

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. 168/2012

Date of Passing Award- 30.05.2022

Between:

Ms. Anita Rani Tyagi,
W/o Shri Dinesh Tyagi,
Through The General Secretary,
General Insurance Employees Federation,
NR.C-3, Community Centre,
Naraina, New Delhi-110028.

Workman

Versus

1. The Managing Director,
New India Assurance co. Ltd.,
87, M. G Marg, Fort,
Mumbai-400001.

2. The DY. General Manager,
New India Assurance Co. Ltd.
Scope Minar, Core-1,
Laxmi Nagar, District Centre,
New Delhi-110092.

3. The Sr. Divisional Manager,
New India Assurance Co. Ltd.,
339, Bombay Bazar,
Meerut (U.P) 250001.

Management

Appearances:-

Shri Rajiv Agarwal
(A/R)

For the workman

Shri Naveendeeep Singh
(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 New India Assurance Co. 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-17011/7/2012 (IR(M) dated 10/12/2012 to this tribunal for adjudication to the following effect.

“Whether the action of the management of the management of New India Assurance Company Limited of imposing penalty of reducing the basic pay of workmen Smt. Anita Rani Tyagi

from the cadre of Sr. Assistant to the basic pay of Assistant in violation of order of Disciplinary Authority dated 10/08/2009 is illegal and unjustified? If so to what relief the workman is entitled to?”

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

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

The claimant at the relevant time was working as a Senior Assistant in the management. On 03.06.2008, with the permission of her superior she had gone to the office of her senior colleague Mr. Subash Yadav to ascertain as to why a substantial amount of her medical claim was disallowed. It was about 4pm and Mr. Yadav was in his cabin alone. when the claimant asked him as to why Rs 4000/- has been deducted from the medical reimbursement bill raised by her, he instead of answering passed some coloured remarks and caught hold of her hand with some ulterior intention. When she raised alarm, Mr. Yadav tore the cheque held by her and threatened her of departmental action. The claimant on the same day lodged a complaint at the local police station and for outraging the modesty of a woman, a case u/s 354 IPC was registered and the same is still pending. On the next day i.e on 04.06.2008, she also lodged a complaint to the higher authorities against Mr. Yadav. Mr. Yadav in order to save his skin, made a counter allegation against the claimant and the management took prompt action on the same and on 04.06.2008, placed her under suspension and on e departmental inquiry was initiated. The charge framed against the claimant was that she on 03.06.2008, she misconducted herself by shouting at the top of her voice at the senior colleague and even slapped him in the office.

The departmental inquiry was conducted hastily violating the principles of natural justice and at the end, the punishment was handed over by which her current pay in the cadre of senior assistant was reduced to the initial scale of pay applicable to the senior assistants. The said punishment was given in terms of Rule 23(F) of the New India Assurance Company Ltd (conduct ,discipline and appeal) Rules 2003.

Being aggrieved the claimant preferred departmental appeal and revision. But those were decided against her too. Having no other departmental remedy available, she approached the Labour commissioner for conciliation. But for the pre occupied mind of the management conciliation failed and the appropriate Govt. referred the matter for adjudication, if the punishment imposed is proper and legal. If not, to what relief the claimant is entitled to.

The management was called upon to file reply, wherein the management justified the action taken against the claimant. This Tribunal framed altogether three issues and the issue no 1 relating to the fairness of the Domestic inquiry was heard and considered as a preliminary issue. The tribunal after considering the materials placed on record, by order dated 08.01.2020 came to hold that the domestic inquiry was conducted in accordance to the Rule and procedure and principles of natural justice was thus found followed in the inquiry. That issue was accordingly decided against the claimant. And it was directed that the claimant shall adduce evidence on the proportionality of the punishment imposed on her. But for the objection raised by the learned AR for the management that once the domestic inquiry is held to have been conducted fairly, there is no scope for adducing fresh evidence and the Tribunal has the power to give a decision on the proportionality of the punishment on the materials available on record. This argument was obviously resisted by the claimant. But by order dated 16.12.21, both parties were called upon to argue if the punishment imposed comensurates the charge of misconduct.

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 a calculation sheet was filed showing the cumulative financial loss suffered by her. It was also argued that for the said punishment she was denied promotion to the CL I grade, though her name was in the zone of consideration. A document described as schedule for promotion from CL III to CL I containing the name of the claimant has been filed.

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 Coallierey 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 as in this case. More over 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 NanelalKushwaha(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.”

But as stated in the preceding paragraph the allegation against the claimant was of misbehavior and physical assault caused to a senior colleague. The admitted evidence is that before initiation of domestic inquiry and placing her under suspension in contemplation of the inquiry, she had lodged FIR alleging that the senior colleague Mr. Yadav had outraged her modesty as a woman. The evidence on record also shows that the criminal trial is still pending.

The learned AR for the management while placing reliance in the case of **West Bokaro Colliery(Tisco) vs. Ram Prasad Singh (2008) 3 SCC 719** argued that when there is an equivocal evidence of misbehavior towards superiors, such evidence rendered before the Tribunal can not be discarded. He also relied upon 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** to argue 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 commensurates 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 quite harsh and disproportionate to the gravity of misconduct of the officials concerned.

In this case the evidence adduced before this Tribunal reveals that the alleged occurrence is the lone incident for which she was proceeded to. During the inquiry though Mr. Yadav stated about the filthy words were uttered by the claimant towards him, the exact verbatim was neither recorded during inquiry nor in the evidence recorded by this Tribunal. It is also not disputed that the criminal case

for outraging the modesty of the claimant by Mr. Yadav is still pending. In such a situation the imposition of punishment appears disproportionate to the charge.

It is felt proper to observe that 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. 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 of in subordination amounting to misconduct is disproportionate and harsh, more so when the case of outraging of modesty against Mr. Subash Yadav is still pending. The imposed punishment has not only occasioned in huge financial loss, but also resulted in loss of opportunity in promotion and mental agony. 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 reverting her current pay scale on the date of passing of the order in the inquiry to the initial scale of senior assistant is illegal and liable to be set aside. The management is directed to stop one annual increment of her salary in the year the impugned order was passed without cumulative effect which will commensurate the charge proved against the claimant and serve the ends of justice. The management is directed to refix the pay of the claimant as directed above and pay the arrear accrued salary and other consequential benefits within three months from the date of publication of the award failing which the accrued amount shall carry interest at the rate of 9% 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.
30th May, 2022

Presiding Officer.
CGIT-cum-Labour Court.
30th May, 2022