

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (L) No.6415 of 2007

1. Chhattisgarh Swantatra Mazdoor Union through its President Baradwar Post, Baradwar, Distt. Champa-Janjgir Chhattisgarh
2. Bhagat Ram S/o Millu Aged about 55 years R/o Vill. Dhakamura, P.O. Maharajganj, Dist: Raigarh (CG)

---- Petitioners

Versus

1. The President Officer Central Govt. Industrial Tribunal Cum Labour Court, Jabalpur (M.P.)
2. The Sub Area Manager South Eastern Coalfields Ltd. Rajgamar, Dist. Korba (CG)

---- Respondents

For Petitioners:	Mr.Gary Mukhopadhyay, Advocate
For Respondent No.2:	Mr.Sudhir Bajpai, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02/08/2018

1. This writ petition is directed against the award passed by the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur dated 26.5.2006 by which the reference has been answered in negative holding petitioner No.2 is not entitled for any relief including reinstatement.
2. Mr. Gary Mukhopadhyay, learned counsel for the petitioners, would submit that though the domestic enquiry has been held to be valid and proper, but thereafter, straightway question of quantum of punishment has been considered and reference has been answered in negative without independently reaching to the finding about misconduct of workman, 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, Mr. Sudhir Bajpai, learned counsel appearing for respondent No.2, 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 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

1 (1973) 1 SCC 813

2 (2013) 10 SCC 324

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, 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: -

3 AIR 1958 SC 130

4 (2009) 1 SCC (L&S) 254

“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. Harisingh⁵, 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

5 (2015) 8 SCC 272

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. In **Deepali Gundu Surwase** (supra), the Supreme Court while dealing with wrongful/illegal termination of service qua back-wages, held as under: -

“38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under [Section 11-A](#) of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it

will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under [Article 226](#) or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages."

10. Thus, on the basis of principle of law flowing from above-stated judgments, it is quite clear that the Industrial Tribunal has failed to follow the appropriate procedure in dealing with the reference. After having held that the domestic enquiry held against the petitioner/workman is just and proper, the Tribunal could have independently assessed the material available on record to come to an independent conclusion that the finding of misconduct found by the Enquiry Officer, duly endorsed by the disciplinary authority, is proper and thereafter, could have considered the issue of quantum of

punishment and other ancillary issues, which the Tribunal has failed to observe.

11. As a fallout and consequence of the aforesaid discussion, the writ petition is allowed and the impugned award is hereby set aside. The matter is remitted to the said Tribunal 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

B/-