

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) NO.17666/2005**

% **Reserved on : 20.01.2009**
Date of Decision: 13.02.2009

DELHI MILK SCHEME Petitioner

Through None

Versus

MAHABIR SINGH Respondent

Through None

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

1. Whether reporters of Local papers may be allowed to see the judgment? NO
2. To be referred to the reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

J U D G M E N T

V.K.SHALI, J.

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1. The petitioner by virtue of the present writ petition has challenged the award dated 6th August, 2004 passed by Sh. R.N.Rai, Presiding Officer, Industrial Tribunal cum Labour Court (hereinafter referred to as 'The Tribunal') in ID No. 17/1995 titled as Mahabir Singh Vs. General Manager, Delhi Milk Scheme.

2. By virtue of the impugned award dated 6th August, 2004, the Tribunal has set aside the punishment of compulsory retirement which

was imposed by the petitioner/Management on the respondent/workman after holding a domestic enquiry on the ground that it was disproportionate to the proved mis-conduct of the respondent/workman. The ground on which this punishment was set aside was that the mis-conduct was considered to be trivial and accordingly the learned Tribunal substituted the said punishment with a stoppage of two increments with cumulative effect and directed the reinstatement of the respondent/workman with payment of 25% of back wages.

3. Briefly stated the facts leading to the filing of the present writ petition are that on 25th January, 1989, the respondent/workman who was employed as a mate with the petitioner/Management was given a charge sheet under Rule 14 of the CCS Rules, 1965 alleging therein that while being employed on the distribution of milk, he attempted to pilfer 35 litres of polypack milk in connivance with the other crew members of the van. The Enquiry Committee was constituted by the Deputy General Manager in the capacity of disciplinary authority. The Enquiry Committee conducted the enquiry against the respondent/workman in accordance with the principles of natural justice and came to the conclusion that the mis-conduct against the respondent/workman of trying to pilfer 35 litres of polypack milk was proved and accordingly he was visited with the punishment of compulsory retirement.

4. The respondent/workman made a reference to the Central Government whereupon the Ministry of Labour vide letter dated WP(C) No.17666/2005

20.1.1995 made the following reference for the adjudication of the learned Tribunal:

“ Whether the General Manager, Delhi Milk Scheme is justified in awarding penalty of compulsory retirement to Shri Mahabir Singh, Mate son of Shri Chottey Lal from the services of Delhi Milk Scheme w.e.f. 3.08.1990? If not, what relief the concerned workman is entitled to.”

5. The learned Tribunal after upholding the validity of the inquiry came to the conclusion that the mis-conduct proved against the respondent/workman was that he had along with 4-5 persons of the delivery van of the milk, attempted to pilfer 35 ltrs. of polypack. It further proceeded to observe that if this was achieved then each would have got to his share about 4-5 liters of milk or so which misconduct in the opinion of the Ld. Tribunal was trivial in nature and therefore, it did not warrant the compulsory retirement of the respondent/workman. The punishment of compulsory retirement was considered to be harsh and accordingly, it substituted the same, with stoppage of two increments with cumulative effect. The respondent/workman was also directed to be reinstated with 25 % back wages along with interest of 6% from the date of publication of the award.

6. The petitioner/Corporation feeling aggrieved by the aforesaid award of learned Tribunal regarding the substitution of punishment of compulsory retirement with stoppage of two increments with cumulative effect has preferred the present writ petition.

7. The main contention of the petitioner/Corporation in the writ petition has been that once the learned Tribunal had upheld the

fairness and the validity of the enquiry conducted against the respondent/workman it could not sit as a Court of appeal and convert the finding of the compulsory retirement to a lesser punishment on the so called assumption of the misconduct being trivial, by simply trying to apportion the quantum of milk attempted to be pilfered by the respondent/workman in connivance with others. It was also contended that imposition of punishment was the job of the disciplinary authority and assuming though not admitting the learned Tribunal has been of the opinion that the punishment was shockingly disproportionate to the mis-conduct of the respondent/workman then the only option available to the learned Tribunal was to set aside the punishment imposed on the respondent/workman and remand the matter back to the disciplinary authority for consideration and imposition of such other punishment, which it may deem appropriate under the circumstances.

8. The learned counsel for the respondent/workman raised preliminary objections with regard to the maintainability of the writ petition itself as being abuse of the processes of law. It was further alleged that the petitioner was adopting unfair labour practice and the principles of natural justice and the CCS (CCA) Rules or FRSR Rules were violated in conducting the enquiry. So far as the quantum of punishment is concerned, it was urged that it was justified on the ground that the learned Tribunal had rightly imposed the punishment keeping in view the misconduct of the petitioner was trivial in nature.

9. I have considered the respective submissions and perused the record. So far as the preliminary objections with regard to the validity

of the enquiry proceedings are concerned, no independent writ petition has been filed by the respondent/workman. Therefore, this Court cannot go into the question of the plea sought to be urged by the respondent/workman in the counter affidavit that the enquiry was not completed in accordance with the principles of natural justice. There is a clear cut finding by the learned Labour Court that the enquiry which was conducted against the respondent/workman was fair, impartial and did not violate any Rule or regulation. If the respondent/workman was feeling aggrieved by the aforesaid finding, it was open to him to challenge the same before the Court. Having not been so, it is too late in the day to contend that the present enquiry was not fair and to allege that it violated the principles of natural justice.

