
(1993) 10 KL CK 0022
In the High Court Of Kerala
Case No : W.A. No. 527 of 1991

Hindustan Latex Ltd. and Others

APPELLANT

Vs

P.G. Padmarajan and Another

RESPONDENT

Date of Decision : 22-10-1993

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 21, 226, 311(2)
Industrial Disputes Act, 1947 — Section 25F

Citation : (1994) 3 ILR (Ker) 233 : (1994) 2 LLJ 278

Hon'ble Judges : K.S. Paripoornan, J; K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : Pathrose Mathai and M. Ramakrishnan, for the Appellant; M.K. Damodaran, for the Respondent

Final Decision : Dismissed

Judgement

Balanarayana Marar. J.

1. Petitioner in O.P. 8711/90 is the appellant. While working as Purchase Officer in Hindustan Latex Ltd., Thiruvananthapuram, a departmental enquiry was conducted against him and he was subsequently dismissed from service. That was challenged in the original petition. The learned single Judge by judgment dated April 24, 1991 allowed the petition and setting aside the order of dismissal directed petitioner to be reinstated in service with arrears of salary. Respondents 1 to 3 have come up in appeal.

2. Petitioner in the original petition-first respondent herein-was employed as Purchase Officer in Hindustan Latex Ltd., Thiruvananthapuram. Serious acts of mis-conduct by tampering with Company's documents at the instance of a supplier of articles to the Company were alleged. Charges were framed against him and an enquiry was conducted. The disciplinary authority did not accept the enquiry report in toto and proposed to modify the same. After informing petitioner about their intention to modify the findings in the enquiry report the disciplinary authority found petitioner guilty of the charges and in consequence

dismissed him from service by Ext. P9 order dated April 24, 1990. This order was challenged in the original petition on various grounds. First appellant-first respondent in the original petition-justified the action taken in the counter affidavit filed by them. The learned single Judge interfered with the order of dismissal mainly on four grounds, (i) Disciplinary authority did not afford an opportunity to the petitioner to state anything regarding the proposed punishment (ii) The punishment awarded is disproportionate to the misconduct alleged, (iii) The finding of the disciplinary authority is based on no evidence, (iv) The plea that the management has lost confidence in the petitioner has not been substantiated.

3. Heard counsel on both sides.

4. Two main aspects highlighted by Shri Pathrose Mathai, learned counsel for the appellants, are: (i) Petitioner is not entitled to a notice showing cause against the proposed punishment, (ii) The punishment even if disproportionate to the misconduct alleged is not open to challenge. The judgment is assailed on other subsidiary grounds also. We will first consider the main aspects on which counsel assails the decision setting aside the order of dismissal and directing reinstatement.

5. In paragraph (9) of the judgment the learned single Judge observed that the disciplinary authority did not afford an opportunity to the petitioner to state anything regarding the proposed punishment. Ext P7 is the notice issued to the petitioner informing him about the decision of the disciplinary authority to depart from the findings entered by the enquiry officer. The disciplinary authority has come to the tentative conclusion that the action of the petitioner is subversive of discipline. Petitioner was therefore informed about this tentative decision of the disciplinary authority and he was further informed that a final decision with regard to the enquiry findings and the appropriate punishment will be taken only after receiving his explanation, if any, and the consideration thereof. Petitioner did submit his explanation and the disciplinary authority considered the same. Ext P9 purports to be a combined order on the findings of the disciplinary authority and the decision to dismiss petitioner from the service of the Company. The learned single Judge is of the view that the disciplinary authority did not issue any notice intimating the proposed punishment to enable the delinquent to state his defence. This finding, according to learned counsel for the appellants, is erroneous. It is his contention that petitioner cannot demand a second opportunity. Petitioner was given reasonable opportunity to put forward his defence and to produce evidence. He has no complaint that he was not given a reasonable opportunity either to put forward his contentions or to produce evidence in proof of his innocence. Under such circumstances the question arises whether a second opportunity can be claimed by petitioner to show cause against the punishment proposed to be awarded and whether failure to afford such opportunity vitiates the punishment awarded.

6. The Supreme Court in the decision in Associated Cement Companies Ltd. Vs.

T.C. Shrivastava and Others, held that a second opportunity to show cause against the proposed punishment is not necessary either under the ordinary law of the land or under Industrial Law. But this does not mean that the standing order may not provide for giving such an opportunity. Unless the standing order provides for it either expressly or by necessary implication no enquiry which is otherwise fair and valid will be vitiated by non-affording of such second opportunity.

