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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-13237-2004 (O&M)
Date of Decision :01.04.2025

Chandigarh Transport Undertaking (C.T.U.)
Chandigarh

...Petitioner

Versus

Gursewak Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: None for the petitioner.

Mr. Arvind Galav, Advocate for respondent No.1.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-4598-CWP-2025

1. Present application has been filed by the applicant-respondent No.1 for listing the main writ petition on an earlier actual date of hearing.

2. Keeping in view the averments made in the application, which are duly supported by an affidavit, application is allowed. Main writ petition is taken up for hearing today itself.

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3. In the present petition, challenge is to award dated 26.03.2004 (Annexure P/3) passed by the Presiding Officer, Labour Court, U.T. Chandigarh by which, the respondent No.1-workman was ordered to be reinstated in service with continuity but without back wages. The Labour



Court further modified the punishment of dismissal from service to that of stoppage of four increments with cumulative effect and the period for which the respondent No.1-workman remained absent from duty, the said period was directed to be treated as leave without pay.

4. The grievance raised in the present petition is that once, it has been found that the respondent No.1-workman was absent from duty and his absence from duty was not authorized, still the punishment of dismissal from service has been modified with that of stoppage of four increments with cumulative effect by the Labour Court on the ground that the punishment of dismissal from service was disproportionate to the charges alleged and proved whereas, once, an employee remains absent from duty for a period of two and a half years, the punishment of dismissal from service cannot be treated to be disproportionate.

5. Learned counsel appearing for the respondent No.1-workman submits that respondent No.1-workman was not well and he had submitted his leave applications along with medical certificate but he concedes the fact that said leave applications were never sanctioned by the authorities. Learned counsel for the respondent No.1-workman further submits that jurisdiction existed with the Labour Court under Section 11-A of the Industrial Disputes Act, 1947 (hereinafter referred as '1947 Act') to modify the punishment and the said discretion has rightly been exercised by the Labour Court, which needs no interference at the hands of this Court.

6. I have heard learned counsel for the respondent No.1-workman and have gone through the record with his able assistance.

7. Certain facts have gone unrebutted such as respondent No.1-

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workman remained absent from duty starting from 01.11.1988 onwards till 13.03.1991. Keeping in view the said unauthorized absence from duty, a departmental proceedings were initiated against the respondent No.1-workman and the respondent No.1-workman did not participate in the same despite being informed about the said departmental proceedings. The letters sent to the respondent No.1-workman were received back with the report “out of station”. After proving the allegations of absence from service for more than two and a half years, the respondent No.1-workman was given show cause notice and after going through the reply filed by the respondent No.1-workman, an order was passed on 15.03.1993 terminating the services of the respondent No.1-workman.

8. Said order dated 15.03.1993 was challenged by the respondent No.1-workman before the Labour Court and the Labour Court while passing the impugned award has recorded a finding in Para-14 that the respondent No.1-workman did not participate in the enquiry proceedings and in the exparte departmental proceeding, he was held guilty and the charges were proved against him and hence, the enquiry conducted against the respondent No.1-workman was fair and proper. The said finding recorded in para-14 of the impugned award has not been challenged by the respondent No.1-workman. Despite recording of the said finding, the punishment imposed upon the respondent-workman has been modified to that of punishment of stoppage of four increments with cumulative effect on the ground that the punishment imposed is disproportionate to the charges alleged and proved with the further a direction that the period of absence from duty be treated as leave without pay, which cannot be accepted.



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9. As per the settled principle of law settled by the Hon'ble Supreme Court of India in *Civil Appeal No.219-2023 titled as, Union of India and others vs. Const. Sunil Kumar, decided on 19.01.2023,* a punishment can only be modified by the Court in case, the same is shockingly disproportionate to the charges alleged and proved. Relevant paragraphs of the judgment are as under:-

6.2 Even otherwise, the Division Bench of the High Court has materially erred in interfering with the order of penalty of dismissal passed on proved charges and misconduct of indiscipline and insubordination and giving threats to the superior of dire consequences on the ground that the same is disproportionate to the gravity of the wrong. In the case of Surinder Kumar (supra) while considering the power of judicial review of the High Court in interfering with the punishment of dismissal, it is observed and held by this Court after considering the earlier decision in the case of [Union of India Vs. R.K. Sharma](#); (2001) 9 SCC 592 that in exercise of powers of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be strikingly disproportionate. As observed and held that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under [Article 226](#) or 227 or under [Article 32](#) of the Constitution.

6.3 Applying the law [laid down](#) by this Court in the aforesaid decision(s) to the facts of the case on hand, it cannot be said that the punishment of dismissal can be said to be strikingly disproportionate warranting the interference of the High Court in exercise of powers under [Article 226](#) of the Constitution of India. In the facts and circumstances of the case and on the charges and misconduct of indiscipline and insubordination proved, the CRPF being a disciplined



force, the order of penalty of dismissal was justified and it cannot be said to be disproportionate and/or strikingly disproportionate to the gravity of the wrong. Under the circumstances also, the Division Bench of the High Court has committed a very serious error in interfering with the order of penalty of dismissal imposed and ordering reinstatement of the respondent.

6.4 At this stage, it is required to be observed that even while holding that the punishment/penalty of dismissal disproportionate to the gravity of the wrong, thereafter, no further punishment/penalty is imposed by the Division Bench of the High Court except denial of back wages. As per the settled position of law, even in a case where the punishment is found to be disproportionate to the misconduct committed and proved the matter is to be remitted to the disciplinary authority for imposing appropriate punishment/penalty which as such is the prerogative of the disciplinary authority. On this ground also, the impugned judgment and order passed by the Division Bench of the High Court is unsustainable.”

10. In the present case, once, the respondent No.1-workman remained absent from duty for more than two and a half years and that too without any valid justification, it cannot be said that the punishment of terminating the service of such employee is disproportionate. Even one day's unauthorized absence has been treated to be a major misconduct. The conduct of an employee, who remains absent from duty for a period of more than two and a half year, has to be treated as a major misconduct.

11. Further, the termination of the service of an employee, who remained absent from duty for a period of two and a half years cannot be treated as a shockingly disproportionate to the charges alleged and proved. The discretion exercised by the Tribunal is contrary to the settled principle

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of law noticed hereinbefore.

12. It may be noticed that while issuing notice of motion, operation of the award was stayed.

13. Keeping in view the totality of the facts and circumstances recorded hereinbefore, as the impugned award dated 26.03.2004 (Annexure P/3) passed by the Presiding Officer, Labour Court, U.T. is perverse to the facts as well as to the settled principle of law cannot be sustained in the eyes of law and is accordingly set aside.

14. It may be noticed that whatever amount the respondent No.1-workman has already been paid under Section 17-B of the Industrial Dispute Act, 1947 will not be recovered from him.

15. Present petition is allowed in above terms.

16. Civil miscellaneous application pending if any is also disposed of.

April 01, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No