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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment Pronounced on : 07.01.2025***

\+ **W.P.(C) 10360/2016**

DELHI TRANSPORT CORPORATION .....Petitioner

Through: Ms. Aditi Gupta, Adv.

versus

MAHENDER SINGH .....Respondent

Through: Mr. S.C. Sharma, Adv. with Mr. Ashish Verma, Adv.

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.

1. The challenge in the present petition is to an Award dated 20.07.2016 passed by the learned Presiding Officer, Labour Court-XVII, Karkardooma Court, Delhi in the matter titled as ***'M/s. Delhi Transport Corporation v. Sh. Mahender Singh'*** [hereinafter referred to as "Impugned Award"].

2. The Coordinate Bench of this Court had by an order dated 04.11.2016 passed directions staying the enforcement of the Impugned Award. Thereafter on 15.10.2019, the Petitioner/DTC was directed to produce the relevant medical record of the Respondent/Workman including finding of the Medical Board. The records have since been filed by the Petitioner/DTC on 14.08.2024, during arguments before this Court.

3. Briefly the facts in the present case are that the Respondent/Workman had joined the services of the Petitioner/DTC

in the year 1983 as a Retainer Crew Driver and his services were regularized in the year 1985, making him a permanent employee of the Petitioner/DTC.

4. The services of the Respondent/Workman were terminated by the Petitioner/DTC on 16.10.2007 pursuant to the disciplinary proceedings initiated against him. It is the case of the Petitioner/DTC that the Respondent/Workman was absent from his duty from 01.01.2007 to 31.05.2007. An enquiry was held pursuant to which the Respondent/Workman was charge-sheeted on 12.06.2007 for the period of his unauthorized absence.

4.1 The enquiry culminated into an enquiry report dated 14.08.2007, which found the charges against the Respondent/Workman to be correct. This led to the issue of a show cause notice dated 13.09.2007 to the Respondent/Workman and which was followed by the order of termination dated 16.10.2007 [hereinafter referred to as "Termination Order"]. The order of termination found the Respondent's responses not to be satisfactory and imposed a penalty of removal with immediate effect from the services of the Petitioner/DTC.

5. The order of removal and the penalty imposed were challenged by the Respondent/Workman before the learned Labour Court. In its statement of claim, it was contended by the Respondent/Workman that the Respondent/Workman was not given the list of witnesses and the documents relied on by the Petitioner/DTC before the Enquiry

Officer. The Respondent/Workman also alleged that the principles of natural justice were violated as he was not given an opportunity of being heard by the Petitioner/DTC and that the enquiry was not conducted according to the Rules of the Petitioner/DTC.

5.1 It was further contended that the Respondent/Workman was suffering from an illness for a long period and had also submitted leave applications along with his medical certificate for the period of leave, despite which his services were terminated.

6. The Petitioner/DTC filed its written statement before the learned Labour Court wherein it denied that the Respondent/Workman was a hard-working and sincere workman. The Petitioner/DTC sought to rely on the record of the Respondent/Workman which showed that due to unauthorized absence from duty, the Respondent/Workman had been warned on more than one occasion and that penalties had also been imposed on him.

6.1 The Petitioner/DTC submitted that the Respondent/Workman was in the habit of frequent unauthorized absence from duty for which previously as well, he has been punished with stoppage of increments and bringing him on the initial stage of pay of drivers.

6.2 The Petitioner/DTC also denied the charges levied by the Respondent/Workman as baseless and unjustified and the Petitioner/ DTC reiterated its stand that the careless attitude of the Respondent/Workman towards his duties amounted to a misconduct under para-No. 19(H)(M) of the Standing Orders of Petitioner

Department which is annexed as **Ex.MW 2/8** before the learned Labour Court. Since, the disciplinary authority of the Petitioner/DTC found the response of the Respondent/Workman unsatisfactory, the orders for termination were issued.

7. The learned Labour Court passed an Award on 20.07.2016 wherein it directed that the Termination Order passed by the Petitioner/DTC was modified to the extent that the Respondent/Workmen was to be deemed to have retired on 16.10.2007, and all retiral and consequential benefits be awarded to him within one month from the date of publication of the Award. It is this Award that has been challenged by the Petitioner/DTC.