7. The question whether a second opportunity against the action to be taken or the punishment to be awarded is part of general principles of natural justice applicable to all disciplinary actions other than those governed by Article 311(2) (as it stood before 1976) of the Constitution of India arose before this Court in Padmanabhan Vs. Kerala State Handloom Development Corporation Limited, Therein the Division Bench was considering the question of the validity of the disciplinary action taken against the appellant, the Finance Manager of the Kerala State Handloom Development Corporation, a State within the meaning of Article 12 of the Constitution of India. After a survey of the decisions on this aspect the Division Bench held that a second opportunity against proposed action or punishment is not part of the general principles of natural justice as applicable to disciplinary cases. That decision squarely applies to the facts of the present case also since petitioner is the Purchase Manager of Hindustan Latex Ltd., a Public Sector Undertaking coming within the definition of State in Article 12 of the Constitution of India. Following the Division Bench decision and the Supreme Court decisions on this aspect we hold that a second opportunity against the proposed punishment is not part of the general principles of natural justice as applicable to disciplinary cases and that the order of dismissal is not liable to challenge for that reason. The learned single Judge was in error in finding that petitioner is entitled to a second opportunity to show cause against the proposed punishment.

8. It is contended by learned counsel for the first respondent that principles of natural justice require an opportunity to be given to show cause against the proposed action. Counsel relies on the following passage contained in Union of India and Another Vs. Tulsiram Patel and Others,

"The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject matter of that Article. Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is violation of Article 14; therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body

of men, not coming within the definition of "State* in Article 12, is charged with the duty of deciding a matter."

9. Counsel has also brought to our notice the decision in D.K. Yadav Vs. J.M.A. Industries Ltd., where it was held that the test of reason and justice cannot be abstract and that the procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against the action proposed to be taken against an individual which affects the right of that individual. It is observed that even executive authorities have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness and they have to act in a manner which is patently impartial and meets the requirements of natural justice. That was a case of automatic termination under certified standing orders on absence beyond the period of sanctioned leave for more than 8 days. It was in those circumstances that the Supreme Court observed that principles of natural justice and duty to act in just, fair and reasonable manner must be read into the standing orders. Termination of service under the standing order without holding any domestic enquiry or affording any opportunity to the workman was held to be violative of the principles of natural justice and Articles 14 and 21 of the Constitution of India apart from violation of Section 25F of the Industrial Disputes Act. In the present case petitioner was afforded reasonable opportunity to put forward his contentions and produce his evidence and an enquiry was conducted. The disciplinary authority had considered the findings of the enquiry officer while they disagreed with some of his findings, for which they are entitled. The management cannot therefore be accused of not affording an opportunity to petitioner nor can it be said that they had acted in an unjust, unfair or unreasonable manner in the conduct of the enquiry. The decision cited by learned counsel for first respondent is therefore of no assistance to him.

10. The next aspect to be considered is whether the punishment of dismissal is disproportionate to the misconduct alleged and if so, whether this Court can interfere in an original petition under Article 226 of the Constitution. Incidentally, learned counsel for the appellants would argue that this Court has no power to interfere with the punishment awarded and in support of this contention counsel has cited the decision of the Supreme Court in Union of India (UOI) Vs. Parmanand, . That was a case where the Central Administrative Tribunal interfered with the punishment awarded by the disciplinary authority and reduced the punishment of dismissal to stoppage of five increments. The power of the Tribunal to interfere with the punishment was challenged before the Supreme Court. Observing that the Administrative Tribunal is just a substitute to the Civil Court and the High Court it was held that the Tribunal cannot interfere with the penalty imposed on a delinquent employee by the competent authority on ground that the penalty is not commensurate with the delinquency of the employer. It is observed that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. At the same time the Supreme Court observed that the Tribunal

cannot interfere with the finding of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is further observed that the Tribunal cannot interfere with the penalty if the conclusion of the enquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter. While holding that what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. The Supreme Court has laid down that interference is possible where findings of the enquiry officer or competent authority are arbitrary or utterly perverse and in cases where they are based on no evidence. The position therefore is that this Court cannot ordinarily interfere with the punishment awarded by the disciplinary authority but has to step in where the findings are arbitrary or perverse or if they are based on no evidence. The question whether this Court can interfere in cases where the punishment awarded is grossly disproportionate to the misconduct alleged has to be considered in the light of this principle.

