# Delhi Transport Corporation Vs Jai Prakash Sharma

**Court:** Delhi High Court

**Date of Decision:** Oct. 9, 2014

**Acts Referred:** Evidence Act, 1872 â€" Section 19(e)
Industrial Disputes Act, 1947 â€" Section 11A

**Citation:** (2015) 218 DLT 227 : (2015) 1 LLN 638

**Hon'ble Judges:** Vibhu Bakhru, J

**Bench:** Single Bench

**Advocate:** Manish Garg and Akshay Bhardwaj, Advocate for the Appellant; Prabhat Kaushik, Advocate for the Respondent

## Judgement

Vibhu Bakhru, J.
The present petition has been filed by the petitioner challenging an order dated 12.05.2010 and an award dated

09.01.2012 passed by the Labour Court, Delhi in D.I.D. No. 109/07 (hereinafter referred to as the "impugned award").

2. By the order dated 12.05.2010, the Labour court had held that the enquiry held against the respondent was vitiated on account of violation of

principles of natural justice. Although the labour court upheld the allegation of misconduct, it found the punishment of dismissal from service

disproportionate and shocking. Accordingly, the Labour Court passed the impugned award setting aside the order terminating the services of the

respondent and directed reinstatement of the respondent with full back wages, continuity of service and all consequential benefits along with a

payment of Rs. 50,000/- as cost to the respondent.

3. Brief facts of the present case are that the respondent workman was working with the petitioner as a conductor since 02.08.1984. During the

course of his employment, the respondent was absent from duty, from 20.04.1995 to 08.05.1995, without prior intimation and permission of the

petitioner. The petitioner sent a letter dated 05.05.1995 to the respondent calling upon the respondent to report on duty within 72 hours of receipt

of the said letter and also warned the respondent that failure to do so would invite action for misconduct. The respondent claimed that the said

letter was received by him on 06.05.1995. The respondent joined his duties on 09.05.1995 and submitted an application intimating that the

respondent could not attend his duties because, on 19.04.1995, the mother of the respondent had fallen seriously ill and was admitted to the Bara

Hindu Rao Hospital. She was discharged from the hospital on 08.05.1995 and the respondent had joined the duty on 09.05.1995. It was also

stated that the respondent had given prior intimation to the petitioner by sending an application of leave through his colleague Ram Avtar, however,

the same was not received by the petitioner.

4. Thereafter, the petitioner issued a charge-sheet dated 19.06.1995 alleging that the acts of respondent in absenting from duty amounted to

misconduct under Section 19(e) , (h) and (m) of the Standing Orders of the petitioner. On 03.07.1995, the respondent filed his reply and denied

all the charges leveled against him. The Enquiry Officer found the respondent guilty of the charges alleged and the petitioner issued a show cause

notice dated 18.12.1995 to the respondent proposing a penalty of termination of service. The respondent, by its reply dated 01.01.1996,

submitted that the enquiry proceedings were conducted without giving an opportunity of hearing to the respondent. The respondent also justified

his absence from the duty. Subsequently, on 09.01.1996, services of the respondent were terminated by the petitioner. The appeal filed against the

said termination order was also rejected by petitioner as time barred.

5. Thereafter, the respondent raised an industrial dispute and filed a petition (DID No. 109/07) before the Labour Court challenging the

termination of his services. The Labour Court framed the following issues for adjudication:-

1. Whether the enquiry conducted against the workman in terms of chargesheet dated 19.06.1995 was not just, fair, proper and was not in

accordance with the principles of natural justice, if so, its effect? OPW.

2. Whether the services of the workman have been terminated illegally and / or unjustifiably by the management, if so, its effect? OPW

3. Relief.

6. By an order dated 12.05.2010 the issue No. 1 was decided, as preliminary issue, in favour of the respondent and against the petitioner. By the

impugned order, the Labour Court held that as the preliminary issue was decided in favour of the respondent, therefore, the burden of proving the

misconduct was shifted on the management. With regard to Issue Nos. 2 and 3, it was held that the charges of misconduct were proved against the

respondent but the punishment was shockingly disproportionate. The Labour Court relied upon the office order dated 08.04.1968 passed by the

General Manager (T) of the petitioner laying down guiding principles for determining the quantum of punishment for misconduct and/ or

irregularities and held that the punishment awarded to the respondent was disproportionate to the charges proved. Accordingly, the Labour Court

directed reinstatement of respondent with back wages and continuity of service.

7. It was contended by the learned counsel for the petitioner that the charges of misconduct of unauthorized absence from duty were proved. It

was further contended that the respondent was a habitual offender as on previous occasions also the respondent was absent without any prior

intimation or permission and a penalty of stoppage of next due increment was imposed on the respondent on 13.05.1988 and on 28.02.1995. It

was contended that Annexure B of the Office Order dated 08.04.1968, relied upon by the Labour Court was not applicable in the present

circumstances because minor penalties had already been inflicted on the respondent for unauthorized absence and in view of the repeated defaults,

the petitioner was entitled to impose a major penalty on the respondent.

