

LAW AND PROCEDURE OF DEPARTMENTAL ENQUIRIES

In Private and Public Sectors

Second Edition



B R GHAIYE

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OF
DEPARTMENTAL ENQUIRIES
(In Private and Public Sectors)

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Publisher's Note

In this Reprint of the Second Edition, another Chapter covering the latest case-law of 1976-1978 has been added after the last Chapter as Chapter 25 bearing page numbers 1388(1), 1388(2).....et. seq.

Preface to Second Edition

In the present edition the case-law up to January, 1976 has been incorporated. Further case-law which could not be incorporated in the body of the book itself has been given at the end so as to bring the case-law up to the end of March, 1976. During the short span of 4 years since the earlier edition of the book, nearly 1,000 cases have been decided and it is very necessary to keep pace with the case-law on the various points involved. Although the basic structure of the book remains the same, some paragraphs have been rewritten on account of the subsequent case-law or change in statute. The book is meant not only for employers, departmental officers, personnel and labour officers who wish to initiate disciplinary proceedings but also for workers, employees, union representatives and others against whom departmental enquiries are initiated or sought to be initiated. The attempt of the Author has been that they should be able to find out the correct position of law on the points concerned with the least possible delay and difficulty. With that aim in view the Author has presented the legal case-law in as simple language as possible so that they may not have any difficulty in grasping all the implications. The Author has been very much encouraged by the response of the public to the earlier edition and hopes that this edition will be found still more useful by the readers.

The new edition has taken time and effort which are not less than that required in writing a new book. The Author takes the opportunity to thank Shri Gopal Singh, B. A., LL. B. and Shri R. C. Garg for assistance in the completion of the revised edition and other wellwishers and readers who have been making suggestions from time to time.

B. R. Ghaiye

DELHI,
June 1, 1976.

Preface to First Edition

The book "Departmental Enquiries in Employment" is concerned with elucidating the principles and procedure followed in conducting departmental enquiries. These principles and procedures are governed, to some extent, by statutory rules or standing orders but largely they are enunciation of the principles of natural justice and their application to the circumstances of departmental enquiries in private employment and of reasonable opportunity as provided under Article 311 of the Constitution of India in government employment. At present there is no book which deals exhaustively with the principles and procedures of departmental enquiries in employment, as developed by case-law on this point. The book serves the same purpose as well-known commentaries on Criminal Procedure Code and Evidence Act to a criminal lawyer or the commentaries on Civil Procedure Code and Evidence Act in case of lawyers practising in civil courts.

As far as the civil and criminal courts are concerned, the law has been codified and, therefore, they have simply to refer to the codified law for guidance. In departmental enquiries most of the law is not codified and at each stage the employees or departmental officers are faced with a dilemma whether a particular procedure adopted is or is not consistent with the principles of natural justice or reasonable opportunity and in absence of any clear enunciation of the applicability of these principles in varying circumstances they are likely to suffer serious consequences.

Departmental enquiry proceedings are a branch of *quasi-judicial* proceedings and some fundamental principles of judicial proceedings are applicable. These fundamental principles are also embodied in Civil Procedure Code, Criminal Procedure Code and Evidence Act. Though these statutes are not applicable to departmental enquiries, yet the fundamental principles embodied in them are applicable to departmental enquiries in so far as such fundamental principles are based on the principles of natural justice. It is very difficult for a layman to decide as to which provision of the Civil Procedure Code, Criminal Procedure Code or Evidence Act is based on the principles of natural justice and as such applicable to departmental enquiries, and which provision is not so based and is not applicable to departmental enquiries. Some of the persons dealing in departmental enquiries may be administrative officers and not lawyers and they may not be conversant with the provisions of the Civil Procedure Code, Criminal Procedure Code and the Evidence Act at all. In view of this the Author has tried to explain, on appropriate occasions, the provisions of these statutes and to what

extent and with what modifications these provisions are applicable to departmental enquiries so that the readers may have full grasp on the subject.

As stated above, the principles of departmental enquiries are derived either directly or indirectly from the well-known principles of natural justice. The Author has, therefore, in Chapter I explained the implications and the contents of the principles of natural justice so that the readers may have a clear idea of this concept and they may be able to apply the same to varying situations of departmental enquiries and also to follow the reasoning of the court as to why a particular procedure to be consistent or inconsistent with the principles of natural justice.

In employment the quasi-judicial functions are called for not only when a person is charged with misconduct and the departmental enquiry is held, but in a multitude of other circumstances in which an officer is required to decide some points which prejudicially affect the rights of employees. In certain circumstances such enquiry may be called for on account of statutory rules or standing orders. Whenever a particular problem arises in departmental enquiry, the first dilemma is "whether it requires a quasi-judicial enquiry based on the principles of natural justice or it can be decided on the subjective satisfaction of the officer concerned". The Author has, therefore, in Chapter 2 explained the contingencies in which the principles of natural justice are required to be observed, such as in the case of termination of service of probationers or temporary employees, promotion, fixation of seniority, retirement, compulsory retirement, simple discharge, *etc. etc.*

The Author has thereafter discussed the subject in the same order in which they are likely to arise. First of all the enquiry generally starts with a complaint against a particular employee. On such complaint some competent officer has to decide whether to institute an enquiry or not and, therefore, complaints and decision to hold departmental enquiries is the subject matter of Chapter 3. Thereafter a charge-sheet is issued and charge-sheet and its drafting; service of charge-sheet and reply to the charge-sheet are Chapters 4, 5 and 6 respectively.

After reply to the charge-sheet is received then sometimes simultaneously with the issue of charge-sheet the employers may like to suspend the employee during enquiry and after the departmental enquiry they may like to impose punitive suspension. Suspension is an intricate branch of law of Master and Servant and this is the subject-matter of Chapter 7.

Sometimes the employers may be faced with a dilemma whether to prosecute the employee in criminal court or to hold departmental enquiry. In case the employee is prosecuted then whether to wait for the result of criminal

prosecution and if so what is the result of either acquittal or conviction. This is the subject-matter of Chapter 8.

