I/397999/2023 LABR-22015(16)/20/23-IR SEC-Dept. of LABOUR

Government of West Bengal
Labour Department, I. R. Branch
N.S. Building, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

No. Labr/.406/(LC-IR)/ Date:.23/05./2023

ORDER

WHEREAS an industrial dispute existed between M/s. Nutricia International Pvt. Ltd. The Millennium Buldg. 7th floor, 235/2A AJC Bose Road, Kolkata - 700020 and Mrs. Bratati Singha Roy, C/o. – Anil Sinha, Neat Expressway Jakal More, P.O. – Lakurdi, Dist. – Burdwan, Pin - 713102 regarding the issue, being a matter specified in the Second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(1B) (d) of the Industrial Dispute Act, 1947 (14of 1947) to the Ninth Industrial Tribunal specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Ninth Industrial Tribunal heard the parties under section 10(1B) (d) of the I.D. Act, 1947 (14of 1947) and framed the following issue dismissal of the workman as the "issue" of the dispute.

AND WHEREAS the Ninth Industrial Tribunal has submitted to the State Government its Award dated 27/04/2023 under section 10(1B) (d) of the I.D. Act, 1947 (14of 1947) on the said Industrial Dispute vide memo no. 65- I.T. dated 03/05/2023.

Now, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14of 1947), the Governor is pleased hereby to publish the said Award as shown in the Annexure hereto.

ANNEXURE
(Attached herewith)

By order of the Governor,

Assistant Secretary
to the Government of West Bengal

I/397999/2023 LABR-22015(16)/20/23-IR SEC-Dept. of LABOUR

No. Labr/.406/.1/(5)/(LC-IR) Date: 23/05/2023

Copy with a copy of the Award forwarded for information and necessary action to:-

1. M/s. Nutricia International Pvt. Ltd. The Millennium Buldg. 7th floor, 235/2A AJC Bose Road, Kolkata - 700020.
2. Mrs. Bratati Singha Roy, C/o. – Anil Sinha, Neat Expressway Jakal More, P.O. – Lakurdi, Dist. – Burdwan, Pin - 713102.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building, (11th Floor), 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Ananda
23/05/2023

Assistant Secretary

No. Labr/.406/.2/(2)/(LC-IR) Date 23/05/2023

Copy forwarded for information to:-

1. The Judge, Ninth Industrial Tribunal West Bengal, Durgapur, Administrative Building, City Centre, Pin – 713216 with respect to his Memo No. 65 - I.T. dated 03/05/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.

Assistant Secretary

In the matter of Industrial Disputes between Mrs. Bratati Singha Roy, C/o. Anil Sinha Neat Expressway Jalkal More, P.O.-Lakurdi, Dist.-Burdwan-713102 and M/S. Nutricia International Pvt. Ltd., having registered office at Contrum Office No.1, 3rd floor, Phoneix Market City, LBS Marg, Kurla(West), Mumbai- 400070 and Zonal Manager- M/S. Nutricia International Pvt. Ltd., The Millennium Buldg. 7th floor, 235/2A AJC Bose Road, Kol.- 700020.

Case No. 01/2017 U/s 10(1B) (d) of Industrial Disputes Act,1947.

BEFORE THE JUDGE, NINTH INDUSTRIAL TRIBUNAL, DURGAPUR.

PRESENT:-SRI SUJIT KUMAR MEHROTRA,

JUDGE,9TH INDUSTRIAL TRIBUNAL, DURGAPUR.

Ld.Advocate for the work petitioner/workman/employee – Mr.S. K.Panda & Smt.Anima Maji

Ld. Advocate for the employer of the Industrial Establishment –Mr. Soumalya Ganguly & Miss. Tanaya Sengupta.

Date of Award : 27.04.2023

At the very outset I must mention that the petitioner – Mrs. Bratati Singha Roy is hereinafter is arrayed as delinquent employee and the Industrial Establishment- M/S. Nutritia International Pvt.Ltd.is arrayed as employer establishment.

The instant case is a case U/S 10 (1B)(d) of the Industrial Disputes Act,1947 ((herein after referred to as the Act,1947) registered on the basis of an application filed by the delinquent employee on 07.02.2017 alongwith Form-S under the Industrial Dispute Rules, 1958 raising Industrial Disputes between her and the employer.

