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

Date of Decision: 1st December, 2015

+ **W.P.(C) 2517/2012 & CM No.25606/2015**

DELHI TRANSPORT CORPORATION Petitioner

Through: Mr.U.N.Tiwary, Adv.

versus

JAI GOPAL THRU LRs Respondents

Through: Mr.J.K.Bhelloriya, Adv.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this writ petition is to the award dated 25.11.2011 passed by the learned Presiding Officer, Labour Court, Karkardooma, Delhi in ID No.79/11.

2. Undisputed background facts are as follows:

The respondent Jai Gopal was employed as a Fitter with the petitioner corporation. He was issued a chargesheet for remaining absent from duty for 60 days between 01.01.1991 to 31.12.1991. The chargesheet specifically stated that past record will be taken into consideration at the time of passing the final order in the case. Disciplinary proceedings were initiated against him and a regular departmental enquiry was held in which respondent was held guilty. The enquiry report was accepted by the management and the respondent was dismissed from service. His dismissal gave rise to an industrial dispute. Since there were disputes between the petitioner and the respondent, the petitioner preferred an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 before the Industrial Tribunal and also sent to him one month wage by money order. The Industrial Tribunal passed an order rejecting the petitioner's application and refused to grant approval under Section 33(2)(b) of the Act. A writ petition No.12815/2005 was filed challenging the said order dated 19.09.2000. The said order was quashed and direction was given to the Industrial Tribunal for fresh

adjudication of the matter. The Labour Court passed an order dated 25.03.2011 in ID No.92/96 deciding the issue of validity of domestic enquiry conducted by the petitioner in favour of the respondent and against the petitioner. On the same date, the Labour Court passed an order dismissing the petitioner's application under Section 33(2)(b) of ID Act on the ground that it had passed an order in an industrial dispute raised by the very same workman and that the enquiry conducted by the management was an eyewash and vitiated. Aggrieved by the said order dated 25.03.2011, the petitioner filed civil writ petition No.7700/2011 wherein notice was issued and the order was stayed. The Labour Court passed an award in ID No.79/11 and decided the reference in favour of the petitioner-management but moulded the relief of punishment of termination of service into one of compulsory retirement. Aggrieved by the award to the extent the punishment of removal from service was interfered with by the Labour Court, this writ petition has been filed by the petitioner.

3. Learned counsel for the petitioner urged that the respondent was unauthorisedly absent from duties for a period of 60 days. After issuance of chargesheet, departmental enquiry was conducted. Although the enquiry issue was decided against the petitioner corporation, however, the same was not pressed during the course of argument on the ground that opportunity was afforded to the petitioner to prove the misconduct which was duly proved. After examining the record, the learned Labour Court also came to the conclusion that it was a case of grave misconduct yet a liberal view was taken by altering the sentence to that of compulsory retirement. The counsel relied upon *Delhi Transport Corporation vs. Sardar Singh* (2004) 7 SCC 574, *Hombe Gowda Educational Trust & Anr. vs. State of Karnataka & Ors.* (2006) 1 SCC 430 and *L&T Komatsu Ltd. vs. N. Udayakumar* (2008) 1 SCC 224 and a judgment given by this Court in *Delhi Transport Corporation vs. Shri Om Dutt* in W.P.(C) No.3602/2010 for submitting that since the factum of grave misconduct on the part of the respondent was proved, the Labour Court should not have interfered with the punishment imposed by the department. Counsel further referred to the conduct of the respondent for submitting that during the pendency of the petition, the respondent had expired and his legal heirs were brought on record. Thereafter instead of putting appearance in this matter, the legal heirs approached the Assistant Labour Commissioner by filing application under Section 33C(1) of the Act

and proceedings for recovery were initiated. The petitioner, therefore, was constrained to move application being CM No.5391/2012 for stay of the recovery proceedings which was stayed by this Court vide order dated 03.11.2015, however, prior thereto, the respondent had succeeded in recovering a sum of Rs.7,43,573/-.

4. Learned counsel for the respondent, on the other hand, submitted that the writ petition is not maintainable in view of the dismissal of the earlier writ petition bearing No.7700/2011 filed by the petitioner. Controverting this submission, learned counsel for the petitioner placed on record the copy of the order dated 06.03.2013 passed by this Court for showing that the writ petition was preferred assailing the award dated 25.03.2011 passed by the Labour Court whereby the application moved by the petitioner under Section 33(2)(b) of Industrial Dispute Act was dismissed. During the pendency of that petition, the Labour Court gave its award on 25.11.2011 whereby the Labour Court substituted the punishment of removal from service to that of compulsory retirement. The petitioner challenged the said award by filing the present writ petition. That being so, the said writ petition was disposed of as having become infructuous. Therefore, it is submitted that the disposal of writ petition No.7700/2011 does not bar the maintainability of the present writ petition.

