

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2,  
MUMBAI

PRESENT

S. S. GARG  
Presiding Officer/Link Officer

REFERENCE NO. CGIT-2/ 80 of 2009

EMPLOYERS IN RELATION TO THE MANAGEMENT OF  
MUMBAI PORT TRUST

The Chairman,  
Mumbai Port Trust,  
Shoorji Vallabhadras Marg,  
Ballard Estate, Mumbai,  
MUMBAI – 400 001.

AND

THEIR WORKMEN.

The General Secretary,  
Mumbai Port Trust General Workers Union,  
1<sup>st</sup> Floor, Kavarana Building, 26/4, P.D. Mello Road,  
Wadi Bunder, Mumbai.  
MUMBAI – 400 009.

APPEARANCES:

FOR THE EMPLOYER : Mr. Umesh Nabar  
Advocate

FOR THE WORKMEN : Mrs. P. Shetty  
Advocate

Mumbai, dated the 23rd July, 2021.

AWARD PART – II

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of



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Labour & Employment, New Delhi vide its order No. L-31011/4/2009 – IR (B-II) dated 13.10.2009. The terms of reference given in the schedule are as follows :

“Whether the action of the management of Mumbai Port Trust by compulsory retiring the workman Shri Jaywant Govind Raut, Mazdoor, Telephone Section, P & R Department of the Mumbai Port Trust w.e.f. 19.3.2008 is legal and justified ? What relief the workman is entitled to ?”

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives.
3. The second party union has filed statement of claim Ex.5. According to the second party union, the concerned workman was appointed as Mazdoor in Docks dept on and from 16.11.1981. He was posted on re-employment as Mazdoor in Telephone Section of Planning & Research Dept. w.e.f. 20.7.2001. He was in continuous employment of the first party management from 16.11.81 and a permanent Gr.D employee.
4. It is the case of the second party union that the concerned workman was compulsorily retired from the services w.e.f. 19.3.08 illegally. He was issued charge sheet dt. 5.1.07 on the allegations that he was indulged in harassing one of the lady officers of MbPT. The concerned workman submitted his reply to the charge sheet. The first party thereafter instituted the departmental enquiry to investigate into the charges. The departmental enquiry was commenced on 12.4.07 and concluded on 23.10.07. The E.O. by report dt. 12.11.07 held all the charges leveled against the workman as



23/2/21

proved. Thereafter the disciplinary authority concurred with the findings of the E.O. and workman was issued show cause notice dt. 3.1.08. The workman submitted his explanation on 28.1.08. The penalty of removal from service was imposed upon the concerned workman by order dt. 19.3.08. Being aggrieved by the order of the disciplinary authority imposing punishment of removal, concerned workman preferred appeal dt. 3.4.08 before the appellate authority. The appellate authority granted personal hearing to the concerned workman on 21.5.08. The appellate authority modified the penalty of removal from service to compulsory retirement by order dt. 30.5.08.

5. It is the case of the concerned workman that in the departmental enquiry prosecution could not adduce any evidence against him which warranted his compulsory retirement from service. E.O. did not appreciate voluminous evidence adduced on behalf of the workman.

6. It is also a case of the concerned workman that he himself and his wife were assaulted and threatened on 26.12.05 and 31.12.05 on the incidence of one Mrs. P.R. Patne and therefore he and his wife lodged complaint with the concerned authorities. Thereafter Mrs. Patne has lodged complain on 5.8.06. However, no action has been taken by the authority even after follow up letters by the union on behalf of the workman & his wife and instead action has been taken against the workmen. As such the enquiry was carried out hurriedly by the E.O.

7. It is then case of the concerned workman that on one hand he was compulsory retired on 19.3.08 and on the other hand he was issued with 2<sup>nd</sup>

  
29/2/21



charge sheet vide letter dt. 18.9.08. He sought time to file reply. The management in reply to said representation dt. 3.10.08 considered and agreed to give extension to file reply by another 30 days. The second charge sheet is still pending and the management has not cancelled or withdrawn the said second charge sheet.

8. It is then case of the concerned workman that Mrs. Patne also lodged another two private complaints on the same matter before Metropolitan Magistrate Court which is pending. The management without waiting for the outcome of the criminal proceedings hurriedly conducted the enquiry and made the workman to retire compulsorily. As such the action taken by the management in terminating i.e. compulsorily retiring the workman from service is illegal.

9. Union therefore by its letter dt. 6.11.08 raised the industrial dispute before the ALC Mumbai. ALC Mumbai admitted the said dispute. However, conciliation proceedings ended in failure. Conciliation report was sent by ALC. As such the dispute is referred for adjudication of the tribunal. The union is therefore asking to held and declare that the action of the management of compulsorily retiring the concerned workman w.e.f. 19.3.08 is illegal and that the concerned workman is entitled for reinstatement in his service with full back wages and continuity of service.

