

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1101 of 2012

Date of Decision: 10.01.2017

Indian Oil Corporation Limited

... Petitioner

Versus

The Central Government Industrial
Tribunal-cum-Labour Court-1,
Chandigarh and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Paul S.Saini, Advocate,
for the petitioner.

Respondent No.2 in person.

RAJIV NARAIN RAINA, J.

1. The Indian Oil Corporation Limited has challenged in this petition brought under Article 226 & 227 of the Constitution the award dated November 03, 2010 passed by the Presiding Officer, Central Government Industrial Tribunal, UT, Chandigarh.

2. This is a case of enquiry on several charges of major misconduct committed by the respondent.

3. In the inquiry report dated June 27, 2000 all the multiple charges were proven against the delinquent workman. The Labour Court agreed with the findings of the Inquiry Officer by recording his views which run like this:-

“On rest of the charges no.1, 2, 3, 4, 6, 7 & 8 the charge stands proved because the same have also been admitted before this tribunal with certain explanations. The same explanations were given by the workman during the departmental proceedings. The explanations given by

the workman are not trust and worthy reliable. The disobedience of the orders of the seniors is established and proved even beyond doubt. The explanations given by the workman are excuses which cannot be considered by the Tribunal in case of administrative inaction and laxity. The workman was guilty of administrative inaction and laxity. The cumulative affect of the charges proved that his adamancy prompted him to violate the lawful orders and directions of the seniors which is not desirable in any institutions, rather it is fetter for the proper business of any Organization. Discipline is the backbone of any institution. We cannot imagine any work culture without discipline. At all cost discipline has to be maintained. Accordingly, the enquiry officer has rightly held the rest of the charges to be proved.”

4. Having returned these findings, the Labour Court proceeded to examine the proportionality of the punishment with the gravity of the misconduct committed. The Labour Court exercised its powers under Section 11-A of the Industrial Disputes Act, 1947 (for short “the Act”) to interfere with quantum of punishment of dismissal from service. The Tribunal in its order was conscious that powers under Section 11-A should be sparingly exercised to prevent miscarriage of justice. The pith and substance of the charge against the workman was disobedience of lawful orders and unauthorized absences. Yet the Tribunal substituted the punishment of dismissal from service by punishment of compulsory retirement which would entitle the workman to post-retirement benefits as though he retired in due course. The Tribunal was swayed by the fact that the workman had served the department for almost 27 years and, therefore, the dismissal awarded was a 'glaring injustice'. The reason assigned for substituting punishment was to bring post-retirement benefits to the

workman since the Tribunal thought that dismissal brings about socio-economic death. In my view, the Tribunal seriously misjudged the issue since deprivation of livelihood is no ground to interfere with dismissal. It is the natural consequence of it.

5. Heard the learned counsel for the petitioner and respondent No.2 in person and perused the record and more closely the impugned award.

6. It is argued by Mr. P.S. Saini, learned counsel for the management on the strength of the Model Standing Orders of the Corporation and the Certified Standing Orders governing service of the IBP Petroleum by particularly drawing attention to identical Clause 34.0 which prescribes penalties for misconduct. Clause 34.1 enumerates the minor penalties, while Clause 34.2 prescribes that the following shall constitute major penalties. These are enumerated as:-

- “a) Stoppage of promotion for a maximum period of 2 years*
- b) Discharge from Service without notice.*
- c) Dismissal from service without notice.*
- d) Demotion to a lower grade.*
- e) Reduction to a lower grade or post of lower pay”*

7. It is his contention that punishment of compulsory retirement is not part of the rule structure and, therefore, cannot be introduced as a major penalty and the Tribunal has grievously erred in converting dismissal to compulsory retirement. This is one limb of the argument.

8. The second argument, and more vital, is that power under Section 11-A can be exercised only to award lesser punishment provided that there are justifiable grounds to do so. The Tribunal has upheld the

inquiry proceedings as fair and proper, the decision making process that led to award of dismissal from service, and the award of punishment for grave misconduct as mentioned in the opening part of this order. In the face of those findings it seems rather peculiar for the Tribunal to substitute punishment awarded to one of compulsory retirement, whether it was or was not part and parcel of punishments incorporated in the rules and regulations of the Corporation, but has large-heartedly and rather magnanimously rewarded the workman with post retiral benefits from the date of dismissal, which is putting premium on misconduct. An award should not be a reward.

