

Saroop Singh vs.dtc

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Court : Delhi

Decided On : Sep-21-2017

Appellant : Saroop Singh

Respondent : Dtc

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

31. t August, 2017 Date of Decision:

21. t September, 2017 + W.P (C) No.6322/2004 DTC Through: Mr.U.N. Tiwari and Mr.S.K. Ojha,

... Petitioner

Advs. versus SAROOP SINGH (THROUGH LEGAL HEIR AJAY)

... RESPONDENTS

Through: Mr.Anil Mittal and Ms.Komal Aggarwal, Advs. + W.P (C) No.6687/2004 SAROOP SINGH

... Petitioner

Through: Mr.Anil Mittal and Ms.Komal Aggarwal, Advs. versus DTC Through: Mr.U.N. Tiwari and Mr.S.K. Ojha, Respondent Advs. CORAM: HON'BLE MR. JUSTICE C.HARI SHANKAR JUDGMENT % 1. These writ petitions are concerned with an award, dated 24th April, 2003, passed by the Labour Court-II in

ID3081987 (Management of M/s. Delhi Transport Corporation v. its workman Shri Saroop Singh, which directs reinstatement of Saroop Singh-the W.P.(C) No.6322/2004 and 6687/2004 Page 1 of 41 petitioner in W.P (C) 6687/2004 and respondent in W.P (C) 6322/2004 in service with 40% back wages). WP(C) 6322/2004, by the Delhi Transport Corporation (hereinafter referred to as DTC), challenges the said award, whereas WP(C) 6687/2004, by the workman Saroop Singh, prays that he be reinstated with full back wages.

2. The controversy before this Court, in the present case, is brief. Saroop Singh, who was employed as a driver by the DTC on 01st February 1982, was served with a charge-sheet, dated 26th September, 1984, proposing to initiate disciplinary action against him, under Regulation 15(2) of the DRTA (Conditions of Appointment and Service) Regulations, 1952 (hereinafter referred to as Regulations) read with the Delhi Road Transport Laws (Amendment) Act, 1971. The precise charge, against Saroop Singh, read thus: That on 28.08.84 when Sh. Satvir Singh, Driver, B.N. 10740 entered the depot under the influence of liquor, you abetted him to take out the Bus No.DEP-8500 from Okhla Depot-I unauthorisedly at about 22.15 hrs. S/Sh. Satvir That when Sh. Satvir Singh, Driver B.No.10740 quarreled with Sh. Kishan Dass, Security Guard over the issue of showing the drivers memo, you alongwith Singh, Driver, B.No.10740 and Nand Lal, Driver, B.No.9888 and some others who were already present in the bus started beating the Security Guard, knocked him down and threw him in the Nallah adjacent to the depot gate after breaking and snatching his wrist watch. W.P.(C) No.6322/2004 and 6687/2004 Page 2 of 41 That when Sh. Buttan Singh, Security Havaladar and intervened, you and your colleagues started beating them also. two others (Emphasis supplied) 3. It was alleged that the above charges constituted misconduct, within the meaning of paras 19 (b), (g) and (m) of the Standing Orders governing the conduct of DTC employees. Observing that the past record of Saroop Singh would also have to be taken into account, the charge-sheet directed him to submit his explanation, to the above extracted charges, within 10 days.

4. It is not in dispute that, after submission of response by him to the aforementioned charges, a detailed enquiry was conducted, in which Saroop Singh fully participated. It merits mention, in this regard, that Kishan Dass, when

specifically queried, stated that, though he had seen several persons belabouring him, he was not certain that Saroop Singh was amongst them, though he might have been.

5. The Enquiry Officer, in his report dated 11th October 1995, ultimately held Saroop Singh guilty of the charge of beating Kishan Dass. However, the allegation of his having been seen in an inebriated condition with his fellow workers was not found to be proved. A complete reading of the Enquiry Report reveals the following:-

"(i) The first allegation against Saroop Singh in the charge- sheet, was that he had abetted Satvir Singh in unauthorisedly taking W.P.(C) No.6322/2004 and 6687/2004 Page 3 of 41 out the bus from the depot. As against this, the Enquiry Officer did not return any finding of abetment, against Saroop Singh. Rather, the Enquiry Officer finds that it was Satvir Singh who brought the bus to the gate, and Saroop Singh had, at the time, gone to the Control Room to obtain the drivers memo. This finding cannot, by any stretch of imagination to be said to constitute abetment, by Saroop Singh, of Satvir Singh, in removing the bus from the depot, which was the first charge against him. (ii) The second allegation against Saroop Singh was that he alongwith Satvir Singh, Nand Lal and some others, started beating Kishan Dass, in the course of which, Kishan Dass was thrown in the adjacent Nallah and his wrist watch was broken and snatched. As against this, the finding of the Enquiry Officer, regarding the participation, of Saroop Singh in the melee, was that Satvir Singh, in an inebriated condition, started beating Kishan Dass and that Saroop Singh later reached the spot and also participated therein. However, it is significant that, though the enquiry report notes the fact that Kishan Dass, in his statement, denied having seen Saroop Singh beating him, the Enquiry Officer chose to attach no significance thereto, on the somewhat presumptuous reasoning that Kishan Dass failed to see Saroop Singh because of the crowd. As such, at the very least, the extent of participation, by Saroop Singh, in the belabouring of Kishan Dass, remains indeterminate and is, in any case, less than the participation of Satvir Singh therein. W.P.(C) No.6322/2004 and 6687/2004 Page 4 of 41 6. Consequent thereupon, Memorandum No.RM (S)/DC-60/84/74/86/3788 dated 10th June, 1986 was issued to Saroop Singh, by the

Regional Manager, DTC, expressing a provisional opinion that Saroop Singh deserved to be removed from the services of the Corporation under para 15 (2) of the Regulations. The memorandum stated that, before the said action was taken, Saroop Singh was being granted an opportunity to show cause thereagainst, for which purpose he was directed to submit an appropriate representation.