In case departmental enquiry is decided upon, the first pre-requisite is appointment of enquiry officer if the disciplinary authority does not want to hold the enquiry himself. This is the subject-matter of Chapter 9. This chapter also describes the circumstances in which an officer is said to be biased and he cannot be appointed as enquiry officer.

Chapter 10 is 'Manner of holding enquiries' and deals with the various miscellaneous matters which are required to be observed by the enquiry officer.

Chapter 11 is 'representation of parties before the enquiry officer'.

Chapter 12 is 'inspection and production of documents before the enquiry officer' mostly as a result of request by the delinquent employee.

Chapter 13 deals with the evidence which can be put and/or produced before the enquiry officer either by the departmental officers or by the employees.

Chapter 14 deals with the procedure of recording evidence before the enquiry officer and cross-examination, summoning of witnesses, production of defence closing management evidence and defence evidence, etc. With this chapter the proceedings before the enquiry officer come to an end.

Chapter 15 deals with decision by enquiry officer.

After the enquiry officer has decided the case the papers go to the disciplinary authority and Chapter 16 deals with consideration of the matter by disciplinary authority.

Chapter 17 deals with actual passing of dismissal or discharge order or any other punishment and departmental remedies.

This is the end as far as the departmental enquiries are concerned. In industrial employment the employers may be required by the provisions of industrial law to take the approval or permission of Industrial Tribunal or Labour Court for such dismissal or discharge. This is the subject-matter of Chapter 18.

If the matter is referred to Industrial Tribunal then he may decide whether to interfere with the result of departmental enquiry or not and the functions of Industrial Tribunal are described in Chapter 19.

The Industrial Tribunal may interfere in case of mala fides, victimization or unfair labour practice which is the subject-matter of Chapter 20.

This chapter will also be useful in case of civil courts and High Courts which are also required to deal with similar problems because they are also entitled to set aside the proceedings in case of mala fides.

Chapter 21 deals with the powers and functions of Industrial Tribunal and Labour Court in granting reinstatement and/or compensation and thus the functions of Industrial Tribunal and Labour Court in industrial employment are described in Chapters 18 to 21.

In industrial employment an employee has choice in certain circumstances to resort to Civil Court or Industrial Courts. In case of employment, other than industrial employment, the only remedy is to approach the Civil Court and in some cases where there is violation of statute they can also go direct to the High Court. The functions of Civil Court in case of dismissal or discharge order are mentioned in Chapter 22 and the functions of High Court in case of dismissal or discharge are mentioned in Chapter 23. Thus this book is a self-contained book in so far as the remedies of employees against dismissal or discharge orders passed in departmental enquiries are concerned.

The book is written in simple and practical language. The Author has got an experience of nearly 20 years of not only actually conducting and supervising departmental enquiries and representing the cases before Industrial Tribunals, Labour Courts, High Courts etc., but of advising number of other parties, associations of employers and is also well conversant in civil and criminal law relating to this point. The Author has, therefore, dealt with all these problems in a practical way. The book will be found more useful for administrative officers and employees who are faced with any problem relating to departmental enquiries. Apart from this, the book will also be found very useful for busy advocates and research scholars because this is the only book which gives such voluminous case-law sorted out subject-wise and item-wise so that they can readily pinpoint the available case-law with the least possible delay. The book has got a voluminous and detailed Index to facilitate the task of busy advocates, departmental officers, employees or officers of unions.

The Author has tried to consolidate the law as far as the procedure of departmental enquiry is concerned. Even when different opinions on a particular point are held by different industrial tribunals or courts, the Author has tried to give reasons which prompted each court to come to a particular point in order to stimulate thinking to enable the readers to come to their own decisions. It is hoped that the book will be found very useful to large volume of readers who are required to deal with departmental enquiries

whose number is fast increasing due to increase in government, industrial and commercial employment.

Recently the Industrial Disputes Act has been amended and a new Section 11-A has been added which provides that Industrial Tribunal and Labour Courts will also have a right to decide the justification of decision of the employers but in doing so they will be limited to the records of domestic enquiry. This amendment has come into force from 15th December, 1971. After this amendment the departmental enquiries in industries are required to be performed with the utmost regard with the principles of natural justice and it is hoped that in view of this change the book is very opportune and it is all the more necessary for the parties to master the intricacies of departmental enquiries.

B. R. Ghaiye

Dated 1-3-1972

Table of Cases

(Full names are given in some instances by their initials Also Union of India has been abbreviated to UI)