9. I think Mr. Saini is correct in urging that the Tribunal has exceeded its jurisdiction by leaps and bounds and devised a punishment not available in the range of penalties and that too on the principle of loss of livelihood. The Tribunals do not sit as a Court of appeal in Section 11-A of the Act and even it were to exercise its authority under Section 11-A as a first appeal against the punishment order, even then its power was curtailed not to make an award in the face of its own findings that the charges were grave and proved on evidence. The Tribunal remarked that at all cost discipline has to be maintained.

10. Still further, the Tribunal has recorded in the impugned award that the explanations given by the workman in his defence are not trustworthy and reliable. The disobedience of lawful orders of the seniors is established and proved on the record even beyond doubt and still the Tribunal exercised its power under Section 11-A of the Act to mitigate the dismissal to compulsory retirement in a most capricious and whimsical manner on *ipse dixit* which renders the award highly suspect in its rationale

adopted. In the present case proof of misconduct and relief granted cannot co-exist when Wednesbury principles are applied. They are diametrically opposed to each other and can be reconciled only when the conscience of the court is disturbed by award of perverted, arbitrary and shockingly disproportionate penalty, which when not present to the mind a reasonable man makes the impugned award unsustainable in the eyes of law.

11. In B.C.Chaturvedi v. Union of India and others, (1995) 6 SCC 749; the Supreme Court did not approve such type of reasoning for converting an order of dismissal into one of compulsory retirement on mere *ipse dixit*. The Supreme Court observed that merely because the appellant had put in 20 years of service and had a brilliant academic record and was selected as a Class-I officer and earned his promotion after the disciplinary proceedings were initiated it would be difficult for him to get a new job at the age of 50 was wholly unsupportable reasoning. These reasons are neither relevant nor germane to modify the punishment awarded. The inquiry case against the delinquent appellant was one of possession of assets disproportionate to his known sources of income.

12. The relevant consideration while exercising power under Section 11-A of the Act as observed by the Supreme Court in U.B.Gadhe & others v. G.M.Gujarat Ambuja Cement Private Limited, 2007 (4) S.C.T 458; is that such power has to be exercised judiciously and the Labour Court is expected to interfere with the decision of the management only when it is satisfied that the punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. It has been further held in the case that the reliefs granted by the

Court 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 Court tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain integrity of legal reasoning and the legitimacy of the conclusions; which I would say are the sine qua non of a judicial dispensation of justice by balancing out the interests of the worker and the management.

13. Similarly, in the matter of Mahindra and Mahindra Limited v. N.B.Naravade, (2005) 3 SCC 134; the Supreme Court held that the Labour Court cannot by way of sympathy alone exercise power under Section 11-A of the Act and reduce the punishment selected and awarded by the employer for misconduct. In the same chain, see U.P.State Road Transport Corporation v. Nanhe Lal Kushwaha, 2009 (4) SCT 152; and my judgment in Pepsu Road Transport Corporation & Anr. v. Presiding Officer, Labour Court & Anr., 2015 (4) PLR 90: 2014 (29) S.C.T. 716.

14. It may be noted the Mr. Saini states that the Corporation had applied for certification of its Standing Orders on October 05, 2001. The respondent workman was dismissed on January 31, 2002. The certified Standing Orders were approved by the authority under the Industrial Employment (Standing Orders) Act, 1946. The application to certify the model standing orders was made before the dismissal took place and the statutory rules were approved thereafter and are identical to the ones in IBP Petroleum; cf. Clause 34.0 to 34.2, supra.

15. For the reasons above recorded, the writ petition is allowed.

The impugned award dated November 03, 2010 passed by the Presiding

Officer, Central Government Industrial Tribunal, UT, Chandigarh is found to be suffering from fundamental legal flaws and grave errors of reasoning and is thus declared illegal and arbitrary and is accordingly set aside.

10.01.2017
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(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>