7. Saroop Singh, admittedly, complied with the above direction by submitting a response, questioning the proposed decision to remove him from service.

8. Predictably, as an inevitable sequel, order No.BM (S)/DO- 60/84/74/86/4700 dated 24th July, 1986 was issued by the Regional Manager, South (DTC) opining that the reply of Saroop Singh to the charge-sheet dated 26th September, 1984 (supra) and the show cause notice dated 10th June, 1986 (supra) had after due consideration, not been found to be satisfactory and on that basis, removed Saroop Singh from the services of the DTC with immediate effect, under Regulation 15(2) (a) (vi) of the Regulations.

9. Saroop Singh raised an industrial dispute, which was referred to by the Secretary, (Labour), Delhi Administration to the Labour Court for adjudication, vide Notification No.F.24 (1781)/87-Lab./18411-16 dated 22nd May, 1987.

10. The Notification set out the following term of reference: W.P.(C) No.6322/2004 and 6687/2004 Page 5 of 41 Whether the termination of services of Sh. Saroop Singh is illegal and /or unjustified, if so, to what relief, is he entitled and what directions are necessary in this respect?. 11. Notice of the said reference was issued, by the Labour Court, to Saroop Singh, who thereupon, filed his statement of claim, praying that he be reinstated in service with full back wages and other consequential benefits. It was contended, inter alia, in the said claim statement, that the charge sheet issued to him was without any substance, and that the enquiry that followed thereupon was merely an eye wash, in clear violation of the principles of natural justice.

12. Written statement, by way of oppugnation thereto, was filed by the management of the DTC. The DTC admitted the fact that Saroop Singh was its employee. However, the allegation, of Saroop Singh, that the enquiry against him

had not been conducted in a fair and proper manner, was emphatically denied, and it was asserted that on the contrary, Saroop Singh had been given a reasonable and proper opportunity to defend himself. Accordingly, it was prayed that the claim of Saroop Singh be dismissed.

13. Rejoinder to the said written statement, was filed by Saroop Singh, essentially reiterating the contentions advanced by him in his claim statement.

14. Following thereupon, on 26th January, 1990, issues were struck as under: W.P.(C) No.6322/2004 and 6687/2004 Page 6 of 41 (i) Whether the present reference is not maintainable in view of Preliminary Objections taken in the Written Statement?. (ii) Whether the enquiry conducted by the management against the workman was fair and proper?. (iii) As in terms of reference.

15. Issue No.(ii), (supra) was treated as a preliminary issue, and both parties, i.e. Saroop Singh and DTC were allowed to adduce their respective evidence thereon.

16. Vide order dated 26th October, 2002, the Labour Court decided Issue No.(ii) i.e. whether the enquiry conducted by the management against Saroop Singh was fair and proper, in the affirmative and, consequently, against Saroop Singh. The order, in fact, went a step further by opining on the findings, returned on merits, by the Enquiry Officer. It was held that though Saroop Singh had, during the course of arguments, pointed out certain contradictions/inconsistencies in the statements of the managements witnesses, as recorded by the Enquiry Officer, the findings returned by the Enquiry Officer could not be characterized as perverse or unjustified merely on that basis. In holding thus, the Labour Court also relied on the trite legal position that it was not competent to sit in appeal over the findings of the Enquiry Officer, and that its jurisdiction was limited to ensuring that the findings of the Enquiry Officer were based on material on record and were supported by an adequate discussion of evidence and reasons. Thus empirically stated, this proposition is, needless to say, unexceptionable. W.P.(C) No.6322/2004 and 6687/2004 Page 7 of 41 17. Having returned the above findings on Issue No.(ii), the Labour Court directed the case to be listed on 12th December, 2002, for evidence to be led by the parties on the remaining issues. However, subsequently, the parties were not allowed to lead any evidence, following the law laid out by this

Court in UCO Bank v. Presiding Officer, ILR (1999) (II) Delhi 331, para 11 whereof may be reproduced thus: 11. The necessary consequence of the aforesaid discussion is that the Labour Court/Tribunal has to first examine as to whether enquiry conducted is proper and valid. Only when this issue is decided that Tribunal will have to decide as to what further course of action has to be taken which would be determined upon the outcome on the issue regarding validity of the enquiry. Therefore, it is but proper for the Tribunal to deal with the validity of the domestic enquiry as a preliminary issue. If its finding on the subject is in favour of management then there will be no occasion for additional evidence being produced by the management. A priori where the domestic enquiry is found to have been properly held neither the employer nor the employee shall have right to produce further evidence before the Tribunal to support or demolish the finding of guilt recorded nor to sustain the quantum of punishment imposed as a result of the domestic enquiry. Therefore, in all such cases where the punishment imposed by the workman is impugned by the workman as a result of departmental/domestic enquiry conducted against the workman and an issue is framed whether such departmental enquiry is valid, fair and proper, such an issue should be decided as preliminary issue. It should be more so when management, like in the instant case, specifically requested for same. W.P.(C) No.6322/2004 and 6687/2004 Page 8 of 41 18. Following the above dictum, the parties were directed to submit their arguments, without being permitted to lead further evidence.