- A. Annamalai v. State of A. P., 1023, 1027
A. Bose v. Chaibassa Cement Works, I. T., Bihar, 170
A. Daood Khan v. State of Kerala, 1304
A. Gopinath v. R. T. O., 823
A. Ibrahim Kunju v. State, 20, 45, 557, 560, 824
A. Kanniah Chettiar v. Collector, 526, 876
A. Messiyandas v. State of Kerala, 1374
A. Palaniandi v. O. N. Ramaswami Chettiar, 1340
A. Ramaswamy & P. Rangaswamy v. Salem Co-operative Central Bank Ltd., 398
A. Ramchandran v. Alagiriswami, 1146, 1148, 1185, 1347
A. Razak v. State, 787
A. Sambandham v. Regional Traffic Supdt., Southern Ry., 157
A. Sanjiva Naidu v. State of Madras, 982
A. Serpa Reddy v. M. Nursingh Reddy, 1012
A. Vedachal Mudaliar v. State of Madras, 1023
A. B. Culvert v. General Manager, S. E. Ry., 432
A. C. Bose v. UI, 185
A. C. Employee's Co-operative Canteen Ltd. v. R. N. Jain, 927
A. D. Sundarao v. State, 1007
A. D. M. Stubbing v. Shellamuthu, 229
A. E. G. Carapiet v. A. T. Desderean, 758
A. F. Abbas v. State of Bihar, 121
A. G. Benjamin v. UI, 162, 166, 214
A. G. Gopalan v. Associated Hotels, Delhi Govt., 61
A. G. Pathak v. S. L. Prasade, 1228
A. H. Magermans v. S. K. Ghose, 1106
A. H. A. Rahiman v. Collector of Customs, 12
A. I. R. Ltd. v. D. D. Datar, 1135
A. J. George v. Coffee Board, 1331
A. K. Gopalan v. State of Madras, 4, 14, 543
A. K. Jagdish Kumar v. Automative Manufacturers (P) Ltd.. 1187
A. K. Kraipak v. UI, 5, 20, 41, 90, 154, 503
A. K. Narayana Rao v. G. M., Southern Ry., 282, 609
A. K. Shaibarlal v. Vice-Chancellor, 539
A. K. Vyas v. State of Rajasthan, 523, 544, 579
A. K. K. Nambiar v. UI, 369, 1347, 1348, 1352
A. M. Balam v. Lal Reo M/g. Tools Pvt. Ltd., 169
A. M. Rode v. Principal, Degree College, 87
A. N. Bheil v. UI, 1347
A. N. Chopra v. UI, 606, 620, 621
A. N. D'Silva v. UI, 836, 842, 863, 866, 875, 1007, 1008
A. N. Gupta v. State Bank of India, 1020, 1020, 1332
A. N. Raina v. State of J. & K., 141, 385
A. N. Tandulkar v. C. F. Mathews, 47, 60
A. P. Sharma v. UI, 118
A. P. Tewari v. Allahabad Bank Ltd., 1187
A. R. Taware v. The Malegaon Sahakari Sakhar Karkhana Ltd., 127
A. R. Verma v. Mettur Industries Ltd., 1116
A. R. R. D. Deshpande v. UI, 82, 174, 522, 649
A. R. S. Chaudhary v. UI, 465, 473, 859, 989, 1128, 1175
A. S. Anantha Subramania v. State of Kerala, 881, 908
A. S. Chowdhary v. UI, 240, 243, 379
A. S. Rizvi v. Divisional Engineer, 455, 475
A. S. Sethi v. UI, 457, 458
A. S. Srinivas v. UI, 156
A. T. Deu Ltd. v. B. P. Ms. Press & Anil Kumar Basak, 248, 454, 554
A. T. K. M. Employees' Association v. Musaliar Industries Pvt. Ltd., 1334
Abalhasan v. Works Manager, 1359
Abani Bhushan Biswas v. Hindustan Cables Ltd., 525, 1348

- Abbot v. Sullivan, 27, 46
 Abdul v. Madhavi Appass Amma, 1260
 — Ahad v. I. G. P., 85, 92, 69, 180, 182
 — Ahmed v. Hasan Raza, 773
 — Aziz v. D.I. G. Police, 85
 — — Khan v. UI, 735, 1048
 — Baggi v. Faqrool Islam, 773
 — Gaffar v. C. P. Syndicate Pvt. Ltd., 436, 845
 — Gani Muzaffarkhan v. Matchwell Electricals India (P) Ltd., 1093
 — Ganib v. State of M. P., 680
 — Hafiz Khan v. Govt. of M. P., 156
 — Hamid v. Distt. School Board, 379, 989
 — Hasan v. Works Manager, N. Rly., 889, 1365
 — Hussan v. G. M., N. Rly., 889
 — Jabar Khan v. State, 199
 — Kadar v. Consolidated Coffee Estate, 931, 1123
 — Khaliq Malik v. State of Jammu & Kashmir, 18, 106, 136, 176
 — — Sheikh v. Dy. Commr., Barmula, 28, 280
 — Latif v. Man Singh Rao, 723
 — Majid v. S. P., 900
 — — Dar v. G. M. Wazir, 1327
 — Mohammed Khan v. State of M. P., 378
 — Rafiq v. District Judge, Midnapur, 458, 579
 — Rahim v. A. P. State Road Transport Corpn., 240, 456, 522, 835
 — — v. Chief Executive Officers, 415, 456
 — — v. King Emperor, 332
 — — Khan v. M. C., 507
 — Rehman v. Emperor, 561
 — Salim v. Abdul Khalik, 71, 170
 — Salem v. State of Kerala, 201, 359
 — Sattar v. UI, 1101
 — Wahab Pradhan v. D. M., 688, 739
 Abdulhuq v. Shivjirani Khemchand, 685
 Abdulla Rowther v. State Transport Tribunal, 873
 Abdur Rashim Ahmed v. State of Mysore, 180, 182, 188
 Abhayanand Mishra v. State of Bihar, 692
 Abheraj v. D. E. S. V., 1180, 1215
 Abid Khan v. Loyabad Colliery Workshop, 1074
 — Mohammad Khan v. State of M. P., 353, 377, 378, 379, 967
 Abraham Haloi v. State, 669
 — Varghese v. State, 328
 Abu Bus & Transport Co. Pvt. Ltd. v. Workmen, 443
 — Pramanik v. Emperor 699
 Abujam Gulab Singh v. I. G. Police, 149, 166
 Accountant General, M. P. v. B. P. Bhatnagar, 124
 Achanmama Thomes (Mrs.) v. E. L. Pairman, 299
 Acharya Prabhakar v. Chancellor, 955
 Achutan Sharma v. Gorantala Chinna Viraiya, 720
 Adam Ahmed v. State, 774
 Adamji Umar Dalal v. State of Bombay, 906
 Addis v. Gramophone Co. Ltd., 1263
 Aditya Mills Ltd., Madanganj v. Ram Dayal, 274, 1064, 1193
 Adjai Second Colliery v. Workmen, 228
 Administrative Officer Hq. Eastern Command Fort William, Calcutta v. Pares Chandra Guha, 90, 257, 1353
 Adoni Cotton Mills Ltd. v. Nachamma, 1077
 — — — v. State of A. P., 1073
 Advertising Corpn. of India v. B. C. Nag, 1268
 Advocate General of Madras v. S. V. Thonthi, 338
 Aftab Ahmad Khan v. State, 826
 Aftabram v. State of J. & K., 000?
 Afzal Ali Baig v. State, 257, 269
 Afzalulla v. State of U. P., 435
 Aga Gulam Hussain v. A. D. Sasmu, 302
 Agarpara Jute Mills v. Sukhdeo Rai, 196
 Agarwal v. D. M., Delhi, 275
 Agnihotram Ananthascharyulu v. Executive Officer, 354, 360
 Agrihorticultural Society v. Workmen, 823
 Agnioni v. Badri Dass, 1206
 Agra Electric Supply Co. Ltd. v. Alladin, 73, 128
 Aher Raja Khima v. State of Saurashtra, 327, 329
 Ahmad v. UI, 1021
 Ahmed Hasan v. Chief Commr., Manipur, 25, 292, 669, 876, 880, 891, 1026, 1355
 — — v. Dy. Commr., Manipur, 603, 980
 — Hussain v. State, 1347
 — Kannu v. Travancore State, 14, 905
 — Sheikh v. Gulam Hassan, 138, 291
 Ahmedabad Cotton Mfg. Co. Ltd. v. Textile Labour Association, 1177, 1266
 — Electricity Co. Ltd. v. Dhula Hira, 260, 319, 684, 924, 1267
 — Laxmi Cotton Mills Co. Ltd., Ahmedabad v. Dabibhai Kalidas, 1152

