

(2017) 01 RAJ CK 0139
In the Rajasthan High Court
Case No : 3522 of 2002

RAJASTHAN STATE ROAD TRANSPORT CORPORATION & Ors	APPELLANT
Vs	
RAM KUMAR JAITELY & Anr	RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

[Industrial Disputes Act, 1947](#), [Section 10](#), [Section 11\(a\)](#) - Reference of disputes to Boards, Courts or Tribunals - Procedure and powers of conciliation officers. Boards, Courts and Tribunals and

Citation : (2017) 01 RAJ CK 0139

Hon'ble Judges : Sanjeev Prakash Sharma

Bench : SINGLE BENCH

Advocate : Dinesh Ojha, Ravish Sharma

Judgement

1. The writ petition filed by the petitioners against the award dated 08.06.2001 passed in Industrial Dispute Case No.124/1999 by the Industrial Tribunal cum Labour Court, Sri Ganganagar.
2. By way of this petition petitioners raised a short question of law whether the Industrial Tribunal or Labour Court, Sri Ganganagar while examining a reference made to it under Section 10 of the Industrial Tribunal Act, 1947 (in short "the Act of 1947") passed an award dated 08.06.2001 on quantum of punishment where the punishment is other than dismissal or removal from service. In other words, whether the power as available to the Industrial Tribunal or Labour Court, Sri Ganganagar (in short "the Tribunal") under Section 11 (A) of the Act of 1947 can also be extended to power to examine the propriety of punishment order which has been referred to it reference made under Section 10 of the Act of 1947.
3. The factual matrix of the present case is that the petitioner challenged the award passed by the Tribunal wherein the respondent had raised a dispute referred to it with regard to punishment awarded to him of stoppage of eight annual grade increments by way of different orders. The reference was made on

behalf of petitioner through its Union on 22.01.1998.

4. In the Industrial Dispute, the claim petition filed by the petitioner it was submitted that he was appointed in August 1968 as a booking clerk and he was promoted vide order dated 06.01.1981 and vide order dated 01.10.1983, one grade increment was stopped with cumulative effect on the basis of charge sheet issued to him and the punishment order was passed on 14.11.1986. The charge against him levelled that while he was a traffic inspector, he wrongfully made a remark of a conductor having allowed two passengers traveling without ticket, without conducting actual inspection. Vide another order dated 08.07.1987, his three increments were stopped with cumulative effect. This punishment was occasioned on the basis of charge sheet dated 14.11.1984. Apart from above, by an order dated 08.07.1987 three increments effects were also stopped by the RSRTC vide order dated 08.07.1987. It is also alleged that inquiry was conducted with regard to third order and in this manner it was claimed that the eight increments stopped with cumulative effect deserves to be restored and the orders impugned were ordered to be set aside.

5. The petitioner-non-claimant submitted their reply and asserted that the claim was not maintainable and deserves to be rejected. It was stated that the petitioner had been served with several charge sheets relating to separate delinquencies. After conducting enquiry, punishment orders had been passed on the basis of enquiry report findings. It has been stated that the claimant-non-petitioner was posted as Vehicle Inspector and there were several complaints relating to his work performance due to which, charges were levelled against him. It has been further stated that the claimant wrongfully made a remark relating to the conductor Gurubachhan Singh of carrying two passengers without ticket whereas when the same vehicle was checked by another flying team, it was found that there were four passengers, who were travelling without ticket. It has been further stated that the non-petitioner did not submit Daily Checking Reports in time and thereby committed several irregularities, for which, he was found guilty. The area, which was under the control of the non-petitioner Vehicle Inspector, was found several times by the flying team that vehicles were carrying 15, 5, 6, 11 1/2 & 60 passengers without ticket and in this manner, it is clear that the non-petitioner was not performing his duties as Vehicle Inspector and was not doing proper checking of the vehicles. Petitioner in support of their reply submitted 56 documents.