19. Having heard the parties on Issue Nos. (i) and (iii) as framed on 22nd January, 1990, the Labour Court held that Saroop Singh was entitled to be reinstated in service with 40% back wages with effect from 24th July 1986, vide the impugned award dated 24th April, 2003. Inasmuch as Issue No (i) is not relevant for deciding the present petition, this judgement need not burden itself therewith. The findings of the Labour Court on Issue No.(iii) are, however, relevant, and deserve to be reproduced, in extenso, thus: I have bestowed my careful consideration to the rival submissions made on behalf of both the parties on the quantum of punishment. From the perusal of the Charge-sheet dated 26.9.1984, it is clear that there were allegations against the workman regarding the abetment to Satveer Singh, Driver to take out the bus from Depot unauthorizedly on 28.8.1984 as well as beating of Kishan Dass, Security Guard. From the perusal of Enquiry Proceedings, it is also

apparent that Kishan Dass, Security Guard in his evidence has nowhere stated that he was also beaten by workman Saroop Singh. Sh. Satveer Singh, Driver, who had quarreled and beaten Sh. Kishan Dass, Security Guard is still in employment of the Mgt./ DTC and this fact shows that management has taken some lenient view against Satveer Singh. In view of these peculiar facts and circumstances, I am of the view that the punishment of removal from service imposed upon the workman Saroop Singh by the management vide order dated 24.07.1986 is too harsh, coercive and disproportionate to the allegations proved against him on the record. Rather this punishment imposed can safely be categorized as victimisation, because such punishment W.P.(C) No.6322/2004 and 6687/2004 Page 9 of 41 punishment imposed was so is still in employment with was not imposed upon Satveer Singh, Driver, by the Management for the reasons best known to it as Sh. Satveer Singh the management. The scope of Section 11-A of ID Act has been discussed in the case of Naktala Iron Works v. State of West Bengal (1978). I.S. Lab. Page 899 wherein it has been stated that the test to be applied is to see whether the shockingly disproportionate to the misconduct attributed as would betray malice on the part of the employer, or, in other words, one is to see if imposition of a particular punishment is a colourable act on the part of the employer or not. Considering the misconduct proved against the workman and also the facts and circumstances of the case, I am of the view that interest of justice would be met if management is directed to reinstate the workman in service with 40% back wages w.e.f., 24.07.1986. Accordingly, management is directed to reinstate the workman Saroop Singh in service with 40% (forty percent) Back Wages w.e.f., 24.07.1986 along with the benefit of Continuity in Service. the nature of 20. The following factors were cited, by the Labour Court, as justifying the said decision:-

"(i) The previous record of Saroop Singh had not been inspected. (ii) There were essentially, two allegations against Saroop Singh viz.(a) that he had abetted Satvir Singh, driver, in taking out the bus of the depot unauthorisedly on 28th August, 1984 and (b) that he had beaten Kishan Dass, Security Guard. (iii) However, Kishan Dass, in his evidence did not state that he had been beaten by Saroop Singh. This allegation was further belied by the fact that Satvir Singh, who also W.P.(C) No.6322/2004 and 6687/2004 Page 10 of 41 allegedly participated in

belabouring Kishan Dass, continued to be in employment of the petitioner-Corporation. (iv) This also indicated that DTC had adopted a lenient view in the matter of Satvir Singh. Awarding of the penalty of removal of Saroop Singh, therefore, amounted to victimization.

21. In the light of these observations/findings, the Labour Court held that removing the petitioner Saroop Singh from service would amount to imposing on him, punishment which was shockingly disproportionate to the misconduct attributed to him, and directed DTC to reinstate Saroop Singh with 40% back wages w.e.f. 24th July 1986 alongwith the benefit of continuity in service.

22. Following the above award dated 24th April, 2003, Article 226 of the Constitution of India was invoked by Saroop Singh as well as the DTC, by means of the present writ petitions filed before this Court, with the DTC impugning the said decision and Saroop Singh seeking reinstatement with full back wages. Significantly, Saroop Singh has entered a nolle prosequi, by not choosing to ventilate any grievance regarding the preliminary finding of the Labour Court that the enquiry conducted against him as held by the DTC was fair and proper, and that no justification to interfere with the finding of the Enquiry Officer, on merits, could be said to exist.

23. The brief of this Court is, therefore, limited to examining whether the Labour Court could be said to have so erred, in holding the punishment imposed on Saroop Singh to be disproportionate to the W.P.(C) No.6322/2004 and 6687/2004 Page 11 of 41 misconduct alleged against him and that, on that basis reinstating Saroop Singh in service with 40% back wages, as would justify interference, therewith, in writ jurisdiction.

24. Be it noted in this regard, that operation of the impugned award was stayed, by this Court, vide order dated 26th April, 2004. The said interim order continues to remain in force till date.

25. The trite position in law, indisputably, is that the scope of this Court, to interfere with the award of the Labour Court, is highly restrained. The burden of the song of the petitioner, in the writ petition is, essentially, that the impugned award of the

Labour Court, in setting aside the punishment imposed upon Saroop Singh in its entirety, was, ex facie, incompatible with its own earlier decision not to interfere with the finding returned against Saroop Singh on merits.

26. In other words, the writ petition filed by DTC asserts that the finding of guilt against Saroop Singh, as returned by the Disciplinary Authority and affirmed by the Labour Court, necessarily entails, in its wake, appropriate chastisement of Saroop Singh. It is submitted that the Labour Court, could, therefore, have perhaps reduced the punishment awarded to Saroop Singh, but could not have set aside the said punishment in its entirety, thereby effectively substituting award with reward.

27. Superficially viewed, there does appear to be substance in the above grievance of the DTC. It may appear incongruous that, having declined to interfere with the finding of the guilt, as recorded against W.P.(C) No.6322/2004 and 6687/2004 Page 12 of 41 Saroop Singh by the Disciplinary Authority - which decision Saroop Singh has not chosen to contest - the Labour Court nevertheless directed him to be reinstated in service with 40% back wages.