- Ahmedabad Mfg. & Calico Printing Co. Ltd. (Calico Mills), Ahmedabad v. Tagjivandas Vithaldas, 210, 289, 1226, 1267
- — — — — v. Keshavlal Kanyibhai, 849, 1230
- — — — — v. Premchand Lajibhai, 750
- — — — — v. Raojibhai Bhikabhai, 705, 902
- — — — — v. Shantilal M. Shah, 1105, 1206, 1266
- — — — — v. Vabhjee Shivjee, 263, 1229, 1230, 1249
- — — — — v. Workmen 842
- Municipal Transport Service v. Workmen, 396
- New Textile Mills Co. Ltd. v. Bhau Shanker Manilal Trivedi, 646, 647
- — — — — v. I. G. Thakore, 1093, 1118, 1120, 1222
- Shri Ramkrishna Mills Co. 'Ltd. v. Narhari Nathalal, 1126
- Ahuja Stores Drafters and Tailors Ltd. v. Workman, 809, 486, 901, 1109
- Air Corpn. Employee's Union v. Vyas (D. V.), 496, 1334
- India Corpn., Bombay v. V. A. Rebello, 95, 1066, 1389
- Airconditioning Corpn. v. S. L. Bhatnagar, 1176
- — v. Workmen, 739, 1113, 1179
- Ajeeb Singh Bakshi v. State of Haryanm 45, 1354
- Ajit Kumar Mohanti v. Managing Committee, 1328
- — Mukherjee v. President, Board of Secondary Education, Bihar, 1034
- Prasad Mukherjee v. L. I. C. of India, 1305, 1333
- Radio Corpn. v. Ram Chandra Dinkar, 781, 831
- Singh v. Delhi Administration, 153, 226, 527
- — Constable v. Kirpal Singh, 484, 494, 622, 709, 887, 942
- Ajodhya Prasad Pandey v. UI, 224
- Ajoy Kumar v. Puspabala Chaudhary, 288
- Ajudhia Textile Mills v. Workmen, 589, 768
- Pershad v. Bhiwani Pershad, 816
- Akal Sewak Sangh v. State of Punjab, 615
- Transport Co. (P) Ltd. v. Workmen, 299, 1155, 1201
- Akasam Suryadeo v. Manthena Rama Raju, 440, 769
- Akash Reddy v. Revenue Divisional Officer, 1032
- Akella Satyanarain Murthy v. Zonal Manager, LIC, 426, 427, 428
- Akhileshwara Iyer v. Cochin Devaswom, 362
- Akhtar Hussain v. Commr., Waqf, 1353
- — Faruki v. Director, Animal Husbandry, 71, 74, 75, 83
- Mirza v. Commr., Waqf, 155
- Akshay Narain v. Mahashwer, 690
- Al Ayub Yusuf Naikwadi v. Municipal Committee, 608
- Alappa Textile (Cochin) Ltd. v. Workmen, 1261
- Albert Bonnan' v. Imperial Tobacco Co., 1161
- Alcock and Ashdown & Co. Ltd., Bombay v. Workmen, 912
- Alembic Chemical Works Co. Ltd., Baroda v. Ishwarlal Purshottamlal, 736, 758, 904
- — — — — v. J. Bhikuram, 487
- — — — — v. Madhosingh Bajabasingh, 1196
- Alexandra Engg. Works Pvt. Ltd. v. Workmen, 78, 824
- Ali Akbar v. Jova Bengal Line, 695
- Hasan & Sons v. Workmen, 314
- Mahomed v. Emperor, 261
- Mohd. Khan v. Crown, 670
- Alkali & Chemical Corpn. of India Ltd. v. Seventh, I. T., W. B., 1079
- All India Ins. Employees' Association v. LIC, Higher Grade Asstts. Assn., 1331
- — Mfg. Co. v. Labour Court, 493, 1050
- — Spg. Mfg. Co. v. First I. C., W. B., 828
- Orissa Transport Employee's Union and State Transport Employee's Union v. State of Orissa, 97, 290
- Allahabad Bank Ltd. v. Chaturvedi, 1256
- Allenberry & Co. Ltd. v. Workmen, 264
- Allepey District Small Scale Coir Mfrs. Assn. v. Travancore Coir. Factory Workers' Union, 1334
- Allingham v. Minister of Agriculture & Fisheries, 461
- Allinson v. General Council of Medical Education, 477
- Alloysus H. E. School v. Kumari Regina, 1274
- Alpna Theatre v. Workmen, 77, 131, 1258
- Altafur Rahman v. Collector, Central Excise, 25, 26, 825, 885, 887, 897, 1155