10. As regards, the other preliminary objections raised by the respondent/workman with regard to the maintainability of the writ petition is concerned that is also without any merit as the respondent/workman has failed to show as to how the writ petition is not maintainable and how it is resulted in gross abuse of the process of law. Merely by making an averment which is too vague and without any material, it cannot be accepted.

11. Therefore, the only question which is to be considered by this Court is as to whether the learned Tribunal was justified in substituting the punishment of compulsory retirement with stoppage of two increments with cumulative effect and further giving a direction regarding reinstatement of respondent /workman with payment of back wages to the tune of 25% with 6% interest.

12. The law regarding imposition of punishment as a consequence of departmental enquiry is very well settled by the Hon'ble Supreme Court in Catena of authorities. The consistent view which has been taken by the Apex Court is that the imposition of punishment is primarily the job of the disciplinary authority. It has by and large not approved of the practice of the High Court and more so of the Tribunal, substituting its own view, so far as the imposition of punishment is concerned. In place of the view of the disciplinary authority. There is only one contingency in which the Apex Court has held that the High Court can interfere with the punishment which is imposed on the delinquent and that is only when the punishment which has been imposed by the disciplinary authority is 'shockingly dis-appropriate' or 'excessively harsh' or which 'shocks the conscious of the Court'. Though the terminology used by the apex Court is different in different cases namely 'excessively harsh', 'shocking the conscious of the Court', 'disproportionate to proved misconduct' but the primary purpose of all these terminologies is that the Court which is considered to be just and reasonable, must come to form an opinion that the proved mis-conduct of the delinquent did not warrant such a punishment on the delinquent as has been done by the disciplinary authority. Reliance in this regard can be placed on Union of India Vs. B.C.Chaturvedi (1995) 6 SCC 497 wherein it was observed as under:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are

invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

13. This view has been reiterated in the later decisions in *Union of India v. G.Ganayutham* (1997) 7 SCC 463 and *Om Kumar v. Union of India* (2001) 2 SCC 386.

14. Simultaneously, there are recent authorities which have also deprecated the practice of the Court or for that matter Tribunal showing mis-placed generosity to the delinquent, in converting the punishment which has been imposed by the disciplinary authority on the delinquent to a lesser punishment. One of the notable judgments on this regard is reported in 2007 is Depot Manager, A.P.S.R.T.C. Vs. Raghuda Siva Sankar Prasad (2007) 1 SCC 222 wherein the Supreme Court has held that the delinquent employee having admitted his guilt before the officer and further having deposed before him that he had handed over the stolen property back and later on praying to the learned Labour Court to excuse him of the mis-conduct, did not deserve any sympathy. In the said case, the disciplinary authority had ordered his removal which was substituted by the High Court to a lesser punishment. The apex Court restored the punishment of removal by observing that while

imposing the punishment the quantum of money or the value of property which has been stolen is not that relevant. Once a theft takes place the employee has lost the confidence of the employer and it would not be safe for the employer and much less in the interest of Corporation to continue such an employee in the service. The Court even went to the extent saying that even the past conduct of the workman could not be a relevant consideration in the departmental proceedings. The apex Court also reminded that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can only modify the punishment which is imposed, if it is found it 'shockingly disproportionate' to the charges proved and certainly not on the ground and 'generosity' or 'misplaced sympathy'. The Court even went to the extent by saying that it was not open to the Industrial Tribunal to substitute their subjective opinion in place of one arrived at by the domestic Tribunal namely the disciplinary authority or the Appellate authority.

15. Keeping in view the aforesaid observations of the apex Court, I feel that learned Tribunal in the instant case has exceeded its power by observing that as the quantum of milk which was sought to be pilfered was only 35 ltrs. and there were 5 or 6 persons which included the petitioner also and therefore, his misconduct was trivial in nature which did not deserve that he be visited with such a harsh punishment of compulsory retirement.

16. This in my view was totally inappropriate and showing misplaced sympathy with the delinquent on account the Hon'ble Supreme Court's

observation in Raghuda Siva Sankar Prasad's case (supra). The respondent/workman in the instant case was working as an employee of the petitioner /Corporation which supplies milk through the private vans to the various booths and private parties and thus it was a question of trust which was reposed by the petitioner/Corporation in the respondent/workman which has been completely eroded on account of his attempt to pilfer the milk in collusion with the other employees of the van. There was a complete loss of confidence on them which the petitioner/Corporation could not rely and work with any further. The Industrial Tribunal/Labour Court has shown complete misplaced sympathy in protecting such a delinquent workman.

17. For the above-mentioned reasons, I feel that the learned Labour Court has fallen into grave error in setting aside the punishment imposed on the delinquent and has exceeded its powers. Accordingly, the impugned order to the extent of setting aside the punishment which has been substituted by the learned Tribunal vide order dated 6th August, 2004 is set aside and the punishment of compulsory retirement which has been imposed by the disciplinary authority is restored. No order as to costs.

February 13, 2009
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V.K.SHALI, J.