28. A more incisive examination of the order of the Labour Court, however, discloses that, in effect, the order has resulted in deprivation, of Saroop Singh, of 60% of the wages which he would otherwise have earned, had he not been found guilty and penalized. In effect, therefore, the Labour Court has substituted the punishment of removal, awarded by the DTC to Saroop Singh, with the punishment of withholding of 60% wages. There is no gainsaying that this is a punishment, and possibly a severe one at that. Withholding 60% of the pay is ominously capable of effecting crippling consequences, especially in the case of a low paid employee such as a driver.

29. On being queried regarding the punishment imposed on Satvir Singh, Mr. U. N. Tiwari, counsel appearing on behalf of DTC submits that Satvir Singh was removed from service at a later point of time, but that, he had thereafter been reinstated. These facts are, however, not forthcoming in the writ petition filed by the DTC. Apparently handicapped by the passage of time, since the entertaining of the present petitions by this court by issuance of rule thereon, Mr Tiwari is

understandably unable to enlighten this Court regarding the circumstances in which Satvir Singh was removed and, later, reinstated. It is, however, clearly stated, by the petitioner-DTC, in Ground C in the writ petition, on oath, that Satvir Singh had been imposed the punishment of stoppage of three increments due to him. W.P.(C) No.6322/2004 and 6687/2004 Page 13 of 41 30. Significantly, the writ petition does not question the wisdom of the Labour Courts finding that there was no justification for treating Saroop Singh more harshly than Satvir Singh. This factor assumes importance, in view of the fact that, as per the allegations in the charge sheet, the main perpetrator of the misconduct was Satvir Singh, with Saroop Singh merely being an abettor. Further, as regards the allegation of belabouring Kishan Dass, one cannot ignore the fact that Kishan Dass himself stated that, while he noticed Saroop Singh in the crowd, he could not state, with certainty, that he was one of the assailants.

31. This Court has, in its recent decision dated 21st July 2017 in D.D.A. v Mool Chand [WP (C) 9468/2004]., delineated the following principles as emerging from the definitive judicial authorities on the subject, regarding the scope of interference, under Article 226 of the Constitution of India, with the findings of the Labour Court/Industrial Tribunal: (i) The Labour Court/ Industrial Tribunal is the final fact finding authority. (ii) The High Court, in exercise of its powers under Article 226/227, would not interfere with the findings of fact recorded by the Labour Court, unless the said findings are perverse, based on no evidence or based on illegal/ unacceptable evidence. W.P.(C) No.6322/2004 and 6687/2004 Page 14 of 41 (iii) In the event that, for any of these reasons, the High Court feels that a case for interference is made out, it is mandatory for the High Court to record reasons for interfering with the findings of fact of the Labour Courts/ Industrial Tribunal, before proceeding to do so. (iv) Adequacy of evidence cannot be looked into, while examining, in writ jurisdiction, the evidence of the Labour Court. (v) Neither would interference, by the writ court, with the findings of fact of the Labour Court, be justified on the ground that a different view might possibly be taken on the said facts.

32. On what constitutes perversity, it is observed in paras 29 and 30 of the said decision, thus: 29. Perversity, for its part, is attributed to a judicial/ quasi judicial

decision if the decision ignores/excludes relevant material, considers irrelevant/inadmissible material, is against the weight of evidence, or so outrageously defies logic as to suffer from irrationality [Damodar Dass v. Sohan Devi, (2016) 3 SCC78 S R Tiwari v. Union of India, (2013) 6 SCC602 Rajinder Kumar Kindra v. Delhi Administration, (1984) 4 SCC635 Kuldeep Singh v. Commissioner of Police, (1999) 2 SCC10 Gamini Bala Koteswara Rao v. State of AP, (2009) 10 SCC636 Babu v. State of Kerala, (2010) 9 SCC189 Dr. Sunil Kumar Sambhudayal Gupta v. State of Maharashtra, (2010) 13 SCC657.

30. Damodar Dass (Supra) further postulates that in examining whether a decision is, or is not, perverse, the classic test, of the reasonable mans conclusion on the W.P.(C) No.6322/2004 and 6687/2004 Page 15 of 41 33. facts before the authority concerned would apply. The same decision also reiterates the trite position that inadequacy of evidence, or the possibility of reading the evidence in a different manner, would not amount to perversity. It cannot be said that the finding, of the Labour Court, that discriminatory treatment had been meted out to Saroop Singh, vis-a- vis Satvir Singh, in the matter of quantum of punishment awarded, suffers from any such infirmity as would warrant interference, therewith, by this Court, in exercise of the extraordinary jurisdiction constitutionally vested in it. In the opinion of this Court, it cannot be said that the Labour Court has erred either on facts or in law, in inflicting upon Saroop Singh, the punishment of withholding 60% of his wages for the entire remainder of his service, after the date of his removal.

34. The power of the Labour Court to substitute a punishment lesser than that awarded by the management on the workman concerned, stands recognized in statute as well as precedent. Section 11A of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) reads thus: 11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.-Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, 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 W.P.(C) No.6322/2004 and 6687/2004 Page 16 of 41 was not justified, it may, by its award, set aside the order of discharge or

dismissal and direct reinstatement of the workmen on such terms and conditions, if any, 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 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. (Emphasis supplied) 35. The Statement of Objects and Reasons of Section 3 of the Industrial Disputes (Amendment) Act, 1971 (which introduced Section 11A in the Act) read, in respect of Section 11A, as under: Indian Iron and Steel In Company Limited v. Workmen (AIR 1958 SC130at 138), the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has 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 that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc., on the part of the management. The its recommendation (No.119) concerning termination of employment at the initiative to the employer, adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a International Labour Organisation, in W.P.(C) No.6322/2004 and 6687/2004 Page 17 of 41 that the neutral body neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and that other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organization has further recommended should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief. In accordance with is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power in cases wherever necessary to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and

conditions, if any, as it thinks fit or give such other reliefs to the workman including the award of any letter punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new Section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947. these recommendations, it (Emphasis supplied) 36. The legal position, regarding the power and functions of the Industrial Tribunal, pre- and post- 15th December 1971, was penetratingly analyzed, by C. A. Vaidialingam, J.

