

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition No.2248 of 2004

Rathesar, aged app. 43 years, S/o Govind Sagar, P.No.133607, Token No.41356, Shunting Assistant, Transport Section, Transport and Diesel Orgn., B.S.P. Bhilai, Present Address: Tandula Irrigation Deptt. Compound, Bans Para, Durg (C.G.)

---- Petitioner

Versus

1. Steel Authority of India Ltd., Through Managing Director, Bhilai Steel Plant, Bhilai, Tah. and Distt. Durg (C.G.)
2. The Presiding Officer, Labour Court, Durg (C.G.)
3. The Industrial Court, Raipur (C.G.)
4. Assistant General Manager I/C (Trfg), Transport and Diesel Organisation, B.S.P. Bhilai.

---- Respondents

For Petitioner: Mr. Vinod Deshmukh, Advocate.

For Respondents No.1 and 4: -

Dr. N.K. Shukla, Senior Advocate with Mr. Vikram Sharma, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

13/08/2018

1. The petitioner was the employee of Steel Authority of India Limited working on the post of Shunting Assistant. He remained absent for 163 days. He was subjected to departmental enquiry and thereafter terminated by order dated 21-12-2001 which he questioned before the Labour Court by filing an application under Section 31(3) read with Sections 64 and 107 of the Chhattisgarh Industrial Relations Act. The Labour Court holding the departmental enquiry legal and valid proceeded to hear the parties on the question of quantum of punishment and held that the same is excessive and directed for reinstatement without back-wages which was reversed by the

Industrial Court and against which this writ petition has been preferred by the employee.

2. Learned counsel for the petitioner submits that though the domestic enquiry has been held to be valid and proper, but thereafter without appreciating the evidence and material available on record to come to a finding whether on the basis of material on record misconduct is established against the delinquent, the Labour Court has granted reinstatement but without back-wages, however, the Industrial Court has reversed that finding which runs contrary to the decision of the Supreme Court in the matter of The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. v. The Management and others¹ (paragraph 36). He also placed reliance upon a decision of the Supreme Court in the matter of Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and others² (paragraph 38.3).
3. On the other hand, learned Senior Counsel appearing for respondents No.1 and 4, would submit that once departmental enquiry has been held to be valid and proper, only the question of quantum of punishment has to be considered and no evidence is required to be led and as such, the order is justified and the procedure adopted by the Industrial Tribunal is just and proper and no interference is warranted in answering the reference in negative.
4. I have heard learned counsel for the parties and considered their rival submissions and also gone through the record with utmost circumspection.
5. It is well settled law that even if the departmental enquiry is held to be legal and proper, the Industrial Tribunal is required to reassess and

1 (1973) 1 SCC 813

2 (2013) 10 SCC 324

reappraise the evidence and material available on record to come to a finding whether on the basis of material on record misconduct is established against the delinquent.

6. In The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. (supra), the Supreme Court has held that even if the domestic enquiry is held to be legal and proper, the Tribunal is at liberty to consider not only whether the findings of misconduct recorded by the employer is correct, but is also entitled to differ from the said finding if a proper case is made out and observed as under: -

“36. We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in *Indian Iron & Steel Co. Ltd. v. Workman*³, existed. The conduct of disciplinary proceedings and the punishment to be imposed were all considered to be a managerial function with which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation or unfair labour practice. This position, in our view, has now been changed by [Section 11-A](#). The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer establishes the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in *Indian Iron & Steel Co. Ltd.* case (supra), can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so; and now it is the satisfaction of the Tribunal that finally decides the matter.”

7. Likewise, in the matter of Mavji C. Lakum v. Central Bank of India⁴,

³ AIR 1958 SC 130

⁴ (2009) 1 SCC (L&S) 254

the Supreme Court held that the Tribunal has to examine the finding of the Enquiry Officer qua misconduct and quantum of punishment as well by holding as under: -

“23. So far the finding of the learned Single Judge appears to be correct. However, the whole thrust of the judgment has changed merely because the Industrial Tribunal had found the inquiry to be fair and proper. The learned Judge seems to be of the opinion that if the inquiry is held to be fair and proper, then the Industrial Tribunal cannot go into the question of evidence or the quantum of punishment. We are afraid that that is not the correct law. Even if the inquiry is found to be fair, that would be only a finding certifying that all possible opportunities were given to the delinquent and the principles of natural justice and fair play were observed. That does not mean that the findings arrived at were essentially the correct findings. If the Industrial Tribunal comes to the conclusion that the findings could not be supported on the basis of the evidence given or further comes to the conclusion that the punishment given is shockingly disproportionate, the Industrial Tribunal would still be justified in reappreciating the evidence and/or interfering with the quantum of punishment. There can be no dispute that power under [Section 11-A](#) has to be exercised judiciously and the interference is possible only when the Tribunal is not satisfied with the findings and further concludes that punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. Besides, the Tribunal has to give reasons as to why it is not satisfied either with the findings or with the quantum of punishment and that such reason should not be fanciful or whimsical but there should be good reasons.”

8. Finally, the Supreme Court in the matter of **Nicholas Piramal India Ltd. v. Harisingh**⁵, following the judgment of **The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd.** (supra) held as under: -

“28. ... Ultimately, the Labour Court has exercised its jurisdiction and on reappreciation of the facts and the evidence on record and in accordance with the decision of this Court in *Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd.*, (1973) 1 SCC 813, it has found fault with the findings of the enquiry officer which were endorsed by the disciplinary authority which has erroneously held that the workman was guilty of the misconduct. ...”

9. After having noticed the scope and jurisdiction of Labour Court qua

5 (2015) 8 SCC 272

domestic enquiry, reverting to the facts of the present case, it is quite vivid that the Labour Court after holding the domestic enquiry to be valid and proper, directly proceeded to consider the question of punishment, which was reversed by the Industrial Court. It appears that the Industrial Court has failed to take note of the decisions rendered by the Supreme Court in The Workmen of M/s. Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. (supra), Mavji C. Lakum (supra) and Nicholas Piramal India Limited (supra) and did not record any findings that whether on the basis of material available on record, finding of misconduct as recorded by the disciplinary authority is established against the petitioner or not which was required to be considered and both the Courts could have come to an independent finding that misconduct alleged has been established, and thereafter could have considered the question of back-wages that too by providing opportunity to lead evidence.

10. Thus, on the basis of principle of law flowing from above-stated judgments, it is quite clear that the Labour Court / Industrial Court has failed to follow the appropriate procedure in dealing with the application. After having held that the domestic enquiry held against the petitioner is just and proper, the Labour Court / Industrial Court ought to have independently assessed the material available on record to come to an independent conclusion that the finding of misconduct found by the respondents is proper and thereafter, could have considered the issue of quantum of punishment and other ancillary issues, which both the Courts below have failed to observe.

11. As a fallout and consequence of the aforesaid discussion, the writ petition is allowed and the impugned orders are hereby set aside. The matter is remitted back to the Labour Court for following the

correct procedure and passing fresh order after hearing the parties in accordance with law within six months from the date of receipt of a copy of this order. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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