

**1993 (2) G. L. H 699**  
**G. T. NANAVATI & M. S. PARIKH, JJ.**

Chandrakant Narottamdas Patel & Anr. ...Petitioners  
Versus  
Vishal Malleables Ltd. ...Respondent

Special Civil Application No. 4134 of 1992 D/- 16-12-1992\*

\*Against the orders passed by Labour Court, Rajkot

**Service Law - Natural Justice -Departmental Enquiry - Notices to workmen sent by post admittedly not delivered by postal authorities - Inference of Labour Court to the effect that workmen knew about the date and time of enquiry - No material to show that workmen knew as to what were the allegations against them - Enquiry held invalid.**

The notices which were sent to the workmen in this behalf were returned unserved by the postman. The workmen had explained in their evidence that on that day, they were absent and possibly it was for that reason that the postman had not delivered these notices to them. Thus, one fact becomes very apparent from the record and it is that the notices were not refused by the workmen. The postman did not deliver those notices to the workmen because they were not available at their places. Thus, at no stage, the workmen were made aware as to what allegations were made against them and in respect of which allegations, the inquiry was going to be held. The Labour Court, relying upon the claim-statement that on the day and at the time of inquiry, the workmen were present near the gate of the factory and that they were prevented from attending the inquiry, has come to the conclusion that the workmen knew about the date and time of inquiry and, therefore, merely because notices were not served upon them, the inquiry held against them cannot be said to be either improper or invalid (Para 2)

There was no material on record to show that the workmen knew what were the allegations made against them and in what respect, the inquiry was going to be held. Before it can be said that proper inquiry was held and reasonable opportunity was given to the delinquent to defend himself, it has to be shown that he was made aware of the allegations made against him. Unless the delinquent is made aware of the allegations against him, it is difficult to appreciate how he can properly defend himself even if he is told that an inquiry is going to be held against him on a particular day. This aspect has been totally missed by the Labour Court, and, therefore, the finding recorded by it that workmen were given reasonable opportunity to defend themselves and, therefore, the inquiry held against them was proper, stands vitiated. (Para 3)

**Appearances:**

K. S. Zaveri, Advocate for the petitioner & K. S. Nanavati, Advocate for the respondent

**PER G. T. NANAVATI, J:-**

1. Though these two petitions arise out of two separate orders passed by the Labour Court at Bharuch, the point involved in both of them is the same and, therefore, at the request of the learned Advocates appearing in these petitions, [*@page699*] they have been heard together and are disposed of by this common judgment. Alleging that the respondent-workmen, on 29-3-1985 had incited other workmen of the company to stop work, an inquiry was held against them and by two separate orders passed on 4-5-1985, both the workmen were dismissed from service. They thereupon raised an industrial dispute and the same came to be referred to the Labour Court. Before the Labour Court, a contention was raised on behalf of the workmen that the inquiry which was held against them stood vitiated because no proper opportunity was given to them to defend themselves inasmuch as no notice was served upon them stating the date on which the inquiry was fixed. In support of its case, the employer had produced copies of the notices which were sent to the workmen but which

were returned unserved. In their evidence, the workmen had admitted that the addresses on the two notices were correct. It was also admitted that the postman had brought these notices to their places but as they were not present, the postman returned the same. Relying upon this evidence, the Labour Court held that the employer had done what it was required to do and, thus it cannot be said that no opportunity was given to the workmen to defend themselves. The Labour Court, therefore, held that the inquiry which was held against the workmen was proper and legal. The Labour Court also recorded a finding that the workmen themselves had remained absent during the inquiry even after knowing the fact that the inquiry was being held against them. On merits, the Labour Court held that as the charges against them were held proved by the employer, the only thing which was required to be considered was whether the punishment imposed upon the workmen was proper or not. Relying upon some decisions, the Labour Court held that the misconduct proved justified the dismissal of the workmen from service. Taking this view, the Labour Court dismissed both the references.

2 . What is urged by the learned Advocate for the petitioners is that the Labour Court committed an error in holding that an inquiry which was held by the employer was proper and legal. He submitted that admittedly, notices containing the allegations against the workmen were not served upon the workmen nor were they informed in advance that the inquiry was to be held on 17-4-1985 and then on 25-4-1985. Now, on examining the record, we find that the notices which were sent to the workmen in this behalf were returned unserved by the postman. The workmen had explained in their evidence that on that day, they were absent and possibly it was for that reason that the postman had not delivered these notices to them. Thus, one fact becomes very apparent from the record and it is that the notices were not refused by the workmen. The postman did not deliver those notices to the workmen because they were not available at their places. Thus, at no stage, the workmen were made aware as to what allegations were made against them and in respect of which allegations, the inquiry was going to be held. The Labour Court, relying upon the claim-statement that on the day and at the time of inquiry, the workmen were present near the gate of the factory and that they were prevented from attending the inquiry, has come to the conclusion that the workmen knew about the date and time of inquiry and, therefore, merely because notices were not served upon them, the inquiry held against them cannot be said to be either improper or invalid.

3 . In our opinion, the Labour Court was not justified in drawing such an inference. Assuming that it is an admission made by the workmen, it [ @page700 ] cannot be inferred therefrom that they knew beforehand, that is before going to the factory premise on that day, that the inquiry was fixed on that day and that it was fixed at a particular time. They might have come to know about it after they reached the factory gate. In any case, the fact remains that there was no material on record to show that the workmen knew what were the allegations made against them and in what respect, the inquiry was going to be held. Before it can be said that proper inquiry was held and reasonable opportunity was given to the delinquent to defend himself, it has to be shown that he was made aware of the allegations made against him. Unless the delinquent is made aware of the allegations against him, it is difficult to appreciate how he can properly defend himself even if he is told that an inquiry is going to be held against him on a particular day. This aspect has been totally missed by the Labour Court and, therefore, the finding recorded by it that workmen were given reasonable opportunity to defend themselves and, therefore, the inquiry held against them was proper, stands vitiated. The Labour Court has proceeded on the basis that the inquiry was proper and misconduct was proved and on that basis, has further held that the order of punishment passed against the workmen is also proper. As we are holding that the inquiry held against the workmen was invalid inasmuch as the workmen were not given reasonable opportunity to defend themselves, the misconduct cannot be said to have been proved. At this stage, the learned Advocate appearing for the respondent-employer stated that in that case, it should be given an opportunity to prove the misconduct. The Labour Court has not independently examined whether the misconduct is proved or not. Therefore, it would be proper if the matters are remanded to the Labour Court to consider that aspect.

4. In the result, these petitions are allowed. The impugned awards are quashed and set aside and the matters are remanded to the Labour Court for further consideration and disposal in accordance with law. The Labour Court is also directed to dispose of these References as early as possible. Rule is made absolute in each of the petitions with no order as to costs.

(NSS) Petitions allowed.

