

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

Date of Decision: 18.11.2015

+W.P.(C) 2314/2012

MANI LAL

..... Petitioner

Through: Mr Sanjay Ghose and Ms Pratistha Vij,
Adv. along with the petitioner in person

versus

MATCHLESS INDUSTRIES OF INDIA

..... Respondent

Through: Mr V.K. Diwan and Mr Lalit Kumar, Adv.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The challenge in this writ petition under Articles 226 and 227 of the Constitution of India is to the order dated 28.03.2008 whereby the preliminary issue regarding enquiry was decided in favour of the respondent and award dated 15.01.2011 passed by the learned Presiding Officer, Labour Court, Kakardooma Courts, Delhi in ID No.46/2010 (new) 368/2011 (old) whereby termination of services of the petitioner was held to be legal and justified.

2. The petitioner (hereinafter referred as to 'the workman') was working as helper with the respondent (hereinafter referred to as 'the management') since the year 1987. He was suspended on 10.08.1999 and thereafter his services were terminated with effect from 21.05.2000. An industrial dispute was raised by him. The Secretary (Labour), Government of NCT of Delhi vide its order number F.24 (4666)/2000-Lab./2907 – 11 dated 02.02.2001 referred the industrial dispute to the Labour Court with the following terms of reference:

“Whether the services of Mani Lal have been terminated illegally and, or unjustifiably by the management, and if so, what relief is he entitled and what directions are necessary in this respect?”

3. Thereafter the workman filed its claim alleging inter alia that he joined the management in the year 1987 as helper and his last drawn salary was Rs.2348/- per month. Although he was performing his duties as a skilled worker, yet the management was paying his salary for the post of labour. When he demanded the wages as per his work, the management got annoyed and issued a show cause notice dated 14.07.1999 levelling false allegations of slowing down the production. He (the workman) submitted his reply on 22.07.1999. The management suspended him with effect from 10.08.1999 and issued him charge-sheet dated 13.08.1999. An enquiry was conducted by the management without following the principles of natural justice and after conclusion of enquiry his services were terminated with effect from 21.05.2000. It was further alleged that the production of an unskilled person depends on the performance of a skilled worker. As he was getting salary only of an unskilled person, therefore, the management cannot level allegations of less production against the workman. Besides taking work of a skilled person and paying salary of an unskilled worker amounts to unfair labour practices. The punishment imposed by the management does not commensurate with the alleged misconduct. The workman has been without employment since the date of termination of services as such he prayed for reinstatement in service with full back-wages.

4. The claim of the workman was contested by the management on the ground that the workman was causing losses to the management by resorting to '*go slow tactics*' despite advices given to him. As such a charge-sheet was served upon the workman and an enquiry was conducted. He was suspended vide letter dated 10.08.1999 and a charge-sheet dated 13.08.1999 was issued. After submission of enquiry report by the Inquiry Officer, the services of the workman were terminated with effect from 21.05.2000 after considering his reply dated 14.02.2000. The punishment imposed upon the workman is not disproportionate to the misconduct committed by the workman. He was appointed as a Labour i.e. unskilled workman and was being paid for that work. No work of skilled labour was being taken from him.

5. On the pleadings of the parties, following issues were framed:

- “(1) *Whether the management conducted a fair and proper enquiry against the claimant, if so, to what effect?*
- (2) *As per the terms of reference.”*

6. Issue no. 1 was treated as a preliminary issue. The workman examined himself whereas the management examined Mr Nishant S. Diwan – Enquiry Officer who proved his affidavit and documents as Ex.MW1/1 to Ex.MW1/10. The enquiry issue was decided in favour of the management and against the workman vide order dated 28.03.2008 and it was held that the same was based on unchallenged testimony of witnesses and unrebutted record and, therefore, it cannot be called perverse or based on no evidence. The Enquiry Officer neither mis-conducted himself nor the enquiry had been concluded in violation of principles of natural justice. As regards issue no. 2, learned Labour Court observed that in view of the evidence and material on record and the decision on issue no.1 in favour of the management and against the workman coupled with the allegations of misconduct of “*go slow tactics*” levelled by the management against the workman, it cannot be said that the punishment of dismissal of service of the workman was disproportionate to the misconduct committed by the workman. As such, the workman was not entitled to get any relief.