11. The Supreme Court in *Bhagat Ram Vs. State of Himachal Pradesh and Others*, held that in a petition under Article 226 the High Court does not function as a court of appeal over the findings of disciplinary authority. But where the finding is utterly perverse the court can always interfere with the same. The Supreme Court quoted with approval the following passage contained in *Union of India (UOI) Vs. H.C. Goel*,

"It still remains to be considered whether the respondent is not right when he contends that in the circumstances of this case, the conclusion of the Government is based on no evidence whatever. It is a conclusion which is perverse and, therefore, suffers from such an obvious and patent error on the face of the record that the High Court would be justified in quashing it. In dealing with writ petitions filed by the public servants who have been dismissed or otherwise dealt with so as to attract Article 311(2), the High Court under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. It is true that the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order, nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charge framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of his dismissal, is based on no evidence."

12. The Supreme Court is of the view that if the punishment is so strikingly disproportionate justifying interference that should not remain uncorrected in judicial review. Punishments awarded by Court Martial were interfered with by the Supreme Court in two decisions. (1) *Ranjit Thakur Vs. Union of India (UOI)*

and Others, and (2) State Bank of India Vs. S. Vijaya Kumar, In Ranjit Thakur's case the complaint was that he had made representations complaining of ill treatment at the hands of Commanding Officer to the higher officers. He was punished to undergo rigorous imprisonment for 28 days for violating the norms for presenting representations to higher officers. While observing that judicial review, generally speaking, is not directed against a decision, but is directed against the "decision-making process" the Supreme Court held that the question of choice and quantum of punishment is within the jurisdiction and discretion of the Court Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. The Supreme Court observed that the sentence should not be so disproportionate to the offence so as to shock the conscience and amount in itself to conclusive evidence of bias. Irrationality and perversity are recognised grounds of judicial review. The Supreme Court held that if the sentence is an outrageous defiance of logic it is not immune from correction. In Ex-Naik Sardar Singh 's case the punishment was for carrying extra seven bottles of rum without the necessary permit. He was sentenced to imprisonment for three months and was also dismissed from service. The following passage contained in Bhagat Ram's case (supra) was quoted by the Supreme Court with approval. State Bank of India Vs. S. Vijaya Kumar,

"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

The Supreme Court observed that these principles were applicable to that case and held that there is an element of arbitrariness in awarding severe punishment to the appellant.

13. The power to award punishment is no doubt vested in the disciplinary authority, but that power is not absolute. It should be exercised in a fair and reasonable manner. When the authority has acted in an arbitrary or unreasonable manner this Court can interfere with the punishment. In such cases the action of the management is not immune from correction. The grounds on which administrative action is subject to control by judicial review were classified under three heads by Lord Diplock in the decision of the House of Lords in Council of Civil Service Unions and others v. Minister for the Civil Service (1984 (3) All ER 935. They are: (i) Illegality (ii) irrationality, and (iii) procedural impropriety. Illegality as a ground for review means that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it Irrationality applies to a decision which is so outrageous hi its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. The third head described as procedural impropriety refers to failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. In a later decision of the House of Lords in Nottinghamshire County Council v. Secretary of State for the Environment and

Anr. (1986 (1) All ER199) at 203 it is observed:

"The law has developed beyond the limits understood to apply to judicial review as practised by the courts in 1947. The ground on which the courts will review the exercise of an administrative discretion by a public officer is abuse of power. Power can be abused in a number of ways: by a mistake of law in misconstruing the limits imposed by statute (or by common law power) on the scope of the power: by procedural irregularity; by unreasonableness in the *Wednesbury* sense; or by bad faith or an improper motive in its exercise. A valuable, and already "classical" but certainly not exhaustive analysis of the grounds on which courts will embark on the judicial review of an administrative power exercised by a public officer, is now to be found in Lord Diplock's Speech in *Council of Civil Service Unions v. Minister for the Civil Service* (1984) 3 All ER 935, (1985) AC 374."