8. Learned Counsel for the Petitioner/DTC has contended that even though the learned Labour Court did not find any illegality in the decision of the Petitioner/DTC, the learned Labour Court modified the penalty of removal imposed on the Respondent/Workman to that of compulsory retirement from the date of his removal.

8.1 Learned Counsel for Petitioner/DTC submits that this exercise of discretion by the learned Labour Court is arbitrary, given the fact that the Respondent/Workman was habituated with availing of unauthorized leaves. It is further contended that the record of the absences over the 24 years of service show regular and repeated absence of the Respondent/Workman for which penalty was also imposed on the Respondent/Workman including with stoppage of the next 3/4 increments as well as reduction in his pay grade and several

warnings were issued to the Respondent/Workman.

8.2 In addition, it is contended that the Impugned Award has given a finding in favour of the Respondent/Workman only on the ground of compassion. It is averred that it is settled law that the Tribunal/Courts cannot reduce punishment of a Workman merely on compassionate grounds. Reliance in this regard is placed on the judgements of the Supreme Court in ***Bharat Forge Co. Ltd. v. Uttam Manohar Nakate[1]; M.P. Electricity Board v. Jagdish Chandra Sharma[2]*** and ***J.K. Synthetics Ltd. v. K.P. Agrawal & Anr[3].***

8.3 Learned Counsel for Petitioner/DTC further contends that in cases of unauthorized absence, the Courts have held the punishment of removal to be a punishment proportionate to the charge. It is contended that the discretion to interfere with the quantum of punishment has to be exercised judiciously by the learned Labour Court and not in the manner done so in the Impugned Award.

9. Learned Counsel for the Respondent/Workman, at the outset, submits that the basis for the Impugned Award was not *"compassionate"*, but the learned Labour Court found the punishment awarded to the Respondent/Workman to be disproportionate to his conduct.

9.1 Learned Counsel for the Respondent/Workman further submits that for a finding of misconduct in the case of an unauthorized

[1] (2005) 2 SCC 489
[2] (2005) 3 SCC 401
[3] (2007) 2 SCC 433

absence, it has to be a willful unauthorized absence, however, the Respondent/Workman had submitted medical documents to show that he was suffering from an illness/disease and was unable to report to work.

9.2 Reliance has been placed on the judgment of the Supreme Court in the case of ***Krushnakant B. Parmar v. Union of India & Anr.***[4]**,** to submit that if the absence is a result of compelling circumstances including illness, hospitalization, etc., then unless the allegation of unauthorized absence is willful, such absence will not amount to misconduct.

9.3 Learned Counsel for Respondent/Workman also seeks to rely on the judgment in the case of ***Hanuman Sahai v. State of Rajasthan***[5] wherein the Supreme Court remitted the matter directing to consider a lesser punishment as the delinquent had an explanation for the impugned absence on the account of ill health.

9.4 It is contended on behalf of the Respondent/Workman that the Reply to charge-sheet dated 12.06.2007 given by him reflected that he had taken leave for a relevant period due to his sickness and also due to the sickness of his wife, who was similarly unwell for a long time. He seeks to rely upon the reasons for absence as explained in his Reply dated 11.07.2007 given to the charge-sheet dated 12.06.2007 in this regard.

9.5 Reliance has also been placed on the judgment of a learned

[4] (2012) 3 SCC 178
[5] 2018 SCC OnLine SC 2852

Single Judge of the Bombay High Court ***Ganesh Ranjan Servai v. Benett Coleman and Co. Ltd. and Others***[6] to submit that the employer is required not only to establish that the alleged misconduct occurred but also to demonstrate that the chosen punishment was justified given the specific facts and circumstances of the case.

9.6 Learned Counsel for the Respondent/Workman submits that the enquiry was not conducted as per the applicable Rules and that no misconduct was committed by him. The charge-sheet was vague and the punishment handed to him was excessive and disproportionate to his misconduct.

Findings

10. At the outset, it is apposite to set out that the decision in the present matter was in two parts by the learned Labour Court. The learned Labour Court framed two issues in the matter on 29.04.2009:

> *"i) Whether the enquiry conducted by the management is fair and proper and in accordance with the principles of natural justice?*
>
> *(ii) Whether the removal of the workman is illegal and unjustified, if so to what relief the workman is entitled to?"*

10.1 Issue (i) was framed as a preliminary issue by the learned Labour Court and was decided by the learned Labour Court by its order dated 28.05.2016 [hereinafter referred to as the "28.05.2016 Order"].