7. Feeling aggrieved, the present writ petition has been filed by the workman seeking quashing of the impugned order dated 28.03.2008 vide which the enquiry was held to be fair and proper and the impugned award dated 15.01.2011 passed by the Labour Court vide which the termination was held to be proportionate to the misconduct committed by the workman. It was further prayed that the management be directed to reinstate him or in the alternative pay compensation for illegal termination.

8. As per record when the writ petition was taken up for consideration on 20.04.2012, the learned counsel for the petitioner – workman confined the challenge only to the punishment awarded to him by the respondent – management stating that the punishment of dismissal from service was shockingly disproportionate to the misconduct found to have been committed by him, as such, notice of the writ petition was issued to

the respondent – management only to the extent of punishment.

9. It is submitted by Mr Sanjay Ghose, learned counsel for the petitioner – workman that the punishment imposed upon the workman is shockingly disproportionate to the charge levelled against him. The petitioner had an unblemished record of thirteen years of service. There was no history of past misconduct; even no warning was given to him at any point of time. No evidence was led by the management to prove the actual loss or closure of industry on account of the alleged allegations. The very fact that the punishment imposed upon the workman is shockingly disproportionate is reflective of the fact that it was a case of victimization and adoption of unfair labour practices. Reliance was placed on *Colour Chem Ltd. v A.L. Alaspurkar & Ors.*, (1998) 3 SCC 192.

10. Mr V.K. Diwan, learned counsel for the respondent – management, on the other hand, urged that the dismissal of the workman indulging in slowing down the work and adopting “*go slow tactics*” cannot be said to be disproportionate to the misconduct proved against the workman which warrants interference. Reliance was placed on *Fancy Corporation Ltd. v. Girdhari Mangru Yadav*, 2007 (113) FLR 953; *Carona Sahu Company Ltd. v. Mansoor Ahmed Noormiya & Ors.*, 1997 LLR 534 and *P.J. Gangadaran v. Second Additional Labour Court*, 1997, LLR 245. Reliance was also placed on *Hawa Singh v. UOI & Ors.*, 2005(106) FLR 402 (Delhi) in support of the submissions that for proved misconduct the punishment awarded to the workman is not exaggerated. The other applicable judgments relied upon by the counsel for the respondent – management are *North West Karnataka Road Transport Corporation, Hubli v. K.S. Ranghuathappa*, 2003 LLR 803. It is further submitted by learned counsel for the respondent – management that the Labour Court does not sit in appeal over the orders of management passed on the basis of a domestic enquiry. The Labour Court is not to interfere with the quantum of punishment unless the same is found to be grossly excessive. Reliance in this regard was placed on *Depot Manager, APSRTC, Karim Nagar – I Depot v. Mohd. Ghani & Anr.*, 2007 (115) FLR 745 and *G.B. Gupta v. G.M. (Operation) SBI, New Delhi*, 2007 (115) FLR 647.

