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

Date of Decision:- 22.01.2020

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LPA 41/2020

RENUKA SHARMA

..... Appellant

Through: Mr. Dinesh Agnani, Senior Advocate
with Mr. Inder Jit Singh, Advocate.

versus

THE SR DIVISIONAL MANAGER , LIC OF INDIA Respondent

Through: Mr. Kamal Mehta, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J (Oral):

1. The present appeal under Clause X of the Letters Patent assails the judgement dated 04.12.2019 passed by the learned Single Judge, whereby the Writ Petition (C) No. 6692/2014 filed by the Respondent was allowed and, consequently, the award dated 23.04.2014 rendered by the Central Government Industrial Tribunal No. 1, Karkardooma Courts, Delhi (hereinafter referred to as 'CGIT') has been quashed.

2. The facts of the case, noted in the impugned judgement are extracted herein below:-

“2. The respondent was working with the petitioner as an

Assistant with effect from 01st March, 1994. On 25th March, 2008, the respondent applied for and was granted leave for 35 days from 11th April, 2008 to 15th May, 2008 for going to Singapore on the ground that her husband had been deputed in a job in Singapore.

3. On expiry of the aforesaid period, the respondent did not join the duty whereupon letters dated 12th June, 2008 and 25th August, 2008 were sent to her asking her to immediately join the duties. The respondent sent a letter on 28th August, 2008 seeking extension of leave up to November, 2008.

4. Vide email dated 18th September, 2008 and letter dated 04th October, 2008, the respondent was again advised to immediately join the duties failing which disciplinary action shall be initiated against her.

5. On 15th November, 2008, a show cause notice-cum-charge sheet was issued to the respondent proposing to impose penalty of removal from service on account of unauthorized absence since 16th May, 2008 to which a reply was received on 27th November, 2008 and the respondent was allowed to join the duty subject to the disciplinary proceedings.

6. On 27th December, 2008, the respondent applied for sick leave from 27th December, 2008 to 10th January, 2009. On 28th December, 2008, the respondent applied for NOC for travelling to Singapore. However, without waiting for the approval, the respondent left for Singapore on 28th December, 2008.

7. The respondent did not appear before the enquiry proceedings despite being informed vide letters dated 26th December, 2008, 05th January, 2009, 16th January, 2009, 16th February, 2009, 05th March, 2009, 20th March, 2009, 06th April, 2009 and 20th April, 2009. The respondent also failed to join the duties despite letters dated 24th January, 2009, 14th February, 2009 and 03rd March, 2009. However, the respondent replied to the charge sheet vide letter dated 25th April, 2009 in which she pleaded her

inability to join the duty because her husband was working in Singapore.

8. Vide report dated 30th April, 2009, the Enquiry Officer held that the charge of unauthorized leave since 16th May, 2008 was proved and established against the respondent. Copy of the enquiry report was sent to the respondent on 01st May, 2009. The respondent filed her reply dated 12th May, 2009 in which she reiterated her grievances as explained in her letter dated 18th March, 2009 and 25th April, 2009.

9. On 27th May, 2009, a show cause notice was issued to the respondent to show cause as to why the penalty of removal from service be not imposed on her to which she replied on 04th June, 2009.

10. On 22nd June, 2009, the disciplinary authority imposed penalty of removal on the respondent under regulation 39(1)(f) of LIC of India Staff Regulation, 1960 for unauthorized absence from 16th May, 2008 to 26th November, 2008 and 27th November, 2008 to 22nd June, 2009 (Total 373 days).

11. On 15th September, 2009, the respondent filed an appeal before the Appellate Authority, Zonal Manager which was rejected on 22nd February, 2010. On 04th August, 2010, the respondent filed a memorial before Chairman-cum-Managing Director which was rejected on 27th January, 2011.”

3. The industrial dispute raised by the Appellant was referred to the Industrial Tribunal. The appellant sought reinstatement contending that after taking leave, when she went to Singapore, she was compelled to seek extension of leave on 28.08.2008 on account of deterioration of health of her children. She returned back and resumed work on 27.11.2008 and worked till 27.12.2008. When her husband fell ill in Singapore, she had to rush back to take care of him and the Respondent, in her absence passed an ex-parte

enquiry report holding her guilty of unauthorized absence. The Respondent herein, contested the petition and the CGIT, after considering the evidence led by the parties, held that the enquiry conducted by the Enquiry Officer was just, fair and proper in consonance with the principles of natural justice. However, with respect to the proportionality of the punishment awarded on account of Appellant's misconduct, it was held that the punishment of removal from service was discriminatory.

4. CGIT primarily proceeded on the principle of parity, by relying upon the cases relating to two other employees, namely, Sh. V.S. Iyer and Sh. Harish Chand Bhatnagar who had also travelled abroad and over-stayed their sanctioned leaves, were not awarded punishment of removal. On this ground, the CGIT set aside the removal and awarded punishment of reduction in basic pay by three stages. In the challenge to the aforesaid decision of the Tribunal by the Respondent herein, the learned Single Judge allowed the writ petition and set aside the award dated 23.04.2014 and as a result, Appellant's Statement of Claim was dismissed and the punishment of removal was upheld.