10. The first party management resisted claim by filing written statement Ex.6 contending therein that the concerned workman was arrested and detained by the police authority from 26.1.06 to 2.2.06 u/s. 506 (2), 507 & 509 of IPC for alleged involvement in the case of sexual harassment of Mrs.



*[Handwritten signature]*



Patne, Asst. Railway Manager of first party. As the workman was in police custody for the period exceeding 48 hours, he was placed under suspension w.e.f. 27.1.06 by order dt. 21.2.06. Thereafter the suspension of the workman was withdrawn on and from 14.8.06 pending departmental enquiry on the basis of recommendation of review committee dt. 8.8.06 and he was allowed to resume duties. Taking into consideration his involvement in case of sexual harassment of the lady employee of the first party and his consequent detention in police custody which amounts to misconduct under MbPT Conduct Regulations 1976, he was issued the charge sheet for violations of Regulations 3 (1), 3 (1a) (vii) & (xv) & 3 (7) of said Regulations. His reply was not found satisfactory and hence enquiry was conducted. There were 28 hearings in the departmental enquiry so as to give ample opportunity to the workmen to defend his case. Opportunities were availed by the concerned workman. As such the sufficient opportunity to defend himself was given to the concerned workman.

11. It is then case of the first party management that during the pendency of disciplinary action against the workman resulting into compulsory retirement upon him once again Sr. Inspector of Police MRA Marg Police station informed the first party that workman was arrested on 29.6.07 for the offence u/s. 193, 465, 467, 469 read with section 120 (b), 34 & 109 of IPC and remanded to police custody till 6.7.07. He was placed under suspension and continued to remain under suspension till 19.4.08 i.e. the date on which disciplinary authority passed an order imposing punishment of removal from service upon the workman on the recommendations of the review committee. On the basis of detention of workman in the policy



custody the disciplinary action was taken against him and therefore the second charge sheet was issued before the order of disciplinary authority imposing the punishment of removal from services. The first party accepted the request of the concerned workman and Marathi translation of the charge sheet was given to him. Copy of report of the police officer was also forwarded to him. So according to the first party it is not necessary for the first party to deal with contention of second party in respect of second charge sheet since the action of compulsory retirement was taken against the workman. Therefore the action taken against the workman imposing punishment of compulsory retirement is legal, proper and justified. The findings of the E.O. are on the basis of evidence placed before him and therefore the concerned workman is not entitled to any relief. The first party is thus sought the dismissal of the reference.

12. By filing rejoinder Ex.9, the concerned workman reiterated that the charges against him are not proved. Action of the management is illegal and therefore he is entitled for reinstatement in service with full back wages and continuity of service.

13. Following issues are framed at Ex.8. Issue No.1 is treated as preliminary issue. Hence I reproduce the Issue No.1 along with my findings thereon for the reasons given below:

Sr. No.	Issue	Findings
1	Whether the enquiry by the management MbPT against workman Shri Jaywant Govind Raut, Mazdoor, Telephone Section, P&R Department,	Yes



	was fair and proper ?	
2.	Whether the findings of the Enquiry Officer are perverse ?	Not perverse
3.	If yes, whether the punishment of compulsory retirement is adequate ?	Yes
4.	What relief the workman is entitled to ?	Not entitled to any relief
5.	What order ?	As per final order

14. On behalf of workman he examined himself to prove his case. In his examination i.e. evidence on affidavit he tried to prove all facts which he asserted in his statement of claim and re-joinder and on behalf of management, no witness is examined. My predecessor in Part – I awarded following points.

1. Enquiry held is fair & proper.
2. Findings of the Enquiry Officer are not perverse.
3. Parties are directed to argue and lead evidence on the point of quantum of punishment.

15. And he gave an opportunity to both the parties to lead any evidence on quantum of punishment but nobody filed any evidence but both the parties filed written notes of arguments. They also filed pursis to close the evidence on 8.3.17 and 7.6.17 (on behalf of management i.e. party No.1 his



advocate closed his evidence on 7.6.17 and on behalf of worker i.e. party No.2 they closed evidence on 8.3.17).

16. After hearing of the argument my predecessor fixed this case on 24.2.20 for reserve of judgment.

17. Now I heard the arguments of both the parties today i.e. on 23.7.21, case fixed for award.

18. On behalf of workman, Party No.2 after relying case laws argued that

1. Learned Disciplinary Authority has not considered my unblemished record of service for 25 years and further by imposing the punishment of Compulsory retirement deprived me of my pensionary benefits.

2. I am not gainfully employed and have not obtained a job even though I have tried for the same considering my advanced age, as also the fact that I am not highly educated.

3. The findings is perverse.

19. On the basis of these arguments he prays that he must be reinstated with all consequence benefits and continuity of service with full back wages.

20. On behalf of management they relied on following case laws argued that;

1. The workman was given clear acquittal in Criminal case on the basis of alleged same facts. It is firstly respectfully submitted that the charges in the Criminal Trial and in the Disciplinary



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Proceedings cannot be held to be same if the Charge sheet dated 5<sup>th</sup> January 2007 at pages 5 to 10 of Exhibit 25.

