

(2002) 08 JH CK 0033

Jharkhand High Court

Case No: CWJC No's. 2873, 3006, 3018 and 3019 of 1994

Uranium Corporation of India
Ltd.

APPELLANT

Vs

Presiding Officer, Central
Government Industrial Tribunal
No. 2 and Another

RESPONDENT

Date of Decision: Aug. 26, 2002

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 11A, 17B

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: V. Shivnath, M.B. Lall and Manoj Kumar, for the Appellant; Y.N. Mishra and Ajay Kumar Sinha, for the Respondent

Final Decision: Allowed

Judgement

M.Y. Eqbal, J.

Since all these writ petitions arose out of a common award passed by the Central Government Industrial Tribunal No. 2, Dhanbad, they have been heard together and are being disposed of by this common judgment.

2. In all these writ petitions the petitioner is the Uranium Corporation of India Ltd. By the impugned award dated 18.4.1994 all the four reference cases being Reference Case Nos. 45, 46, 47 and 49 of 1988 have been answered in favour of the workmen.

3. The terms of reference in all the reference cases which were referred to the Tribunal by the Government of India, Ministry of Labour for adjudication read as under :--

Reference Case No. 45 of 1988

Whether the management of UCIL, Jaduguda is justified in dismissing Sri Lusa Manjhi, Minor, T. No. 1401 from service w.e.f. 11.8.1979 vide their order No. UCIL/PF/1401/Admn./Mines/79 dated 11.8.1979. If not, to what relief the workmen is entitled ?

Reference Case No. 46 of 1988

Whether the management of UCIL, Jaduguda is justified in dismissing Sri Doman Hansda, T. No. 1086 from service w.e.f. 11.8.1979 vide their order No. UCIL/PF/108G/Admn/Mines/70 dated 11.8.1979. If not, to what relief the workman is entitled ?

Reference Case No. 47 of 1988

Whether the management of UCIL, Jaduguda is justified in dismissing Sri Charan Manjhi, Helper-C T. No. 1402 from service w.e.f. 11.8.1979 vide their order No. UCIL/PF/1402/Admn./ Mines/79 dated 11.8.1979. If not, to what relief the workman is entitled ?

Reference Case No. 49 of 1988

Whether the management of UCIL, Jaduguda is justified in dismissing Sri Ram Prasad Haldar, Driver, T. No. 740 from service w.e.f. 11.8.1979 vide their order No. UCIL/PF/740/Admn./ Mines/79 dated 11.8.1979. If not to what relief the workman is entitled ?

4. At the very outset it is worth to mention here that in all the four reference cases the fairness and propriety of the domestic enquiry was conceded by the representative of the workers Union and consequently the fairness and propriety of the domestic inquiry was not challenged. In all the cases charge-sheets were issued to the concerned workmen on 15.7.1979 and they were put under suspension on the same day. The Inquiry Officer and the Company's representative in all the cases is the same.

5. In Reference Case No. 45/88 the concerned workmen is Sri Lusa Manjhi. The charge against him were that on 25.6.1977 he had approached Sri A.S. Venkatachar. Deputy Superintendent (Mines) at about 7:10 a.m. at the place of allocation of duty when Sri Venkatachar was busy in allocating the work. The workman asked him to sign the joining report and permit him to join the duty. As the workman has already lost his lien of his appointment, the officer told him to make an application so that necessary order can be passed by the Administration. It is alleged that despite repeated advice given by Sri Venkatachar to go down and wait at his office, the workman insisted on signing the joining report and started assaulting him by holding his shirt collar and giving him blows. When Sri Ray, Superintendent (Mines) tried to pacify the workman, he also assaulted him. The workman took a iron rod

from Sri Mithu Lal Gope and was running with it towards Sri Venkatachar to hit him. When he wanted to hit Sri Venkatachar, he was prevented by Sri S. Roy who snatched the rod from the workman. Further charge was that the concerned workman brought a live snake and started terrorizing Sri J.L. Bhasin, Additional Superintendent (Mines) and other officers. Sri Manjhi has gone to other sections of the department in drunken state with live snake alongwith Sri Mithu Lal Gope and incited other striking workmen and terrorize all the person with live snake and forced them to live the work place and come to the Mines Office building threatening them with dire consequences. Further charge is that at about 1 p.m. the concerned workman entered into the meeting room and threatened the officers present thereto give quick decision for his reinstatement. He started forcing the Managing Director and the other officers to go to the terrace of shaft house and also forced them to read out the order whereby the Management had agreed to take him back in service.