11. The petitioner alongwith one Munna Lal were charge-sheeted on the allegations of misconduct of resorting to 'go-slow' tactics. Having found the explanation to be unsatisfactory, the management decided to conduct an enquiry. One Mr Rajesh Vaid was initially appointed as an enquiry officer, however, on the objections raised by the workman for change of that enquiry officer, Mr Nishant S. Diwan was appointed as an enquiry officer. A perusal of enquiry proceedings goes to show that in order to substantiate the charge against the workman, Mr Suman Kumar Gandhiok, partner of the management appeared before the enquiry officer and explained the duties of the charge-sheeted workman by stating that their duties were to clean the tank. Their job was to take out the rims from one tank and to put them in the next tank. They were required to take out the rims of the tank on completion of 25 minutes but the workman used to do so in 35 minutes whereby chemicals, nickel and electricity was wasted and loss of production in labour incurred. According to the calculations of the witness, if the rims were kept in the tank for extra period of five minutes in that case it would cause loss @ Rs.4.50 on a pair of small rim and Rs.7.50 on a pair of big rim. Because of this reason, the company suffered huge losses and certificate of Chartered Accountant was placed on record to prove the said allegations. The witness further stated that the chemicals used by them were of superior quality and the management's supplier also advised them to keep the rims for plating only for 25 minutes. However, because of 'go-slow' tactics, the management suffered huge losses and were superseded by the competitive factories. He further stated that before the charge-sheets, letters dated 14.03.1999 and 31.07.1999 were sent to the charge-sheeted employee to mend their policy of 'go slow' and not to cause loss in production but the workman did not give up their 'go-slow' policy despite repeated requests causing loss to production. He further stated that 'go-slow' tactics resorted to by the workman was a misconduct. The record reveals that despite opportunities given, the witness was not cross examined by the workman.

12. Mr Jagmohan, factory in-charge was also examined and he also deposed that due to the policy adopted by the workmen, the factory suffered huge losses. There was also loss of nickel, a precious item, chemicals and loss of per day production. Besides this, it also caused excess expenses on electricity and labour.

13. The management also produced the entire record of production in order to show that during the month of September 1998 to December 1998 and January 1999 the workmen were taking lot of rims from the cleaning tanks in 30 minutes. However, in the month of May, 1998 to August, 1998 they resorted to 'go-slow' and took out lot of rims in 35 minutes' time. As per the enquiry report in spite of opportunities granted to the workman he did not choose to cross examine the witnesses. Not only that, the workman did not lead any evidence to rebut the allegations as such the enquiry officer held the workman guilty of the charges. The Labour Court vide a detailed order dated 28.03.2008 observed that despite participating in the enquiry, the workman neither cross examined the management's witnesses nor proved his contention. Moreover, no plea of victimization or unfair labour practices was ever whispered. As such, the issue regarding the fairness of inquiry was decided in favour of the management and against the workman.

14. By relying upon *Fancy Corporation Ltd.* '(supra) and *Carona Sahu Company Ltd.* (supra), vide award dated 15.01.2011 it was held that the workman could not establish that there was no 'go slow' tactics adopted by him. 'Go-slow' is a serious misconduct and punishment of dismissal from service cannot be treated as exaggerated or disproportionate. Accordingly, the workman was held not entitled to get any relief.

15. The first question for consideration is as to whether the act of the workman in indulging in 'go-slow practice', is mis-conduct or not.

16. The expression 'misconduct' has not been defined either in the Industrial Disputes Act, 1947 or in the Industrial Employment (Standing Orders) Act, 1946. The dictionary meaning of the word misconduct is 'improper behaviour'; intentional wrong doing or deliberate violation of a rule of standard of behaviour. In so far as the relationship of industrial employment is concerned, a workman has certain express or implied obligations towards his employer. Any conduct on the part of an employee inconsistent with the faithful discharge of his duties towards his employer would be a misconduct.

Any breach of the express or implied duties of an employee towards his employer, therefore, unless it be of trifling natures would constitute an act of misconduct. In industrial law, the word 'misconduct' has acquired a specific connotation. It cannot mean inefficiency or slackness. It is something far more positive and certainly deliberate. The charge of 'misconduct' therefore is a charge of some positive act or of conduct which would be quite incompatible with the express and implied terms of relationship of the employee with the employer. What is misconduct will naturally depend the circumstances of each case. In any case the act of misconduct must have some relation with the employee's duties to the employer. In other words, there must be some rational connection of the employment of the employee with the employer. If the act complained of is found to have some relationship to the affairs of the establishment, having a tendency to affect or disturb the peace and good order of the establishment or be subversive of discipline in any direct or proximate sense, such act would amount to misconduct. Conversely, if the act complained of has no relation to his duties towards his employer, it would not be an act of misconduct towards his employer.

