly Co.Ltd. V/s. Workman (AIR 1960 SC 219) in which the Court classified, for the sake of convenience, strikers into two, namely (1) peaceful strikers and (2) violent strikers both of whom may be guilty of participation in an illegal strike but both not liable to the same kind of punishment. It is not disputed that under Section 11A of the Industrial Disputes Act the Labour Court is competent to modify the punishment awarded by the employer. That very power is exercisable by the High Court under Article 226 of the Constitution of India and by virtue of Section 29 (4) (b) of the Administrative Tribunals Act, 1985 the same power is exercisable by this Tribunal. In the case of Workmen of Bharat Fritz Werner (P) Ltd. Versus Bhara Fritz Werner (P) Ltd and Another 1990 SC 1054 it has been held that since 11A of the Industrial Disputes Act empowers the Industrial Tribunal to go into question whether the order of discharge or dismissal of the workman is justified or not and permits the Tribunal to set it aside as the circumstances of the case may require, therefore it is open to the High Court to consider what would be the adequate punishment for the misconduct found to have been committed. As already mentioned, the Tribunal exercises the same powers as the High Court

M. M. Singh

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We may now examine the reasons which prompted the Labour Court to modify the punishment.

21. The findings of the Labour Court are to be found in paras 27, 28 and 29 of the award. In para 27 it is stated that after serious consideration of the circumstances, the Labour Court had no doubt in its mind that the facts and circumstances as broadly mentioned in the chargesheet were correct. In para 28 it is stated that the essence of the charge was that by his action in calling for a strike and in defying the orders regarding holding meeting and the demonstrations on the campus, he acted in a manner which was unbecoming of an employee of the CIRI. It was added that the gravamen of the charge is that they used derrogatory language and tried to disrupt the meeting hall. The Labour Court went on to observe that whether such slogans were indeed and in fact so offensive so to attract the ultimate penalty of removal from service is the only question which was to be determined. He repeated that he had no doubt that the charges were substantially proved. It will be useful to reproduce the findings recorded in para 29 of the award which runs as follows:-

> "In any trade union activities and even where the employees in Govt. or semi Govt. undertaking engaged in demonstrations, slogans are shouted and such demonstration as took place in this case are the usual features. The management does not take such a serious view as to inflict upon the agitating workers the ultimate penalty, for there is or there may be good reason for the dis-satisfaction

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of the employees which do not find any other way to draw the attention of the authorities but to resort to such steps as demonstration and strike. It is therefore both fair and proper that a distinction must be made between the highly provocative, filthy or abusive language used against the management and the language commonly used in demonstration by a crowd of persons, which has an entirely distinct personality from that of individuals. In my opinion in the circumstances of this case the slogans which were shouted and the demonstration led up to the auditorium on 17.2.79 were directed to draw the attention of the management at a crucial time when demonstration or demonstrators could not be ignored. The demonstrators did not seriously mean to disrupt the meeting completely, for in that case they would not have dispersed so easily. In my opinion therefore though such action on the part of the workman was unconscionable it does not merit such extreme punishment as the removal of the workman from service. It deserves to be noted here that the workman appears to be a competent official with an unblemished record except for trade union activities. In fact he was allowed to cross the efficiency bar also. While therefore holding that the charges have been substantially proved I would set aside the order of removal..... "

22. It will be seen that the Labour Court commenced with the observation that slogan shouting and demonstration as in this case are usual features even in Govt. and semi Government undertakings. The case of the CSIR is that there is no material or evidence on the record to establish or justify this stand; the case of the

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respondents' employee is that the Labour Court took notice of that fact. We find no basis for taking such notice.

23. The next feature in the findings of the Labour Court is an observation that distinction must be drawn between highly provocative, filthy or abusive language used against the management and the language commonly used in the demonstration by a crowd of persons which have entirely distinct personality from that of the individuals. Having said so, the Labour Court did not spell out the true nature of the slogans, and language used by the employee while on demonstration or strike. The slogans are set out in para 23 of the award. They pronounced the Director of the CDRI to be liar. They gave a call to Butcher the Dalal. They declared that whoever knocked against the demonstrators, would be reduced smithereens. They demanded that whatever the helplessness, their demands must be fulfilled. On its own showing the Labour Court had to consider whether such slogans and demonstration were highly provocative, filthy or abusive or not; he did not say anything on that aspect of the query raised by himself. He simply said that the slogans and demonstration were directed to draw the attention of the management at a crucial time when demonstration or demonstrators could not be ignored. He went on to observe that the demonstrators did not seriously mean to disrupt the meeting completely. He then arrived at the conclusion that "though such action on the part of the workman was unconscionable, it does not merit such extreme punishment as the

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removal of the workman from service". The word 'unconscionable' means 'unscrupulous', 'not conformable to conscience', 'outrageous', vide Chambers 20th Century Dictionary. So the Labour Court did hold that the employees' conduct was unscrupulous, did not conform to good conscience and was outrageous; but having said so the Labour Court could not "call a spade a spade". We are clearly of the opinion that the slogans raised in the demonstration in question were highly provocative, filthy and abusive. It may be mentioned that in the preamble of the Constitution under which the employees claim a fundamental right of trade union activities, the aim of the Nation is to ensure "the dignity of the individual". Among the fundamental duties of every citizen in Article 51-A of the Constitution of India, Clause(a) requires every citizen to respect the ideals of the Constitution, Clause (e) expects every citizen to promote harmony and clause (h) requires the citizens to develop humanism. We are of the opinion that the employee had cast all these Constitutional ideals to the Winds.

