
(1996) 09 BOM CK 0024
In the Bombay High Court
Case No : Writ Petition No. 1773 of 1984

Mannlal Yadao

APPELLANT

Vs

Presiding Officer, Second Labour Court and another

RESPONDENT

Date of Decision : 09-09-1996

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 78
Constitution of India, 1950 — Article 277, 311(1)
Industrial Disputes Act, 1947 — Section 11
Penal Code, 1860 (IPC) — Section 294, 353
Road Transport Corporations Act, 1950 — Section 14(3)

Citation : (1998) 1 BomCR 119

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Advocate : R.B. Pendharkar, for the Appellant; S.C. Mehadia, for the Respondent

Judgement

V.S. Sirpurkar, J.—The petitioner, a dismissed driver of the Maharashtra State Road Transport Corporation (hereinafter referred to as "the Corporation" for short), has herein challenged the award passed by the Labour Court affirming the said dismissal by the Corporation on account of the misconduct. Shortly stated the factual panorama is as follows :

2. The petitioner Mannala was working as a driver for about 8 years and was attached to Tumsar Depot. A charge-sheet came to be served on him on 25-7-1977 alleging therein that on 19-7-1977, while one P.P. Sable who was working as a Traffic Controller, was on duty in the room next to the Control Room, the petitioner entered the same at about 3 O'clock in the after-noon and at that time he was under the influence of liquor. He abused the said Shri Sable in the filthy manner and though he was tried to be appeased, the petitioner did not stop abusing and instead picked up an aluminium rod and hit Shri Sable on his left hand 3-4 times. Not only this but he also tore the pages of those Allocation Register and thereafter threw the said aluminium rod outside and left the place. In support of the charge-sheet, the statements of Shri P.P. Sable and

the other witnesses were also supplied. The particulars of the allegations were also supplied and an explanation was called. The petitioner was suspended on 27-7-1977. The charge-sheet was replied to by the petitioner who abjured his guilt and took a bold stand that no such incident had ever taken place at all and it was the figment of imagination and he was being falsely implicated on account of his having left the INTUC and having joined the other rival Union. The actual enquiry was held on 29-8-1977. The spot was also inspected and the second show-cause-notice was given with the findings on 31-8-1977 to which a reply came to be filed on 10-9-1977 and by order dated 17-9-1977, the petitioner was dismissed from the service. The initiation of the enquiry was by the competent officer who was none other but Divisional Traffic Officer.

3. A reference came to be made as against this enquiry and punishment. The Labour Court, before whom the reference was made, passed a preliminary award holding the enquiry to be fair and proper and in keeping with the principles of natural justice. Finally, the Labour Court found that the findings were correct and the punishment was also justified. It is this award which is challenged in the present petition.

4. Shri R.B. Pendharkar, learned Counsel appearing on behalf of the petitioner firstly contended that the whole enquiry was vitiated as in the first place the enquiry was not in keeping with the principles of natural justice and that the enquiry suffered because of the procedural lapses. In support of his contention, Shri Pendharkar took me through the preliminary award holding the enquiry to be in order. He contested that order on the ground that the various facets of the enquiry were not considered at all and the Labour Court mainly went on the rules regarding the discipline and appeal procedure laid down by the Corporation for its employees. According to Shri Pendharkar, it was bound to be seen firstly that there was a report made against the petitioner in respect of the alleged acts in the police station and the petitioner was prosecuted for the offence u/s 353 and 294 of the Indian penal Code. Shri Pendharkar, therefore, contended that in the wake of a pending prosecution, the enquiry could not have gone simultaneously as it would have unduly caused prejudice to the petitioner. He contended that this important question was not considered while giving a preliminary finding on the nature of the enquiry.