Thus when the punishment is wholly out of proportion with the misconduct alleged that is indicative of unreasonableness in turn amounts to abuse of power. The observations of Lord Diplock in *CCSU's* case (*supra*) were quoted with approval by the Supreme Court in *Ranjit Thakur's* (*supra*) case and in *Ex-Naik Sardar Singh's* case (*supra*)

14. The position that emerges is that the power of the disciplinary authority to punish a wrong doer is not absolute whereas it has to be done in a fair and reasonable manner. When the procedure adopted is found to be grossly unfair and unreasonable this Court can interfere with the punishment awarded. In other words, the right of the management to punish is not immune from correction by way of judicial review. But such a power of review can be exercised only in cases where the order impugned is perverse or unreasonable and is irrational, meaning thereby that it is "so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it". If the punishment awarded is grossly disproportionate to the misconduct alleged then it may even amount to victimisation from which malafides can be inferred. This Court should also interfere in cases where the decision-maker has acted illegally or in other words has not understood the law correctly and has not given effect to it. The action of the authority is also liable to correction where there is failure to act with fairness and there is failure to observe basic rules of natural justice.

15. In the light of the principles enunciated in the foregoing paragraph the action taken by the management against the petitioner amounts to perversely unreasonable exercise of the power to punish a wrong-doer and it is unfair and disproportionate to the misconduct alleged. The main charge against petitioner is that he had made insertions/alterations in the office copy of the order forms which had helped the suppliers in getting tax exemption to an extent of huge amount This was alleged to be an act on his part to defraud the State of its dues on account of sales tax and giving a chance to the suppliers to gain tax exemption which the suppliers would not have got but for the insertions/

alterations. No sanction was obtained from higher authorities for making this correction. The alterations/insertions has therefore resulted in irreparable injury and damage to the reputation of the Company. Petitioner was therefore accused of favouring the suppliers without any justification or authority. He was also accused of tampering with records so as to enable an outside agency to make unauthorised gain.

16. Petitioner while admitting that he had made the insertions/additions pleaded that the suppliers were entitled to get the benefits of tax exemption even without the additions and alterations. In all the bills the supplier had specifically given either of the following descriptions, (i) Towards board and printing charges for Nirodh publicity materials, (ii) Nirodh publicity materials. The supply orders do not contain such specific descriptions. There was an apparent inconsistency between the supply order and the bills. According to the workmen the alterations were made only to reconcile this difference. He also pleaded that he had consultations with the Deputy General Manager and the Tax Consultant and the alterations/additions were made on their advice. He raised a plea that the management has not sustained any loss on account of the insertions/additions and no prejudice was caused to the management If at all, the corrections made by him is only a casual omission on his part which arose on account of an error of judgment. According to him, he had 21 years unblemished record of service in the Company.

17. The enquiry officer found two of the charges established viz. that he has unilaterally modified/corrected purchase department copies of 27 supply orders issued in favour of M/s. Coronation Litho works and M/s. Coronation Arts & Crafts on a request from the suppliers and that he had resorted to the above actions without authority and proper sanction from his higher authorities. Regarding these two charges, the first charge is admitted by the petitioner himself. On the second charge, his plea that the corrections were made after obtaining advice from the Deputy General Manager and the Tax Consultant was disbelieved by the enquiry officer mainly for the reason that no evidence was adduced to establish this fact. The enquiry officer expressed his inability to properly assess the validity or otherwise of the other charges for the reasons mentioned by him in his report. The management did not accept this finding of the enquiry officer and proposed to modify the same. The General Manager by Ext. P7 proceedings directed petitioner to show cause why the points of disagreement from the findings of the enquiry officer as stated therein should not be confirmed. He was also informed that the findings arrived at are only tentative and a final decision will be taken only after receiving his explanation. An explanation was in fact tendered by the petitioner and it was thereafter that Ext. P9 order of dismissal was issued. True, the management has every right to disagree with the findings of the enquiry officer and had come to its own conclusion on the basis of the evidence available before the enquiry officer. But those findings should also be based on such evidence. The main accusation against the petitioner was that the corrections were made in the office copies of the supply orders to enable the suppliers to get

unlawful gain. The disciplinary authority was aware of the absence of evidence at the time of enquiry regarding the elements constituting dishonesty on the part of the petitioner such as unlawful gain, intention to defraud or to cause loss to the Company. This is specifically mentioned in paragraph (10) of Ext. P7. It is stated that there cannot be a definite finding of dishonesty on the part of petitioner. Still the authority presumed dishonesty from the facts and circumstances of the case. It has to be said that this finding was arrived at without any materials whatsoever and after fully knowing about the absence on these aspects. The order of dismissal is based on this finding of the disciplinary authority which is based on no evidence. The order of dismissal is liable to be struck down for this sole reason.