11. It was the contention of the Respondent/Workman that the enquiry was not conducted as per the principles of natural justice,

[6] 1988 SCC OnLine Bom 41

since the Respondent/Workman was not given a proper opportunity to defend his case and he was not supplied copy of list of documents and witnesses relied upon by the Petitioner/DTC. On the other hand, it was contended by Petitioner/DTC before the learned Labour Court that the Respondent/Workman was present before the Enquiry Officer and admitted to the charge voluntarily before the Enquiry Officer. It is further contended that in view of this admission, the Petitioner/DTC had not examined a single witness before the Enquiry Officer and that the enquiry was held only on one day and the Respondent/Workman was present on that day.

11.1 The other contention raised by the Respondent/Workman was that the Respondent/Workman could not attend his duty on account of the long illness of his wife and he had filed the medical papers of his wife, which were not considered by the Enquiry Officer. The learned Labour Court gave a finding in the 28.05.2016 Order that in the enquiry proceedings, the Respondent/Workman had not taken the defense of the illness of his wife in any application filed by him to avail leave but had instead submitted that he is suffering from a disease called "Cycodarivat Lombay".

11.2 The learned Labour Court, after examining the documents, gave a finding that before the Enquiry Officer, the Respondent/Workman had not taken a defense that he was absent due to the long illness of his wife and that neither his leave applications nor medical papers were before the Enquiry Officer. The learned Labour Court therefore examined these leave applications and gave a finding that none of

these leave applications were on the sickness of his wife. The learned Labour Court also found that these were not filed in advance.

12. As stated above, the leave applications of the Respondent/Workman were placed on record by the Petitioner/DTC, this Court has examined the applications for the period from 29.12.2006 to 27.05.2007. The reasons as set out in these applications for this period are extracted below:

(i) From 29.12.2006 to 07.01.2007 on the ground that the Respondent/Workman's son was admitted in a hospital;

(ii) From 08.01.2007 to 24.01.2007 on the ground that the Respondent/Workman was suffering from fever and loose motion;

(iii) From 27.01.2007 to 06.02.2007 on the ground that the Respondent/Workman sustained an injury on his foot;

(iv) From 27.01.2007 to 14.02.2007 on the ground that the Respondent/Workman was suffering from typhoid;

(v) From 17.02.2007 to 26.02.2007 on the ground that the Respondent/Workman had pain in neck and back;

(vi) From 27.02.2007 to 07.03.2007 on the ground that the Respondent/Workman was still suffering from an illness;

(vii) From 10.03.2007 to 25.03.2007 on the ground that the Respondent/Workman had pain in his neck and back;

(viii) From 26.03.2007 to 04.04.2007 on the ground that the Respondent/Workman was suffering from illness;

(ix) From 05.04.2007 to 15.04.2007 on the ground that the

Respondent/Workman was still suffering from illness and recovering;

(x) From 16.04.2007 to 25.04.2007 on the ground that the Respondent/Workman was suffering from illness;

(xi) From 26.04.2007 to 03.05.2007 on the ground that the Respondent/Workman was still suffering from illness; and

(xii) From 23.05.2007 to 27.05.2007 on the ground that the Respondent/Workman was having loose motion.

12.1 The learned Labour Court found that most of these applications were filed after the leave was already availed and, hence, were rejected by the Petitioner/DTC as these were not filed in advance. The learned Labour Court also gave a finding that there was no leave application on the ground of sickness of the wife of the Respondent/Workman.

12.2 Based on the aforegoing, the learned Labour Court decided that the Enquiry Officer had not violated the principles of natural justice and that the Enquiry Report was in order.

13. The Impugned Award decided the second issue which was whether the removal of the Respondent/Workman was illegal and unjustifiable and to what relief, if any, the Respondent/Workman is entitled to.