5. It is true that this aspect is not considered in the preliminary award. However, Shri S.C. Mehadia, learned Counsel appearing on behalf of the respondent No. 2-Corporation, countered it by pointing out that the petitioner did not raise any objection to this enquiry, on the ground that criminal prosecution was pending. Shri Mehadia pointed out that it was only at the time when the notice of punishment was replied to that the petitioner has feebly stated that the enquiry could not have been properly conducted. Now, if there was no demur by the petitioner against the enquiry being held, it was not incumbent for the Enquiry Officer to stop the enquiry, nor was it necessary for the Labour Court to stay the enquiry in fairness. If the objection was not raised to the enquiry at all, the

Labour Court was not even required to consider the question. That apart, while the criminal prosecution was in respect of the offences under sections 353 and 294 of the Indian Penal Code, the charges which were levelled against the petitioner were not limited only to those offences. It may be that the Substratum of the factual panorama may be similar, nay, even identical; yet there were number of charges which were not triable in the criminal prosecution, such as the destruction of the Corporation record and the unruly and undisciplined behaviour with the superior officers. Again, a close look at the chargesheet would show that the witnesses were also not identical witnesses in the criminal trial and in the Departmental Enquiry. There is, therefore, no force in the contention of Shri Pendharkar that the enquiry should not have been held simultaneously with the criminal prosecution against the petitioner.

6. Shri Pendharkar then contended that the Labour Court had not appreciated the enquiry at all, nor the facts proved therein and had merely "leafed through" the enquiry papers. That showed the casual approach by the Labour Court which could invalidate both the preliminary as well as the final award. Shri Pendharkar pointed out that here was an enquiry where the role of the prosecutor and the Judge was played by one and the same person and the petitioner was pushed to a position of the accused and was searchingly cross-examined by none else but the Enquiry Officer himself.

7. As regards the first charge, Shri Mehadia pointed out and, in my opinion, rightly that there is no impediment in the Presenting Officer being an Enquiry Officer and the role of a Presenting Officer being played by an Enquiry Officer. Shri Mehadia pointed out that the rules of the enquiry did permit such a procedure to be taken and, therefore, there was nothing wrong if the Labour Court also granted the approval to the enquiry on that count. Indeed, there did not seem to be anything contrary to the rules, if the Presenting Officer was not there to present the facts. On that count, therefore, the argument must fail. The Labour Court was right in holding that the enquiry was in keeping with the rules framed for that purpose by the Corporation.

8. Shri Pendharkar pointed out that here was a case where the delinquent was subjected to a searching cross-examination and that the Enquiry Officer stole the role of Presenting Officer in that behalf. Shri Pendharkar took me extensively through the statements and showed that number of questions were put to the delinquent/petitioner. Now, there is nothing unusual if the Enquiry Officer puts certain questions to the delinquent. As a matter of fact, the enquiry followed a simple procedure of first getting the statement of a witness proved and then put some questions himself to the said witness and then to give an opportunity to the delinquent to cross-examine the witness. The same practice was followed when the statement of the delinquent was considered. If few questions were asked, it cannot be said that the delinquent was thoroughly cross-examined as is pointed out by the learned Counsel, and as such the enquiry cannot be faulted on this count; so also the order of the Labour Court can also not be found fault

with, holding the enquiry to be in keeping with the principles of natural justice.

9. Shri Pendharkar then contended, relying on the" decision of the Supreme Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, , that in this case the Labour Court has completely ignored the letter and spirit of section 11-A of the Disputes Act, 1947 and felt itself to be bound by the findings and the punishment awarded by the Enquiry Officer. Shri Pendharkar tests the law right from the reported decision in *Vithoba Maruti Chavan v. Taki Bilgrami*, 1964 (XI) L.L.J. 31, which was a case on the old law. The main thrust of the argument of Shri Pendharkar is that in keeping with the decisions of the Supreme Court as also this Court, the Labour Court was bound to examine the findings and also actively consider the question of punishment. In that, Shri Pendharkar heavily relied upon the reported decision of this Court in *E. Merck (India), Limited. Bombay v. V.N. Parulekar and others*, 1991(2) B.C.R. 201 : 1991(11) C.L.R 73. Shri Pendharkar spelt out from this case a duty on the part of the Labour Court to reappraise the evidence and satisfy itself regarding the proof of the alleged misconduct against the worker. Dhanuka, J., extensively relying on *M/s Fires/one Tyre and Rubber Company's* case (cited supra), has held that the Labour Court should address itself on an issue whether the charge of misconduct levelled against the workman is proved to the satisfaction of the Tribunal by acceptable evidence. There, Dhanuka, J., relied on the observations by the Apex Court in *M/s. Firestone Tyre and Rubber Company's* case to the following effect :

"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."

