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**Court :** Rajasthan

**Decided On :** Nov-06-1985

**Reported in :** 1986(1)WLN521

**Judge :** Kishan Mal Lodha and; Shyam Sunder Byas, JJ.

**Appeal No. :** D.B. Civil Special Appeal Nos. 263 and 264 of 1984

**Appellant :** R.K. Shukla and anr.

**Respondent :** Chief Project Engineer, R.A.P.P.

**Judgement :**

**Shyam Sunder Byas, J.**

1. Since both these appeals under Section 18 of the Rajasthan High Court Ordinance, 1949 are directed against the common judgment of a learned Single Judge of this Court delivered on July 10, 1984 by which the two Writ Petitions (S.B. Civil Writ Petition No. 798/ 1976 and S.B. Civil Writ Petition No. 988/1976 were decided, they were he together and are being disposed of by a single judgment. In the judgment aforesaid, the learned Single Judge allowed the writ petitions. He set-aside the orders of the Assistant Labour Commissioner (Central), Kota and directed him to give permission to the employer under Section 33(3)(b) of the Industrial Disputes Act, 1947 for the dismissal of the appellants from the service.

2. Succinctly stated the facts and circumstances giving rise to these appeals are that the Chief Project Engineer, Rajasthan Atomic Power Project P.O. Anushakti via Kota (here in after referred to as the 'management') filed two writ petitions under Articles 226 and 227 of the Constitution of India against the appellants and the Assistant Labour Commissioner, Kota. The averments made in both the writ petitions are common and identical. As per averments disclosed in them, the appellants S.K. Sharma and R.K. Shukla are employed as Tradesman in the project. Both of them, are protected Workmen under Section 33(4) of the Industrial Disputes Act, 1947(for short, 'the Act'). The State Government by its notification dated, April 21, 1972 declared for a period of ten years 'the plant site of the Project" as prohibited place for the purpose of the Indian Officials Secrets Act, 1923 (Central Act No. XIX of 1923). On December 11, 1,974, the appellants staged a demonstration and shouted slogans between Administrative Building No. 1 and 2, of the Project between 12.15 to 12.45 Hours, which are situated in the prohibited area. The management took a serious view of the matter as it appeared a case of gross misconduct on the part of the appellants. An inquiry was initiated against them. The charges were framed against the appellants. The appellants participated in the inquiry, refuted the charges and claimed innocence. The Inquiry Officer recorded the evidence of the concerned parties. On the conclusion of the inquiries, the Inquiry, Officer found this appellant R.K. Shukla guilty of the charges number 2 and 3 and partly of charge No. 1 and found the appellant S.K. Sharma guilty of charge No. 2 and partly of charge No. 1. He submitted his report before the Disciplinary Authority. The Disciplinary Authority, on a consideration of the inquiry proceedings, took all the charges duly proved against the appellants. He, therefore, proposed the penalty of dismissal of both the appellants from service. The appellants were issued notices to show cause, if any,, against the proposed punishment of their dismissal from service. The appellants submitted their written representations before the Disciplinary Authority. The Disciplinary Authority also afforded a personal hearing to them. The Disciplinary Authority thereafter decided that the penalty of dismissal from service should be inflicted upon the appel-tents. Since an industrial dispute under the Act was pending for conciliation before the Assistant Labour Commissioner (Central), Kota and the appellants were 'protected workmen', the management submitted applications under Section 33(3)(b) of the

Act for permission. The Assistant Labour Commissioner heard the parties and taking it to be a case of victimisation, declined to grant permission for the appellants' dismissal from service. Dissatisfied the management submitted writ petitions in this Court. In the reply filed by the appellants in this Court, they reiterated that since they were the active members of the Rajasthan Anushakti Karmchari Union (RAKU), they were taken as an eye-sore by the management. Actuated by malice the management initiated inquiries against them. It is a case of unfair labour practice and victimisation where the appellants are being penalised with the extreme punishment for trivial matters. The learned Single Judge held that no case of victimisation was visible as the charges of misconduct stood proved against the appellants. He also found no case of discrimination between the workmen. He took the view that once the charges stood proved and the findings of the inquiries were not perverse, the plea of victimisation collapses. The Authority under Section 33 of the Act acted beyond his jurisdiction in declining to give the permission under Section 33(3)(b) of the Act for the dismissal of the appellants from service. The writ petitions were consequently allowed, the orders of the Assistant Labour Commissioner (Central), Kota were quashed and he was directed to give the requisite permission for the dismissal of the appellants. Aggrieved against the said judgment of the learned Single Judge, the appellants have come-up in special appeals.