17. Hon'ble Supreme Court in the case of *State of Punjab and Ors. v. Ram Singh Ex.Constable* reported in (1992) 3 SCR 634, had an occasion to consider what a misconduct means. It has been held that the word misconduct though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behavior, wilful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.

18. What is misconduct will naturally depend upon the circumstances of each case. When there are standing orders, there would be no difficulty because they define

misconduct. In the absence of the Standing Orders, however, the question will have to be dealt with reasonably and in accordance with commonsense. As to what acts can be treated as acts of misconduct, therefore, would depend on the facts and circumstances of each case. The expression 'misconduct' covers a large area of human conduct. Misconduct spreads over a wide and hazy spectrum of industrial activity, the most seriously subversive conducts rendering an employee wholly unfit for employment to mere technical default are covered thereby. To some extent, misconduct is a civil crime which is visited with civil and pecuniary consequences.

19. Go-Slow - Slow-down or go-slow, whether as a concerted action by the workmen or by an individual workman, in reducing production is a breach of duty and has been condemned as misconduct in industrial adjudication. An employee who deliberately works slowly and thereby curtails production or does not complete a job in proper time, is guilty of intentional omission of duty, which would constitute misconduct. It is a serious misconduct as it is an insidious method of undermining the stability of a concern. For while delaying production and thereby reducing output, workmen claim to have remained employed and thus to be entitled to full wages. Go-slow may be indulged in by an individual workman either in one section or different sections or in one shift or both shifts effecting the output in varying degrees and to different extent depending upon the nature of the product and the productive process. Misconduct of go-slow may entail two-fold consequences viz., discharge or dismissal from service and deduction of wages. In either case, it is necessary that the factum of go-slow and/or extent of the loss of production on account of it, is disputed, there should be a proper enquiry on the charges which furnish particulars of go-slow and loss of production on that account.

20. Therefore, reduced production, refusal to give the agreed output, deliberately working slow, not completing the job in a proper time, is a breach of duty. It is a crude device to defy the norms of work. It is dishonesty, in as much as, the workman claim wages for the work which he has not done, and claims full wages for the reduced out put. The workmen is guilty of intentional omission of duty. It has been condemned as misconduct in Industrial adjudication. It is not a case of inefficiency or slackness. It is a

positive act. It is quite incompatible with the express and implied terms of relationship of master and servant. That is the edifice of contract of employment. It need not be specifically mentioned in the contract of employment or in the standing orders. Standing orders lists the acts and omissions which shall be treated as a misconduct and it is not exhaustive. It is not possible to provide every type of misconduct in the standing orders. At the same time, an employer cannot fish-out some conduct as misconduct and punish the workman even though the alleged misconduct could not be comprehended in any of the enumerated misconduct. Therefore, not performing the stipulated work deliberately and not giving the agreed out put for which wages are paid and received constitute a grave misconduct and is one of the most pernicious practices that harm the industry than the total cessation of work.

21. In the case of ***Bharat Sugar Mills Ltd. v. Jai Singh & Ors.*** reported in 1961(3) FLR 371 while dealing with the misconduct of go-slow, it was observed as under:

“...go -slow which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory is one of the most pernicious practices that discontented or disgruntled workmen some time resort to. It would not be far wrong to call this dishonest, for while thus delaying production and thereby reducing the output, the workmen claim to have remained employed and thus to be entitled to full wages. Apart from this also, "go slow" is likely to be much more harmful than total cessation of work by strike. For, while during a strike much of the machinery can be fully turned off during the "go slow" the machinery is kept going on a reduced speed which is often extremely damaging to machinery parts. For all these reasons "go slow" has always been considered a serious type of misconduct.

22. Reference may also be made to a judgment rendered by Bombay High Court in ***Sonaba Baburao Dalvi v. Factory Manager, Raja Bahadur Motilal Mills Ltd.***, 2000 (84) FLR 941 (Bom.) where it was observed as under:

“If from the evidence and material on record in the enquiry which is confirmed as fair and proper the only conclusion which can be drawn is that the production given by the petitioner was lower than the production given by the others and it was less than 8500 ends. It cannot be said that

there was absolutely no material to show that the production given by the petitioner was lower than the production given by the others. The petitioner has not denied or refuted the figures of production produced by the respondent company before the Enquiry Officer. The net result which we have to see is the figures of the low production on the record of the enquiry. Therefore, High Court held that the respondent company was justified in dismissing the petitioner from employment."