6. Similar is the charge against Doman Hansda, the concerned workman in Reference Case No. 46/88. He also did not go to the place of work since the aforesaid date rather he joined the strikers and gheroed the officers and forcibly entered into the room of Sri Venkatachar and Sri S.B. Srivastava. He assaulted Sri Venkatachar on his chest with glass and paperweight.

7. In Reference Case No. 47/88 the charge against the concerned workman, Charan Manjhi is that he was insisting the other workers to join the strikers on the same day and he also assaulted Sri M. Bhattacharya with Helmet.

8. The charge against Sri R.P. Haldar in Reference Case No. 49/88 is that he instead of going to the place of duty, joined the strikers and started inciting the other workers not to go the place of duty. It is also stated that he abetted, instigated and participated in the strike.

9. All the concerned workmen appeared in the reference cases before the Tribunal and filed their written statement. The Management as also the concerned workmen adduced evidence before the Tribunal in support of their respective cases.

10. The Tribunal, after analyzing the entire evidences has come to the conclusion that the charges levelled against the concerned workmen were proved. However, the Tribunal held that the punishment of dismissal of the concerned workmen from their services was disproportionate to the misconduct committed by them. Taking into consideration the fact that the concerned workmen are tribals and illiterate and that they might not have knowing the consequences of the wrongs committed by them, the Labour Court substituted the punishment of dismissal by imposing a punishment of stoppage of increments and reinstatement in service.

11. As noticed above, the propriety and fairness of the domestic inquiry was not challenged by the workmen and it was held by the Tribunal that the domestic inquiry was just and fair. The Tribunal, after considering the entire evidence,

affirmed the finding of the Enquiry Officer to the effect that the charges have been proved against the concerned workmen. In such circumstance, in my considered opinion this Court cannot reverse those findings of come to a different conclusion after reappraisal of evidences in exercise of powers under Article 226 of the Constitution of India.

12. The only question that to be considered by this Court is whether exercise of discretion by the Tribunal u/s 11-A of Industrial Disputes Act in substituting the punishment is in accordance with law. At this stage it would be worth to quote the concluding portion of the award passed by the Tribunal which reads as under :

"No doubt using abusive language, terrorizing, threatening and assault are all major and serious misconduct and punishment of dismissal may not be called unjustified but in the instant reference the workmen involved are mostly tribals. The tribals are illiterate and very ignorant residing in remote corner of the village. The little know about the consequences of any wrong being committed by them. About Lusa Manjhi it is stated that he had never shown such intemperate and repulsive behaviour any time before the occurrence which took place on 25.7.1977. He was having a snake around his neck. From the evidence it also transpires that he was persuaded by his challengers to go inside the meeting hall with the snake and press for his demand. It appears that he acted and behaved as ill advised by his co- workers. It appears that he was taking all those steps little knowing the consequences of his deeds. Considering the status and the poor condition of those tribals it will be in the interest of justice that certain lapses on their part have to be condoned. After having considered these aspect of the matter I think a bit sympathetic view of the matter can be taken and the punishment of dismissal can be altered to some other punishment. Accordingly all the concerned workmen after having been found guilty of the misconduct are hereby censured and the necessary entries to that effect be made in their service books. In case of Jusa Manjhi his two consecutive future increments be withheld permanently. In the circumstances of the case they are also not entitled for any back wages. The Management-Corporation is thus directed to reinstate the concerned workmen within three months time from the date of publication of the Award under the conditions aforesaid. However, the continuity of service will be maintained."