24. It should be remembered that the CSIR or its Unit CDRI is an Industry but is not a factory; it does not produce wealth, it produces knowledge and learning for the uplift of the Nation Scientifically. It is not a place where the din and noise of giant machinery drowns the human voice and the Labour and their Associations have to resort to tough trade

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union activities; it is an Institution of intellectuals and experts where moral and scientific raising of the standards is the object. As stated in the para 4 of the decision in the case of Sabhajit Tewari Vs. Union of India and Others 1975 SC 1329 "..... Government takes special care that the promotion, guidance and co-operation of scientific and Industrial Research, the institution and financing of specific researches, establishment or development and assistance of special Institutions or Department of the existing Institutions for study or promotion affecting particular Industry in a trade, the utilization of the result of the researches conducted under the auspices of the Council towards the development of Industries in the country are carried out in a responsible manner". Such being the function of the CSIR and CDRI, it is absolutely essential to have a peaceful and tranquil atmosphere on the campus of the Institute. Indeed, the Labour Court itself has observed that demonstration was made "at a crucial time when demonstration or demonstrators could not be ignored". If that be so, it is difficult to see how the unconscionable conduct of the employee at a crucial time using highly provocative, filthy and abusive language could be ignored by the Labour Court. Annexure-3 dt.16.8.78 in T.A.No.6 of 1990 containing the "agreed demands" for whose implementation the slogans and demonstrations in question were furthered shows that the police had to be called on the campus, and withdrawn

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only on agreement. This is symbolic of the magnitude of the disturbance caused at the campus.

25. The Labour Court seems to have been impressed by the fact that the employee was a competent official with unblemished record except trade union activities and had been allowed to cross Efficiency Bar. We do not think that efficiency can be a licence for activities like those proved in this case; indeed we should think that the more educated and influential a person is, the greater is the responsibility upon him to act in a more reasonable and restrained manner. In practice, the Courts have always taken a more serious view of illegal activities of a man of position, education and competence than a person who is uneducated and is of no position.

26. The learned counsel for the employee has laid emphasis upon the decision in the case of D.R.Singh Versus Union of India 1989 (4) SCC 710 where some office bearers of the Union who had been dismissed from service were reinstated by the Supreme Court itself. The facts of that case deserve to be taken notice of. Firstly, that was not a case of established misconduct after enquiry; the services had been terminated under special powers conferred by the Rule to do so without holding enquiry. Secondly, the President of India was to inaugurate the AHARA, 1987 on 25.1.87 while the Union including the office hearers had given strike notice to implement assurances already given and the strike had commenced on 21.1.87

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to continue indefinitely. In the wake of apprehended danger, the Trade Fair Authority of India filed a Civil Suit and obtained a temporary injunction restraining the workmen from holding any demonstration within 75 meters of the gates of the Campus. There was no actual demonstration therefore at the time when the inauguration function by the President of India was going on. Thirdly, para 14 of the judgment indicates that the language used in the demonstration was "harsh" although such language could have been avoided; the language before us was provocative, filthy and abusive. Fourthly, the observations of the Supreme Court in para 20 of the judgment indicate that both the parties were found to be partly at fault, the Union Leaders acting in haste without oblique motive, the management acting because of anxiety over untimely action in the wake of the visit of the President of India with its reputation at stake; and then the Supreme Court went on to hold in para 22 that keeping the interest of the Institution in mind and bearing in mind the economic hardships that the labour would suffer if the impugned orders were not set aside, directed the reinstatement. The facts and circumstances of that case have absolutely no parallel with the facts and circumstances of the case before us.

27. The latest decision of the Supreme Court in such matters is to be found in the case of workmen of Bharat Fritz Werner (P) Ltd Versus Bharat Fritz Werner (P) Ltd.and Another 1990 SC 1054 referred to above. The workmen of the Company were chargesheeted

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for trespassing into office of the President of the Company for terrorising and wrongfully compelling him to withdraw a notice. The charges were found proved although ex parte. The competent authority passed the dismissal order. The Industrial Tribunal held that the enquiry was not fair and proper. The Single Judge of the High Court also held that the enquiry was bad in law but instead of reinstating the workmen directed the Company to pay certain compensation. In the appeal before the Division Bench of the High Court, the Division Bench found the Workmen to be guilty of the misconduct for which they were charged, but held that the guilt did not call for dismissal and ordered reinstatement with 50% back wages. When the case figured before the Supreme Court against the decision of the Division Bench, the Supreme Court held in para 21 that reinstatement has not been considered desirable or expedient where there have been strained relations between the employer and the employee or the employee is found guilty of an activity subversive or prejudicial to the interests of the Industry. It was held that the misconduct found established involved acts subversive of discipline on the part of the workmen, three of whom were office bearers of the Union. In the light of these features of the case, the Supreme Court said that keeping in view the interest of the Industry it could be said that it was not desirable and expedient to direct the reinstatement of the workmen who were also office bearers.

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28. On a careful consideration of all the features of the case, we are of the opinion that the view of the Labour Court that the removal of the workmen was not called for is perverse and must be set aside. We hold that the employee P.R. Singh was rightly removed by the Management and the order of his reinstatement by the Labour Court must be set aside. T.A.No. 6/90 is dismissed. T.A.No.5/90 is allowed and the order of the Labour Court directing reinstatement of P.R. Singh or payment of any wages is quashed; the order of removal from service is sustained and confirmed. Parties shall bear their costs of both the petitions.

(M.M. SINGH)
Administrative Member.

2.3.91
(KAMLESHWAR NATH)
Vice Chairman.

March 2, 1991