After registration of the delinquent employee's application parties were put on notice.

Subsequently, parties filed their claim statement and WS of defence by way of their respective pleadings.

As per delinquent employee's pleading case she joined as Medical Service Representative on 19.06.1995 with the employer establishment, which was previously known as M/S.Wockhard Ltd. before its merger with M/S. Nutricia International Pvt. Ltd. on 26.07.2012, and that she was assigned to work in the territory of Burdwan District.

She in her pleading further states that she was stared performer in sales promotion of the employer establishment and was conferred with the designation of Territory Manager in the year, 2000 and Sr. Territory Manager in the year, 2008. That after taking over of the employer establishment on 26.07.2012 her post has been re-designated as Sr. Nutricia Advisor and she all along discharged her duty sincerely, diligently and in unblemished manner. But from the middle of the year, 2014 the management of the employer establishment changed their attitude towards her without any rhyme or reasons and ultimately, the O.P/employer through e-mail on 10.11.2014 asked for explanation from her on false allegation of violating tour programme and falsely mentioning the name of the doctors whom she did not visit during her sales promotion activities on different dates.

Delinquent employee in her pleading further stated that the management of the O.P/employer being not satisfied with explanation conducted domestic enquiry but the said enquiry proceedings ended with no result.

It has further been averred by the delinquent employee that again on 12.04.2016 and 14.04.2016 show-cause notices were issued to her alleging false reporting relating to visits of 3(three) doctors and she sent reply of the same vide e-mail dtd.27.04.2016 but the management of the O.P/employer held another domestic enquiry on the charges levelled against her in Kolkata on 16.06.2016.

She also states that the conduct of the O.P employer towards her is malafide and without any vestige of truth.

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Delinquent employee in her WS further states that the O.P/employer by sending a letter of termination of service dated 18.08.2016 retrenched her with immediate effect and the same was in violation of statutory dictum of the Act, 1947 and principles of natural justice

It has further been contended by the delinquent employee in her WS that after her such termination she made an appeal before the management of the O.P establishment praying for her reinstatement but as the same did not yield any result, so she raised Industrial Disputes before Asstt. Labour Commissioner, Burdwan Sadar, Govt. of West Bengal for conciliation on 16.09.2016. As no conciliation could be arrived at within the statutory period, so she obtained pending certificate under Rule 12(A) of the Industrial Dispute Rules on 08.12.2016 and filed the instant application U/S 10 (1B)(d) of the Act,1947 praying for her reinstatement in the service alongwith back wages and consequential benefits.

On the other hand, after receipt of notice, the O.P/employer submitted its statement by way of WS wherein it although admits that the delinquent employee was its worker/employee prior to her termination of service by it on 16.09.2016 but denies all other statements of the delinquent employee as made in her pleading.

The positive case of the O.P/employer, as per its WS is that the applicant/employee is guilty of 17 (seventeen) instances of false reporting which resulted to her termination after domestic enquiry.

As per O.P/employer the delinquent employee admitted the issue of false reporting during the course of joint working with Mr. Pijush Debnath and Mr. Subrata Mukherjee on 07.04.2016 and also subsequently confirmed it vide e-mail on 08.04.2016 and expressed regret for the same.

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O.P/employer in its WS also states that since the nature of job of the delinquent employee was purely managerial and supervisory in nature, so she does not come within the definition "workman" under the Act, 1947 and accordingly, this tribunal lacks jurisdiction to entertain the instant case under the Act, 1947.

This apart, O.P/employer also took the defence that the enquiry was conducted after following the principles of natural justice as well as after following all the process under the provisions of law such as issuance of show-cause notice, framing of charges, communicated the same to the delinquent employee inviting her written explanation and giving her opportunity of being heard, so it cannot be said that the service of the delinquent employee was terminated illegally, arbitrarily or without following due process of law. Accordingly, it pressed for dismissal of the instant case against it.