(speaking for himself and I. D. Dua, J.) in *Workmen of M/s Firestone Tyre & Rubber Co. of India (P) Ltd v Management*, (1973) 1 SCC813 Paras 32 to 41-A the report, in the said case, merit reproduction, in extenso, as under: W.P.(C) No.6322/2004 and 6687/2004 Page 18 of 41 32. From those decisions, the following principles broadly emerge: imposing The right to take disciplinary action and to

(1) decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified. the punishment, an

(2) Before employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the

first time justifying his action, and it is open to the employee to adduce evidence contra. W.P.(C) No.6322/2004 and 6687/2004 Page 19 of 41

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct. W.P.(C) No.6322/2004 and 6687/2004 Page 20 of 41

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court Tea

Estate v. Workmens [(1971) 1 SCC742 within the judicial decision of a Labour Court or Tribunal. in Management of Panitole 32-A. The above was the law as laid down by this Court as on December 15, 1971, applicable to all industrial adjudications arising out of orders of dismissal or discharge.

33. The question is whether Section 11-A has made any changes in the legal position mentioned above and if so, to what extent?. The Statement of Objects and Reasons cannot be taken into account for the purpose of interpreting the plain words of the section. But it gives an indication as to what the legislature wanted to achieve. At the time of introducing Section 11-A in the Act, the legislature must have been aware of the several principles laid down in the various decisions of this Court referred to above. The object is stated to be that the Tribunal should have power in cases, where necessary, to set aside the order of discharge or dismissal and direct reinstatement or award any lesser punishment. The Statement of Objects and Reasons has specifically referred to the limitations on the powers of an Industrial Tribunal, as laid down by this Court in Indian Iron and Steel Co. Ltd. case. W.P.(C) No.6322/2004 and 6687/2004 Page 21 of 41 for adjudication. In 34. This will be a convenient stage to consider the contents of Section 11-A. To invoke Section 11-A, it is necessary that an industrial dispute of the type mentioned therein should have been referred to an Industrial Tribunal 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 workman 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 indicate that a change in the law, as laid down by this Court has been effected. According to the workmen the entire law has been completely altered; whereas according to the employers, a very minor change has been effected giving power to the Tribunal only to alter the punishment, after having held that the misconduct is proved. That is, according to the employers, the Tribunal has a mere power to alter the punishment after it holds that the misconduct is proved. The workmen, on the other hand, claim that the law has

been re-written.

35. We cannot accept the extreme contentions advanced on behalf of the workmen and the employers. We are aware that the Act is a beneficial piece of legislation enacted in the interest of employees. It is well settled that in construing the provisions of a welfare legislation, courts should adopt, what is described as a beneficent rule of construction. If two constructions are reasonably possible to be placed on the section, it follows that the construction which furthers the policy and object of the Act and is more beneficial to the employees, has to be preferred. Another principle to be borne in mind is W.P.(C) No.6322/2004 and 6687/2004 Page 22 of 41 that the Act in question which intends to improve and safeguard the service conditions of an employee, demands an interpretation liberal enough to achieve the legislative purpose. But we should not also lose sight of another canon of interpretation that a statute or for the matter of that even a particular section, has to be interpreted according to its plain words and without doing violence to the language used by the legislature. Another aspect to be borne in mind will be that there has been a long chain of decisions of this Court, referred to exhaustively earlier, laying down various principles in relation to adjudication of disputes by industrial courts arising out of orders of discharge or dismissal. Therefore it will have to be found from the words of the section whether it has altered the entire law, as laid down by the decisions, and, if so, whether there is a clear expression of that intention in the language of the section.

36. We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in Indian Iron & Steel Co. Ltd. case existed. The conduct of disciplinary proceedings and the punishment to be imposed were all considered to be a managerial function with which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation of unfair labour practice. This position, in our view, has now been changed by Section 11-A. The words in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified clearly indicate that the

Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer establishes the misconduct alleged against a W.P.(C) No.6322/2004 and 6687/2004 Page 23 of 41 workman. 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. The limitations imposed on the powers of the Tribunal by the decision in Indian Iron & Steel Co. Ltd. case, can no longer be invoked by an employer. 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.

37. If there has been no enquiry held by the employer or if the enquiry is held to be defective, it is open to the employer even now to adduce evidence for the first time before the Tribunal justifying the order of discharge or dismissal. We are not inclined to accept the contention on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal for the first time recognised by this Court in its various decisions, has been taken away. There is no indication in the section that the said right has been abrogated. If the intention of the legislature was to do away with such a right, which has been recognised over a long period of years, as will be noticed by the decisions referred to earlier, the section would have been differently worded. Admittedly, there are no express words to that effect, and there is no indication that the section has impliedly changed the law in that respect. Therefore, the position is that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had held no enquiry or the enquiry held by him is found to be defective. Of course, an opportunity will have to be given to the workman to lead evidence contra. The stage at which the employer has to ask for such an opportunity, has been W.P.(C) No.6322/2004 and 6687/2004 Page 24 of 41 then pointed out by this Court in Delhi Cloth and General Mills Co. Ltd. case. No doubt, this procedure may be time consuming, elaborate and cumbersome. As pointed out by this Court in the decision just referred to above, it is open to the Tribunal to deal with the validity of

the domestic enquiry, if one has been held as a preliminary issue. If its finding on the subject is in favour of the management, for additional evidence being cited by the management. But if the finding on this issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence justifying his action. This right in the management to sustain its order by adducing independent evidence before the Tribunal, if no enquiry has been held or if the enquiry is held to be defective, has been given judicial recognition over a long period of years. there will be no occasion 38. All parties are agreed 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.