3. In assailing the impugned judgment, Mr. Mirdul raised the following two contentions : (1) it is a case of discrimination. Some workmen belonging to the RAKU (of which the appellants are the office - bearers), who took part in the demonstration and raised slogans along with the appellants in the prohibited/protected area, were left out and the appellants were alone chosen and picked-up for punitive action. Likewise, workmen belonging to the other union e.g. 'Supervisors Association', who also staged a like demonstration and raised slogans in the prohibited/protected area were not dealt with and left free with no action. This discrimination of pick and choose between the workmen of the same union and the workmen of one union and the workmen of the other union makes out a clear case of unfair labour practice and (2) the penalty of dismissal from service on a charge of trivial nature was uncalled for. The penalty or punishment of dismissal from service was so shockingly disproportionate to the misconduct that it

smacks of victimisation.

4. It was argued that when both these elements are assimilated and taken together, they show that there was complete want of bonafides on the part of the management. The Assistant Labour Commissioner was perfectly within his jurisdiction in declining the permission. It was urged that the learned Single Judge did not correctly appreciate these defences of the workmen.

5. We are here primarily concerned with the jurisdiction of an Authority in an application under Section 33 of the Act. The ambit and scope of Section 33 of the Act and the powers of the Authority while deciding an application for approval/permission thereunder have been considered by the Supreme Court from time to time beginning in 1958 with *Atherton West & Colta v. Suti Mill Mazdoor Union* 0065/1953 : (1953)11LLJ321SC and ending with *Lalaram v. Management of DCM Chemical Works Ltd* : (1978)11LLJ507SC . Mr. Mridul has taken us through all these decisions. But we need not make a reference to all of them as almost all of them have been noticed in *Bharat Iron Works v. Bhagu Bhai Balu Bhai Patel* : [1976]2SCR280 .

6. In the case of *Bharat Iron Works*, it was observed by their Lordships:

When an application under Section 33 whether for approval or for permission is made to a Tribunal it has initially a limited jurisdiction only to see whether a prima facie case is made out in respect of the misconduct charged. This is, however, the position only when the domestic enquiry preceding the order of dismissal is free from any defect, that is to say, free from the vice of violation of the principles of natural justice.

7. Dealing with unfair labour practice and victimisation it was further observed:

Where there is no failure of the principles of natural justice in the course of domestic enquiry, if the tribunal finds that dismissal of an employee is by way of victimisation or unfair labour practice, it will then have complete jurisdiction to interfere with the order of dismissal passed in the domestic enquiry. In that event the fact that there is no violation of the principles of natural justice in the course of

the domestic enquiry. In that event the fact that there is no violation of the principles of natural justice in the course of the domestic enquiry will absolutely lose its importance or efficacy.

'Ordinarily a person is victimised, if he is made a victim or a scape-goat 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 types or victimisation indicated.

'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 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. (Para 9)

'The onus of establishing a plea of victimisation will be upon the person pleading, it, 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. 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.

A view was also expressed that there is no difference, in principle of law applicable to a case under Section 10 of the Industrial Disputes Act and that under Section 33.

8. In Lala Ram's case (supra), after noticing the various decisions of the Supreme Court, the legal position under Section 33 of the Act was summed up as under:

The position that emerges from the above quoted decisions of this Court may be stated thus: In proceedings under Section 33(3)(b) of the Act, the jurisdiction of the Industrial Tribunals is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and Principles of

natural justice has been held; (ii) Whether a prima, facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bonafide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co. v. Ram Probesh Singh (1964) 1 SCR 109 : AIR 1964 SC 486 Titaghur Paper Mills Co. Ltd v. Ram Naresh Kumar (1961)1 Lab. LJ 511 (SC) Hind Construction and Engineering Co. Ltd. v. Their Workmen : (1965)ILLJ462SC ; Workmen of Firestone Tyre and Rubber Company of India (P) Ltd. v. Management : (1973)ILLJ278SC , and Eastern Electric and Trading Co. v. Baldev Lal : (1975)ILLJ367SC that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide, and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an interference of malafides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonable short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal.