CR reveals that subsequent to filing of the WS of the parties the then Ld. Judge of this tribunal framed the following issues vide order no.10 dated 06.09.2017:-

1) *Whether the termination of employment of Smt. Bratati Singha Roy by M/S Nutricia International Pvt. Ltd. is justified or illegal?*
2) *Has the workman violated tour programme and falsely reported the names of the Doctor whom she did not visit during herself promotion activities on different dates?*
3) *Whether the domestic enquiry was being done arbitrarily and perversely at the Mumbai Head Office on 26.05.2016?*
4) *Whether the allegation against the workman for not visiting (i) Dr. N. Roy ,(ii) Dr. A. Barma and (iii) Dr. S. Nasrin on different dates as motioned in the show-cause notice on 12.04.2016 and 14.04.2016 is correct?*

5) *Is it justified the demand of the workman to hold enquiry at Burdwan relating to non-visit to the concerned Doctor living within the territory of Burdwan?*

6) *Did the Opposite Party Company refuse to attend the conciliation proceedings and save and except sending written version dated 21.11.2016?*

7) *Whether the order of reinstatement of the workman in the Opposite Party Company with back wages is entitled to in the facts and circumstances of the case?*

8) *To what other relief/reliefs, the workman is entitled to both in law and equity?*

It further transpires from the CR subsequent to the framing of the above mentioned issues the then Ld. Judge took up the matter of hearing on the issue no.3 as preliminary issue vide order no.14 dated 12.12.2017 and thereafter the parties were provided opportunities to adduce both oral as well as documentary evidence with respect to the issue no.3, which dealt with the validity of the domestic enquiry dated 26.05.2016.

During the course of such hearing the delinquent employee examined herself and produced documentary evidence but the employer establishment although cross-examined the delinquent employee elaborately but neither examined any witness nor produced any documents with respect to the issue no.3. However, after hearing of both the parties concerning the issue no.3 the then Ld. Judge of this tribunal vide order no.53 dated 30.12.2019 decided the preliminary issue against the delinquent employee and infavour of the employer establishment and subsequently fixed dates for evidence of the parties with respect to other issues.

CR reveals that ultimately on 02.09.2022 delinquent employee examined herself further as P.W-1 with respect to the other issues and she

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was cross-examined in full by the employer establishment but it did not adduce any evidence from its side.

At this juncture it is pertinent to mention herein that the orders passed subsequent to the order no.53 dated 30.12.2019 that the delinquent employee repeatedly took time by stating that she moved the Hon'ble High Court against the said order no.53 dated 30.12.2019 but as she failed to file any documents in support of her such contention as well as this tribunal did not receive any order from the Hon'ble High Court, the matter of hearing of other issues have been taken up by this tribunal. That apart, the Ld. Sr. Lawyer for the delinquent employee during the course of hearing of this case as well as argument on other issues unequivocally submitted that the delinquent employee never moved the Hon'ble High Court against any of the order of this tribunal which includes order no.53 dated 30.12.2019.

In view of above discussed facts and circumstances it is crystal clear that the findings of this tribunal with respect to issue no. 3 vide order no.53 dated 30.12.2019 attains finality as the same has neither been modified or set aside by any Hon'ble higher forum and as a result of which nothing remains for adjudication with respect to the issue no. 2, 4,5 & 6 for this tribunal and only the issue nos.1,7,and 8 which are actually related to the validity of punishment and relief, as prayed for, remains for adjudication and /or whether the punishment of termination of service of the delinquent employee on the basis of the domestic enquiry report is justified or not.

ISSUES nO.1, 7 &8 :-

All these issues are taken up together as they are interrelated with each other and also to avoid repetition of discussion of same set of facts and evidence.

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However, in my considered view, to consider the same we are to first look to the power of the Tribunal to interfere with the findings of the domestic enquiry and punishment awarded in consequence of the same legal as well as the factors which are taken into consideration for awarding the punishment on the basis of the domestic enquiry which has been found as made fairly and properly by this Tribunal.

Section 11-A of the Act, 1947 speaks about power of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.

At this stage it is pertinent to mention herein that admittedly service of the delinquent employee has been terminated on the basis of the domestic enquiry which has been found to be made fairly and properly. So, the provisions of Section 11-A of the Act, 1947 are very much relevant and which provides as follows:-

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 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 only ***on the materials or record and shall not take any fresh evidence*** *in relation to the matter.*

From plain reading of the above provision it is clear that the Tribunal has the power to exercise its discretionary power either to set aside the order of discharge or dismissal and direct reinstatement of the workman/employee or give any other relief including lesser punishment, if it is satisfied on materials on record that order of dismissal of discharge was not justified. The factor of satisfaction of the Tribunal depends upon lot of circumstances which includes nature of charges proved, nature of job entrusted with, and previous conduct of the delinquent employee etc. There cannot be a straight jacket formula of satisfaction for the Tribunal.