Dhanuka, J., also relied upon the following observations in the said *Firestone Tyre and Rubber Company's* case :

"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."

In *General Employees Union Vs. Ambassador Sky Chef and Another*, , Srikrishna, J., has, in para-13, observed :

"It is now settled by the judgment of the Supreme Court in *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, that section 11-A was brought on the statute book specifically to give two additional powers to the Industrial Adjudicator. First is virtually a power of appeal against findings of facts made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts. The second and the far more important, is the power of reappraisal of the quantum of punishment."

Heavily relying on these cases and observations made therein, Shri Pendharkar contended that the Labour Court has miserably failed to either appreciate the evidence and to examine the findings and has also failed to consider the quantum of punishment. According to him, the Labour Court was probably not alive to section 11-A of the Industrial Disputes Act and considered it to be bound by the findings recorded by the Enquiry Officer and the punishment awarded by him, as was the previous Law. Shri Pendharkar, therefore, took the Court extensively through the award to suggest that the Labour Court had not taken upon itself the duty of re-examining the evidence.

10. There cannot be any dispute with the proposition laid down by the Apex Court in *Firestone's* case cited supra. It is, however, difficult to accept that the Labour Court in each and every case has duty u/s 11-A of the Industrial Disputes Act to reappraise the whole evidence and to give the findings thereupon. The reading of the judgment suggests that where earlier it was not possible for the Labour Court to go behind the findings of the Enquiry Officer, now the Labour Court has liberty or power to do so (in contra-distinction with "duty"), The Apex Court has also recognised the new power conferred upon the Labour Court or the Tribunal by amended section 11-A of the Industrial Disputes Act. In *Firestone's* case, the Apex Court explained the principles enunciated in section 11-A on the backdrop of its reported decision in *Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen*, wherein it is observed that in case of dismissal on misconduct, the Tribunal does not act as a Court of Appeal and substitute its own judgment for that of the management, and the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc., on the part of the management. In para 30, the Apex Court observed :

"In the course of such adjudication, the Tribunal has to be satisfied that the order of discharge or dismissal was not justified. If it comes to such a conclusion, the Tribunal has to set aside the order and direct reinstatement of the workmen on such terms as it thinks fit. The Tribunal has also power to give any other relief to the workman including the imposing of a lesser punishment having due regard to the circumstances. The proviso casts a duty on the Tribunal to rely only on the materials on record and prohibits it from taking any fresh evidence. Even a mere reading of the section, in our opinion, does not indicate that a change in the law, as laid down by this Court, has been effected."

In para-34, it is held that even after section 11-A, the employer and employee can adduce evidence regarding the legality or validity of the domestic enquiry, if one had been held by an employer. Earlier to this, the Apex Court recognised the right of the employer where the enquiry was not held by the employer or the enquiry was held to be defective, to adduce the evidence, for the first time, before the Tribunal justifying the order of discharge or dismissal. In para-36, it was observed that where a domestic enquiry has been held as also where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction u/s 11-A, about the guilt or otherwise of the workman

concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

The two other cases of this Court referred to me earlier spell out a power in the Labour Court to reappreciate the evidence and to record its satisfaction. The only duty cast upon the Court is to restrict to the material on record and not permitting leading of the fresh evidence before it. Shri Pendharkar submits that the Labour Court has miserably failed to do the same. His contention is that the Labour Court has not referred to the evidence as the Appellate Court is expected to do in keeping with the direction given by Srikrishna, J.. in General Employees Union's case cited supra. Even if it is to be presumed that section 11-A puts the Labour Court on a high pedestal of Appellate Court, it would have to be said that the Labour Court has discharged that function. It is difficult to put the Labour Court on that high pedestal. If the Labour Court is viewed as an appellate Court, then there is undoubtedly a duty in the Labour Court to reappreciate the evidence and to examine the findings on the basis of reappreciation of the evidence. In the judgment of the Firestone's case, the apex Court does not put the Labour Court or the Tribunal on that exalted pedestal of an Appellate Court. It only speaks that the Labour Court should be satisfied with the findings and should display its satisfaction. The Apex Court speaks of the power which was not there prior to the advent of section 11-A of the Industrial Disputes Act. It will have, therefore, to be considered whether the Labour Court was alive to section 11-A of the Industrial Disputes Act or felt itself to be bound down by the earlier law.

11. Shri Pendharkar has heavily relied upon the observations in para-7 of the Labour Court's award, where the Labour Court says-

"The only point now requires determination is whether the dismissal of party No. 2 from service was in any way wrongful as to justify the demands put forth and upon consideration of the oral and documentary evidence on record, my finding is in the negative."

The learned Counsel pointed out that the issue, which was shown by Dhanuka, J., regarding the satisfaction of the Tribunal, is not framed, and that the Labour Court merely felt itself bound by the findings of the Enquiry Officer. As a matter of fact, in para-8, the Labour Court has considered the whole evidence led on behalf of the Corporation. It has not only mentioned the names of the witnesses but also given gist of the evidence of those witnesses. It has found that the evidence of Shri P.P. Sable, Shri Shivshankar Gokhale, Shri Parteki, Z.D.Thakkar and Dhande was sufficient enough to prove the guilt of the petitioner. Specific reference has been made to the evidence of independent witnesses and it has been specifically found by the Labour Court that all these witnesses stood to the test of the cross-examination. The Labour Court has also held the presence of these witnesses most natural at the spot and the Labour Court has ultimately

come to the finding that there was a positive evidence about the charges levelled and has rightly held the version as proved. Lastly, the Labour Court has also found that in exonerating the petitioner of the incharge of drunkenness, the Enquiry Officer has shown his judicial acumen. It cannot, therefore, be said at all that the Labour Court, in any way, found itself to be bound down by the fact that the Enquiry Officer had recorded the findings against the petitioner.

12. Again, it was reiterated by Shri Pendharkar that the Labour Court should have considered the effect of the judgment of the Criminal Courts. Shri Pendharkar pointed out that the trial (Criminal) Court acquitted the petitioner of the offence u/s 353 of the Indian Penal Code and convicted him of the offence u/s 294 of the Indian Penal Code. However, in appeal, the Appellate Court acquitted him of that offence also. The contention of the learned Counsel is that the Labour Court was bound to consider the effect of these decisions that it has not, in fact, considered the aspect. Now, in the first place, Shri Mehadia countered this argument by showing that in para-9 of its judgment the Labour Court has, in fact, considered the whole aspect. There is undoubtedly a reference made to the judgment of the Appellate Court. Shri Mehadia promptly pointed out that the petitioner had not even bothered to place before the Labour Court, the judgment of the Criminal Court acquitting him of the offence u/s 353 of the Indian Penal Code. Once that factual position is established, it would not be for the Labour Court to invite the judgment of the Criminal Court and then to consider as to whether the petitioner had really assaulted the Government servant on duty. That apart, the charges levelled against the petitioner in the enquiry could not be said to be identical to the charges levelled in the criminal trial. The material relied upon is also different. I have already held that it was not necessary at all to stay the enquiry on the ground that it was identical with the criminal trial. No identity could be spelt out in the two. The Labour Court has proceeded to hold that it could not be said that there was no material available to the Enquiry Officer for holding that the petitioner was guilty of misconduct. It has approved that finding earlier by appreciating the evidence which, even if deemed to be its duty, was complied with by it. The Labour Court has thereafter found that, therefore, merely because the Criminal Court handed out the acquittal to the petitioner. That would not be the automatic exoneration from the Departmental Enquiry. Even before this Court the judgment of the Criminal Court acquitting the petitioner of the offence u/s 353 was not filed.