39. Having held that the right of the employer to adduce evidence continues even under the new section, it is needless to state that, when such evidence is adduced for the first time, it is the Tribunal which has to be satisfied on such evidence about the guilt or otherwise of the workman concerned. The law, as laid down by this Court that under such circumstances, the issue about the merits of impugned order of dismissal or discharge is at large before the Tribunal and that it has to decide for itself whether is proved, continues to have full effect. In such a case, as laid down by this Court, the exercise of managerial functions does not arise at all. the misconduct alleged W.P.(C) No.6322/2004 and 6687/2004 Page 25 of 41 40. Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under Section 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.

41. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11-A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and

found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to re-appraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11-A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when W.P.(C) No.6322/2004 and 6687/2004 Page 26 of 41 to the conclusion that the misconduct it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11-A. 41-A. Another change that has been effected by Section 11-A is the power conferred on a Tribunal to alter the punishment imposed by an employer. If the Tribunal comes to a conclusion that the misconduct is established, either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation. Under Section 11-A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by Section 11-A. (Emphasis supplied) 37. The issue of whether a decision that dismissal or removal of the workman was illegal, would entail, as an inevitable sequitur, reinstatement with full back wages, was also examined, by this Court, in Mool Chand (supra). A study of the evolution of the law, on the subject, as undertaken in the said decision, revealed that, over the

years, there has been a paradigm shift, from the concept of reinstatement with full, or partial, back wages, to lump sum compensation. Having taken stock of the fact that, in earlier decisions W.P.(C) No.6322/2004 and 6687/2004 Page 27 of 41 such as P.G.I. of Medical Education & Research, Chandigarh (Supra), M.P. State Electricity, Indian Railways Construction Co. Ltd. v. Ajay Kumar, (2003) 4 SCC579 and Hindustan Motors Limited v. Tapan Kumar Bhattacharya, (2002) 6 SCC41 M/s. Hindustan Tin Works (supra), reinstatement with back wages, had been awarded, the judgment notes, in paras 41 and 42, as under: the trend of judicial 41. Subsequently, however, thought appears to have sharply swung, from the theory of "reinstatement with back wages (in whole or in part)" to the theory of "lump sum compensation". Noting this fact, Senior Superintendent Telegraph (Traffic) v Santosh Kumar Seal, (2010) 6 SCC773 held thus: Corpn. Ltd. v. Uday Forest this Court In the last few years it has been consistently 9. held by that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate. (See U.P. State Brassware Narain Pandey [(2006) 1 SCC479:

2006. SCC (L&S) 250]. Development Corpn. v. M.C. Joshi [(2007) 9 SCC353: (2007) 2 SCC (L&S) 813]. , State of M.P. v. Dassit Kumar Verma [(2007) 1 SCC575: (2007) 1 SCC (L&S) 405]. , M.P. Admn. v. Tribhuban [(2007) 9 SCC748: (2008) 1 SCC (L&S) 264]. , Sita Ram v. Moti Dass Nehru Farmers Training Institute [(2008) 5 SCC75: (2008) 2 SCC (L&S) 71]. Development Authority v. Ramsahai [(2006) 11 SCC684: (2007) 1 SCC , GDA v. Ashok Kumar [(2008) 4 SCC261: (2008) 1 SCC (L&S) , Uttaranchal (L&S) 518]. , Jaipur W.P.(C) No.6322/2004 and 6687/2004 Page 28 of 41 1016]. and Mahboob Deepak v. Nagar Panchayat, Gajraula [(2008) 1 SCC575: (2008) 1 SCC (L&S) 239]. .) In a recent judgment authored by one of us 10. (R.M. Lodha, J.) in Jagbir Singh v. Haryana State Agriculture Mktg. Board [(2009) 15 SCC327: (2010) 1 SCC (L&S) 545]. , the aforesaid decisions were noticed and it was stated: (SCC pp. 330 & 335, paras 7 &

14) It is true that the earlier view of this 7. Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee the prescribed Compensation instead of reinstatement has been held to meet the ends of justice. in contravention of is procedure. *** 14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding termination, the date of W.P.(C) No.6322/2004 and 6687/2004 Page 29 of 41 particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee. 42. Perhaps the most recent pronouncement, on this issue, is to be found in the following unequivocal words of Ranjan Gogoi, J., in *Rashtrasant Tukdoji Maharaj Technical Education Sanstha v Prashant Manikarao Kubitkar*, MANU/SC/0745/2017, which holds thus:

"2. The Respondent workman had worked under the Appellant for a period of two years and three months whereafter he was terminated on 1st June, 1994. Judicial opinion has been consistent that if the termination is found to be contrary to Sections 25F and 25G of the Industrial Disputes Act, 1947 reinstatement in service is not the rule but an exception and ordinarily grant of compensation would meet the ends of justice.

3. The Respondent workman in the present case had worked for a period of two years and three months and that apart he had approached the labour Court after 13 years. Taking into account the totality of the facts and circumstances of the case we are of the view that the order of the labour Court and the High Court ought to be modified by granting compensation of Rs. 1,00,000/- lieu of

reinstatement without back wages as ordered. It is ordered accordingly."