5. The submission of learned counsel for the respondent regarding non-maintainability of writ petition deserves straight rejection as writ petition No.7700/2011 was disposed of due to passing of the award by the Labour Court on 25.11.2011 and filing of this writ petition by the petitioner challenging the award.

6. Coming to the factual matrix of the case the workman was supplied with a chargesheet for remaining unauthorisedly absent for a period of 60 days from 01.01.1991 to 31.12.1991 without intimation and without any sanctioned leave. According to the employer, the unauthorised absence was indicative of negligence and lack of interest in the employer's work amounting to misconduct as mentioned in para 4(ii) and 19(h) of the standing orders issued under para 15(1) of the regulations. The relevant paras of the standing order reads as follows:-

“4. Absence without permission. (i) An employee shall not absent himself from his duties without having first obtained the permission from the authority or the competent officer except in the case of sudden illness. In the case of sudden illness he shall send intimation to the office immediately. If the illness

lasts or is expected to last for more than 3 days at a time, applications for leave should be duly accompanied by a medical certificate, from a registered medical practitioner or the Medical Officer of DTS. In no case shall an employee leave station without prior permission.

(ii) Habitual absence without permission or sanction of leave and any continuous absence without such leave for more than 10 days shall render the employee liable to be treated as an absconder resulting in the termination of his service with the organisation.

19. General provisions. – Without prejudice to the provisions of the foregoing Standing Orders, the following acts of commission and omission shall be treated as misconduct:

(a)-(g)

(h) Habitual negligence of duties and lack of interest in the authority's work."

8. Clause 15 of the Regulations so far as relevant reads as follows:

"(2) Discipline. – The following penalties may, for misconduct or for a good and sufficient reason be imposed upon an employee of the Delhi Road Transport Authority:

(i)-(v)

(vi) Removal from the service of the Delhi Road Transport Authority.

(vii) Dismissal from the service of the Delhi Road Transport Authority."

7. On a consideration of oral and documentary evidence led by the parties, the Labour Court found that the workman remained absent unauthorisedly. The plea taken by the workman that he had to take leave due to illness of his mother and wife could not be substantiated by the workman as he did not file any medical certificate. In ***Delhi Transport Corporation vs. Sardar Singh*** (2004) 7 SCC 574 Hon'ble Supreme Court observed that when an employee absents himself from duty, without sanctioned leave for a long period, it prima facie shows lack of interest in work. Burden is on the employee who claims that there was negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of Para 4 of the standing orders shows the seriousness attached to habitual absence. In Clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorised. On the factual matrix of the case, the Labour Court arrived at the conclusion that the department proved that the workman remained unauthorisedly absent for a period of 60 days which was a grave misconduct. The past conduct of the workman was also noted by observing that the workman was a habitual absentee as he remained absent for 68 days in 1989, 89 days in

1990 and 75 days in the year 1991. The workman did not dispute that he did not obtain prior permission for proceeding on leave nor sent any written intimation or communication to the management stating reason for his absence. No leave application or medical certificate was placed on record. The respondent-workman has not even challenged this finding of the Labour Court.

8. However, despite holding that the workman was guilty of grave misconduct, by placing reliance on ***Bhagwan Lal Arya vs. Commissioner of Police, Delhi & Ors.*** (2004) 4 SCC 560 the punishment of termination of service was modified to one of compulsory retirement. If the punishment is harsh, albeit a lesser punishment may be imposed but such an order cannot be passed on an irrational or extraneous factor and certainly not on compassionate ground. As held in ***Hombe Gowda Educational Trust & Anr.*** (supra), the Tribunal's jurisdiction is akin to one under Section 11(A) of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt, it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate. The Court further observed that such interference, at the hands of the Tribunal, should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the management which would have direct bearing on the question of quantum of punishment.

9. In ***V. Ramana v. A.P. SRTC*** (2005) 7 SCC 338 relying upon a large number of decisions, Apex Court opined: (SCC p.348, paras 11-12)

“11. 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 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.

12. To put it differently unless the punishment imposed by the disciplinary

authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

10. In ***Bharat Forge Co. Ltd. v. Uttam Manohar Nakate*** (2005) 2 SCC 489 it was held:

"30. Furthermore, it is trite, the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, must act within the four corners thereof. The Industrial Courts would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Although its jurisdiction is wide but the same must be applied in terms of the provisions of the statute and no other."