8. It was contended on behalf of the petitioner that the enquiry proceedings were fairly conducted and principles of natural justice were followed as

sufficient opportunity was given to the respondent to present his defence and evidence before the enquiry officer. It was contended that strict

compliance of the Indian Evidence Act is not required in a domestic enquiry and once the Labour Court had noted that there was some evidence

of misconduct before the enquiry officer, the Labour Court could not invalidate the order passed in the domestic enquiry. In support of this

contention, the petitioner has relied upon a decision of the Supreme Court in State of Haryana and Another Vs. Rattan Singh, .

9. It was further contended that the Labour Court erred in shifting the burden of proving the misconduct on the petitioner as the Supreme Court in

Delhi Transport Corporation Vs. Sardar Singh, had held that the burden of proof lies on the employee who claims that there was no negligence

and/or lack of interest and he has to establish the same by placing relevant materials before the Court.

10. It was contended on behalf of the respondent that the petitioner did not conduct the enquiry proceedings in a fair and just manner as neither the

proceedings before the enquiry officer were notified to the respondent nor an opportunity of hearing was given to the respondent. It was urged that

in the circumstances there was a clear violation of the principles of natural justice. The learned counsel for the respondent drew the attention of this

court to the order whereby the preliminary issue was decided in favor of the respondent. It was contended that the petitioner had passed the

termination order relying upon the findings of the enquiry officer and, therefore, the said termination order was illegal. It was further contended that,

independent of the findings on the aforesaid issues, the punishment imposed on the respondent was highly disproportionate to the alleged

misconduct and the Labour Court had rightly set aside the punishment imposed by the petitioner.

11. Before proceeding further, it is to be noted that neither parties have impugned the findings of the Labour Court that the charge of misconduct of

absenting without leave was proved against the respondent. Therefore, the limited controversy to be decided in the present case is whether the

Labour Court had erred in holding that that enquiry against the respondent was vitiated for non-observance of the principles of natural justice and

whether the punishment of termination of services of the respondent was excessive and disproportionate to the charges proved.

12. Admittedly, the enquiry against the respondent was proceeded ex parte. The respondent had stated that he had not received any notice of the

enquiry and thus, could not participate in the enquiry. The respondent was examined and he deposed that he had not received any notice of the

enquiry proceedings. The Labour Court also noted that respondent was not confronted with any document indicating service of notice. He also

noted that the enquiry proceedings had not recorded that the respondent had been served. After appreciating the evidence, the Labour Court

concluded that the enquiry had not proceeded in accordance with the principles of natural justice. The finding of the Labour Court was arrived at

after considering all evidence. The findings are informed by reason and material on record and accordingly, the order dated 12.05.2010 warrants

no interference.

13. It is well settled that even when the charges leveled against a workman stand proved, the Labour Court retains certain amount of discretion to

interfere with the quantum of punishment awarded by the management. One such instance when the Labour Court may exercise such discretion is

when the Court comes to a conclusion that the punishment is shockingly disproportionate to the nature of the charges proved. The Supreme Court

in the case of Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., , examined the scope and power in interfering with the quantum of

punishment. The court held as under:-

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

14. In the case of LIC of India Vs. R. Suresh, , the Supreme Court explained the principles of exercise of such jurisdiction and held as under:-

31. An Industrial Court in terms of Section 11-A of the Act exercises a discretionary jurisdiction. Indisputably, discretion must be exercised

judiciously. It cannot be based on whims or caprice.

32. Indisputably again, the jurisdiction must be exercised having regard to all relevant factors in mind. In exercising such jurisdiction, the nature of

the misconducts alleged, the conduct of the parties, the manner in which the enquiry proceeding had been conducted may be held to be relevant

factors. A misconduct committed with an intention deserves the maximum punishment. Each case must be decided on its own facts. In given cases,

even the doctrine of proportionality may be invoked.

15. In the case of Mavji C. Lakum Vs. Central Bank of India, , the Supreme Court held as under:-

23. So far the finding of the learned Single Judge appears to be correct. However, the whole thrust of the judgment has changed merely because

the Industrial Tribunal had found the inquiry to be fair and proper. The learned Judge seems to be of the opinion that if the inquiry is held to be fair

and proper, then the Industrial Tribunal cannot go into the question of evidence or the quantum of punishment. We are afraid that that is not the

correct law. Even if the inquiry is found to be fair, that would be only a finding certifying that all possible opportunities were given to the delinquent

and the principles of natural justice and fair play were observed. That does not mean that the findings arrived at were essentially the correct

findings. If the Industrial Tribunal comes to the conclusion that the findings could not be supported on the basis of the evidence given or further

comes to the conclusion that the punishment given is shockingly disproportionate, the Industrial Tribunal would still be justified in reappreciating the

evidence and/or interfering with the quantum of punishment. There can be no dispute that power under Section 11-A has to be exercised

judiciously and the interference is possible only when the Tribunal is not satisfied with the findings and further concludes that punishment imposed

by the management is highly disproportionate to the degree of guilt of the workman concerned. Besides, the Tribunal has to give reasons as to why

it is not satisfied either with the findings or with the quantum of punishment and that such reason should not be fanciful or whimsical but there should

be good reasons.