23. Similar view was taken in **Fancy Corporation** (supra); **Carona Sahu** (supra) and **P.J. Gangadaran** (supra).

24. In view of the aforesaid decisions coupled with the oral and documentary evidence led by the respondent – management, it had proved that the petitioner – workman was guilty of misconduct by resorting to tactics of ‘go-slow’.

25. The fact that the workman was guilty of misconduct has not even been challenged by the workman as at the stage of admission of writ petition, counsel for the petitioner workman confined the challenge to the extent of punishment only. Therefore, the only question left for consideration is as to whether the punishment of dismissal of service is shockingly disproportionate to the misconduct committed by the workman.

26. The concept of the term "shockingly disproportionate" is very much known and familiar to Industrial Jurisprudence. The Apex Court in the case of **Hind Construction and Engineering Co. Ltd. v. Their Workmen** case reported in AIR 1965 SC 917, while dealing with the issue regarding punishment has observed as under:

“6...

The Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But, where the punishment is shockingly disproportionate regard being had to be particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice."

27. What can be culled out from the aforesaid decisions is that the misconduct of 'go-slow' is more punishable act than that of resorting to strike and punishment of dismissal would be proper when the misconduct of 'go-slow' is proved. While imposing such punishment, the employer cannot be accused of unreasonableness or of revengefulness if he proposes punishment of dismissal for such conduct. The doctrine of proportionality invoked by Mr Sanjay Ghose, counsel for the petitioner – workman is not available to the petitioner – workman for seeking modification or substitution of the penalty of dismissal from service because the charges found proved against the petitioner are extremely graver. Despite repeated letters sent to him to mend his ways, he did not improve thereby causing loss to chemicals, electricity, labour and ultimately affecting the production. Therefore, the penalty of removal from service cannot be described as shockingly disproportionate or wholly unreasonable.

28. *Colour Chem Ltd.* (supra) relied upon by counsel for the petitioner – workman is quite distinguishable. In that case, punishment of dismissal on the ground that workmen were sleeping at duty was held to be disproportionate.

29. It is trite law that where a departmental enquiry is held to be fair and proper and the findings of the enquiry officer are also held to be legal, proper and not perverse, the Management is invested with the discretion to impose appropriate punishment keeping in view the magnitude and gravity of misconduct. The scope of judicial review in the matter of punishment is extremely restricted. Unless it could be shown that punishment imposed upon the delinquent employee is such as to shock the conscience of the Court or that no person of ordinary prudence would come to such conclusion and it is ex facie arbitrary, the Court will not interfere.

30. Dealing with the Court's power to interfere with the punishment imposed upon the delinquent employee, in *G.V. Triveni Prasad vs Syndicate Bank And Ors.* (2007) II LLJ 685 (AP), it was observed as under:-

“22. The Court's power to interfere with the punishment imposed on the delinquent employee has become subject-matter of scrutiny in large number of cases. The terms and phrases like arbitrary, unreasonable, unconscionable and shockingly disproportionate are often used by the advocates representing the delinquent employees who seek intervention of the Court for invalidation of the order of punishment. The doctrine of proportionality and Wednesbury rule have also been pressed into service for persuading the Courts to interfere with the employers' prerogative to punish the employee. But, the Courts have to constantly remain guard against adopting a populist approach in such matters and refrain from interfering with the punishment imposed by the employer on a delinquent employee. The power of judicial review in such cases should be exercised with great care and circumspection. Only in exceptional cases, the Court may interfere with the punishment, if it is convinced that the same is wholly arbitrary or shockingly disproportionate to the misconduct found proved. For determining this, the Court has to take into consideration the factors like length of service of the delinquent, the nature of duties assigned to him, sensitive nature of his posting and job requirement, performance norms, if any laid down by the employer, the nature of charges found proved, the past conduct of the employee and the punishment, if any, imposed earlier. The Court has also to keep in mind the paramount requirement of maintaining discipline in the services and the larger public interest.