6. The Tribunal examined the claim and found that the enquiries which had been conducted were fair and proper and there could not be any irregularity found in the enquiry proceedings. The Tribunal also gave a finding that it cannot act as a disciplinary authority or as the appellate authority and the charges which had been proved in the domestic enquiry, it was found to be fair, could not be interfered with by it. The Tribunal, however, proceeded to reduce the punishments considering the nature of charges and converted the stopping of one annual grade increment from cumulative effect to non-cumulative. The

second punishment of stopping of three annual grade increments with cumulative effect is concerned, the same was not interfered with while in the third punishment order of stopping of three annual grade increments with cumulative effect were converted by the Tribunal to stopping of three annual grade increments with cumulative effect.

7. Accordingly, the petitioners have challenged the power of the Tribunal to convert the punishments. It is stated that the Tribunal has vested powers under Section 11-A of the Act of 1947 for reduction of punishment where the punishment of dismissal or removal from service has been awarded. However, it is urged that the Tribunal does not have powers to reduce any other punishment awarded to a delinquent, once it reaches to the conclusion that the enquiry conducted was fair and proper. It is submitted that the power under Section 11-A of the Act of 1947 could not be exercised in such cases.

8. In support of the submission Mr. Dinesh Ojha, learned counsel for the petitioners has relied upon the judgment in the matter of Divisional Manager, Rajasthan State Road Transport Corporation Vs. Kamruddin decided on 12.05.2009 wherein the Hon"ble Supreme Court examining the quantum of punishment issue, has held as under:- "10. The power of Labour Court and/or Industrial Tribunal in terms of Section 11A of the Industrial Disputes Act, 1947 to interfere with the quantum of punishment although cannot be denied, but it is also a well settled principle of law that the said power should be exercised judiciously.

The Labour Court relied upon the decision of this Court in Bhagyo Mal (supra) wherein the High Court allowed back wages to the workman concerned. This Court in the facts and circumstances of the case found the order of the High Court to be self-contradictory, stating:

"When the High Court had found that the respondent - employee deserved punishment on account of his misconduct, the High Court could not have rewarded the employee by granting him the back wages particularly when the Tribunal had converted the order of dismissal into that of the stoppage of two increments with cumulative effect. We, therefore, allow the appeal and set aside that part of the order of the High Court whereby the respondent - employee has been given the benefit of back wages. The rest of the order is maintained."

We fail to understand as to how the said decision advanced the case of the respondent."

9. The counsel for the respondents has supported the judgment and award passed by the Tribunal and submits that the power under Section 11 (A) of the Act of 1947, for reduction of dismissal and removal is independent to the power under Section 10 of the Act of 1947. Once a reference is made to the Tribunal regarding the legality and propriety of order of punishment, it would mean that the Tribunal apart from considering the manner, in which, the impugned order has been passed, can also examine the propriety of passing of the punishment

order and it can also reduce the punishment awarded. Once the Tribunal finds that the same is disproportionate to the so called delinquency and does not commensurate with the charges levelled against the concerned claimant it can reduce the same. It is admitted that although the court may reach to the conclusion that inquiry has to be fair, but still the punishment which may be lesser than dismissal or removal from service can also be interfered with, keeping in view of the second part of the reference terms it relates to the question of relief, which may be given to the concerned claimant.

10. In support of his submissions, he relied upon the judgment passed by the Full Bench of Gujarat High Court in the GSRTC Vs. D.V. Chauhan reported in (2006) 2 GLR 889.

11. Having heard the submissions advanced by both the sides, this Court has to examine the legality and propriety of the order, by which, the punishment awarded by the petitioner, on the basis of an inquiry, which was held to be fair, could be reduced holding it to be disproportionate.