11. Again in ***Regional Manager, Rajasthan SRTC v. Sohan Lal*** (2004) 8 SCC 218 it has been held that it is not the normal jurisdiction of the superior courts to interfere with the quantum of sentence unless it is wholly disproportionate to the misconduct proved. Such is not the case herein. In the facts and circumstances of the case and having regard to the past conduct of the respondent as also his conduct during the domestic enquiry proceedings, we cannot say that the quantum of punishment imposed upon the respondent was wholly disproportionate to his act of misconduct or otherwise arbitrary.

12. ***L&T Komatsu Ltd.*** (supra) relied upon by counsel for the petitioner was also a case of unauthorised absence which was proved during the enquiry proceedings. The enquiry report was accepted by the management and the respondent was dismissed from service. The dismissal gave rise to an industrial dispute. The matter was referred to Labour Court. The Labour Court found that though the workman remained absent unauthorisedly, the extreme punishment of removal from service was too harsh and disproportionate to the gravity of the charge and the order of dismissal was set aside and management was directed to reinstate the workman with continuity of service but without backwages. The single Judge upheld the order of reinstatement but without continuity of service and without backwages. The Division Bench allowed the appeal filed by the respondent while dismissing the appeal filed by the appellant. SLP was preferred and while dealing with the question whether habitual absenteeism is the gross violation of

discipline, the Court took note of what was stated in ***Burn & Co. Ltd. vs Workmen*** AIR 1959 SC 529.

“5.....There should have been an application for leave but Roy thought that he could claim, as a matter of right, leave of absence though that might be without permission and though there might not be any application for the same. This was gross violation of discipline. Accordingly, if the Company had placed him under suspension that was in order. On these findings, it seems to us that the Tribunal erred in holding that it could not endorse the Company's decision to dispense with his services altogether. In our opinion, when the Tribunal upheld the order of suspension it erred in directing that Roy must be taken back in his previous post of employment on the pay last drawn by him before the order of suspension.”

13. While dealing with the powers under Section 11-A of the Act reliance was placed on number of judgments and it was held as under:-

“9. In LIC of India v. R.Dhandapani, it was held as follows

“It is not necessary to go into detail regarding the power exercisable under Section 11-A of the Act. The power under said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words ‘disproportionate’ or ‘grossly disproportionate’ by itself will not be sufficient.

In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. (See Kerala Solvent Extractions Ltd. v. A. Unnikrishnan.)

Though under Section 11-A, the Tribunal has the power to reduce the quantum of punishment it has to be done within the parameters of law. Possession of power is itself not sufficient; it has to be exercised in accordance with law.

The High Court found that the Industrial Tribunal had not indicated any reason to justify variations of the penalty imposed. Though learned counsel for

the respondent tried to justify the award of the Tribunal and submitted that the Tribunal and the learned Single Judge have considered the case in its proper perspective, we do not find any substance in the plea. Industrial Tribunals and Labour Courts are not forums whose task is to dole out private benevolence to workmen found by the Labour Court/Tribunal to be guilty of misconduct. The Tribunal and the High Court, in this case, have found a pattern of defiance and proved misconduct on not one but on several occasions. The compassion which was shown by the Tribunal and unfortunately endorsed by the learned Single Judge was fully misplaced.”

10. In *Mahindra and Mahindra Ltd. v. N.B. Narawade* it was noted as follows: (SCC p. 141, para 20)

*“20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. As noticed hereinabove at least in two of the cases cited before us i.e. *Orissa Cement Ltd. and New Shorrock Mills* this Court held : ‘Punishment of dismissal for using of abusive language cannot be held to be disproportionate.’ In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove.”*

11. Again in *M.P. Electricity Board v. Jagdish Chandra Sharma* [2005 (3) SCC 401] this Court dealt with the matter as follows:

"The question then is, whether the interference with the punishment by the Labour Court was justified? In other words, the question is whether the punishment imposed was so harsh or so disproportionate to the charge proved, that it warranted or justified interference by the Labour Court? Here, it had been clearly found that the employee during work, had hit his superior officer with a tension screw on his back and on his nose leaving him with a bleeding and broken nose. It has also been found that this incident was followed by the unauthorised absence of the employee. It is in the context of these charges found established that the punishment of termination was imposed on the employee. The jurisdiction

