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. 138/2012

Date of Passing Award- 16.08.2022

Between:

Shri G. K Mirdha,
R/o RZ-291, Block-M,
Near DDA, Park, Raj Nagar-II,
Palam Colony, New Delhi- 110045. Workman

Versus

The General Manager,
National Aviation Company of India Ltd.,
IGI Airport, Northern Region,
New Delhi-110037. Management

Appearances:-

Shri Abhishek Kumar (A/R) For the claimant

Shri Gautam Dutta (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 National Aviation Company of India 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-11012/25/2011 (IR(CM-I) dated 06/09/2012 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of National Aviation Company of India Ltd. (NACIL) Air India, Northern Region, IGI Airport New Delhi in terminating the services of Shri G.K Mirdha, Ex-helper (Ground Support) staff No. 701131 w.e.f 11.07.2008 is fair and justified? To what relief is the workman concerned entitled?

This order deals with the grievance of the claimant (since dead and represented substituted by legal heirs) with regard to the punishment imposed on him in the domestic inquiry which he describes as unreasonably disproportionate to the charge leveled against her.

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

The claimant in the year 1979 had joined the service of Indian Airlines as a helper in the ground support department. His service was made permanent in the year 1980. Considering his performance, later he was promoted to the post of senior helper and head helper. When every thing was going on smoothly, for some un fore seen family problem he remained absent from duty for a long period in the year 2000 and a result of the same his service was terminated. But for the representation made and being convinced with the explanation offered, on 03/09/2003, he was re appointed. But to his bad luck, during the period 2004 to 2007, his wife and one son suffered critical illness and son suffered from mental illness. Not only that, his mother also died during this period and he being the only able male member of the family had to look after every body including their treatment. This led to irregularity on his part in reporting for duty. However, he was informing his seniors from time to time about his problem. To add to his misfortune, in the year 2007, he met with an accident on fall from a staircase and lost his mobility. This fact was also duly intimated by him in the office with a request for grant of leave. But the authorities decided to initiate an inquiry against him and on 19/09/2007, a charge sheet was served on him alleging un authorized absence from duty for a period of 383 days during the period 16/03/2006 to 31/08/2007. His reply to the charge sheet was not accepted and departmental inquiry proceeded. Though he participated in the inquiry, did not contest the same and admitted the alleged unauthorized absence since he was advised to do so with a false assurance that on admission of guilt he will be excused. Being an illiterate person, he believed the same and did not contest the inquiry properly. At the end of the inquiry, the inquiry officer found the charge established against him and recommended for the punishment i.e termination of service. The same was accepted by the disciplinary authority and his service stood terminated with effect from 11/07/2008. He then served a demand notice on the management and raised the Industrial dispute challenging the order of Termination of service as illegal, disproportionate and harsh. The fairness of the inquiry conducted has also been challenged.

The management refuted the stand taken by the claimant and by filing written statement in which it has been pleaded that the claimant was a habitual absentee from duty and in the past i.e before his termination between 1987 to 1998 he was proceeded with disciplinary action on eight separate occasions and for each inquiry, punishment was imposed on him.but for the period under inquiry he was found absent from duty for 383 days and for such indisciplined attitude he was rightly given the punishment.

On these rival pleadings, issues were framed by order dated 15/05/2013 and issue no. 1 was taken up for adjudication as a preliminary issue to ad judge if fairness was adopted during the inquiry and if principles of natural justice were followed. After recording evidence adduced by both the parties, by order dated 22/03/2022, this Tribunal came to hold that the inquiry was conducted fairly and due opportunity was allowed to the claimant to participate and set up his defence. The said issue was decided in favour of the

management and the both parties were called upon to advance argument on the proportionality of the punishment.

Whereas the learned AR for the Management supported the order imposing punishment as proper and cited his past in disciplinedbehavior as a strong ground for imposing the punishment of termination, the claimant has described the same as extremely harsh. On behalf of the claimant it was also argued that the mitigating circumstances leading to his absence was not considered at all during the inquiry. It was also pointed out that the claimant had suffered an accident causing loss of mobility and the same though intimated to the superior authorities was not considered during inquiry. But while deciding the preliminary issue it has already been considered and held that the claimant could not substantiate the stand that for his accident he was forced to remain absent from duty.

This tribunal in view of the arguments advanced has to give a finding on the proportionality of the punishment imposed on the claimant. Be it stated here that in several judicial pronouncements the scope of adjudication u/s 11 A of the ID Act has been defined to say that the Industrial adjudicator can not act as the appellate authority to weigh and asses the evidence recorder during the domestic inquiry. But it can interfere with the punishment awarded in appropriate cases.

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."

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 money or breach of Trust, no doubt the same is serious in nature and distinguishable from the charge of demeanor or in subordination.

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."

But as stated in the preceeding paragraph the allegation against the claimant was of habitual unauthorized absence from duty. The claimant had admitted the same during the inquiry. The evidence on record also shows that in the past in eight separate proceedings he was found guilty and awarded with punishment. As per the admission of the claimant on one occasion he was dismissed from service and the management on a sympathetic consideration had re employed him. That show of sympathy did not change the attitude of the claimant and during the period 2006 to 2007 he remained absent for 383 days. The explanation offered was not found acceptable. The claimant has taken a further plea that on assurance of excuse, he admitted his guilt is again found un worthy of acceptance.

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.

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.

In this case the evidence adduced before this Tribunal reveals that the alleged occurrence is the not lone incident for which he was proceeded to. During the inquiry the claimant had admitted his guilt and could not prove the defence plea taken. In such a situation the imposition of punishment appears to be proportionate to the charge i.e habitual unauthorized absence.

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 un authorized absence, amounting to misconduct is proportionate and cannot be termed as harsh. Hence it is not felt proper to interfere and modify the same 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 against the claimant. For the finding rendered in the preceding paragraphs it is held that imposition of the punishment commensurates the charge.

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.
16th August, 2022

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