18. Even according to the management, no loss was sustained by them. Learned Counsel for appellant would point out that there is likelihood of loss being sustained in future in case the sales tax authorities intend to proceed against them. This apprehension is baseless. The corrections are alleged to have been made on the impression that the materials to be supplied are exempt from sales tax. From Ext. P1, the office memorandum issued to petitioner calling upon his explanation, it is seen that the two suppliers are in Tamil Nadu. The misconduct alleged is adding the words "Nirodh Publicity Materials" and "tax exempted" and deletion of the words against "C" form. Twentyseven supply orders are seen to have been received from M/s. Coronation Litho Works, Sivakasi and M/s. Coronation Arts & Crafts, Sivakasi. The explanation of petitioner before the management was that the corrections were made on account of an inconsistency between the supply orders and the bills. The suppliers had given the descriptions of the materials to be supplied in the bills as either "towards board and printing charge for Nirodh publicity materials" or "Nirodh publicity materials". The supply orders did not contain such specific description. Moreover the order of the Tamil Nadu Sales Tax Appellate Tribunal in Appeal 41/75 was also brought to the notice of the petitioner whereunder the assessee was found eligible to get exemption from sales tax in respect of sales of Nirodh publicity materials. That necessitated necessary corrections to be made in the supply orders. At the utmost this amounts to error of judgment on his part. No pecuniary loss was caused to the management since the liability to pay sales tax is on the seller, viz. the suppliers. The insertions/additions in the supply orders had not therefore caused any prejudice to the management nor did petitioner obtain any unlawful gain. The apprehension of the management that liability of sales tax is likely to be fastened on them in future is without any basis since the sales tax has to be collected by the suppliers. That the quotations were offered by the suppliers offering prices which include sales tax also is no reason to say that an unfair advantage was obtained by the suppliers by the corrections made by petitioner, especially when Nirodh publicity materials had been held to be exempt from tax by the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench) Madurai which prompted petitioner to make the corrections. In any case therefore the action of petitioner in making the corrections amounts only to an error of judgment as observed by

the learned single Judge. The disciplinary authority was also aware of this as revealed from the statement in paragraph (10) of Ext. P7. If that be so, the order of dismissal is patently perverse and grossly unfair and disproportionate to the misconduct alleged. The punishment awarded may even amount to victimisation leading to an inference of mala fides on the part of the management. No error was therefore committed by the learned single Judge in quashing Exts. P9 and P11 orders. We see no error either in the reasoning or in the finding of the learned Judge.

19. A contention is seen raised before the learned single Judge that the Company has lost confidence on the petitioner and that the Company may be directed to pay compensation instead of reinstating the delinquent officer. Reliance was also placed on the decision of the Supreme Court in *O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others*. The learned single Judge is of the view that the facts of that case will not help the respondents in the original petition. Observing that the corrections were made by petitioner on account of a pure error of judgment it was held that the principles stated in Bhandari's case cannot apply to the facts of this case. That resulted in the direction for reinstatement of petitioner in service with arrears of salary.

20. Before this Court also the plea of loss of confidence is reiterated by the learned counsel for appellant and the decision in Bhandari's case was also referred to. While dealing with the plea of loss of confidence raised in an Industrial Dispute the Supreme Court in *L. Michael and Another Vs. Johnson Pumps Ltd.*, laid down the norms to be followed. It was held that an employer, who believes or suspects that his employee, particularly one holding a position of confidence, has betrayed that confidence, can, if the conditions and terms of the employment permit, terminate his employment and discharge him without any stigma attaching to the discharge. But such belief or suspicion should not be a mere whim or fancy. It should be bonafide or reasonable and it must rest on some tangible basis and the power has to be exercised by the employer objectively, in good faith, which means honestly with due care and prudence. The Supreme Court further held that if the exercise of such power is challenged on the ground of being colourable or mala fide or an act of victimisation or unfair labour practice, the employer must disclose to the Court the grounds of his impugned action so that the same may be tested judicially. The ipse dixit of the employer that he has lost confidence in the workman is not sufficient. The question whether or not the employer had lost confidence in the employee is essentially a question of fact. Ordinarily this Court should not disturb a finding of fact. But when the finding is based on no evidence or if it is so unreasonable or grossly unjust that no reasonable man would arrive at that conclusion this Court has to interfere and set right the matters.