- Aluminium Corpn. of India Ltd. v. Workmen, 373, 374
- Alvi Simons v. Workmen, 355
- Amalendu Ghosh v. District Traffic Supdt., 525
- — v. North-Eastern Rly., 217
- Amalgamated Chemicals and Dyestuffs Co. Ltd. v. Workmen, 1131, 1139, 1184
- Electricity Co. Ltd., Belgaun v. Workmen, 1089, 1090
- Tea Estates Co. Ltd. v. UI, 481
- Amalgamations Ltd., Madras v. Workmen, 1223, 1245
- Amarendranath Mukherjee v. Damodar Valley Corpn., 202, 1332
- Amarjit Singh v. Smt. Saroj Malik, 308
- Amar Nath v. Commr., 1326
- Amarnath v. Swatantra Bharat Mills, 396
- Gupta v. N. E. F. Rly., 150, 151, 152, 157, 158, 167, 172, 953, 957
- Amarsingh v. State of Punjab, 1017
- v. State of Rajasthan, 154
- Gowamal & Sons v. Their Workmen, 373
- Amba Cinema v. Bachan Singh, 326
- — v. Ranbir Singh, 437, 1258, 1268
- Ambadas Eknath v. Narsinggirji Mfg. Co. Ltd., Sholapur, 80, 92, 93, 94, 95
- Ambalal v. UI, 334, 636
- Ishwarlal v. Ayodaya Spg. & Wvg. Co., 931
- Motibhai Patil v. State, 698
- Tulsidas v. Rajnagar Sps. & Mfg. Co. Ltd., 459
- Ambica Mills Co. Ltd. v. S. B. Bhatt, 1348
- Prasad v. Adhyaksha, Zila Parishad, 108
- American Arcot Industrial Institute v. Workmen, 274, 662
- Direct Tea Trading Co. Ltd. v. Workmen, 1125
- Refrigeration Co. Ltd. v. Workmen, 462, 498, 920, 1051, 1141
- Amin Chand v. State of U. P., 140
- Sultan v. State, 800
- Amirsingh v. Govt. of India, 511, 513
- Amiruddin v. Divl. Supdt., Central Rly., 821, 1381
- Ammal v. Narasimhan, 695
- Ammehta Lime Stone Quarry v. Workmen, 463, 1268
- Amrish Kumar Sharma v. State of U. P., 583, 587, 667
- Amrit Lal Hajra v. Emperor, 663, 670
- Amrita Bazar Patrika v. Industrial Tribunal, 1091
- Amritlal & Co. Pvt. Ltd. v. P. P. Sharma, 495, 566
- Amritrai Sood v. State of Punjab, 1022
- Amul Roy Chaudhary v. Chief Commr., Tripura, 83, 161, 164, 445
- Amulya Kumar Sikdar v. L. M. Bakshi, 25, 379, 513, 712, 989
- Ratan Mukherjee v. Eastern Rly., 111, 214, 216, 243, 272, 683
- — Nayek v. State of W. B., 112, 914, 1346
- Anala Kondala Rao v. State of Orissa, 290, 955
- Anam Swain v. State of Orissa, 698
- Anand Bazar Patrika (P) Ltd. v. Employees, 196, 624, 733, 765, 1102, 1115, 1176, 1198
- Bhondiba Gade v. Victoria Mills Ltd., 305, 541, 1144
- Chander v. Vasu, 481
- Kumar v. Punjab University, 686
- — v. UI, 118
- Narain Shukla v. State of M. P., 461, 544, 545, 889
- Parkash Saxena v. UI, 154, 261
- — & Sons v. Girja Shankar, 1172, 1389
- Prasad Seth v. State of W. B., 954, 957
- Sahu v. State of Orissa, 1239
- Sarup Bhatnagar v. State of Rajasthan, 147, 159
- Scientific Co. v. Employee's Union, 588
- Swaroop Singh v. State of Punjab, 1291
- Anadi Pradhan v. I. G. Police, 1029
- Anandilal Verma v. State of Rajasthan, 314, 358, 964, 1010
- Anant Bandhu Bose v. W. B. Board of Secondary Education, 431, 433
- Narain v. Southern Rly., 1298
- Narayan v. Massey Ferguson Ltd., 1240, 1263, 1269
- Prasad Seth v. State of W. B., 483, 582, 616, 860, 863, 901
- Ram v. D. M., 392
- Udyog Tilok Bazar, Delhi v. Damodar-das, 665
- Ananta Gaimdalar v. P. V. Sinari, 49
- Ananthanarayanan v. G. M., Southern Rly., 243, 246
- v. State, 1013
- Ananthan Pillai v. State of Kerala, 155
- Ancillary Industries & Forgings Pvt. Ltd. v. Workmen, 910.
- Andagalur Kumaram Handlooms Products and Sales Society v. Ramaswami, 1240