13. Shri Pendharkar further relied upon the case of the Supreme Court reported in *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, . In this case also, the Supreme Court has clearly laid down a rule that it is not possible or advisable to evolve a hard and fast, straight-jacket formula valid for all cases and of general application without regard to the particularities of the individual situation. Shri Pendharkar argued that here it is on the same set of facts that both the disciplinary enquiry and the criminal prosecution depend. I am afraid the contention cannot be accepted. The enquiry is based on a broader issue about discipline. It cannot be ignored that the charge of insubordination as also

of destruction of Corporation's records was not there in the criminal trial. On the back-drop of these facts, the contention of learned Counsel has to be rejected.

14. Shri Pendharkar thereafter proceeded to argue that the Labour Court had not independently considered the sufficiency of the punishment in terms of its duty u/s 11-A of the Industrial Disputes Act. The learned Counsel invited the attention of the Court to para 11 of the award of the Labour Court, where the Labour Court has proceeded to hold that considering the seriousness of the charges, there was no question of any interference in the quantum of punishment. The learned Counsel heavily relied upon some decisions to suggest that in the matters such as this, the dismissal could not be an appropriate or proper punishment. The learned Counsel pointed out that this Court in *Arun Khushalrao Zade v. Maharashtra State Road Transport Corpn.*, 1991 (1) C.L.R. 722 had declined to impose punishment of dismissal in the matter of theft. He also relied upon the Supreme Court judgment reported in *Rama Kant Misra v. The State of U.P.*, 1982 (1) L.L.J. 472 to suggest that the previous record of the petitioner was bound to be considered before embarking upon the confirmation of the extreme punishment. He also relied upon the Supreme Court decision in *Scooters India Limited Vs. Labour Court and Others*, to suggest that the attitude of the employer should be reformatory than retributive.

15. It is true that the approach of the Labour Court in the matter of quantum of punishment is somewhat sketchy. The Labour Court has mainly gone into the question of the seriousness of the misconduct and instead of again describing that misconduct, has chosen to leave it at that. It would be better to see what are the findings of the Enquiry Officer. Here was a case where a subordinate worker like the petitioner, who was working as a driver, created a scene on the motor-stand, a public place, in presence of the general public, and not only abused the superior officer but also physically assaulted him, and while doing that, showed scant respect to the records and chose to tear even the pages of the duty allotment register. All this had happened in the broad-day light at 3 O'clock, apart from the fact that the petitioner had shown disrespect to his superiors and completely threw the disciplines to the winds, the petitioner gave an impression of a bully to the general public. It cannot be forgotten that one such traveller was examined in the enquiry who fully supported the enquiry proceedings. There cannot be any hard and fast rule in the matter of punishment excepting that it should not be unduly harsh and that the Enquiry Officer and/or Labour Court should give an active consideration to the same. The Court has referred to the seriousness of the punishment and according to it that itself was sufficient enough for endorsing the finding of dismissal reached by the Enquiry Officer. The finding, though somewhat sketchy, is correct.

16. Shri Pendharkar submitted that the previous record of the petitioner was not considered. That is also not a fact. The previous record was very much there, inasmuch as the employer has proved the previous record. There is a specific evidence available that the petitioner was thrice dealt with and was let off. Shri

