Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 32/2004

Date of Passing Award- 02.11.2022

Between:

Shri Ram Singh Sejwal,
S/o Shri Rishal Singh Sejwal,
R/o 102-A, Khikhra Wali Gali,
No.1 Lado Sarai Mehrauli
New Delhi- Workman

Versus

The Assistant General Manager (P)
Airport Authority of India, Terminal-I,
Palam
New Delhi- 110037. Management

Appearances:-

Shri Vinay Singh (A/R) For the claimant
Shri Hardik Bedi (A/R) For the Management

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Airport Authority of India, Terminal-I, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-11012/25/2003 (IR(M) dated 21/01/2004 to this tribunal for adjudication to the following effect.

"Whether the action of the management of Airport Authority of India, Terminal-I, Palam, New

> Delhi in terminating the services of Shri Ram Singh Sejwal, Ex-Trafic Warden/Sharp Shooter w.e.f 06.06.2000 is just, fair and legal? If not, to what relief the workman concerned is entitled?”

This order deals with the grievance of the claimant with regard to the punishment imposed on him in the domestic inquiry which he describes as unreasonably disproportionate to the charge leveled against him.

In order to consider the facts and grievance of the claimant, it is necessary to set out the relevant facts as per the claim statement in detail.

The claimant at the relevant time i.e on 05.10.1997, was working as a Traffic Warden and posted at IGI Airport Terminal no 2 and on duty at PAX entry Gate No 2. On that day a foreigner guest, a Dutch Lady made a complaint against the claimant for exhibiting indecent behavior to her. A preliminary fact finding inquiry was held during which the complainant identified the claimant of this proceeding as the wrong doer. She also lodged a criminal complaint with police on that day and FIR u/s 354 and 509 IPC was registered against the claimant. The management on 07.10.1997, in contemplation of a domestic inquiry, placed the claimant under suspension. Charge heads were served on the claimant and the inquiry officer was appointed. The inquiry proceeded with the participation of the charged employee and at the end of the inquiry, the inquiry officer submitted his report to the disciplinary authority with a finding that the charges standproved. On receipt of the said report the disciplinary authority, served a copy of that report, calling the charged employee to submit his reply. The reply submitted was found not satisfactory and the disciplinary authority imposed the punishment of dismissal from service against the claimant. Being aggrieved, though the workman had preferred a departmental appeal, the same was decided against him and the order passed by the disciplinary authority was confirmed. Feeling aggrieved, the claimant has raised this Industrial Dispute.

On completion of pleadings by the parties, issues were framed and the issue relating to the fairness of the inquiry was taken up as the preliminary issue. After considering the evidence adduced by both the parties with regard to the said preliminary

issue, this Tribunal by order dt 17.12.2019, arrived at a conclusion that the domestic inquiry was not conducted fairly by giving proper opportunity to the charged employee of setting up his defence. Hence the said inquiry was held to be vitiated and opportunity was given to the Respondent/Management for adducing evidence and proved the charge and establish that the punishment imposed commensurate the charge.

The management examined the inquiry officer of the domestic inquiry, who was not examined during the preliminary issue hearing and also relied upon the inquiry report and proceeding, already placed on record during the preliminary issue hearing. The claimant workman did not adduce further evidence and expressed that he relies upon the evidence adduced by him during the preliminary issue hearing.

At the outset of the argument, the learned AR for the Respondent/Management submitted that the inquiry officer could not be examined during the preliminary issue hearing. The inquiry report and proceeding placed on record could not be proved in absence of the inquiry officer and this Tribunal consequently decided the said issue against the management. Now the inquiry officer during his examination proved those inquiry proceeding and records relating to the same including his report and order of the disciplinary authority. His oral evidence coupled with the documentary evidence proves the charge .he also argued in favour of the proportionality of the punishment and submitted that the alleged incident was highlighted in the news papers. The victim was a foreign national and the incident had tarnished the image of the respondent impacting the business activities. The claimant was also found involved in disciplined activities in the past and was proceeded by departmental inquiry and minor punishment was also imposed on him. Hence the recurrence of the behavior was viewed seriously and punishment was appropriately imposed.

The claimant who argued in person submitted that no previous charge against him has been proved. For the efficient discharge of duty, he was awarded twice in the past by his employer. Moreover the criminal case filed against him ended in acquittal as the charge could not be proved. The Respondent though aware of the result of the criminal case, as an act of vindication, imposed the major penalty and the order f dismissal is

harsh and disproportionate. He also argued that for last 25 years he is fighting against the injustice meted out to him.

The law is well settled that even if the inquiry is found to be fair, that would be only a finding certifying that all possible opportunities were afforded to the delinquent employee to set up a defence. But that would not mean that the inquiry officer and the disciplinary authority had arrived at a legal and proper finding. It is the Industrial Tribunal only, who, by exercising power u/s 11 A of the ID Act can look into and analyze the evidence and examine if the charges have been proved. Once it is held that the charges against the employee are proved, it will examine the proportionality of the punishment. The Hon'ble SC in the case of **General Secretary, South Indian Cashew Factory Workers' Union vs. The MD Kerala State Cashew Development Corporation (2006) LLR 657, SC** and in the case of **Usha Breco Mazdoor Sangh vs. Management of Usha Breco Ltd2008(118)FLR400 SC** have held that after amendment and incorporation of sec 11A in the ID Act the Industrial Tribunal is authorized to examine all the materials placed before it, which includes the evidence adduce during the domestic inquiry.