14. The learned Labour Court examined the record and found that, during the tenure of Respondent/Workman's service from 1983 onwards, there were 8 adverse entries in his service record and of

these 8 entries, 7 of them pertain to his unauthorized absence from duty. The learned Labour Court found that since the Respondent/Workman was absent from duty for 100 days in the year 2007 itself and that his absence shows that he had complete lack of devotion in his duty. However, the learned Labour Court also gave a finding that the Respondent/Workman had served the Petitioner/DTC for 24 long years and that the disciplinary authority did not take into account the length of his service prior to terminating him. In view thereof, it was held that the punishment of termination from service is *"slightly"* disproportionate to the misconduct, hence, the act of the Petitioner/DTC is unjustifiable. The Impugned Award thus modified the Termination Order to the extent that retiral and consequential benefits like pension be given to the Respondent/Workman within a month, failing which the Petitioner/DTC shall also be liable to pay interest at the rate of 9% per annum.

14.1 Paragraphs 11 and 12 of the Impugned Award are extracted below:

> "*11.* ***The claimant was unauthorizedly absent from duty for 100 days. Such absence shows that he had complete lack of devotion in duty****. It is admitted the case of both parties that the claimant had joined the management as retainer crew driver on 24.12.1983 and he had served the management till 16.10.2007 i.e. for long about 24 years.* ***The disciplinary authority did not take into account length of service before terminating his service. Due to length of his service, punishment dated 16.10.2007 terminating him from service is slightly disproportionate to the proved misconduct. So, it is held that there was no illegality in removing claimant from job, but the act of the management is unjustifiable****.*
>
> *Relief:*
>
> *12. Taking into account about 24 years length of service of the*

claimant, the order dated 16.10.2007 passed by the management for terminating him from service, ***is slightly modified to the extent that the claimant shall be deemed to have retired on 16.10.2007****. All retiremental and consequential benefits like pension (if he had opted for the same) and others be given to him. The management is directed to pay the said benefits to the claimant within a month from the date of publication of the award failing which it shall be liable to pay interest @ 9 per cent per annum from today till realization. Award is passed accordingly.*"

[Emphasis supplied]

15. As stated above, the primary contention of the Petitioner/DTC was that in view of the regular and repeated unauthorized absences of the Respondent/Workman, the stoppage of his increments was made as well as a reduction in his pay grade was also done by the Petitioner/DTC, however, despite these warnings, the Respondent/Workman failed to mend his ways, and hence, his services were terminated. It was further contended by the Petitioner/DTC that it is settled law that the discretion to interfere with the quantum of punishment has to be exercised judiciously by the learned Labour Court.

16. It is apposite at this stage, to examine the judgements relied upon by the Petitioner/DTC. In the ***Bharat Forge*** case, the Supreme Court addressed the application of the plea of victimization, holding that when misconduct is proved, neither a plea of victimization nor compassionate ground can be invoked. The relevant extract of ***Bharat Forge*** case reads as follows:

"28. In Bhagubhai Balubhai Patel [(1976) 1 SCC 518 : 1976 SCC (L&S) 92] this Court observed: (SCC p. 523, para 12)

"In such a case the employee, found guilty, cannot be

> *equated with a victim or a scapegoat and the plea of victimisation as a defence will fall flat.* ***This is why once, in the opinion of the tribunal a gross misconduct is established, as required, on legal evidence either in a fairly conducted domestic enquiry or before the tribunal on merits, the plea of victimisation will not carry the case of the employee any further****. A proved misconduct is antithesis of victimisation as understood in industrial relations. This is not to say that the tribunal has no jurisdiction to interfere with an order of dismissal on proof of victimisation."*
>
> *29. It was, therefore, obligatory on the part of the respondent to plead and prove the acts of victimisation. He failed to do so.*
>
> *30. Furthermore, it is trite, the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, must act within the four corners thereof. The Industrial Courts would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Although its jurisdiction is wide but the same must be applied in terms of the provisions of the statute and no other.*
>
> ***31. If the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on an irrational or extraneous factor and certainly not on a compassionate ground.****"*
>
> [Emphasis Supplied]

16.1 The Petitioner/DTC has also cited ***J.K Synthetics*** case, which itself relies on the judgment of ***Bharat Forge*** case. While acknowledging that the Labour Court has jurisdiction to modify punishment, it emphasized that such discretion must be exercised judiciously. The judgment established that interference is warranted only when punishment is wholly disproportionate to the charge. However, given the factual matrix involving insubordination and false (indecent) allegations against superiors, the Court deemed interference inappropriate due to the gravity of the charges in that case. The

relevant extract of ***J.K Synthetics*** case reads as follows:

> *"27. In this case, we have already found that the charge established against the employee was a serious one. The Labour Court did not record a finding that the punishment was harsh or disproportionately excessive. It interfered with the punishment only on the ground that the employee had worked for four years without giving room for any such complaint. It ignored the seriousness of the misconduct. That was not warranted.* ***The consistent view of this Court is that in the absence of a finding that the punishment was shockingly disproportionate to the gravity of the charge established, the Labour Court should not interfere with the punishment. We, therefore, hold that the punishment of dismissal did not call for interference****."*
>
> [Emphasis Supplied]

17. The service record of the Respondent/Workman [exhibited as Ex. MW2/5 (colly)] shows that he had, on multiple occasions, availed excessive leave and was absent from duty without intimation, which had led to punishment/penalty being imposed on the Respondent/Workman. These included the following:

S. No.	Disciplinary order	Date/details	Punishment
1.	*BBM D-I/AI(T)/ 170 / 87 / 5575 Dt.01.12.1887*	*Due to availing excessive LwPs. i.e. 118 days with effect from 01.01.1986 to 31.12.1986*	*"stoppage of next due two increments without cumulative effect"*
2.	*WPD-I/AI(T)/ Int. 54/92/1661 dt.03.04.1992*	*Due to availing excessive LwPs. i.e. 109 days from 01.12.1990 to 30.11.1991*	*"stoppage of next due two increments with cumulative effect"*
3.	*WPD-I/AI(T)/ Int. 202/94/2837 dt.26.09.1994*	*Absent from duty without intimation from 18.09.1994 to 20.09.1994*	*"warned"*
4.	*BD/AI(T)/ CS-28/06 /629 dt. 27.02.2006*	*Un-authorised absence from duty for 179 days from 01.01.2003 to 31.07.2004*	*"stoppage of next due three increments w/e/effect*
5.	*ST. 2006*	*Absent from duty without*	*"warned"*

		intimation on 4-12-2005	
6.	*BD/AI(T)/CS-43/07/ 2723 dt. 14.08.2007*	*Un-authorised absence for 126 days from 01.04.2005 to 31.03.2006*	*"brought him initial stage in the time scale of driver for a period of one year"*
7.	*BD/AI(T)/CS-14/07/ 2722 dt. 14.08.2007*	*Un-authorised absence from duty for 173 days from 01.04.2006 to 30.11.2006*	*"warned"*

17.1 The above record shows several absences of the Respondent/Workman for 3 to 6 months at a time from his duty and also shows that the Petitioner/DTC had, on multiple occasions, passed Disciplinary Orders and meted out the punishment of stoppage of increments and even downgraded his pay grade, despite which, the unauthorized absence from duty was continued by the Respondent/Workman.

18. The Supreme Court has consistently held that the Tribunal/Labour Court can interfere with the quantum of punishment, even when it upholds the enquiry conducted by the Employer, as proper and fair, if it finds the punishment awarded shockingly/highly disproportionate to the allegation/charges, against the delinquent workman. In the judgment of Supreme Court in ***L&T Komatsu Ltd. v. N. Udayakumar***[7], an employee had a track record of habitual unauthorized absenteeism from service, and the employee was also dismissed from services following his leave of 105 days. The Labour Court found that though the workman was remaining absent

[7] (2008) 1 SCC 224

unauthorizedly, the punishment of dismissal from service was too harsh and disproportionate to the gravity of the charge and reinstated the employee. The High Court upheld the order of the Labour Court. The Supreme Court however set aside the Order of the High Court.