12. It is true that this Court as well as the Hon''ble Supreme Court have been varying the punishment order, once they find that it is extremely shocking and disproportionate to the delinquency committed by an employee and theory of proportionality of punishment been propounded. In this respect the Hon''ble Supreme Court in the case of B.C. Chaturvedi Vs. Union of India reported in AIR 1996 SC 484 wherein it has been held as under:- "A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases. impose appropriate punishment with cogent reasons in support thereof. "

13. The power of Tribunal in terms of Section 11-A of the Act of 1947 to interfere with the quantum of punishment, is not in all cases and is only limited to the extent, provided under the said provisions of the Act and, therefore, such a power which has been exercised by the Tribunal, in the present case, cannot be said to be flowing from Section 11 (A) of the Act of 1947. Nor the Tribunal was entitled to assume such a power under Section 11 (A) of the Act of 1947 as held in Divisional Commissioner RSRTC Vs. Kamruddin (Surpa).

14. The question still remains that under Section 10 of the Act 1947 where a reference made for an order passed by the authorities against claimant who is

aggrieved of the same. Whether the Tribunal can vary such order by holding it to be unjustified while granting relief?

15. In the case of Karnataka State Road Transport Corporation Vs. B.S. Hullikatti reported in (2001) 2 SCC 574 it was held that it is a misplaced sympathy by the Tribunal to reduce the punishment relating to cases where conductors have been found causing financial loss to the Corporation by allowing passengers to travel without tickets. A similar view has been taken by the Hon"ble Supreme Court in the case of RSRTC Vs. Ghyanshyam Sharma 2002 (10) SCC 330. In another case of Uttranchal Transport Corporation VS. Sanjay Kumar Nautiyal reported in 2008 SCC 131, the same view was taken by the Honb"le Supreme Court.

16. In the case cited by the counsel for the respondents the Full Bench of the Gujarat High Court has held as under:- "11 Adverting to the question, which of the two judgments referred to by the Division Bench (Coram: R.S.Garg & Ravi R. Tripathi, JJ.) decides the law correctly, our answer is, Section 11A may exclusively deal with cases of discharge or dismissal, but criteria, after common reference under Section 10, to decide an industrial dispute is same, namely, the Second Schedule and the Third Schedule. In other words, in all cases of punishments, Labour Court/ Tribunal can examine the legality and propriety of punishment, irrespective of nature thereof. Scope of examination of an industrial dispute and extent of interference is same irrespective of the fact that Section 11A deals specifically with cases of discharge or dismissal, because, as said, in all cases, it is the legality and propriety of the order passed by the employer which is to be examined."

17. Further it has held as under:- It is also correct when it holds that dehors Section 11A the legality and propriety of punishment had to be examined by the Industrial Tribunal/ Labour Court while adjudicating the industrial dispute referred to it for adjudication, but holding that once an industrial dispute is referred for adjudication, the Industrial Tribunal / Labour Court, in Page 0920 exercise of its power under Section 11A, is bound to adjudicate upon the dispute and pronounce upon it, is not correct, because dispute is not referred under Section 11A, it is referred under Section 10, and once referred, be it punishment of dismissal or discharge or any other kind of punishment, Labour Court/ Industrial Tribunal is bound to adjudicate upon the legality and propriety of punishment order referred in dispute and pronounce upon it.

18. In my view, I find that the disputes which are referred to the Tribunal are only disputes under Section 10 and not under Section 11 (A) of the Act of 1947 and the later part of the view taken by the Gujarat High Court, therefore, obviously has not taken into consideration, the provision of Section 11 (A) of the Act of 1947 which only gives the enabling power to the Tribunal to reduce the punishment.

19. In view thereof, I am unable to accept the theory that once the Tribunal has upheld the entire departmental proceedings and holds the inquiry to be fair but

can still reduce the punishment of stoppage of annual grade increments which is lesser than dismissal or removal from service. The Tribunal is a creature of the statute. It has to follow the provisions under the statute and cannot be said to be having power akin to this Court or that of Hon"ble Supreme Court for reducing punishment in a given case where it is found to be shockingly disproportionate. Moreover, the punishment awarded cannot be said to be shockingly disproportionate, not any such finding has been given by the Tribunal.

20. In view of the above, the writ petition allowed. The award dated 08.06.2001 passed by Industrial Tribunal cum Labour Court, Sri Ganganagar in Industrial Dispute Case No.124/1999 is ordered to be quashed and set aside.