In this case the management being called upon to adduce evidence and prove the charge, examined Shri Bhola Ram who is non other than the inquiry officer in the domestic inquiry held against the claimant. He proved the inquiry proceeding and the report prepared by him as ext MW1/5. In his oral testimony he stated that the inquiry continued for ¾ months and the claimant with his defence assistant was attending the same regularly. The said proceeding record shows that altogether 5 charges were framed against the claimant and the respondent department had examined three witnesses who were the DGM(Airport 2) and the Sr. Airport Manager and the AirPort Manager. Besides the witnesses,6 documents were produced which included the copy of the FIR, Charge Sheet, photo copies of the log book entry and photo copies of the news paper clippings. Before commencement of the inquiry, the copies of all the documents were supplied to the charged employee who acknowledged the same. The procedure of inquiry was also explained to him. During inquiry the photocopy of the FIR lodged through the Airport Manger was proved. The Airport manager Azad Singh confirmed that in his presence the foreigner lady, the victim identified the claimant as the wrong doer. This evidence of the department witness the Air Port Manger was

corroborated by the defence witness Jag Jivan Prasad, who said that the victim passenger identified the claimant as the wrong doer in his presence. In view of the same the inquiry officer did not accept that no misbehavior was shown by the claimant to the passenger. The inquiry officer came to hold that no plausible reasons are evident as to why a foreigner passenger having no axe to grind against the workman facing the charge shall depose and implicate him falsely. Thus in view of the evidence, the principal charge against the claimant stands proved. The other charges were with regard to the unwarranted and unbecoming behavior of an employee, which according to the inquiry officer were consequently proved and accepted by this Tribunal

On behalf of the claimant argument was advanced that the criminal case had ended in acquittal before the inquiry was concluded. This fact was brought to the notice of the inquiry officer, but never considered as he prepared the report in a pre occupied manner. The disciplinary authority and the appellate authority never considered this aspect too. Thus he argued that for a lone incident of alleged misconduct the harshest punishment was imposed on him. In reply argument the learned AR for the management described about many such previous incidents in which the claimant was facing departmental inquiry and punishment was imposed on him. But no evidence to that effect was placed onrecord.

In the case of **Regional Manager U.P.S R TC, Etawah & others VS Hotilal and another, 2003(3) SCC 605, referred in the later case of U.P.SRTC VS Nanhelal Kushwaha (2009) 8 SCC, 772,** the Hon'ble Apex Court have held that "The court or Tribunal while dealing with the quantum of punishment has to record reason as to why it is felt that the punishment inflicted do not commensurate with the proved charge. A mere statement that the punishment is not proportionate would not suffice. It is not only the amount involved ,but the mental set up, the type of the duty performed and similar relevant circumstances, which go into the decision making process are to be considered while deciding the proportionality of the punishment awarded."

But as stated in the preceding paragraph, the allegation against the claimant was of the indecent behavior shown to a foreigner passenger. But the evidence on record does not show that in the past the claimant was found guilty for alleged misconduct.

The argument of the learned AR with regard to the past misconduct shown by the claimant is not supported by any evidence. The claimant on the contrary has adduced evidence of his past good deeds earning him rewards..

The learned AR for the management while placing reliance in the judgment of the Hon'ble SC in the case of **M/S Firestone Tyre and Rubber Co of India vs. The Management And Others** argued that the discretion vested in the Tribunal u/s 11-A should be judiciously exercised. The crux of his argument is that the punishment imposed on the claimant is appropriate to the charge and the Tribunal should not interfere.In the case of Firestone referred supra, the Hon'ble SC have held that after incorporation of the provision of sec 11A in the ID Act, the Tribunal in order to record a finding on the fairness of the domestic inquiry or the proportionality of the punishment, can not be confined to the materials which were available at the domestic inquiry. On the other hand 'material on record' in the proviso to sec 11A of the ID Act must be held to refer the materials before the Tribunal. They take in (1) the evidence taken in by the parties during the domestic inquiry (2) the evidence taken before the Tribunal.This tribunal in view of the arguments advanced has to give a finding on the proportionality of the punishment imposed on the claimant. In the case of **Muriadih Colliery VS Bihar Coalliery Kamgar Union (2005) 3 SCC331,** The Hon'ble SC have held:-

> "it is well-established principle in law that in a given circumstance, it is open for the Industrial Tribunal acting u/s 11-A of the I D Act 1947 to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the tribunal decides to interfere with such punishment awarded in domestic inquiry, it should bear in mind the principle of proportionality between the gravity of the offence and stringency of the punishment."

Thus on considering the evidence recorded during the domestic inquiry and adduced before this Tribunal, the one only conclusion is that the punishment imposed on the claimant for the isolated incident amounting to mis conduct is disproportionate and harsh, more so when the case of outraging of modesty against the claimant has ended in acquittal. The imposed punishment has not only occasioned in huge financial los, but also resulted in mental

agony to the claimant. Hence it is felt proper to interfere and modify to a lesser punishment in exercise of the power conferred u/s 11A of the ID Act. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the claimant. For the finding rendered in the preceding paragraphs it is held that imposition of the punishment of dismissing him from service for a lone allegation and in absence of proof that he had earlier indulged in such activities, is illegal and liable to be set aside. The punishment imposed is thus modified and the management is directed to notionally reinstate him in service from the date of dismissal since the claimant has already attained the age of superannuation. On such notional reinstatement two annual increments of the claimant shall be stopped and with cumulative effect and his financial and retirement benefits shall be released in his favour within two months from the date of publication of this award, failing which for the extreme old nature of the dispute the accrued amount shall carry interest at the rate of 7% per annum from the date of accrual and till the actual payment is made. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
2nd November, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
2nd November, 2022.