18.1 The Supreme Court held that the power exercisable under Section 11-A of the Industrial Disputes Act, 1947, which is accorded by the statute to Labour Courts and Tribunals, has to be exercised judiciously. The Tribunal or Labour Court is expected to interfere in the decision of a management only when such decision of the management is shockingly disproportionate to the degree of guilt to the workman concerned. It was further held, relying on the judgment of ***LIC of India v. R. Dhandapani***[8], that although a Tribunal has the power to reduce the quantum of punishment, it has to be exercised in accordance with law. The discretion can only be exercised where the punishment is disproportionate to the gravity of misconduct so as to disturb the conscious of the Court or there exists mitigating circumstances which require reduction of the sentence or the past conduct of the workman is of such nature that would persuade the Court to reduce the punishment. The relevant extract of ***L & T Komatsu*** case is below:

> "*8. So far as the question whether habitual absenteeism means the gross violation of discipline, it is relevant to take note of what was stated by this Court in Burn & Co. Ltd. v. Workmen [AIR 1959 SC 529] : (AIR p. 530, para 5)*
>
> > *"5. ... **There should have been an application for leave but Roy thought that he could claim, as a matter of right, leave of***

[8] (2006) 13 SCC 613

absence though that might be without permission and though there might not be any application for the same. This was gross violation of discipline. *Accordingly, if the Company had placed him under suspension that was in order. On these findings, it seems to us that the Tribunal erred in holding that it could not endorse the Company's decision to dispense with his services altogether. In our opinion, when the Tribunal upheld the order of suspension it erred in directing that Roy must be taken back in his previous post of employment on the pay last drawn by him before the order of suspension."*

9. In LIC of India v. R. Dhandapani [(2006) 13 SCC 613 : AIR 2006 SC 615] , it was held as follows

"It is not necessary to go into detail regarding the power exercisable under Section 11-A of the Act. ***The power under said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.***

In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. ***It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions****. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. (See Kerala Solvent Extractions Ltd. v. A.*

Unnikrishnan [(1994) 1 Scale 631] .)

Though under Section 11-A, the Tribunal has the power to reduce the quantum of punishment it has to be done within the parameters of law. Possession of power is itself not sufficient; it has to be exercised in accordance with law*.*

The High Court found that the Industrial Tribunal had not indicated any reason to justify variations of the penalty imposed. Though learned counsel for the respondent tried to justify the award of the Tribunal and submitted that the Tribunal and the learned Single Judge have considered the case in its proper perspective, we do not find any substance in the plea. Industrial Tribunals and Labour Courts are not forums whose task is to dole out private benevolence to workmen found by the Labour Court/Tribunal to be guilty of misconduct. The Tribunal and the High Court, ***in this case, have found a pattern of defiance and proved misconduct on not one but on several occasions. The compassion which was shown by the Tribunal and unfortunately endorsed by the learned Single Judge was fully misplaced****."*

[Emphasis supplied]

18.2 It was further held by the Supreme Court that where there is a pattern of defiance and proved misconduct, the interference is not warranted. Relying on the judgment of ***Mahindra and Mahindra Ltd. v. N.B. Narawade***[9], it was held that unless the punishment is disproportionate to the gravity of the conduct, or there are mitigating circumstances, the Court cannot reduce the punishment merely by way of sympathy. The relevant extract of ***L & T Komatsu*** case is below:

"10. In Mahindra and Mahindra Ltd. v. N.B. Narawade [(2005) 3 SCC 134 : 2005 SCC (L&S) 361] it was noted as follows : (SCC p. 141, para 20)

"20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is

[9] (2005) 3 SCC 134

vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. ***The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is*** *certainly not unlimited as has been observed by the Division Bench of the High Court.* ***The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment****. In the absence of any such factor existing, the* ***Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment.*** *As noticed hereinabove at least in two of the cases cited before us i.e. Orissa Cement Ltd. [Orissa Cement Ltd. v. Adikanda Sahu, (1960) 1 LLJ 518 (SC)] and New Shorrock Mills [New Shorrock Mills v. Maheshbhai T. Rao, (1996) 6 SCC 590 : 1996 SCC (L&S) 1484] this Court held: 'Punishment of dismissal for using of abusive language cannot be held to be disproportionate.' In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove.*"

[Emphasis supplied]

19. Learned Counsel for the Respondent/Workman has contended that the Respondent/Workman applied for leave due to his sickness and sickness of his wife, however, his applications do not advert to the sickness of his wife, but only his own sickness and one application due to the sickness of his son.