5. Mr. Dinesh Agnani, learned Senior Counsel appearing on behalf of the Appellant argues that the learned Single Judge has erroneously overlooked that the Respondent indulged in gross discrimination in the matter of imposition of penalty in similarly situated employees and ignored the law laid down by the Supreme Court and relied upon by the Appellant. He further argued that the Appellant had brought on record six similar cases of over-staying sanctioned leave in which none of the employees were removed

from service and only cases of Mr. Bhatnagar and Mr. Iyer were referred to in the impugned judgement. He further submitted that Mr. Iyer had admittedly gone abroad without sanction of leave and yet the Chairman of the Respondent Corporation only imposed a punishment of reduction in basic pay by two stages in the pay scale. The Appellant's case was on a much better footing, yet the learned Single Judge failed to notice the findings of CGIT. He further submitted that the findings of fact reached by the Tribunal as a result of appreciation of evidence cannot be re-opened or questioned in writ proceedings.

6. Mr. Dinesh Agnani also argued that the Respondent being a public undertaking, is expected to act in a fair and just manner towards all its employees and therefore applying the principles of parity, there was no justification for the learned Single Judge to have modified the punishment imposed upon the Appellant, which exercise had been carried out by CGIT by virtue of the powers vested in him under Section 11-A of the Industrial Disputes Act, 1947.

7. We have given due consideration to the submissions advanced by Mr. Dinesh Agnani. The facts unequivocally demonstrate that Appellant has scant regard for her duty. Despite several letters being issued to the Appellant, she did not resume work and remained unauthorizedly absent. Ultimately, when the Petitioner was permitted to join duty, with the Respondent reserving the right to proceed against her for over-staying abroad, the Appellant, yet again, went abroad without sanctioned leave. Besides, she also did not join the enquiry proceedings despite several letters

issued to her. Taking note of these facts, the learned Single Judge has proceeded to consider the question as to whether the award of punishment was dis-proportionate to the gross misconduct committed by the Appellant. While examining this question, learned Single Judge has proceeded to hold that once the charge was proved, the disciplinary authority is empowered to impose appropriate punishment and the Tribunal should not ordinarily substitute the punishment imposed by the disciplinary authority.

8. Also, examining the position in law on the doctrine of discrimination, the learned Single Judge by referring to several case laws has observed that a wrong decision does not give a right to a person to enforce the wrong order and claim parity or equality. The learned Single Judge has observed that the doctrine of equality has been wrongly applied by the Tribunal, contrary to the settled principles of law as laid down in the case of ***Gursharan Singh v. NDMC, 1996 (2) SCC 459*** and ***State of Haryana v. Ram Kumar Mann, (1997) 3 SCC 321***.

9. We are in agreement with the views expressed by the learned Single Judge and do not find any ground or scope for interference. The facts of the case indeed exhibit gross misconduct on the part of the Appellant. Despite getting permission to join the service after her unauthorized absence, she again proceeded to go abroad without sanction of the competent authority. Further, as noted above, she also did not care to join the disciplinary proceedings. Undue and misplaced sympathy, that the Petitioner seeks to invoke in her favour, would subvert discipline in the organization and cannot be countenanced. The management would not be able to maintain the code

of conduct amongst its employees if such delinquency is condoned. This would be seriously detrimental to the organization and therefore the CGIT should not have interfered with the quantum of punishment imposed, since the same is a subject matter that is essentially in the domain of the Departmental Authorities. The limited judicial review with respect to the punishment imposed could be only in such cases, where it is found to be shockingly dis-proportionate to the conscience of the Court.

10. The learned Single Judge has rightly corrected the error committed by the CGIT, holding that the claim of equality on the basis of a wrong decision is not permissible. Tribunal got carried away by the fact that certain other employees have got away with lesser punishment. Parity cannot be claimed as a matter of right in the matter of imposition of punishment. The doctrine of equality can only be applied when the employee concerned and the co-delinquent, are equally placed. The nature of charge, the subsequent conduct after the service of chargesheet etc., all the factors have to be gone into before the doctrine of equality can be applied. There is not right to seek enforcement of negative equality. The test could not be as to how the other employees – who had overstayed on leave, had been punished. The correct test is: as to whether those other employees too could have been meted out the same penalty of removal for their similar misconduct. If the punishment inflicted upon the Appellant is reasonable keeping in view her proven misconduct, she cannot claim - as a matter of right, that she be also shown the same relaxation, which was shown to several others. The learned Single Judge found the punishment to be proportionate to the charge of misconduct, and the approach of the Tribunal to be erroneous, since the reasoning of the

CGIT was found to be outrageously defiant of logic. This Court in the Intra Court Appeal, would not like to interfere with the approach of the learned Single Judge.

11. In view of the above, we find no merit in the present appeal and accordingly the same is dismissed with no order as to costs.

SANJEEV NARULA, J

VIPIN SANGHI, J

JANUARY 22, 2020

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