9. In the case of G. Mackenzie & Co. v. Its Workmen and Ors. IJ 1959 (I) 285, the following principles laid down in Indian Iron & Steel Co. Ltd. v. Their Workmen AIR 1968 SC 130 were quoted with approval:

Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute arises, industrial tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct, the tribunal does not, however, act as a Court of appeal and substitute its own judgment for that of the management, It will

interfere--'-

(i) when there is vent of good faith;

(ii) when there is victimization or unfair labour practice;

(iii) when the management has been guilty of a basic error or violation of principle of natural justice, and

(iv) when on the materials the finding is completely baseless or perverse.

'It is for the management to determine what constitutes major misconduct within its standing orders sufficient to merit dismissal of a workman but in determining such misconduct it must have facts upon which to base its conclusions and it must act in good faith without caprice or discrimination and without motives of vindictiveness, intimidation or resorting to unfair labour practice and there must be no infraction of the accepted rules of natural justice. When the management does have facts from which it can conclude misconduct, its judgment cannot be questioned provided the above-mentioned principles are not violated. But in the absence of these facts or in case of the principles set out above, its position is untenable.

10. It is, thus, now a trite law that the jurisdiction of an Authority, while dealing with an application for approval or permission under Section 33 is of a very limited nature. The jurisdiction of the Authority is not of an appellate or revisional nature. The Authority has no jurisdiction for weighing or re-appreciating the evidence led in during a domestic industry. The Authority can look into the evidence only for the limited purpose whether the evidence discloses a prima facie case or whether the findings based on evidence are perverse. The Authority has, of course, the jurisdiction to find out whether the domestic inquiry initiated against the workmen was conducted in fair and proper manner keeping the principles of natural justice in view. If the workmen raises the defence relating to the unfair labour practice and victimization, such plea should be taken notice of and should be properly dealt with. The Authority may decline to grant the approval / permission if the workman is able to establish unfair labour practice and victimization. It is pertinent to note that

the averments in regard to the unfair labour practice and victimisation should be specific, giving out the, particulars. Vague allegations or suggestions are not sufficient to serve the purpose. Then, there should be not only averments but also the necessary proof to establish the averments of unfair labour practice and victimisation.

11. It may be recalled that the workman has ample opportunities to allege and prove the unfair labour practice and victimisation. The first opportunity available to him in this regard is in the course of domestic inquiry conducted against him. The second opportunity available to him is before the Authority under Section 33 of the Act.

12. Here in the instant case, the appellants (Workmen) have not complaint against the manner in which the inquiries were conducted. There is nothing in their replies filed in the writ petitions or before the Authority under Section 33 of the Act to vitiate the inquiries. No exception was taken to the procedure adopted by the Inquiry Officer. In fact, no arguments vitiating the inquiries were addressed before the learned Single Judge.

13. It may also be mentioned that the Assistant Labour Commissioner (Centre) found no flaw or defect in the inquiries. He did not take the view nor was persuaded to take that the charges of misconduct were not established against the appellants, or that the findings of guilt recorded against them were perverse. The Assistant Labour Commissioner nowhere stated that there was no prima facie case against the appellants.

