

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. 147/97

Date of Passing Award- 08.08.2022

Between:

Shri kalyan Das
Block No.1, P.O Bijwasan, New Delhi. Workman
Versus

Indian Oil Corporation Ltd.,
World Trade Centre,
Baber Road, New Delhi. Management

Appearances:-

Shri Deepak Kohra For the claimant
(A/R)
Shri Naveen Kumar Chaudhary For the Management
(A/R)

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 Indian Oil Corporation Ltd., 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-30012/90/96 (IR(Coal-I) dated 26th September 1997 to this tribunal for adjudication to the following effect.

“Whether the action of the management of M/s Indian Oil Corporation Ltd. in terminating the services of Shri Kalyan Das, Driver is legal and justified? If not, to what relief the workman concerned entitled?”

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

The relevant facts relating to the dispute are that the claimant Kalyan Das (since dead and substituted by legal heirs) was appointed in the management corporation as Driver on 01.04.1965. On 31.01.1996 he was on duty of driving the oil tanker of the management and during the course of duty he was found to have parked the tanker near village Simlaka Delhi and the helper of the tanker was found draining out oil into a jerkin from the said tanker. The claimant was caught red handed and a departmental inquiry was initiated. Charge sheet was served on him. After conclusion of the inquiry

the charge was found established. The disciplinary authority found him guilty and on 21.10.1996 a showcause notice was served on him calling him to explain as to why the punishment of dismissal from service shall not be imposed on him. The reply submitted by him was found unsatisfactory and he was visited with the punishment of dismissal from service. Being aggrieved the claimant raised an industrial dispute before the conciliation officer. The conciliation also failed and the matter was referred to this tribunal for adjudication.

After completion of pleading the issues were framed and issue no.2 i.e the issue relating to the fairness of the inquiry was decided to be heard as a preliminary issue. Both parties adduced evidence and argument. This, tribunal by order dated 11.03.2022 came to hold that the inquiry was held by the competent authority following the rules of Natural Justice and there being no evidence to hold the contrary the said issue with regard to the fairness of the domestic inquiry was decided against the claimant and both the parties were called upon to advance argument on the proportionality of the punishment awarded. Accordingly both parties advanced their argument.

During the course of argument the Ld. A/R for the management supported the order of the disciplinary authority imposing punishment of dismissal as proper whereas the claimant describes the same as extremely harsh. It was also argued on behalf of the claimant that no action was taken against the helper who was found drawing oil from the tanker. He was not proceeded with for the inquiry and made a witness against the claimant for some personal grudge of the officials of the management against the claimant.

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 Coallier 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 ID 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.”

Whether a misconduct is severe or otherwise depends on the facts of each particular case. In a case where the charge is about misappropriation of public property or breach of Trust, no doubt the same is serious in nature and distinguishable from the charge of demeanor or in subordination. Moreover the finding in the relevant inquiry is based upon oral evidence only.

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

UPSRTC 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 was 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. If the charged employee holds a position of trust where Honesty and Integrity are in built requirements of functioning, it would not be proper to deal with the matter leniently."

This is a case where the claimant was the driver of the Management Company and was often entrusted with the duty of carrying the product of the company to the dealer in the tanker. The duty assigned to him carries the responsibility of delivering the valuable item as per the accurate quantity and quality as well. Any deviation with regard to the quality and quantity is likely to mar the relationship of the company with the customer. Thus, the driver carrying huge quantity of petroleum product in a tanker is expected to carry out the direction and discharge the duty with utmost sincerity and trust. But as stated in the preceding paragraph the allegation against the claimant was of breach of trust and he was caught red handed while draining out the oil from the tanker on the way back which means the appropriate quantity was not delivered at the dealers end. The admitted evidence during inquiry is that for the leakage detected in the tanker the helper was draining the same proves that the tanker was having oil, which was allowed to be drained and the fact that it was leaking has not been proved.

The Ld. A/R for the management while placing reliance in the case of **M/s Firestone Tyres and Rubber Company of India vs. the management and others**, decided by the Hon'ble Supreme Court argued that the discretion vested in the tribunal u/s 11-A should be judiciously exercised. Crux of his argument is that the punishment imposed on the claimant is appropriate to the charge and the tribunal should not interfere.

The learned AR for the claimant on the other hand argued on the legislative intention behind incorporation of sec 11A of the Act by placing reliance in the case of **ML Singla vs. Punjab National Bank, AIR 2018 SC 4668**, submitted that in the said judgment the Hon'ble SC have held that even if the issue relating to the fairness of the inquiry is decided in favour of the employer, even then the Tribunal has to consider if the punishment comensurates the charge. There is no dispute that section 11-A of the Act empowers the industrial tribunal to interfere with the quantum of punishment in appropriate cases. The Hon'ble Apex Court in the case of **Pepsu Road Transport Corporation vs. Rawel Singh AIR 2008(SCW) 2099** have held that section 11A of the Act empowers this tribunal to interfere with the quantum of punishment. But the discretion is to be

exercised judiciously in such cases where order of punishment is quiet harsh and disproportionate to the gravity of misconduct of the officials concerned.

In this case the evidence adduced during the preliminary issue clearly reveals that the alleged occurrence was with regard to the trust of the management reposed on an employee and the said employee committed breach of trust during duty. It is not disputed that the claimant was caught red handed. Thus, it is felt proper to observe that in the case of Fire Stone referred supra the Hon'ble Supreme Court have held that after incorporation of provisions of section 11-A in the ID Act the tribunal in order to record a finding with regard to the fairness of the inquiry or the proportionality of the punishment cannot be confined to the materials which were available at the time of domestic inquiry. On the other hand material on record in the proviso to section 11-A of the Id Act must be held to refer to the materials before the tribunal. They take in (1) the evidence taken by the parties during the domestic inquiry (2) the evidence taken before the tribunal. This empowers the tribunal to consider the evidence recorded before this tribunal for adjudicating the proportionality of the punishment imposed.

On behalf of the claimant it was pointed out that the senior officers of the respondent when visited the site found an outsider taking the oil from the tanker. But the liability was fixed on the claimant. This argument does not sound convincing since the claimant was in charge of the tanker being entrusted with the said movable property and under every circumstance till the tanker is brought back to the depot he is the custodian of the same. It is for him to explain as to how the oil after delivery to the dealer remained in the tanker and how the outsider was draining the oil from the tanker in possession of the claimant. This conduct of the claimant clearly shows the breach of trust by him leading to loss of confidence by the employer on him as the employee. The law is well settled that for loss of confidence the disciplinary authority can pass the order imposing punishment of dismissal from service as has been done in the case of the claimant. Hence it is felt proper not to interfere and modify the punishment imposed by the disciplinary authority in exercise of the power conferred u/s 11-A of the ID Act. Hence, ordered.

ORDER

The reference be and the same is answered against the claimant. it is held that the finding rendered in the departmental proceeding and the punishment imposed is proportionate to the charge leveled against the claimant. 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.

Presiding Officer.

CGIT-Cum-Labour Court.
08th August, 2022

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