under [Section 107-A](#) of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under [Article 226](#) of the Constitution only when it finds that the punishment imposed, is shockingly disproportionate to the charge proved. These aspects are well settled. In [U.P. SRTC v. Subhash Chandra Sharmathis](#) Court, after referring to the scope of interference with punishment under [Section 11-A](#) of the Industrial Disputes Act, held that the Labour Court was not justified in interfering with the order of removal from service when the charge against the employee stood proved. It was also held that the jurisdiction vested with the Labour Court to interfere with punishment was not to be exercised capriciously and arbitrarily. It was necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived at that the punishment was shockingly disproportionate to the nature of the charge found proved, before it could interfere to reduce the punishment. In [Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh](#), this Court after referring to the decision in [State of Rajasthan v. B.K. Meena](#) also pointed out the difference between the approaches to be made in a criminal proceeding and a disciplinary proceeding. This Court also pointed out that when charges proved were grave viz. is the establishment, interference with punishment of dismissal could not be justified. In [Bharat Forge Co. Ltd. v. Uttam Manohar Nakate](#) this Court again reiterated that the jurisdiction to interfere with the punishment should be exercised only when the punishment is shockingly disproportionate and that each case had to be decided on its facts. This Court also indicated that the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, had to act within the four corners thereof. It could not sit in appeal over the decision of the employer unless there existed a statutory provision in that behalf. The Tribunal or the Labour Court could not interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground. It is not necessary to multiply authorities on this question, since the matter has been dealt with in detail in a recent decision of this Court in [Mahindra and Mahindra Ltd. v. N.B. Narawade](#). This Court summed up the position thus: (SCC p. 141, para 20) "20 . It is no doubt true that after introduction of [Section 11-A](#) in the [Industrial Disputes Act](#), certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under [Section 11-A](#) is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment."

It may also be noticed that in Orissa Cement Ltd. v. Adikanda Sahu and in New Shorrock Mills v. Maheshbhai T. Rao this Court held that use of abusive language against a superior, justified punishment of dismissal. This Court stated "punishment of dismissal for using abusive language cannot be held to be disproportionate". If that be the position regarding verbal assault, we think that the position regarding dismissal for physical assault, must be found all the more justifiable. Recently, in Muriadih Colliery BCC Ltd. v. Bihar Colliery Kamgar Union this Court after referring to and quoting the relevant passages from Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh and Tournamulla Estate v. Workmen held: (SCC p. 336, para 17) "The courts below by condoning an act of physical violence have undermined the discipline in the organisation, hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11-A of the Act to interfere with the punishment of dismissal."

14. On the factual matrix of the above case, it was found that the workman was guilty of unauthorised absence for a period of 105 days and as such, his consequential dismissal from service ought not to have been treated to be harsh and interfered with by Labour Court/High Court. The order of termination as passed by the authority concerned was restored.

15. When the factual background is considered in the light of principles indicated above, the inevitable conclusion is that even after holding that the workman was guilty of misconduct and remained unauthorisedly absent for a period of 60 days, and upon reflection of his past conduct which shows that he remained unauthorisedly absent even earlier and was earlier placed under suspension with effect from 29.08.1985 and was released from suspension with effect from 01.10.1985, then for consuming liquor with foreman, one increment with cumulative effect was stopped, for missing from duty on 11.08.1988 he was censured, again for availing excessive leave without pay from 01.07.1987 to 30.06.1988 his two increments with cumulative effect were stopped, again for availing leave without pay with effect from 01.01.1990 his one increment with cumulative effect was stopped, the learned Labour Court was not justified in interfering with the order of termination by modifying it to compulsory retirement. The reliance placed by the Labour Court on **Bhagwan Lal Arya** (supra) is totally misconceived. In that case the workman was recruited as Constable in Delhi Police. While undergoing the prescribed training, he fell down in the parade ground, thereupon he was sent to police dispensary. Since his condition did not improve, his relatives took him to his hometown

where he remained under treatment of government doctors and sent applications for leave on medical grounds supported with medical certificates from competent medical authorities in accordance with the leave rules. The competent authority passed an order sanctioning leave without pay for the period of his illness as no other leave was due to him. Subsequently, he was chargesheeted for unauthorised absence for the same period and was terminated from services. Under those peculiar circumstances, it was held that the punishment of removal from service imposed on the appellant was not only highly excessive and disproportionate but was also one which was not permissible to be imposed as per the service rules.

16. Things are entirely different in the instant case. The workman admitted to having remained unauthorisedly absent for 60 days. The plea taken that the same was because of sickness of his mother and wife could not be substantiated by him. Besides that, the department proved the past conduct of the workman. Except citing the pronouncement of Hon'ble Supreme Court in *Bhagwan Lal Arya* (supra) no ground has been assigned by the learned Labour Court for taking a compassionate view by moulding the relief from termination of service to one of compulsory retirement despite observing the misconduct of the workman to be grave. Under the circumstances, the award to the extent of moulding the relief to one of compulsory retirement is set aside. The order of termination, as passed by the authority concerned, stands restored. The petition is accordingly allowed with no order as to costs.

(SUNITA GUPTA)
JUDGE

DECEMBER 01, 2015

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