

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. 40/2011

Date of Passing Award- 17.04.2023

Between:

Shri Chamel Singh S/o Sh. Richpal Singh
PO Chipiyana Bujurg,
Gautam Budh Nagar, U.P

Workman

Versus

The General Manager,
National Bicycle Corporation of India,
Hind Nagar, Ghaziabad, U.P.

Management

Appearances:-

Shri Kailash, Ld. A/R for the Claimant.

Shri Praveen Sharma, Ld. 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 (i) The General Manager, National Bicycle Corporation of India, Hind Nagar, Ghaziabad, U.P. 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-42011/4/2011-(IR(DU)) dated 09/05/2011 to this tribunal for adjudication to the following effect.

“Whether the action of Management of National Bicycle Corporation of India, Ghaziabad, in removing the services of Shri Chamel Singh S/o Shri Richpal Singh, w.e.f. 18/06/1992, is legal and justified? What relief the workman is entitled to?”

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

The claimant was working as a turner in the factory of the management since 16.05.1983. He was involved in the union activities and often raising demand in respect of the legal and legitimate claims of the fellow workers. That had caused displeasure to the Management, which was searching opportunity of framing the claimant and removing him from service. On 01/01.1990, on some false allegations charge was framed against him and a show cause notice was served. The claimant workman submitted reply denying the charge. But the management found the same unsatisfactory and unacceptable. A domestic inquiry was conducted in respect of the said charges. The domestic inquiry was conducted in the most unfair manner in as much as the principles of natural justice were not followed and the documents demanded by the claimant were not supplied. In a pre determined manner the inquiry was closed and the major punishment in terms of removal from service was imposed on him by order dt 18/06/1992. Being aggrieved the claimant raised an Industrial Dispute before the labour commissioner. The effort for conciliation since failed, the appropriate Govt. referred the matter to this Tribunal for adjudication in terms of the reference.

The management filed written statement denying the stand of the claimant. On behalf of the management it was pleaded that the claimant had conducted gross misconduct by his in disciplined behavior at work place. It is not the singular

occasion, but a several previous occasions too he was proceeded with punishment for such behavior. Once in the year 1979 and again in the year 1984, his service was terminated. But on both the occasions on humanitarian consideration, the representations of the claimant was allowed and he was re-appointed. But the claimant never tried to mend his behavior. His undisciplined behavior caused disturbance in the work balance of the management. Hence as the last instance the domestic inquiry was conducted against him by charge sheet dt 18/06/1992 and the charge being proved, his service was terminated on 18/06/1992.

In view of the pleadings the following issues were framed for adjudication.

ISSUES

- 1-Whether the inquiry conducted against the workman was fair and proper?
- 2-Whether punishment awarded to the claimant commensurates to his misconduct?
- 3-Whether delay in filing the claim statement frustrates the relevant claim?
- 4-Whether the Management has closed it's business activities. If so it's effect
- 5-As in terms of reference.

The Tribunal directed for hearing of issue no 1 as the preliminary issue. Both parties were allowed to adduce oral as well as documentary evidence. On considering the evidence and after hearing argument, the Tribunal by order dt 17/10/2022, came to a finding that the domestic inquiry against the workman was conducted fairly following the principles of natural justice and due opportunity was allowed to him to set up his defence. Thus the parties were called upon to advance argument on the proportionality of the punishment awarded.

As directed both the parties advanced oral argument and also filed written notes of submission which were taken on record.

During course of argument the learned counsel for the management submitted that the inquiry was conducted in

presence of the workman and the charge of misconduct was duly proved. This being a case of loss of confidence on the employee, the punishment was appropriately imposed. Drawing the attention to the exhibited documents and the proceeding of the departmental inquiry, he submitted that the charge has been duly proved against the claimant in this proceeding. Hence the Tribunal should not sit over the punishment imposed as if the appellate authority.

Whereas the learned AR for the Management supported the order imposing punishment as proper, the claimant has described the same as extremely harsh. During course of argument it was pointed out by the AR for the claimant that for the long drawn litigation, the claimant was deprived of contesting the matter properly and now suffering for the illegal order of dismissal. Hence a lenient view may be taken in the matter for deciding the proportionality of the punishment. The counter argument by the learned AR for the management is that it is a case of loss of confidence. The business of the management establishment has been permanently closed for the order passed by the Hon'ble H C of Bombay followed by the decision taken by the Govt. The action of the claimant had visibly impacted the business of the respondent in the past and the respondent establishment having been closed permanently, no modification in the order of punishment is warranted and the claimant workman does not deserve any sympathy.

Now, in view of the arguments advanced by the parties, a finding is to be given 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 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 indiscipline and refusal to undertake the work assigned, no doubt the same is serious in nature and distinguishable from the charge of demeanor or in - subordination. More over it is a matter of record that the claimant, on two previous occasions were proceeded for the misconduct and his service was terminated once on 10.03.1979 and again on 18.06.1992. As stated by the witness examined by the management, he was re appointed on consideration of his representations. The learned AR for the management thus argued that the management on both the occasions had considered the case of the claimant on humanitarian ground. But for the un amended conduct of the claimant, the management lost confidence and imposed the punishment which has been challenged in this proceeding. No explanation has been offered nor there is any evidence adduced by the claimant to believe that the action as stated by the management was not taken against him. The argument that he was made a victim of the vindication on account of his union activities is found not acceptable.

In the case of **Regional Manager U.P. SRTC, Etawah & others VS Hotilal and another, 2003(3) SCC 605, reffered in the later case of U.P.SRTC VS Nanelal Kushwaha(2009) 8 SCC, 772**, the Hon'ble Appex 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."

As stated in the preceeding paragraph the allegation against the claimant was of misconduct on account of refusal to

perform the duty assigned, leading to loss of confidence of the employer on the employee. The management was a factory engaged in manufacturing of Bi Cycles. Machines as well as man power was involved in the process of production. The workman was working as a turner and on the relevant date he was assigned the duty in the lever turning fencing from maintenance by the supervisor. The order was duly received by the claimant, but he refused to perform the duty so assigned.

The learned AR for the management while placing reliance 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**, and 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 commensurate the charge.

It is felt proper to observe herethat 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 otherhand 'material on record' in the proviso to sec 11A of the ID Act must be held to refer the materials before the Tribunal. Which are(1) the evidence taken in by the parties during the domestic inquiry (2) the evidence taken before the Tribunal. But in this case no evidence has been adduced by the claimant before this Tribunal to presume that the punishment imposed is disproportionate to the charge. The evidence was adduced to prove the irregularities in conduct of the domestic inquiry,

which was not found worthy of acceptance. On the other hand the witness examined by the management has proved the past misconduct of the workman and the punishment imposed which has attained finality and admitted by the workman. Thus on considering the evidence adduced before this Tribunal, the one and only conclusion is that the punishment imposed on the claimant for disobedience of the direction which amounts to mis conduct, is proportionate to the charge and same has been imposed for loss of confidence on the employee by the employer. Hence it is not felt proper to interfere and modify the punishment imposed by the disciplinary authority, in exercise of the power conferred u/s 11A of the ID Act. Hence ordered.

ORDER

The claim advanced by the claimant be and the same is answered against him. The finding of the disciplinary Authority in imposing the punishment is held proportionate to the finding of misconduct. The claimant is held not entitled to any relief.

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.
17th April, 2023.

Presiding Officer.
CGIT-cum-Labour Court.
17th April, 2023.