*23. In **Ranjit Thakur v. Union of India**, 1988 CrL. L.J. 158, the Supreme Court invoked the doctrine of proportionality for quashing the order of punishment because the same was found to be shockingly disproportionate to the misconduct found proved against the appellant. The proposition laid down in that case reads as under:*

Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of

the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review.

24. In **Union of India v. G. Ganayutham**, (2000) 11 LLJ 648 SC, the doctrine of proportionality was considered along with Wednesbury rule and the following propositions were laid down:

(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational - in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English Administrative Law in future is not ruled out. These are the CCSU principles.

(3) (a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English Law, the English Courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3) (b) If the Convention is incorporated in England making available the principle of proportionality, then the English Courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or

excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4) (a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the Courts/Tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the Court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the Courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the Courts will have a primary role only if the freedoms under Articles 19, 21 etc., are involved and not for Article 14.

*25. In **Om Kumar v. Union of India** (2001) 2 SCC 386, the Supreme Court considered the applicability of the doctrine of 'Proportionality' in the context of Article 14 of the Constitution, referred to the judgments in *Ranjit Thakur v. Union of India* (supra), *B.C. Chaturvedi v. Union of India* and held:*

*(1) In this context, we shall only refer to these cases. In *Ranjit Thakur v. Union of India*, this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In *B.C. Chaturvedi v. Union of India*, this Court stated that the Court will not interfere unless the punishment awarded was one which shocked the conscience of the Court. Even then, the Court would remit the matter back to the authority and would not normally substitute one punishment for the other. However, in rare situations, the Court could award an alternative penalty. It was also so stated in *Ganayutham's case* (supra)."*

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27. In **Director General, RPF v. Ch. Sai Babu**, (2003) 1 SCR 729 the Supreme Court reiterated that the High Court should not ordinarily interfere with the discretion exercised by the disciplinary authority in the matter of imposition of punishment and observed:

“Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a Tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of the charges proved, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works.”

28. In **V. Ramana v. A.P. SRTC**, (2005) III LLJ 723 SC, the Supreme Court approved the view expressed by the Full Bench of this Court in the matter of imposition of punishment and observed:

“The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case (1948) 1 KB 223 the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.”

31. Similar view was taken in **Fancy Corporation Ltd.** (supra), where it was observed as under:

“26. Courts below have also failed to appreciate that they were required only to judicially review the action of the petitioner and not to sit as Court of appeal over the action of the petitioner. It is also trite law that where a departmental enquiry is held to be fair and proper and the findings of the enquiry officer are also held to

be legal, proper and not perverse, the Management is invested with the discretion to impose appropriate punishment keeping in view the magnitude and gravity of misconduct. In this connection the petitioner rightly referred to the observation of the Apex Court in the case of B.C. Chaturvedi v. Union of India, reading as under:

Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment, and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the Court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the enquiry was held by a competent authority or whether rules of natural justice are complied with. When the findings and conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion.

The Court/Tribunal in its power of Judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.

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.”

32. In **G.B. Gupta** (supra) while referring to scope of judicial review in the matter of punishment, reference was made to **State of Gujarat v. Anand Acharya alias Bharat Kumar Sadhu**, (2007) 9 SCC 310, where the Apex Court has held:-

“The well-settled proposition of law that a court sitting in judicial review against the quantum of punishment imposed in the disciplinary proceedings will not normally substitute its own

conclusion on penalty is not in dispute. However, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the Court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof”

33. Keeping in view the ratio of the aforesaid judgments, it cannot be said that the punishment imposed upon the petitioner does not commensurate to the charges levelled against him. That being so, there is no warrant for interference in the award passed by the Labour Court. The petition is accordingly dismissed, however, with no order as to costs.

(SUNITA GUPTA)
JUDGE

NOVEMBER 18 2015/rd