This provision has been incorporated by way of amendment of the Act, 1945 w.e.f 15.02.1971 and it has gone under judicial scrutiny of the Hon'ble Supreme Court as well as various High Courts in catena of decisions.

The Hon'ble Supreme Court in the case of ***Christian Medical College Hospital Employees' Union and another Vs. Christian Medical College, Vellore Association and ors. reported in (1987) 4 SCC 691*** *observed in para 14 that Section 11-A which has been introduced since then into the Act which confers the power on the Tribunal or the Labour Court to substitute a lesser punishment in lieu of the order of discharge or dismissal passed by the management again cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power U/S 11-A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of management U/S 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decisions. The decisions of the Industrial Tribunal or the Labour Court are again, as already said, subject to judicial review by the High Court and this Court".*

In the case of ***Devalsab Husainsab Mula Vs. North West Karnataka Road Transport Corporation reported in (2013) 10 SCC 185*** *the Hon'ble Supreme Court further observed that "As far as the discretionary power of the Labour Court under Section 11-A of the Act is concerned, the exercise of such power will always have to be made judicially and judiciously. Under the said provision, wide powers have been vested with the Labour Court to set aside the punishment of discharge or dismissal and in its place award any lesser punishment. Therefore, high amount of care and caution should be exercised by the Labour Court while invoking the said discretionary jurisdiction for replacing the punishment of discharge or dismissal. Such exercise of discretion will have to depend upon the facts and circumstances of each case. Before exercising the said discretion, the Labour Court has to necessarily reach a finding that the order of discharge or dismissal was not justified. A reading of Section 11-A of the Act makes it clear that before reaching the said conclusion, the Labour Court should express its satisfaction for holding so. It has to be remembered that the question of exercise of the said discretion will depend upon the conclusion as regards the proof of misconduct as held proved by the management and only if it finds that the discharge or dismissal was not justified. Therefore, the satisfaction to be arrived at by the Labour Court while exercising its discretionary jurisdiction under Section 11-A of the Act must be based on sound reasoning and cannot be arrived at in a casual fashion, in as much as , on the one hand the interference with the capital punishment imposed on the workman would deprive him and his family members of the source of livelihood, while on the other hand the employer having provided the opportunity of employment to the workman concerned would be equally entitled to be ensured that the employee concerned maintains utmost discipline in the establishment and duly complies with the rules and regulations applicable to the establishment. In that sense, since the relationship as between both is reciprocal in equal proportion, when the employer had chosen to exercise its power of discharge and dismissal for*

stated reasons and proven misconduct, the interference with such order of punishment cannot be made in a casual manner or for any flimsy reasons.

In this context, it will be appropriate for the Labour Court to assess the gravity and magnitude of the misconduct found proved against the employee concerned, the past conduct of the employee, the repercussion it will have in the event of interference with the order of discharge or dismissal in the day-to-day functioning of the establishment which will have far-reaching effects on the other workmen and so on and so forth. It should always be remembered that any misplaced sympathy would cause more harm to the establishment which provides source of livelihood for many number of employees than any good for the employee concerned. It will be worthwhile to refer to the repercussions that would result in the event of any misplaced sympathy shown to an employee who indulges in certain acts of misconduct which has been lucidly explained in a decision of the Madras High Court in Royal Printing Works Vs. Industrial Tribunal3 (1959) 2 llj629(Mad) wherein Hon'ble Balakrishna Ayyar.J. (as he then was) stated the position as under (LLJ pp.621-22)

"There are certain passages in the order of the tribunal which as I understand them suggest that carelessness on the part of an employee in relation to his work would not justify serious punishment. With this view I definitely disagree. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. I shall not refer to the classic example of the sentry who sleeps at his post and allows the enemy to slip through. There are more familiar instances. A compositor who carelessly places a plus sign instead of a minus sign in a question paper may cause numerous examinees to fail. A compounder in a hospital al or chemists' shop who makes up the mixtures or other medicines carelessly may cause quite a few deaths. The man at an airport who does not carefully filter the petrol poured into a plane may cause it to crash. The railway employee who does not set the point carefully may cause a head-on collision.