Pendharkar submitted that the Labour Court should have considered this aspect itself and this Court, in its constitutional jurisdiction, cannot embark upon that enquiry. It cannot, however forgotten that this matter was initiated in the year 1977. If, after 19 years of its pendency before various fora, the matter is sent back, it would be a sheer travesty. This is particularly true because the petition itself has been pending before this Court right from 1984. The bully like attitude of the petitioner, his not so clean record, the fact that he created a scene in the broad-day light in a public place like a motor-stand in presence of the members of public and in that he hit his superior officers and destroyed the property of the Corporation, cannot be just overlooked. The judgment of the Apex Court and other two judgments, which are referred to earlier, are entirely different on facts where such a grave misconduct was not in question. In one matter i.e. in Arun Zade's case, the worker was found to be removing two small pieces of rexine cloth. There the Court had relied on Rama Kant Misra's case (supra), where the dismissal was ordered on the flimsy grounds. The doctrine of De minimis non curial text was relied upon by this Court and it was held that the law should not take notice of the trifles. Such is not the case here. Shri Pendharkar's contention that a reformatory attitude should be taken, cannot also be accepted, for the simple reason that the petitioner had shown no remorse whatsoever. On the other hand, in his defence, the petitioner went on to substantiate it by contending that no such incident has ever occurred and that all the superior officers had conspired against him to concoct a false case against him. No opportunity was sought for showing any remorse. Such course, therefore, cannot be, and was rightly not, taken by the concerned authorities.

In Scooter India Limited's case (supra) also, where the Supreme Court approved setting aside of dismissal and limiting the punishment to restricting the backwages to 75% only, the facts are entirely different and inapplicable to the present case. The decision relied upon by Shri Pendharkar in Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another, is also wholly different in facts and turns more on the scope of interference by the High Court under Article 227 of the Constitution than on the question of quantum of punishment. Shri Pendharkar also relied upon a decision of Supreme Court in Jaswant Singh Vs. Pepsu Roadways Transport Corporation and Another, , where the driver was proved to have driven a bus in the drunken condition and yet the Labour Court had granted him the reinstatement. Supreme Court had approved the course taken by the Labour Court and expressed that dismissal was not a proper penalty. Even here, beyond the drunken driving, nothing else was done by the driver and, therefore, it cannot be said that firstly there is any principle laid down by the Supreme Court in this case and, secondly, that the facts are in any manner similar to the present case. The contention regarding the quantum of punishment has, therefore, to be rejected.

17. Last, but not the least, Shri Pendharkar pointed out that the whole exercise of initiating the enquiry and awarding the punishment was without any authority. Shri Pendharkar argued that the appointing authority of the petitioner was

Divisional Controller, while the enquiry was initiated and the dismissal order was passed by the Divisional Traffic Officer who is essentially an officer lower in rank to the Divisional Controller. According to him, therefore, the whole exercise is bad in law.

18. It would be seen that this question has been raised in a most general manner in his written-statement by the petitioner, before the Enquiry Officer as also before the Labour Court. The thrust of the argument of the learned Counsel is more or the less on the spirit of Article 311(1) of the Constitution of India and the contention is that the Departmental Enquiry cannot be initiated and the punishment in pursuance thereof cannot be awarded by an authority lower to the appointing authority. In support of his contention, Shri Pendharkar has relied upon an unreported judgment of the Division Bench of this Court in Writ Petition No. 1091 of 1984, *Indraj D. Thakre v. State Bank of India*, decided on 26th/27th April, 1988. He also relied on *State of Bank of India Vs. S. Vijaya Kumar*, ; *Municipal Corporation of Delhi v. Sh. Ram Pratap Singh*, 1979 (2) SLR 324 and *Mysore State and Road Transport Corporation v. Mirja Khasin Ali Beg*, 1977 (1) SLR 237.

19. Shri S.C. Mehadia, learned Counsel appearing on behalf of respondent No. 2 however, on the other hand, pointed out that as per the Regulations, which govern the service conditions of the staff of the Corporation, the concerned officer was specifically empowered to initiate such action. According to him, the enquiry cannot be faulted or account of the authority as the Regulations specifically grant such power.