2. Judgment and order of Criminal Court of acquitting the Second Party Workman would not automatically replace the Order of Compulsory retirement imposing punishment of Compulsory Retirement upon the Second Party workman.
  3. Retirement benefits including pension during life and thereafter pension to the legal representatives is proper punishment and no interference is called for.
  4. No interference is called for in the Order of Compulsory Retirement imposing punishment of Compulsory Retirement with retirement benefits.
  5. Reference is rejected with cost in interest of justice.
21. Now I want to see legal position

Cases filed by Advocate of second party workman.

1. M/s. Glaxo Laboratores (I) Ltd. V/s. Presiding Officer, Labour Court, Meerut & Ors. – SCC – 1994 – 1 in which Hon'ble Supreme Court held that "substantial and proximate nexus between misconduct and employment essential – Place and time have a significant bearing in determining whether an act constituted misconduct – Certified standing order requiring the specified misconduct to be "committed within the premises of the establishment or in the vicinity thereof" –



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Interpretation of, in the context of the language used and its intendment.”

2. Hardwari Lal V/s. State of UP & Ors. – SC – 2000 (2) – L.L.N. 69 in which Hon'ble Supreme Court held that “dismissal of appellant set aside on ground of violation of principles of natural justice – Reinstatement ordered – Considering the fact of long lapse of time between dismissal and reinstatement and no blame can be put on the door respondents, award of 50 per cent back-wages considered appropriate.”

Cases filed by Advocate of First party.

1. State Bank of Patiala & Ors V/s. S.K. Sharma – SC – 1996 II CLR – 29 in which Hon'ble Supreme Court held that “principles of natural justice cannot be reduced to any hard and fast formulas. They cannot be put into a straight-jacket. Their applicability depends upon the context and facts and circumstances of each case. The objective is to ensure a fair hearing, a fair deal, to the person whose rights are affected.”
2. M/s. Banaras Electric Light and Power Co. Ltd. V/s. The Labour Court II, Lucknow and Ors. – SC – 1972 – Page 328 – II – LLJ in which Hon'ble Supreme Court held that “the findings of the Labour Court and the High Court as to victimization are based on no evidence and are wholly unwarranted.”

22. As I mentioned that workman examined himself but no witness is examined on behalf of management. Now I want to see evidence part of this case.



23. Workman Shri Jaywant Govind Raut, WW-1 in his cross examination admitted most of the facts. Now I want to mention here the part of the statement which is mentioned in para 17 & 18. He also admitted that "On each page of enquiry proceedings there are signatures of mine and my defence counsel. It is true that enquiry initiated against me on the basis of letter dt. 3.2.06 given by Sr. Inspector, MRA Marg Police station..... It is true that I was given opportunity to file my documents during enquiry. It is true that during enquiry I have examined myself and my witnesses and management cross examined me and my witnesses..... I have also submitted my say before inquiry officer.....Thereafter I was given show cause notice calling upon me to give say on the inquiry officer report. It is true that during pendency of this inquiry I received another charge sheet. It is true that I have asked for translated copy of charge sheet in Marathi I have received the copy of the same in Marathi. It is true that papers of second charge sheet sheet are included in the first charge sheet..... I was given punishment in respect of first charge sheet.

24. He also admitted that it is true that I preferred appeal before Dy. Chairman and as per order of Dy. Chairman my punishment of removal was modified to compulsory retirement.

25. On the perusal of record it appears that workman started his services on 16.11.1981 as Mazdoor. He asserted in his chief examination so many facts regarding assault and threat but this fact was not proved by court evidence. He also admitted that during the pendency of first enquiry he received another charge sheet. He also admitted that second charge sheet are included in the first charge sheet but punishment given only for first



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charge sheet. He also admitted that disciplinary authority punished him "removal from services" which was modified to as "compulsory retirement". He also orally admitted in the court that he completed 15 years service.

26. On going through above discussion and considering with touch stone of case law in my humble opinion finding of criminal court is not binding with civil court. I also feel punishment as to 'compulsory retirement' is not punishment in civil conduct rules. Nothing show that finding of disciplinary authority with regard to punishment as well as modified view of appellate authority from "removal from services" to "compulsory retirement" is not appear to be shocking. It also appear that in comparing the misconduct of the workman, no employer is allow such type of worker in their establishment where male and female are working or public dealing. So in my humble opinion view taken by Appellate Authority is not illegal and unjustified.

27. Hence I pass the following order.

**ORDER**

1. Action of management of Mumbai Port Trust by compulsory retiring the workman Shri Jayawant Govind Raut, Mazdoor, Telephone Section, P & R Department of the Mumbai Port Trust w.e.f. 19.3.2008 is legal & justified.
2. The workman is not entitled to any relief.



Date: 23.07.2021

(SHYAM. S. GARG)  
Presiding Officer/Link Officer  
CGIT -2, Mumbai