20. As is set out above, the learned Labour Court, by 28.05.2016

Order, gave a finding that the enquiry conducted was proper and in accordance with law, and that the Respondent/Workman was present during his hearing and given the opportunity to take assistance from a co-worker or Labour Welfare Inspector, which was not availed by the Respondent/Workman. The Respondent/Workman was cross-examined by the learned Labour Court and he admitted to his signature at point A on the proceeding sheet at Ex.WW1/M1. It was further held that in view of the admission by the Respondent/Workman, there was no need to examine any witnesses. Thus, the contention of the Respondent/Workman that he was not given a copy of the list of witnesses of the Petitioner/DTC and that principles of natural justice were not followed by the Petitioner/DTC is without merit. In any event, 28.05.2016 Order was not challenged by the Respondent/Workman and has thus attained finality *qua* the issue of whether the enquiry was conducted in accordance with the principles of natural justice.

21. On the aspect of the reduction of punishment as has been done by the learned Labour Court in the Impugned Award, this Court does not concur with the finding of the learned Labour Court**.** The conduct of the Respondent/Workman, as can be seen from paragraph 17 above, clearly shows willful neglect of his duty and that of continuous unauthorized absences. The Impugned Award has found that due to the length of the service of the Respondent/Workman for 24 years, the punishment is *"slightly disproportionate"* to the misconduct. It also holds that there was no illegality in removing the

Respondent/Workman from his job, in view of the fact that the explanation as given by the Respondent/Workman before the Enquiry Officer was that of leave due to illness of his wife, which was not substantiated.

21.1 However, in the applications that were submitted by the Respondent/Workman during this period, as can be seen from paragraph 12 above, all the applications were on account of the illness of the Respondent/Workman himself. The conduct of the Respondent/ Workman is also reflected from the table of unauthorized absences set out at paragraph 17 above, also shows that despite punishments of downgrading and stoppage of increments over a period of time, the Respondent/Workman continued with his unauthorized absences and not for a few days but for periods from 4 to 6 months at a time. In fact, it shows that the workman was habituated to long absences from the beginning itself, and for the period from July, 2004 onwards till his termination in 2007, there were a total of more than a hundred (100) days of absence in each year. There was no reason as to why, if the Respondent/Workman was suffering from an illness or his wife was unwell, that he was unable to continuously not take permission for his absence from duty. In fact, during this period alone, the Respondent/Workman was not present for his duty for 579 (approximately) days, in a period of 3 years.

22. Learned Counsel for Respondent/Workman has also relied upon the judgment of the Supreme Court in ***Krushnakant B. Parmar*** case to submit that where there is absence due to compelling

circumstances, including illness, it does not constitute misconduct. The facts in the ***Krushnakant B. Parmar*** case are entirely different from the present case. In that case, the medical board of the management had documented the workman's illness and the records of such illness were ignored. It was, in these circumstances, the Supreme Court held that where there was unauthorized absence and the absence was not willful but due to compelling circumstances, which were beyond the control of the workman, the order of dismissal was set aside. The relevant extract ***Krushnakant B. Parmar*** case reads as follows:

> *"16. In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a government servant. The question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.*
>
> *17.* ***If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.***
>
> *18.* ***In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.***
>
> *19. In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorisedly* ***absent***

> ***from duty but failed to hold that the absence was wilful****; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty."*
>
> [Emphasis Supplied]

22.1 In the present case however and as explained above, the leave applications did not actually convey the reasons that was stated before the learned Labour Court by the Respondent/Workman. The absence thus was not on account of compelling circumstances beyond the control of the Respondent/Workman but was willful.

23. Given the fact that the absences of the Respondent/Workman were frequent, continuous and for long durations and the documents submitted by the Respondent/Workman were all seeking leave on his own behalf for various ailments and not on behalf of his wife, the contentions of the Respondent/Workman are without any merit. In addition, in these circumstances, it cannot be said that the absence from duty was not willful.

24. In view of the judgments of the Supreme Court in ***Bharat Forge*** case and ***L&T Komatsu*** case, this Court is unable to agree with the Impugned Award, which is accordingly, set aside. The Enquiry Report of the Petitioner/DTC is affirmed.

25. The Petition is accordingly allowed. Given the circumstances, however, there shall be no order as to costs.

TARA VITASTA GANJU, J

JANUARY 07, 2025/pa/ *ha*