(Rupees one lakh) in (Emphasis supplied) 38. A mildly discordant note was, however, sounded by another Division Bench of the Supreme Court, in *Deepali Gundu Surwase v W.P.(C) No.6322/2004 and 6687/2004* Page 30 of 41 *Kranti Junior Adhyapak Mahavidyalaya (D. Ed.)*, (2013) 10 SCC324 wherein G. S. Singhvi, J., culled out the following propositions, after a careful analysis of earlier decisions on the point: if any, the found proved against financial condition of 38.1 In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. 38.2 The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, the employee/workman, the employer and similar other factors. 38.3 Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments. *W.P.(C) No.6322/2004 and 6687/2004* Page 31 of 41 if full back wages. However, 38.4 The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct

or that the employer had foisted a false charge, then there will be ample justification for award of full back wages. 38.5 The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages. 38.6 In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of W.P.(C) No.6322/2004 and 6687/2004 Page 32 of 41 infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis--vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course (P) Ltd. v. Employees, (1979) 2 SCC80 in Hindustan Tin Works suggested (Emphasis supplied) 39. Deepali Gundu Surwase (supra), it may be noted, was subsequently followed in Pawan Kumar Agarwala v General Manager, S.B.I., (2015) 15 SCC184 40. Paras 38.4 and 38.5 of Deepali Gundu Surwase (supra), therefore, hold that (i) where the enquiry is in accordance with the principles of natural justice, and/or provisions of

applicable Standing Orders, etc., but the punishment is found to be disproportionate to the alleged misconduct, the Tribunal is empowered to reduce the punishment awarded to the workman; (ii) however, (a) if the enquiry is held in violation of the principles of natural justice, or W.P.(C) No.6322/2004 and 6687/2004 Page 33 of 41 (b) the Tribunal finds the factum of misconduct not to be established at all, or (c) the workman is found to have been victimized, the Tribunal would be justified in awarding full back wages.

41. In the present case, the finding, of the Labour Court, that the enquiry, as held against Saroop Singh, was proper and in accordance with the principles of natural justice, has not been impugned by Saroop Singh. At the same time, the writ petition, of the DTC, for its part, does not question the finding of the Labour Court, that Saroop Singh was entitled to be treated at least at par with Satvir Singh. Satvir Singh, admittedly, was awarded the penalty of stoppage of three increments. As against this, the Labour Court has awarded, to Saroop Singh, the penalty of withholding of 60% of his wages, permanently. Ex facie, therefore, it appears that the treatment meted out by the Labour Court to Saroop Singh is, in fact, harsher than that meted out by the DTC to Satvir Singh and that the Labour Court has, if at all, erred on the side of caution. The reliance, by the Labour Court, on the fact that Saroop Singh was merely charged with having abetted Satvir Singh and that Kishan Dass, in his deposition, denied having seen Saroop Singh belabour him, cannot be said to be misguided or perverse in any manner.

42. This Court is, therefore, unable to concur with the submission, of the DTC, that the decision of the Labour Court that Saroop Singh W.P.(C) No.6322/2004 and 6687/2004 Page 34 of 41 be reinstated, with 40% back wages, warrants interference, under Article 226 of the Constitution of India.

43. As already noticed above, the presently resonant judicial refrain is that setting aside of an order of termination of the employee does not inevitably result in his or her reinstatement with back wages, and that the more appropriate remedy, in such cases, would be awarding a lump sum compensation. Deepali Gundu Surwase (supra) makes an exception, in this regard, in this regard, only where the Labour Court finds that the enquiry was held in violation of the principles of natural justice,

or that the workman was not guilty of misconduct at all, or that the workman had been victimized. In the present case, it cannot be said that the Labour Court has entirely exonerated Saroop Singh of complicity in the alleged misconduct. Though the impugned Award does observe that the present case indicated victimization, this Court does not feel that sufficient factual basis, for sustaining such a finding, exists in this case. Every case of discrepant punishment, to employees similarly situated, is not, ipso facto, victimization. Victimization, in the context of labour law, has been authoritatively defined, in *Bharat Iron Works v Bhogubhai Allubhai Patel*, (1976) 1 SCC518 in the following words, which brook no ambiguity: 7. What is victimisation is again a multiheaded monster to tackle with. The word victimisation is not defined in the Industrial Disputes Act. An attempt to describe unfair practices by employers by a deeming definition was made under Section 28-K in Chapter III-B of the Indian Trade Unions (Amendment) Act, 1947 (Act 45 of 1947) but we understand, it has not yet been W.P.(C) No.6322/2004 and 6687/2004 Page 35 of 41 brought into force. The concept of victimisation is to a large extent brought out under Section 28-K of that unenforced law and it may be worthwhile to quote the same as it throws sufficient light on the topic and will offer guidance to tribunals in adjudicating a ticklish issue of this nature: to interfere with the 28-K. Unfair practices by employers.-The following shall be deemed to be unfair practices on the part of an employer, namely- (a) to interfere with, restrain or coerce his workmen in the exercise of their rights to organise, form, join or assist a Trade Union and to engage in concerted activities for the purpose of mutual aid or protection; (b) formation or administration of any Trade Union or to contribute financial or other support to it; (c) to discharge, or otherwise discriminate against, any officer of a recognized Trade Union because of his being such officer; (d) to discharge or otherwise discriminate against any workman because he has made allegations or given evidence in an enquiry or proceeding relating to any matter such as is referred to in sub-section (1) of Section 28-F; (e) Section 28-F: Provided that the refusal of an employer to permit his workmen to engage in Trade Union activities during their hours of work shall not be deemed to be unfair practice on his part. to fail to comply with the provisions of Section 28-F provides for rights of recognized trade unions. Ordinarily a person is victimised, if he is made a 8. victim or a scapegoat and is subjected to persecution, prosecution or punishment for no

real fault or guilt of his own, in the manner, as it were, of a sacrificial victim. It W.P.(C) No.6322/2004 and 6687/2004 Page 36 of 41 is, therefore, manifest that if actual fault or guilt meriting the punishment is established, such action will be rid of the taint of victimisation. It is apparent that victimisation may partake of 9. various types, to cite one or two only, for example pressurising an employee to leave the union or union activities; treating an employee unequally or in an obviously discriminatory manner for the sole reason of his connection with union or his particular union activity; inflicting a grossly monstrous punishment which no rational person would impose upon an employee and the like.