21. The Supreme Court referred to the decision in *Management of Murgugan Mills Ltd. Vs. Industrial Tribunal Madras and Another*, where it was held that the form of the order is not conclusive and the Tribunal can go behind the order to

find the reasons which led to the order and then consider for itself whether the termination was a colourable exercise of power or unfair labour practice. It is further held that if it came to the conclusion that the termination was a colourable exercise of the power or was a result of victimisation or unfair labour practice the Industrial Tribunal would have jurisdiction to intervene and set aside such termination.

22. In a later decision reported in *Delhi Transport Corporation Vs. Ram Kumar and another*, which also arose on a reference under the Industrial Disputes Act the Supreme Court held that the plea of loss of confidence must have some rational relation to the fact that the employee had misused his position of trust and rendered it undesirable to retain him in service.

23. The question arose before the Supreme Court whether the charge levelled against a workman for using abusive language against another workman is a serious one and whether if proved would result in a loss of confidence of the management in that workman. The Supreme Court in *Ved Prakash Gupta Vs. Delton Cable India (P) Ltd.*, held that the charge is not a serious one and it is not known how the charge would result in any, much less total, loss of confidence of the management in the workman. The Supreme Court is of the opinion that the punishment of dismissal awarded to the workman was shockingly disproportionate regard being had to the charge framed against him. The Supreme Court further observed that no responsible employer would ever impose in like circumstances the punishment of dismissal to the employee and that victimization or unfair labour practice could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the workman within the premises of the factory.

24. Learned counsel for appellant has raised a contention that the principle laid down by the Supreme Court in the case of industrial workman cannot be made applicable to the case of an employee like the petitioner who is in the managerial cadre. The Supreme Court in *O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others*, has classified the workman into three categories, viz. "blue collar" workmen, "white collar" employees and also "gold collar" (managerial cadre) employees. The Supreme Court in that decision observed that in so far as the "gold collar" (managerial cadre) employees are concerned the quashing of the regulation calls for some reflection. In the private sector the managerial cadre of employees is altogether excluded from the purview of the Industrial Disputes Act and similar labour legislations. It is observed that the private sector can cut the dead wood and can get rid of a managerial cadre employee in case he is considered to be wanting in performance or in integrity. Not so the public sector under a rule similar to the rule impugned in the Supreme Court. The Supreme Court observed that it is in public interest that public undertakings or their Board of Directors are not compelled and obliged to entrust their managements to personnel in whom, on

reasonable grounds, they have no trust or faith and with whom they are in a bonafide manner unable to function harmoniously as a team working arm-in-arm with success. This, according to the Supreme Court, has to be taken into account while granting the relief.

25. The important question to be considered is whether petitioner was holding a position of trust and whether he has misused that position either to his advantage or to the detriment of the interests of the Company. Petitioner employed as the Purchase Officer holds a position of trust. That by itself is no reason for the management to terminate his services by stating that they had lost confidence in him. The plea of loss of confidence is not seen raised in the counter affidavit nor does the counter affidavit mention the factors which induced the management to lose confidence in the workman. In this context it is argued by learned counsel for appellant that the principles applicable to industrial workmen regarding the plea of loss of confidence cannot apply to the plea of loss of confidence in the case of an employee in the managerial cadre. We do not agree with the statement. True, the authorities cited relate to industrial workmen. But there is no reason why the principle of those decisions does not apply to the present case where a plea of loss of confidence has been raised without any basis whatsoever. As observed earlier there is no plea nor is there any evidence to substantiate that plea. Further more, the specific case of the workman that he had 21 years of unblemished record of service in the Company to his credit is not seen to have been controverted by the management. The management has not pointed out any instance in which action was taken against petitioner earlier. This is, therefore, the first instance in which a misconduct is alleged against petitioner, that too for a bonafide error, if it can be termed as an error. As rightly observed by the learned single Judge, the action of petitioner amounts to an error of judgment. That alone is not sufficient to lose faith in petitioner, especially when the disciplinary authority was aware that there was no evidence with regard to the elements constituting dishonesty such as unlawful gain, intention to defraud or to cause loss to the Company as slated in paragraph (10) of Ext. P7. The plea of loss of confidence was rightly rejected by the learned single Judge. We see no error in this finding.

26. For the aforesaid reasons the writ appeal is found to be devoid of merits and is hereby dismissed, but in the circumstances without costs.