13. It is, therefore, clear that the Tribunal has taken a sympathetic view on the ground that the concerned workmen are illiterate and tribals. Section 11-A of the Industrial Disputes Act reads as under :

"11-A. Powers of Labour Courts. Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workman.--Where an industrial dispute relating to discharge or dismissal of a workman has been referred to a Labour Court. Tribunal or National Tribunal for adjudication, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it

may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if and as it thinks fit or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :

Provided that in any proceeding under this section the Labour Court, Tribunal or the National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter,"

14. From bare perusal of the aforesaid provision it is manifest that the Labour Court/Tribunal has been empowered to either set aside the order of discharge/dismissal or pass lesser punishment if the Tribunal or the Labour Court is satisfied that the order of discharge or dismissal was not justified. In other words, if the Labour Court or the Tribunal finds that the charges against the workman are not grievous and those charges have not been conclusively proved, then the order of discharge or dismissal may be converted into a lesser punishment. Section 11-A of the I.D. Act, however, does not confer power to the Labour Court or the Tribunal to substitute the order of punishment into reinstatement in such cases where charge of misconduct has been proved. It is well settled that where the charge of misconduct is proved against the workman and the order of dismissal is passed in the domestic inquiry then that amounts to losing the confidence of the workman by the Management. In such a situation exercise of power u/s 11-A of the I.D. Act by the Labour Court or the Tribunal by converting the punishment into reinstatement is improper. In the case of Punjab Dairy Development Corporation Limited and another, etc. Vs. Kala Singh, etc., their Lordships observed :

"This is a cross appeal filed by the workman. It is contended by the learned counsel for the workman that the charges were not correct; the Labour Court has not properly considered the evidence and the view that the order relates back to the date of the dismissal was not correct. We find no force in the contention. It is seen that the Labour Court after adduction of evidence came to the conclusion that the dismissal is justifiable. On the basis of the evidence adduced before it, no doubt, the Labour Court has not elaborately considered the entire evidence but agreed to the decision that the misconduct has been proved. In view of the proof of misconduct, the necessary consequence would be that the management has lost the confidence that the appellant would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power u/s 11-A to grant relief of reinstatement with minor penalty."

15. In the case of Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarara Sangha Etc., the employees of the Cooperative Society were charge-sheeted for breach of trust and misappropriation of money. After holding a domestic inquiry all the employees were dismissed. In reference case u/s 10 of the I.D. Act the Labour Court found the charges proved and established. However, in view of the past clean records of the

delinquents the Labour Court, in exercise of its discretionary power u/s 11-A of the Act, ordered their reinstatement with 25% back wages. The award of the Labour Court was upheld by the High Court. The Cooperative Society moved the Supreme Court. The Apex Court, after setting aside the decision of the High Court observed :

"As stated above, the learned Single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust land misappropriation of funds entrusted to them for the value mentioned in the charge sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the management removing the workman from service and reinstating them with 25% back wages. Once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled. Re: Municipal Committee Bahadurgarh v. Krishnan Behari. In UPSRTC v. Basudeo Choudhary, this Court set aside the judgment passed by the High Court in a case where a conductor serving with U.P. State Road Transport Corporation was removed from service on the ground that the alleged misconduct of the conductor was an attempt to cause loss of Rs. 65 to the Corporation by issuing tickets of Rs. 2.35, which figure was subsequently altered to Rs. 2.85. The Court held that it was not possible to say that the Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly in Punjab Dairy Development Corporation. v. Kala Singh this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting milk from various centers and was charged for a misconduct that he inflated the quantum of milk supplied in the milk centres and also inflated the quality of fat contents where there were less fat contents. The Court held (at S.C.C. pp. 161- 62, para 4) that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power u/s 11-A of the I.D. Act to grant relief with minor penalty."

16. As noticed above, the Tribunal, after re-appraisal of the entire evidence has recorded its own finding to the effect that the charges have been proved against the concerned workmen. In such a situation the Tribunal has erred in substituting the punishment of dismissal from service into reinstatement with lesser punishment in exercise of its discretion u/s 11-A of the said Act. The award of the Labour Court so far the punishment is concerned, cannot be sustained in law. It is, therefore, held that the Tribunal ought not to have exercised its discretion in substituting the punishment of dismissal into a lesser punishment with reinstatement in service. The punishment of dismissal of the concerned workmen from service appears to be justified in law.

17. These writ applications are, therefore, allowed and the impugned award passed by the Tribunal so far it relates to punishment, is set aside. It is made clear that whatever amounts have been paid by the Management to the concerned workmen pursuant to the order passed u/s 17-B of the I.D. Act shall not be recovered from them.