- Andheri Marol Kurla Bus Service v. Tukaram Sakhamam Suttar**, 1076, 1078, 1238
Andhra Co-op. Spg. Mills v. Workmen, 525
 — Patrika, Madras v. Workmen, 1186
 — Prabha Ltd. v. Secy., Madras Union Journalists, 1219
 — — — v. Workmen, 1184
 — Pradesh State Road Trspt. Corpn. v. I. T., 1094.
 — — — — — v. Labour Court, 1318
 — — — — — v. N. R. R. Verma, 1075
 — — — — — v. Satyanarain Transporters (Pvt.) Ltd., 465, 499, 500, 507
 — Scientific Co. v. L. C., 1234, 1235, 1237
 — — — v. Seshagiri Rao, 473, 487, 489, 490, 492, 880, 1072, 1126
 — University v. Durga Laxman Manoharan, 1138, 1277
Andrew v. Mitchell, 849, 1364
 — Yule & Company Ltd. v. Workmen, 221, 259
Angal v. State of Maharashtra, 1317
Angel Bros. Ltd., Calcutta v. Workmen, 1223, 1240, 1248
 — American Direct Tea Trading Co. Ltd. v. Labour Court, Coimbatore, 316, 423, 424, 442, 510, 708, 758, 1241, 1261, 1263
 — — — — — v. Workmen, 473, 1334
Angus Jute Co. Ltd. v. Workmen, 1197
Angnusingh v. Emperor, 564
Anil Bihari Saran v. State of Bihar, 472, 488, 628, 672, 717, 770, 802, 883, 1283, 1339, 1345, 1353
 — Chandra Ghosh v. UI, 733, 829
 — — Mitra v. State of Orissa, 117
 — Hardboards Ltd., Bombay v. N. N. Sangle, 768
 — — — — — v. Silveira Eusepio Paul Bombay, 705, 1087
 — Kumar v. UI, 121, 823
 — — Das v. Senior Supdt. of Post Offices, 526, 528, 540
 — — Mitra v. Commr. for the Post of Calcutta, 8, 81, 966
 — Starch Products Ltd. v. Workmen, 927
Anita Pal Chowdhary v. Chitaranjan Cancer Hospital, 288, 512, 617, 618, 705
Anjuman Tea Co. Ltd. v. State of W. B., 922, 1126, 1127
Annam Adinarayan v. State of A. P., 1363
Annamalai v. State of Madras, 497, 499, 822
Ansuiyya Subbad v. Baramati Mncpl. Council, 1091
Antarim Zila Parishad v. Shanti Devi, 1292
Anthony v. Goodyear Tyre & Rubber Co. of India, 1187
Anton v. Rayner, 626
Anukul Chandra Mondal v. Commr. of I. T., W. B., 973, 977, 979
Anup Singh v. State of Haryana, 1195
Anusuya v. Model Mills Ltd., 394
Advion Mills v. Workmen, 320
Appar Singh v. State of Punjab, 71, 108, 153, 154, 161, 164, 165
Appu Kuttan Nair v. State of Kerala, 45
Arbuda Mills Ltd. v. Ram Sukh Shanker, 1251
Arca Press v. Kanhaiyalal, 1177
Arcuthpore Tea Estate v. Workmen, 228
Arjand Lal Wadhara v. State of Punjab, 105
Arjandas Brijlal & Co. Ltd. v. Workmen, 930
Arjun Singh v. Kartar Singh, 833
 — — v. State of Punjab, 1369
 — Vishkarma v. Asstt. Personnel Officer, 1275
Arjunlal v. State, 330
Arti Cotton Mills Ltd. v. Industrial Tribunal, 833
Arumugam v. Kadulandy Co-op. Urban Bank, 1327
 — (P) Ltd. v. Divisional Personnel Officer, S. Rly., 710
Arun Kumar Bhattacharya v. State of W. B., 116, 157
Amna v. State, 793
Arunachalam Pillai (U. P.) v. Revenue Divisional Officer, Kovilpatti, 28
Arundas Kashiram v. Shri Hanuman Jute Mills, 1057
Arvind Boards & Paper Products Ltd., Billimoria v. Gajari Ladi, 97, 209, 796, 920
 — Mills Ltd. v. Ramdulare, 1247
 — Processors v. Processing Kamgar Union, 132, 144, 275
 — Processors v. UI, 663
Arya Bhavan Madras v. M. S. Narayana Rao, 500
Aryodaya Engg. & Mfg. Co. v. Jaibahadur Jyoti Singh, 1156, 1266
 — Ginning & Mfg. Co. Ltd. v. Abdulla Rehman, 702

- Asa Ram v. G. C. Saxen, 532
 — — v. Ravi Prakash, 303
 Asansol Electric Supply Co. v. Chunnilal Daw, 1307
 Asarwa Mills Ltd., Ahmedabad v. Bai Manipuri, 1267
 Asbestos Cement Co-op. Consumers Society Ltd. v. Kachru Kalu, 364, 590, 595
 — — — v. Workmen, 923
 Asgarali *alias* Chhotakhan v. New Victoria Mills Ltd., 364, 395, 922
 Asharfi Devi v. Trilokchand, 795
 Asharva Mills Ltd. v. Chunilal Sita Ram, 898
 Ashgar Mustaq Ahmed v. UI, 64
 Ashok Kumar Bhatia v. UI, 133
 — — Tribhavandass v. A. P. Mfg. & Calico Printing Co., 1152
 — Mills Ltd., Ahmedabad v. Dohyabhai Jethbhai, 738
 — Motors Ltd. v. Workmen, 697
 — Singh v. Chief Secy., J. & K. Govt., 137, 1298
 — Textiles Ltd., Always v. Workmen, 322
 — Tribhuwandass v. Ahmedabad Mfg. & Calico Ptg. Co. Ltd., 339
 Ashoka Brothers v. Workman B. N. Mehra, 599, 624
 — Marketing Ltd. v. Workmen, 396
 Asia Publishing House v. Workmen, 650, 1143
 Asian Antiques Arts & Handicrafts v. Ramprashad, 1093
 — Rayon Mills Bombay v. Sakharam Ragho Sawant, 66, 320, 910, 914
 — — — v. Workmen, 915
 Asiatic Trstpt. Co. Pvt. Ltd. v. Workmen, 991
 Asiatic Travel Service v. Workman—N. K. Rai, 461
 Asmat v. Shyamlal, 694
 Assam Match Co. Ltd. v. L. C., 1068
 — — — v. P. O., Labour Court, 1056
 — Oil Co. v. Abdul Malib & Ochi Meach, 1043
 — — — Ltd. v. Appalswami, 21, 394, 395, 546, 1129, 1311
 — — — v. Balahari Mondal, 780
 — — — v. Workmen, 68, 76, 99, 114, 567, 771, 1120, 1178, 1205, 1241, 1254, 1258
 — Railways and Trading Co. Ltd. v. Workmen, 825, 923
 Asstt. Collector of Customs v. Soorajmull, 1350
 Asstt. Education Officer v. Kuthu Paramba, 237, 965
 — — — v. Mainnu, 962
 — Educational Officer, Kuttipuram v. Mohammed, 388
 Associated Cement Companies Ltd., Kotma Collieries v. Chhediram, 1070
 — — — v. Industrial Tribunal, 1081, 1084, 1091
 — — — Kymore Cement Works v. P. O. Labour Court No. 1, Jabalpur, 1089
 Associated Cement Cos. Ltd., New Delhi Brij Mohan Lal, 83
 — — — v. Workmen, 8, 60, 317, 332, 474, 480, 537, 636, 702, 815, 832, 833, 1077, 1127
 — Companies — v. Sharma, 1198
 — Corporation of Industries (India) Pvt. Ltd. v. Addl. Commr., 78
 — Electrical Industries v. Labour Court, 479, 1051
 — General Co. Ltd. v. Workmen, 602
 — Hotels of India Ltd. v. Ranjit Singh, 1349
 — Indian Enterprises (P) Ltd. v. Workmen, 62, 328
 — Industries (Assam) Ltd. v. Fadumoni Bhanio, 1138
 — — — Ltd. v. M. C. Mahajan, 1068
 — Traders & Engineers Pvt. Ltd. v. Amar-Singh, 259, 420
 — — — — — v. Workman Basantlal, 1202
 — — — — — v. Workmen, 77, 1203
 Asutosh Roy v. State, 321, 655, 800
 Asutoshdass v. State of W. B., 471, 492
 Aswini Kumar & Co. v. Workmen, 708
 Asyodayu Engg. & Mfg. Co. Ltd., Ahmedabad v. Jaibahadur, 1226
 Atherton West & Co. Ltd. v. Regional Conciliation Officer, 297
 — — — — — v. Suti Mill Mazdoor Union, 1042, 1059
 Athoppam Monbosingh v. Officer on Spl. Duty, 124
 Athos L. J. P. Fernandes v. UI, 1342
 Atlas Cycle Industries Ltd. v. Workmen, 641
 — Transport (P) Ltd. v. Workmen, 261
 Atmasingh Bhag Singh v. Anil Starch Products Ltd., 72, 94, 170
 Atraj v. State, 832
 Attar Transport (P) Ltd. v. State, 1112
 Atul Chandra Lahiri v. Sanatandeo, 758

