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> [T]his Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the tribunal may give an opportunity to the employer to prove his case and in doing so, the tribunal tries the merits itself. This view is consistent with the approach which industrial adjudication generally adopts with a view to do justice between the parties without relying too much on technical considerations and with the object of avoiding delay in the disposal of industrial disputes.[5]

The course approved by the Supreme Court in the two decisions noted above is manifestly in the interests of both the employers and the workmen. If such a course is not followed it would lead only to duplication of proceedings. This is because in the absence of a decision on the merits by the labour court in those circumstances, it would be open to the employer to institute an enquiry where there was none before or a fresh enquiry where the previous enquiry was defective. The *de novo* enquiry leading to a fresh order will in its turn come up before the labour court. This was precisely what happened in the proceedings culminating in the decision of the Supreme Court in *Management of Northern Rly. Co-operative Credit Society Ltd.* v. *Industrial Tribunal, Rajasthan.*[6]

Thus, it is clearly in the interests of employers and their workmen alike to concede to the management a right to lead fresh or additional evidence in justification of its disciplinary order. It is no doubt open to the management to take before the labour court a definite stand that its domestic enquiry was perfectly in order and to refrain from adducing any further evidence. In such a case if the labour court holds against the management and sets aside its order there can be no scope for further proceedings by way of a *de novo* domestic enquiry. It is very rarely, however, that the management ventures to take such a stand.[7] Normally the management is keen to lead evidence in justification of its order. The vital question then is as to the stage at which the employer is to adduce such additional evidence as he may like to place before the labour court. It is to this question that the Supreme Court has addressed itself in the instant case.

There have been earlier decisions of the Supreme Court on this subject. In *Management of Ritz Theatre (Pvt.) Ltd.* v. *Its Workmen*[8], the management took care to produce evidence on merits while contending simultaneously that the domestic enquiry was perfectly in order. It was argued on behalf of the employees that by producing further evidence and preparing itself for an

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5. *Id.* at 1808.
6. A.I.R. 1967. S.C. 1182,
7. For a case where such a stand was taken, see *State Bank of India* v. *R.K Jain*, A.I.R. 1972 S.C. 136.
8. A.I.R. 1963 S.C. 295.

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enquiry by the labour court into the merits, the management was barred from taking a stand that the domestic enquiry was adequate and in order. This argument was rightly rejected by the Supreme Court. It was held that in such a case though the further evidence adduced is superfluous, the management should not be penalised for its inability to anticipate aright the labour court's verdict as to the validity of the proceedings of the domestic inquiry under challenge. In *Delhi Cloth and General Mills Co.* v. *Ludh Budh Singh*[9] the management requested for an opportunity to let in evidence as to the merits of the disciplinary action taken by it. The request was made after arguments before the labour court had been closed and the judgment was reserved. This was held to be too late a stage for the court to take up consideration of the matter on its merits. The employer, in the opinion of the court, should have either simultaneously led additional evidence or asked for an opportunity to do so during the pendency of the proceedings.

It is obvious that while in the *Ritz* case[10] the management found itself in an embarrassing position by letting in evidence wrongly anticipating an adverse verdict by the court as to the domestic enquiry, in the *Delhi Cloth Mills* case, the management found itself in a sorry predicament by waiting too long for a favourable verdict which was not forthcoming. The resultant position in either case is manifestly unsatisfactory. To get over a difficulty of this kind it was suggested by the Delhi[11] and Madhya Pradesh[12] High Courts that at the appropriate stage the labour court itself should call upon the management *suo motu* to place before it for consideration on the merits further evidence, if any, on which the management would like to rely in support of its disciplinary order. This view of the High Courts was held to be erroneous by the Supreme Court in *State Bank of India* v. *R.K. Jain*.[13] In this case, however, the Supreme Court agreed with the view of the Orissa High Court[14] "that there was no obligation, in law, on the part of the labour court to indicate its mind about the infirmities in the domestic enquiry at any stage before it gave its finding in the award".[15] So the labour court has no duty *suo motu* to call upon the parties to furnish fresh evidence. While this may be so, the resultant unsatisfactory condition remained as before.

The Supreme Court's decision in the instant case is to be considered against the background surveyed above as an attempt to find a reasonable

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9. A.I.R. 1972 S.C. 1031.

10. *Supra* note 8.

11. *Premnath Motors Workshop Pvt. Ltd.*, v. *Industrial Tribunal, Delhi,* (1971) 22 Fac. L.R. 370 (Delhi).

12. *Madhya Pradesh State Road Transport Corporation* v. *Industrial Court, Madhya Pradesh* (1970) Lab. I.C. 510: (1970) Jab. L.J. 8.

13. *Supra* note 7.

14. M/s. *Hindustan Steel Ltd.* v. *Their Workers through Rourkela Mazdoor Sabha,* (1970) Lab. I.C. 102 (Orissa).

15. *Id.* at 103.

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solution for the practical difficulty inherent in such a situation. Goswami, J., speaking for a unanimous court, has pointed out that the validity or otherwise of the domestic enquiry is a jurisdictional fact. As such the labour court is bound to decide it as a preliminary issue. When this preliminary issue is decided the stage is set for the management to take its stand. The question of taking a definite stand even in anticipation of the decision on this issue, which was a perennial source of embarrassment to the management, is thus eliminated. As Goswami, J., rightly observed:

> [I]t will be most unnatural and unpractical to expect a party to take a definite stand when a decision of a jurisdictional fact has first to be reached by the Labour Court prior to embarking upon an enquiry to decide the dispute on its merits. The reference involves determination of the larger issue of discharge or dismissal and not merely whether a correct procedure had been followed by the management before passing the order of dismissal. Besides, even if the order of dismissal is set aside on the ground of defect of enquiry, a second enquiry after reinstatement is not ruled out nor in all probability a second reference. Where will this lead to ? This is neither going to achieve the paramount object of the Act, namely, industrial peace, since the award in that case will not lead to a settlement of the dispute. The dispute, being eclipsed, pro tempore, as a result of such an award, will be revived and industrial peace will again be ruptured. Again another object of expeditious disposal of an industrial dispute...will be clearly defeated resulting in duplication of proceedings. This position has to be avoided in the interest of labour as well as of the employer and in furtherance of the ultimate aim of the Act to foster industrial peace.[16]

The decision is thus memorable as an effective antidote to an "unnatural and unpractical" situation and goes a long way in furthering the cause of industrial peace which is the paramount objective of all labour welfare legislation.

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16. *Supra* note 1 at 1904.

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