16. In view of the above, there is no doubt that the Labour Courts/Industrial Tribunal has the jurisdiction to interfere in the quantum of the

punishment and the said discretionary power has to be exercised judiciously. In the present case, the Labour Court considered that the punishment

awarded to the respondent was disproportionate, first of all, for the reason that the punishment meted out to the respondent was much in excess of

that as specified in the petitioner''s Office Order dated 08.04.1968. Secondly, the Labour Court noted that the workman had complied with the

petitioner''s letter dated 05.05.1995 and joined his duty within the period of 72 hours as called upon by the petitioner. Thirdly, the Labour Court

also noted that there were compelling reasons for the petitioner to absent himself during the period 20.04.1995 to 08.05.1995 as his mother was

admitted to a hospital. Lastly, the Labour Court found that the respondent''s dismissal in view of his conduct (i.e. penalty imposed on the workman

on 13.05.1988, warning issued on 08.09.1988) which was several years ago was disproportionate.

17. In my view, none of the reasons that weighed with the Labour court are perverse or extraneous to the issues being considered. First of all, the

Office order dated 08.04.1968, which provides the guiding principles for determining the quantum of punishment for misconduct and/ or

irregularities, prescribed four degrees of punishments corresponding to the seriousness of the offence committed. Although the said Officer Order

cannot fetter the discretion of the petitioner to take action for misconduct of an employee, nonetheless it would be a guiding factor and a departure

from the said Office order could only be for good reason. Completely ignoring the Office Order would not be appropriate. According to the

petitioner, the only reason for taking a punitive measure in excess of that as provided in the Office Order was the respondent''s past conduct. It is

to be noted that the past punishment meted out to the respondent was in 1988 i.e. 7 years prior to the unauthorized absenteeism in 1995. Although

the respondent was warned in February 1995, the reason for his absenteeism was explained as the ill health of his mother. There were,

undoubtedly, mitigating circumstances that were required to be considered by the petitioner and undue weightage to past conduct in 1988 was not

warranted.

18. The respondent had explained that his absence from 20.04.1995 to 08.05.1995 was on account of his mother being admitted to a hospital. He

had also provided the evidence for the same. The petitioner had called upon the respondent, by a letter dated 05.05.1995, to join duty within 72

hours, which the respondent had done. It is in the context of the above facts that the Labour court had come to a conclusion that the punishment

inflicted on the respondent was disproportionate. The perspective that the labour court came to bear on the issues was within the scope of its

jurisdiction.

19. The Supreme Court in the case of Sardar Singh (supra) had expressed its opinion that absence of an employee from duty without sanctioned

leave would indicate his lack of interest in the work. However, the Court had clearly indicated that this inference was only prima facie. Thus, in the

given circumstances, the employee could explain the circumstances which compelled him to be absent from work. In the present case, the Labour

Court had also taken note of the circumstances which had resulted in the respondent being absent from work and I find no infirmity with the same.

20. However, the decision of the Labour Court in awarding back wages is not sustainable. The Supreme Court in the case of J.K. Synthetics Ltd.

Vs. K.P. Agrawal and Another, had made a distinction in cases where an employee has been reinstated on account of his termination being found

to be illegal and in cases where an employee is directed to be reinstated by reducing the punishment meted out to the employee. In such cases

where the punishment inflicted on an employee is reduced and the employee is reinstated with retrospective effect, i.e. from the date of his

termination, he would be entitled to continuity of his service and in cases where he is not reinstated with retrospective effect, he would be reinstated

in service from the date of the award. The Supreme Court clarified that reinstatement in either event, would not result in the employee being entitled

to back wages. The relevant extract of the said decision reads as under:-

19. .. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor

consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved,

and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the

employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct

committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for

purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions, etc.

21. Following the aforesaid decision, the impugned award to the extent that it grants back wages to the respondent, is liable to be set aside.

22. In the given circumstances, the present writ petition is disposed of by modifying the impugned award to the extent that it directs payment of

back wages to the respondent. It is directed that the back wages prior to the award shall not be payable to the respondent. However, it is clarified

that the reinstatement awarded by the Labour Court shall be given effect to for the purposes of providing continuity of service to the respondent.

The order dated 13.07.2012 staying the operation of the impugned award is vacated. Out of the amount deposited by the petitioner with the

Registrar General of this Court a sum of Rs. 50,000/- (being the cost imposed by the Labour Court) shall be paid to the respondent along with

accrued interest thereon. The balance sum along with interest shall be refunded to the petitioner.

23. The writ petition and the application are disposed with the aforesaid directions. No further order as to costs.