14. Keeping this background in mind, we may now proceed to examine the two contentions raised before us by Mr. Mridul.

15. As stated earlier, the first contention of Mr. Mridul is that of discrimination. The, discrimination is sought on two grounds. The first is that some workmen belonging to R.A.K.U. which the appellants are the office bearers) who took part in the demonstration and raised slogans along with the appellants in the prohibited/protected area were left out with no action and the appellants alone were chosen and picked up for punitive action. The learned Single Judge found no

substance in the contention and rejected it. In the additional affidavit filed by Mr. O.P. Bansal, the Chief Administrative Officer of the Project, it has been mentioned that the leading part in the demonstration was taken by nine employees. All these employees were suspended pending disciplinary proceedings and were subsequently charge-sheeted. Out of the nine employees, against whom disciplinary actions were initiated, four took voluntary retirement, two namely A.K. Pandey and Kamal Singh admitted the guilt and offered written apology. Taking their apologies into consideration, the punishment of stoppage of two grade increments was imposed on them. The remaining three, viz., the two appellants and one S.N. Singh denied the charges of misconduct and faced the inquiries. On the completion of the inquiries these three workmen were found guilty of the charges and they were dismissed from service. The narration of these facts in the affidavit of Mr. O.P. Bansal makes it ample clear that the nine employees, who took a leading part in the demonstration were dealt with and actions were initiated against them. No discrimination was, thus, shown by the management in respect of these nine workmen, whose case stood at par. The discrimination would have been there if they were treated differently from each other. There is no discrimination between the similar situated employees. It is for the management to accept the voluntary retirement and to take a lenient view in the matter of punishment when the workman tenders apology and feels sorry for his misconduct. It may be mentioned at this stage that the appellants tendered no apology and expressed no regrets for their misconduct. We, therefore, agree with learned Single Judge that it cannot be said that persons of the same class have been differently treated and that the action taken by the management was violative of Article 14 of the Constitution.

16. Coming to the second limb of the alleged discrimination, it was argued by Mr. Mridul that some workmen, including the appellants, belonging to R.A.K.U. alone were picked-up for punitive action while workmen belonging to Supervisors' Association were left out without action even though the latter also staged the demonstration and raised slogans in the protected/ prohibited area. This discrimination, according to Mr. Mridul, between the workmen of one union and the workmen of the other union discloses a clear case on unfair labour practice and victimisation. We have carefully examined the contention and find no substance in

it. Victimization, in the words of the Supreme Court, is a serious charge by an employee against an employer. It, therefore, requires that all particulars belonging to victimization or unfair labour practice should be clearly pleaded and proved. In the reply filed by the appellants before the Inquiry Officer and the Assistant Labour Commissioner (C), no particulars have been pleaded. The names of those workmen belonging to the Supervisors' Association have not been disclosed therein. No evidence was led in either before the Inquiry Officer or before the Assistant Labour Commissioner (C) on this point by the appellants. The Assistant Labour Commissioner (C) has not recorded a finding that workmen belonging to Supervisors' Association were left out without action. It would be useful to notice that the Assistant Labour Commissioner (C) did not make the ground of discrimination as a reason for declining to grant the approval/permission. There are only vague and bald allegations or mere suggestions about the aforesaid discrimination with no material and proof in their support. Before the learned Single Judge also, no such contention based on this part of discrimination was ever raised by the appellants. We are, therefore, unable to accept the contention of Mr. Mridul relating to discrimination between the workmen of one union and the workmen of the other union.

17. The contention which now survives for consideration is whether inferences of unfair labour practice and victimization can be inferred from the punishment awarded to the appellants by the management. It was vehemently contended by Mr. Mridul that the misconduct alleged against the appellants is of trivial nature. Raising the slogans and holding demonstrations is a part of the activities of labour union. The Project allowance was suddenly stopped by the management without prior notice to the workmen. The workmen naturally raised protest against it. The only error on the part of the workmen is that they staged demonstration and raised the slogans in the protected/prohibited area. The misconduct, if any, is, thus, of trivial nature. It was argued that the extreme penalty of dismissal from service is shockingly disproportionate to the misconduct involved. It was urged that the Assistant Labour Commissioner (C) was, therefore, perfectly justified in raising an inference of victimization, taking into consideration the penalty imposed for a misconduct of trivial nature. It was, on the other hand, contended by Mr. Mehta learned counsel for the management that the misconduct involved is of grave

nature. The premises where the demonstrations were made and slogans were raised have been declared prohibited/protected area under the Indian Official Secrets Act, 1923. The appellants have been punished not for raising the slogans and making demonstrations but for doing all these activities in the prohibited/protected area. It was argued that the Authority acting under Section 33 of the Act has no jurisdiction to refuse the approval/ permission simply; because in its opinion the penalty imposed is severe or harsh. We have bestowed our thoughtful consideration to the rival submissions.