- Auchingham & Carnatic Mills Co. Ltd. v. Workmen, 1126
 Auxiliary Industries Forgings Pvt. Ltd. v. Workmen, 995
 August Jute Mills Ltd. v. Tavelkulkant, 912
 Auckland Jute Mills Ltd. v. Workmen, 593
 Austin Distributors (P) Ltd. v. N. K. Kumar Das, 1276, 1286
 — Singh v. State of M. P., 741, 977, 980
 Auto Cars Ltd. v. Sri Ambaji Bhikshaji, 937
 Automobile Manufacturers Worker's Assn. v. Automobile Products of India Ltd., 98, 196
 — Products of India Ltd. v. Rukhmaji Bala, 1042, 1057
 — — — — v. S. V. Seshagiri, 195
 — — — — v. Workmen, 1207
 Avadh v. Emperor, 815
 — Behari Sharma v. State, 676, 789
 — Narain Singh v. Addl. Supdt. Police, 213, 289, 626, 676, 710, 833, 1046, 1128
 — Narain Singh v. Jwala Prasad, 338
 Avery Co. of India Pvt. Ltd. v. Workmen, 792, 1205
 Avinash Chandra Sanjar v. Divisional Supdt., Central Rly., Jhansi, 246, 261, 274, 618, 725, 782, 1365
 — — — — v. State of W. B., 1034
 Avon Drycleaners v. Workmen, 304
 Avtar Krishan Kaul v. UI, 172, 1361
 — Singh v. I. G. Police, 148, 889, 891, 1371
 — — Dalip Singh v. Zonal Manager, 1298, 1303
 Awadhesh Kumar v. State of Bihar, 163
 Awadesh Kumar Bhatnagar v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd., 610, 963
 Ayisabevi v. Aboobacker, 299
 Ayodhya Prasad Singh v. Registrar, Co-op. Society, 125
 Ayub Yusuf Naikwadi Sangh v. Sangli Cit Municipality, 506, 770, 1082, 1179
 Ayubali v. Harinarain Kanu, 252
 Azamali v. Rex, 850
 Aziz-ul Haq v. State of U. P., 605
 B. Basuagraswami v. State, 689
 B. Bikshapathy v. Depot Manager, A. P. S. R. T. Corpn., 1252
 B. Bhimrajee v. UI, 715, 727
 B. Chakravarty v. UI, 882
 B. Chandra Gupta v. Chairman, Posts & Telegraphs Board, New Delhi, 119
 B. Bhowarajah v. State of A. P., 1000
 B. George v. I. G. Police, 118
 B. John Buryan v. State of A. P., 529
 B. Laxminarain v. Imperial Bank of India, 61
 B. Manmohan v. State of Mysore, 1351
 B. Narayan v. B. Damodara Prabhu & Co., 1311
 B. Narayanswamy v. State of A. P., 190
 B. Ramamurthy v. Director of Public Instruction, 1330
 B. Ramchander Rao v. Registrar, Co-op. Societies, 501
 B. Ranganathan Pillai v. Commr., Municipality, 741
 B. Roy's Ramkanmal Colliery v. Workmen, 454
 B. Sadanand Nayak v. Canara Industrial & Banking Syndicate Ltd., 1228
 B. Varalarajulu Chettiar v. State of Madras, 1007
 B. Venkat Reddy v. UI, 470, 1357
 B. A. Arawade v. Workmen, 1266
 B. A. John v. Block Development Officer, 376
 B. B. Chavan v. Jalgaon Distt. Central Co-op. Bank Ltd., 320, 931, 1281
 B. B. Dutta v. UI, 86, 174, 185, 1352, 1354
 B. B. Marwaha v. UI, 1290
 B. B. Mondal v. State of W. B., 369, 370
 B. B. Singh v. Emperor, 782
 B. B. & C. I. Rly. v. B. C. Patil, 205, 402
 B. & C. Co. v. Venkatiiah, 1120
 B. C. Chatterjee v. State of W. B., 66, 493
 B. C. Das v. State of Assam, 1000
 B. C. Gurive Reddy v. Govt. of A. P., 1033
 B. C. Mazumdar v. UI, 285
 B. C. Tewari v. State of M. P., 117
 B. C. Thangkhiaw v. UI, 1349
 B. D. Mankad v. State of Saurashtra, 402, 1007
 B. D. Gupta v. State of Haryana, 390, 877
 B. E. S. T. Undertaking v. Bombay Electric Workers Union, Bombay, 540, 715
 — — — — v. Chunnilal D. Shingrani, 1131
 — — — — v. Jainuddin Saifuddin, 96
 — — — — v. Mushaffe Ahmed Khalil Abbasi Sheikh, 221
 — — — — Workers' Union v. General Manager, B. E. S. T. Undertaking, 176, 204, 207, 246, 248, 259, 283, 462, 657, 753, 864, 897, 910, 957, 1045, 1111, 1128, 1130
 B. H. Kumhappa v. Collector, 821
 B. H. Marwaha v. UI, 390, 392, 387