20. It is seen that the present Corporation is a child of the Road Transport Corporation Act, 1950. Section 14(3)(b) thereof provides that the conditions of appointment and service of the employees of the Corporation shall be determined by the regulations made under the Act. Attention of the Court was drawn to these Service Regulations. Regulation 80 empowers the Corporation to specify the act of misconduct or omission and classify such acts of misconduct and minor lapses. The regulation also empowers the Corporation to prescribe procedure for dealing with the cases of misconduct and minor lapses on the part of the delinquent. It further empowers the Corporation to appoint appropriate authorities to impose punishments and to hear appeals and order disciplinary actions. Shri Mehadia further invited my attention to the Disciplinary and Appeals Procedure and pointed out that under Schedule "C" the disciplinary authority and competent authority to deal with the staff working in the Depots and Sub-depots was the Divisional Traffic Officer. On the basis of this, Shri Mehadia contended that when there is a specific rule in respect of the competent authority, there is no necessity to go to the general principles under Article 311(1) of the Constitution of India, as there is no challenge to the Rules. He further pointed out that, indeed, there was no murmur against these rules either by the Union or individually by the employees and more particularly the present petitioner.

21. Once there are rules in the field which are operating even earlier to the

induction of the petitioner in service of the Corporation, the petitioner cannot find fault and cannot seek to rely on the general principles laid down by Article 311(1) of the Constitution of India. It is not disputed at all that Article 311(1) is not attracted in the present case, as the petitioner does not hold a civil post and is an employee of the Corporation. Municipal Council, Delhi's case and Mysore State and Road Transport Corporation's case (cites supra) are the cases where Article 311(1) of the Constitution of India was clearly attracted. In Municipal Council, Delhi's case, there was a clear dictate of law in shape of section 95(1) of Delhi Municipal Corporation Act, 1957, providing that no officer or employee could be reduced in rank or punished by any authority subordinate to the appointing authority. There is no such rule in the present Corporation such as section 95. As regards the Mysore State and Transport Corporation's case also the factual panorama is different. There also the employee was working as a conductor in the Road Transport Department of the erstwhile State of Hyderabad. After reorganisation, he was allotted to the State of Mysore and was continued in the Depot which became the part of the Mysore Transport Department. Thus, he was clearly holding the civil post and, therefore, Article 311(1) of the Constitution was clearly attracted. The Apex Court also held the post to be a civil post and, therefore, afforded the protection under Article 311(1) relying on subsection (2) of section 116 of the States Reorganisation Act, 1956. Such is not the situation in the present case.

As regards the case of State of Bank of India Vs. S. Vijaya Kumar, , again the Apex Court clearly held that the employees of the State Bank could not seek any protection under Article 311(1) of the Constitution of India as they were not holding the civil posts. However, the Apex Court relied on Regulation 55(2)(a) of the General Regulations, giving them the protection from being punished by an authority lower than the appointing authority. The rule in the present case is quite otherwise and, therefore, this authority is of no help to the petitioner. Similar is the case with the Division Bench judgment of this Court in *Indraj D, Thakre v. State Bank of India*. This was also a case of State Bank's employee where a relief was sought on Regulation 55(2)(a) of the State Bank Regulations. The judgment in this case also turns on the rules because of which the ratio in the said judgment would not be applicable

22. That apart, the further contention of Shri Pendharkar, that the Rules of the Corporation should have been in keeping with the Article 311 of the Constitution of India, has to be mentioned only to be rejected in the absence of any challenge thereto.

23. Lastly, Shri Pendharkar relied upon the decision of the Supreme Court in *Kumar v. The Divisional Assistant Electrical Engineer, Central Railway*), AIR SC 1912. However, even that case clearly and completely turns on Article 311(1) of the Constitution of India and, therefore, is inapplicable to the present situation. In short, the disciplinary enquiry was correctly initiated by a competent authority in keeping with the Rules of the Corporation and the punishment was also

awarded by an authority having competence to do so. This argument has, therefore, to be rejected.

24. Lastly, Shri Pendharkar pointed out that the petitioner had suffered right from 1977 and was without a job. He pointed o'ut that the petitioner would be about 58 years now and in that view, a lenient view should taken by this Court regarding the punishment. It has already been pointed out that these factors will not weigh, particularly when the misconduct of the petitioner was of such a degree so as not to give him any benefit of lost years in the litigation.

25. In the result, this writ petition has no merits and must fail. It is accordingly dismissed. However, in the circumstances of the case, there shall be no orders as to the costs.

26. Petition dismissed.