Misplaced sympathy can be of great evil. Carelessness and indifference to duty are not the high roads to individual or national prosperity".

The Hon'ble Supreme Court in the case of ***Hombe Gowda Educational Trust and another Vs. State of Karnataka and ors. reported in (2006) 1 SCC 430*** *had the occasion to deal with the power of the Tribunal U/S 11-A and its ambit to interfere with the quantum of the punishment imposed by the employers and observed that he Tribunal's jurisdiction is akin to one U/S 11-A of the Industrial Dispute Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercised a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised to only when, inter alia it is found to be* ***grossly disproportionate.***

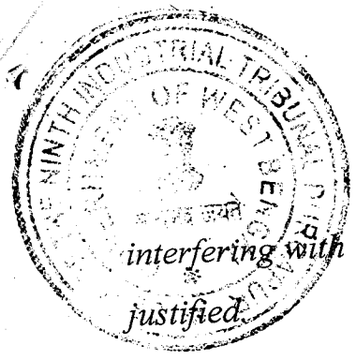
It has further been held by the Hon'ble Court by observing in para 18 that " this court repeatedly has laid down the law that such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment. The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the management which would have direct bearing on the question of quantum of punishment".

To consider the legality of awarding quantum of punishment awarded by the management the Hon'ble Supreme Court in para 20 further speaks but other aspects to be taken into consideration while exercising discretionary power U/S 11-A of the Act,1947 and it provides that "a person, when dismissed from service, is put to a great hardship but that would not mean that a great misconduct should go unpunished although the doctrine of proportionality may be applicable in such matters, but a punishment of dismissal from service for such a misconduct

cannot be said to be unheard of. The maintenance of discipline of an institution is equally important....."

In the said decision Hon'ble Court in para 30 finally laid down the guidelines after taking into account of all is earlier view points. It provides as follows :-"This Court has come a long way from its earlier view points. The recent trends in the decisions of this court seek to strike a balance between the earlier approach to the industrial relevant wherein the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this court it has been noticed how discipline at the workplace/industrial undertakings received a setback. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity to our country is Govt. of Rule of Law. All actions, therefore, must be taken in accordance with law. Law declared by this court in terms of Article 141 of the constitution, as notice in the decision noticed Supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to this court was bound to follow the decision of this court which are applicable to the facts of the present case in question. The Tribunal can neither ignore the ratio laid down by this court nor refuse to follow the same".

Thus, from the above observation of the Hon'ble Supreme Court there remains no haziness in our understanding that this Tribunal is bound to follow the guidelines laid down by the Hon'ble Supreme Court while exercising discretionary power U/S 11-A of the Act,1947 in interfering with the punishment imposed by the management of the industrial establishment. That apart, it is also abundant clear from such dictum of the Hon'ble Supreme Court there is no place for showing unnecessary generosity or sympathy on the part of the Tribunal on



interfering with the quantum of punishment of removal which is otherwise justified.

The Hon'ble Supreme Court in the case of ***A.P SRTC Vs. Raghuda Siba Sankar Prasad, reported in (2007) 1 SCC 222*** *has moved one step ahead from its earlier views and held that the High Court can modify the punishment in exercising its jurisdiction under Article 226 of the constitution only when it finds that the punishment imposed is* ***shockingly disproportionate*** *to the charges proved.*

The Hon'ble Supreme Court although made such observation while considering the findings of the Hon'ble High Court under Article 226 of the Constitution but sprit of its observation of circumstances under which the judicial forum can interfere with the punishment imposed by the domestic Tribunal after prove of charges.