10. A word of caution is necessary. Victimisation is a serious charge by an employee against an employer, and, therefore, it must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them. The charge must not be vague or indefinite being as it is an amalgam of facts as well as inferences and attitudes. The fact that there is a union espousing the cause of the employees in legitimate trade union activity and an employee is a member or active office-bearer thereof, is, per se, no crucial instance. Collective bargaining being the order of the day in a democratic social welfare State, legitimate trade union activity which must shun all kinds of physical threats, coercion or violence, must march with a spirit of tolerance, understanding and grace in dealings on the part of the employer. Such activity can flow in healthy channel only on mutual cooperation between employer and employee and cannot be considered as irksome by the management in the best interest of the concern. Dialogues with representatives of a union help striking a delicate balance in adjustment and settlement of various contentious claims and issues.

11. The onus of establishing a plea of victimisation will be upon the person pleading it. Since a charge of victimisation is a serious matter reflecting, to a degree, W.P.(C) No.6322/2004 and 6687/2004 Page 37 of 41 upon the subjective attitude of the employer evidenced by acts and conduct, these have to be established by safe and sure evidence. Mere allegations, vague suggestions and insinuations are not enough. All particulars of the charge brought out, if believed, must be weighed by the Tribunal and a conclusion should be reached on a totality of the evidence produced.

12. Again victimisation must be directly connected with the activities of the concerned employee inevitably leading to the penal action without the necessary proof of a valid charge against him. The question to be asked is: Is the reason for the punishment attributable to a gross misconduct about which there is no doubt or to his particular trade union activity which is frowned upon by the employer?. To take an example, suppose there is a tense atmosphere prevailing in a company because of a strike consequent upon raising of certain demands by the union, each party calling the other highly unreasonable or even provocative, the tribunal will not readily accept a plea of victimisation as answer to a gross misconduct even when an employee, be he an active office-bearer of the union, commits assault, let us say, upon the Manager, and there is reliable legal evidence to that effect. 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. (Emphasis supplied)

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In the present case, the Labour Court having found Saroop Singh guilty of misconduct - albeit to a lesser degree than alleged - it is not possible to subscribe to its observation that he had been victimized. A reading of the principles laid down in Bharat Iron Works (supra) makes it apparent that treating an employee unequally or in an obviously discriminatory manner would amount to victimization only where such discriminatory treatment is for the sole reason of his connection with union or his particular union activity. In the present case, the Labour Court has, without imputing any motives to the DTC, opined that Saroop Singh had been victimized, only because, in its view, the punishment imposed on him was discrepant vis--vis that imposed on Satvir Singh. The premise is, quite clearly, too facile and tenuous to merit the conclusion. This Court, therefore, is convinced that the findings, of the Labour Court, in the present case, do not justify any inference of victimization of Saroop Singh by the DTC.

44. Saroop Singh was 51 years of age at the time of filing of the writ petition and would have, therefore, superannuated prior to his demise on 23rd August, 2015. His legal heirs have been substituted in both these writ petitions. Obviously, the issue of reinstating of Saroop Singh being no longer open for consideration, the issue would narrow down to grant of monetary compensation.

45. In view of the fact that (i) the order, dated 24th October, 2002, of the Labour Court, was not challenged by Saroop Singh and (ii) the charges against Saroop Singh were found to have been proved (albeit W.P.(C) No.6322/2004 and 6687/2004 Page 39 of 41 to a lesser degree than alleged), it is not possible to accede, to the prayer of Saroop Singh, that he be granted full back wages. W.P (C) 6687/2004 filed by Saroop Singh is, consequently, dismissed.

46. The DTC has not produced any material to indicate that, after his removal, Saroop Singh secured gainful employment elsewhere. In that view of the matter, this Court is of the opinion that 40% of the wages which Saroop Singh would have drawn, had he continued to be in service till superannuation, would amount to a just and equitable compensation, in the facts of the case. It is clarified that the said payment is being directed, not towards back wages, in whole or in part, but as a measure of the lump sum compensation which, in the opinion of this Court, the interests of justice would merit.

47. Resultantly, WP (C) 6322/2004 is disposed of with a direction, to the DTC, to disburse, to the legal heirs, 40% of the wages which Saroop Singh would have drawn, had he continued in service till the age of his superannuation. This would include any increments to which he might have become entitled during the said period. No additional payment, towards any pensionary benefits that may have accrued to Saroop Singh consequent on his superannuation, would, however, merit inclusion therein. The amount, thus computed, is directed to be disbursed, by the DTC, to the legal heirs of Saroop Singh, within a period of 2 months from the receipt of a certified copy of this judgement. Any delay or default, in doing so, would entail additional liability of interest, calculated @ 14% per annum. W.P.(C) No.6322/2004 and 6687/2004 Page 40 of 41 48. These writ petitions are, therefore, disposed of, in terms of paras 45 and 47 (supra), without any order as to

costs. SEPTEMBER21 2017 neelam C. HARI SHANKAR (JUDGE) W.P.(C)
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