- B. I. C. Ltd. (Cooper Allen Branch), Kanpur v. Workmen, 267
- B. K. Chatterjee v. Reliance Jute Mills Co., 1073, 1080
- B. K. Misra v. Chief Justice, High Court, Orissa, 418
- B. K. Mukerjee v. Corporation of City of Nagpur, 506, 886
- B. K. Sardarilal v. UI, 227, 998, 999, 1000, 1002
- B. K. Talwar v. State of Haryana, 148, 869, 916, 98C, 992
- B. K. D. Aftundo Kale v. Secretary of State, 1025
- B. L. Bhatia v. Indian Standards Institution, 1332
- B. L. Bhatia v. Manager Lipton Tea Co. Ltd., 66, 169, 171
- B. L. Kohli v. UI, 582, 612, 983, 1035, 1180
- B. L. Salvi v. Genl. Manager, B. E. S. T. Undertaking, 247
- B. L. Sharma v. State Bank of India, 1370, 1371
- B. M. Darlikar v. Chief Executive Officer, 376
- B. M. Kasturba v. Swadeshi Mills Co. Ltd., 896, 1112
- B. M. Pandit v. UI, 71, 137
- B. M. Ramalingam v. State, 1288
- B. M. Tripathi v. State of U. P., 97
- B. N. Elias & Co. Ltd. v. C. P. Sarathy, 374
- B. N. Elias & Co. Ltd. v. Employees, 1190
- B. N. Nagraj Rao v. Indian Oil Corpn. Ltd., 1302, 1333
- B. N. Nagrajan v. State of Mysore, 1186
- B. N. Nanjundappa v. State, 496
- B. N. Singh v. State of U. P., 526, 532, 533, 681
- B. N. Surendra v. G. A. Ajwani, 353
- B. O. A. C. Bombay v. Workmen, 315, 489, 505, 610, 707, 713
- B. P. Gindroniya v. State of M. P., 354
- B. P. Kohli v. State of J. & K., 1180
- B. P. Singh v. U. A. Goswami, 1011
- B. R. Chaudhary v. R. N. De, 1000
- B. R. Gulyani v. Punjab & Haryana High Court, 314
- B. R. Gurukul v. Samuel Osborn (India) Pvt. Ltd., 259, 330
- B. R. Patel v. State of Maharashtra, 365, 360, 362
- B. R. Verma v. State of U. P., 187, 190, 1204
- B. R. M. S. Bus Service v. L. C., 140
- B. S. Birthare v. State of M. P., 138
- B. S. Brar v. State, 1358
- B. S. Jaiswal v. UI, 172
- B. S. Punjari v. Deepak Metal Industries, 1201
- B. S. E. B., Patwa v. Workmen, 1157
- B. V. Mokeshi v. Mysore State Road Corpn., 1331
- B. U. N. Iyendar v. State of Mysore, 611
- Babu Ahmed Kabir v. Principal, Medical College, 745
- Raghunath Naik v. Mrs. Terezininab, 905
- Ram Gupta v. U. P. Sahakari Ganna Samiti Sangh, 1327
- Singh v. State of Punjab, 252
- Babubhai Sardarbhai v. Commercial Ahmedabad Mills Co. Ltd., 680, 796
- Babulal v. Hon'ble Mr. M. C. Desai, C. J., 583, 891
- Babulal v. Principal, Govt. Engg. College, 64, 91, 138, 162
- Ajmera v. State Bank of Bikaner, 886, 976, 1302
- Chokhem v. Emperor, 563
- Saksena v. State of M. P., 80
- Shukla v. Shivpratap, 797
- Babuli Narayan Behera v. State, 784
- Baburam v. Bai Pannabai, 302
- Lalia v. UI, 1296
- Baburao v. State of Maharashtra, 441
- Dhandiba v. State, 43
- Tatyrao v. Emperor, 561
- Babusingh Sengar v. State of U. P., 110, 131
- Bacha Pandey v. Partabpore Concern Ltd., 1174
- Bachakrishna Rao v. State, 557
- Bachan Singh v. UI, 545, 838
- Bachitter Singh v. State of Punjab, 29, 60, 824, 880, 993, 1014
- — Sandhu v. Punjab Woollen Textile Mills, 362, 377, 381
- Bachubha Ramsinghji v. Shivilal, I. P. S., Kutch, 355, 357, 967, 970
- Bachulal Roy v. Corpn., 482
- Badjna Colliery v. Workmen, 1051
- Badri Pratap v. State of Rajasthan, 381, 916
- Badripershad v. President, Distt. Board, 354, 355, 505
- Badrul Huda Ahmed v. State of Assam, 286
- Badshah v. Indian Trading Co., 1068
- Bagai Motor Service v. Workmen, 684, 841
- Bagalkot Cement Co. v. R. K. Pathan, 2, 525
- Bagchi (P. N.) & Co. (P) Ltd. v. I. T., 547