18. It may be mentioned that the only ground which weighed with the Assistant Labour Commissioner (Central) in declining to grant approval permission is that the proposed action of dismissal smacks of victimisation because this penalty is shockingly disproportionate to the offence.

19. The pertinent question is whether the Authority under Section 33 of the Act can refuse to grant approval permission when it is of the opinion that the punishment to be awarded, is severe or harsh. In other words whether the inference of victimisation and unfair and unfair labour practice can be raised by the Authority under, Section 33 of the Act simply because in its view the punishment is severe and uncalled for.

20. As observed by their Lordships of the Supreme Court, 'a proved misconduct is anthesis of victimisation as understood in industrial relations'. In our opinion, the measure or punishment is within the discretion of the employer. The question of severity of punishment cannot be taken into consideration by an Authority while dealing with an application for approval/ permission under Section 33 of the Act. The jurisdiction of the Authority under Section 33 of the Act, as discussed earlier, is of limited nature. The Authority does not sit in appeal or revision to decide the question of quantum of punishment. If the Authority refuses to grant approval/permission merely on the ground that the punishment is unduly severe, it commits a jurisdictional error. In *L.D. Sugar Mills v. Ramswaroop* AIR 1957 SC 827, it was observed by their Lordships that when misconduct stands proved against the workmen, the Authority acting under Section 33 of the Act is bound to give requisite permission to the employer to deal out the punishment to the

workmen. In our opinion, where the misconduct stands proved and the defence of unfair labour practice or victimisation is negatived, the Authority acting under Section 33 of the Act cannot refuse the permission/approval on the ground that the proposed punishment is severe or harsh.

21. There is yet another aspect of the matter. The appellants staged demonstrations and raised slogans in the prohibited/protected area of the Atomic Power Project. It is a sensitive place. The scope of offence committed in the vicinity of the premises was recently considered by the Supreme Court in *Glaxo Laboratory Ltd. v. Presiding Officer, Meerut* (1984) 1 SCC (L&S;) 42. It was observed in para 13 of the judgment:

To enable an employer to peacefully carry on his industrial activity, the Act confers powers on him to prescribe conditions of service including enumerating acts of misconduct when committed within the premises of the establishment. The employer is entitled to prescribe conditions of service more or less specifying the acts of misconduct to be enforced within the premises where the workmen gather together for rendering service. The employer has both power and jurisdiction to regulate the behaviour of workmen within the premises of the establishment.

22. In the instant case, Circular issued by the management on Dec. 10, 1974 restrains the employees of the project to carry on agitational activities prejudicial to discipline e.g. shouting slogans at the plant site, which is prohibited/protected area. The charge against the appellants is of carrying on agitational activities in contravention of the Circular and they were found guilty of it. The project plant-site is a sensitive place and it was why that the plant site was declared to be prohibited/protected area. Thus, the misconduct, of which the appellants were found guilty cannot be prima facie taken to be of trivial nature as argued before us by Mr. Mridul. Acts committed by the appellants within the protected/prohibited area are subversive of discipline and constitute grave misconduct. The quantum of punishment being a managerial function cannot be interfered with by the Authority acting under Section 33 of the Act.

23. The severity or harshness of punishment, of course, cannot be taken into consideration by an Authority under a proceeding under Section 33 of the Act. But

the workman is not without remedy. If the workman feels that the penalty imposed on him by the management is uncalled-for the misconduct he has been charged with, he can raise an industrial dispute and have it referred to by the proper Government under Section 10 of the Act. The Labour Court or the Industrial Tribunal has then the powers under Section 11A of the Act to examine the question of harshness of the penalty and grant appropriate relief to the workman. Section 11A of the Act reads as under:

11A. 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 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 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 on the materials on record and shall not take any fresh evidence in relation to the matter.

24. No other contention survives for consideration.

25. For the reasons discussed above, we find no force in these appeals.

26. The appeals are consequently dismissed with costs on the parties.