

(1998) 11 GAU CK 0021
In the Gauhati High Court
Case No : Civil Rule No. 1753 of 1992

Achyut Ch. Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-11-1998

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 11A, 2

Citation : (1998) 4 GLT 472

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : T.N. Phukan and P. Talukdar, for the Appellant; A.K. Phukan and J. Roy, for the Respondent

Final Decision : Allowed

Judgement

D.N.Chowdhury, J.—This proceeding is directed against and arises out of an award dated 24.9.91, passed by the Industrial Tribunal in Reference No. 6 (c) of 1988. In the aforesaid case, the following industrial dispute referred:

Whether the action of the management of Cement Corporation of India, Bokajan Cement Factory, P.O. Bokajan, Assam in dismissing the services of Shri Achyut Ch. Das. Watchman, Bokajan Cement Factory, Bokajan w.e.f. 24.3.84 is justified. If not, what relief the workman is entitled to?

2. Parties appeared, submitted their written statement. The Management averred in the written statement that the workman was appointed in the year 1976 who joined the service of the Corporation accepting the terms and conditions of Service on 30.6.76. He was transferred on 5.4.83, to the Quarry of the Corporation at Delai Parbat. The workman did not comply with the order of transfer and refused to join the new place of posting and left the factory premises and went home. The workman thereafter submitted a representation to cancel his transfer. The Management instituted a departmental proceeding for unauthorised absence from his duty and also for violation of lawful order of the

Management. The Management accepted the Report of the Enquiry officer and dismissed the workman find service is their the provisions of the Standing order. The workman pleaded that in the year 1977, the was transferred to Delai Parbat Quarry from Bokajan factory. While serving in the quarry, he suffered from Malaria and had to undergo medical treatment on many occasions. He was thereafter transferred in the year 1979 to Bokajan factory and posted at the Rail Gate of the Factory. Anti-social elements used to threaten him regularly for which he requested to management to post another Watchman alongwith him at the rail gate But instead of acceding to his request, the management transferred him to the Quarry site. The workman stated that while he was serving at the rail gate, the workman suffered from eye trouble and had to undergo medical treatment at Dimapur from 10.4.83 to 15.4.83. The workman also denied that be was given full opportunity to defend his case. The workman alleged that he was dismissed from service by adopting unfair labour practice. The Management adduced three witnesses and exhibited some documents. The workmen also examined himself and exhibited some documents. According to the Management, the transfer was made for administrative exigencies and since the workman refused comply with the transfer order, the management order to enforce discipline amongst its workman, initiated proceeding against the workman and on accepting the report of the Enquiry Officer, dismissed, him from service. The Tribunal, on examination of the materials on reevidence adduced and on hearing the learned counsel for the parties, found that the workman failed to comply with the transfer order of the Management and remained absent from duty and held ? that misconduct was proved against the workman.

3. Mr. P. Talukdar, learned Counsel appearing on behalf of the Petitioner/ workman, submitted that the Tribunal fell into serious error in accepting the plea of the Management holding the Petitioner guilty of misconduct. Mr. Talukdar, the learned Counsel for the Petitioner, referring to the plea taken by the Management, .submitted that the misconduct was not proved. "The Tribunal while coming to the conclusion. relied on the evidence of the witnesses including the exhibits proved by both the parties. In its finding, the learned Tribunal did not indicate as to whether the domestic enquiry was fair and reasonable.

4. Mr. A.K. Phukan, learned Senior Counsel appearing on behalf of Respondent/ Corpo-ration, submitted that though in so many words ,the award did not disclose about the legality of the domestic enquiry, but from the facts referred to by the learned Tribunal it appears that the learned Tribunal found the workman guilty of misconduct. The Award of the learned Tribune though not happy, can not be rejected on that court alone. However, from the Award, it appears that the learned Tribunal did not address its mind to the powers conferred u/s 11-A of the Industrial Disputes Act, 1947. The Tribunal only made a bald statement the workman did not comply with the lawful order of the Management and tried to put pressure on the Management to stay the transfer order and that the ?above action does not deserved any lenient punishment.?

5. The labour Court/Tribunal is clothed with the Power u/s 11-A of the Industrial Disputes Act, 1947 to look to the quantum of punishment. The institutions such as the present Corporation, are expected to be inspired by a sense of fair play towards its employees in one hand and consideration for maintenance of discipline in the institution on the other hand. While exercising powers u/s 11-A of the Act, 1947, the Labour Court/Tribunals expected to take into consideration the conflicting claims of the parties. The object of the Industrial Disputes Act, 1947 is to make provisions for the investigation and settlement of industrial disputes and for certain other purposes with a view to provide security of service to the industrial workers and to protect them from wrongful termination, power is conferred on the authority to ascertain all the aspects of the matter including the nature of the misconduct. An order of punishment should not become harsh or disproportionate to the nature of the offence/misconduct. It appears that the order of dismissal of the workman was passed without having regard to the nature of the misconduct or the past record of service of the workman, thereby leading to disproportionate punishment amounting to unfair labour practice u/s 2(ra) under the Act, 1947. These are matters which are required to be gone into by the Tribunal while adjudicating the industrial dispute, more particularly, in view of the provisions contained in Section 11-A of the Act, 1947. The power conferred on the Tribunal is wholesome and meaningful and such power is to be exercised with due application of mind and not mechanically. From the Award referred to above, it is clear that the learned Tribunal overlooked this aspect of the matter.

6. The power u/s 11-A of the Act, 1947 is no doubt conferred upon the Labour Court/Tribunal/National Tribunal, but at the same time, under the Constitutional Scheme, judicial review is permissible either under Article 226 of the Constitution or by way of an appeal under Article 136 of the constitution. Proportionality of punishment can also be looked into while exercising the power under Article 226 of the Constitution. In the instant case, the Tribunal failed to judge the situation in the light of the above, more particularly so, when the Petitioner was serving under the Management from 1976. Taking into consideration all these aspects, instead of sending the matter back to the Tribunal for adjudication u/s 11-A, of Act, 1947, in order to avoid lingering of the case, this Court in exercise of the power under Article 226 of the Constitution considered that point, and on consideration of the materials on record, perusal of the Award and in fact situation of case, I am of the opinion that the order of dismissal is disproportionate to the Nature of the misconduct and hence, the same is set aside.

7. In the fact situation of the case, the Petitioner shall be re-instated in his service and the workman be let-off with a warning. The Petitioner shall get all the service benefits including seniority save except 25% of the backwages.

The writ petition is allowed to the extent indicative above. There would be no order as to costs.