From above discussed dictum of the Hon'ble Apex Court it is crystal clear that this Tribunal can interfere with the punishment imposed by the management of the employer for discharge or dismissal from the service of the delinquent employee on the basis of the domestic enquiry which has already been found to be fair and proper, only if the Tribunal is satisfied that the quantum of punishment is ***shockingly disproportionate*** *or highly disproportionate to the charges proved.*

That apart, it must be mentioned herein that although the Hon'ble Supreme Court in the case of Ms.Firestone Tyre and Rubber Corporation of India (P) Ltd. Vs. Management and others reported AIR 1973 SCC 1227 observed that " Tribunal after holding that the domestic enquiry was held fairly and properly, can examine the correctness of the finding of the domestic enquiry and at that time again allow production of fresh and new evidence which was not adduced before the Enquiry Officer after the domestic enquiry, and that the Industrial Tribunal followed a course of action which was under consistent with the principal laid down by the Supreme Court. According to that principle once the Tribunal has found

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that the enquiry has been made fairly and properly, in that event the Tribunal U/S 11-A can reappraise the evidence on record but the Tribunal cannot travel beyond record and cannot take into consideration any new evidence which was not on record and the Tribunal cannot be directed to take into consideration any piece of evidence which was not on record. Such observation has been reiterated by our Hon'ble High Court in the case of ***Sujit Kumar Banerjee Vs. M/s. Indian Explosive Ltd and ors. reported in 1993(I) CHN 240.***

In other words, as per dictum of the Hon'ble Apex Court and our Hon'ble High Court this Tribunal has to confine itself within the materialson record which was produced before the Inquiry Officer and it cannot travel beyond that while considering whether the punishment inflicted the disproportionate to the charges proved or not.

It is also very much pertinent to mention herein that once this court has come to the findings that the domestic enquiry was made fairly and properly, so the entire record of domestic enquiry becomes the part of evidence on record.

Now, let us consider the charges for which the domestic enquiry was conducted and/or the nature of allegations brought against the delinquent employee by the management of the industrial establishment.

Delinquent employee in her cross-examination stated that the allegations against her were of tour programme deviation and false reporting. From the materials of this case it is the undisputed fact that the nature of job of the delinquent employee was to meet with the doctors and to promote sale of products of the employer establishment.

From Exbt.18 i.e domestic report it is evident that the allegations against the delinquent employee was that of false reporting of her alleged visiting of doctors and disobedience of the direction of the higher authority. It further reveals that when she was working at Burdwan she had indulged in the similar nature of activities of false reporting of

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meeting with the doctors and for that show-cause notice was issued to her. She admitted those allegations and the management warned her not to repeat such type of activities in future vide letter dated 21.11.2014.

It is further evident from Exbt.18 that the delinquent employee did not stop her such acts and activities and accordingly she was again served with show-cause notice on 12.04.2016 through e-mail for the charges in the following manner:- "You have reported Dr. M. Roy of Satgachia on IVY on 5th and 19th Jan, 2nd and 16th Feb, 3rd and 16th March but the Dr. is not available in this market for three months in your joint working on 7th April with your Manager – Pijush Debnath and Zonal Manager-Subrata Mukherjee, the fact was proved. The false reporting was thus established you have acknowledged the same in person during the joint working on 7th April and on e-mail dated 8th April, 2016 to your Zonal Manager".

"You have reported Dr. A.Barma of Paharhati on IVY on 5th and 19th Jan, 2nd & 16th Feb, 3rd and 16th March, but this Dr. does not exist in the market in your joint working on 7th April with your Manager-Pijush Debnath and Zonal Manager- Subrata Mukherjee, the fact was proved. The false reporting was thus established. You have acknowledged the same in person during the joint working on 7th April and on e-mail dated 8th April, 2016 to your Zonal Manager".

"You have reported Dr. S. Nasrin on IVY on 9th and 21st Jan, 4th Feb, 2nd and 14th March but it was found out by your Manager Pijush Debnath that the Dr. was transferred 3 months back. This is a clear case of false reporting. Subsequently, it was acknowledged by you on mail dated 8th April 2016 to your Zonal Manager.

From the above mentioned contents of the allegations it transpires that the gist of the allegations against the delinquent employee is that she was in the habit of reporting about her false visits to the doctors who were not available in the market on those days, as claimed by her. In my

considered view, since the job of the delinquent employee is to promote sale of product of the employer establishment by visiting various doctors for prescribing this such product, so nature of allegations of false reporting of such visit cannot be considered as simple in nature but the same is of grave in nature.

It has further been stated by the O.P/employer that the delinquent employee admitted her such acts and activities verbally as well as by sending e-mail to the Zonal Manager. Delinquent employee in her cross-examination although admits issuance of show-cause notice and her submission of reply but denies her making any admission of such allegations. She in her cross-examination also denies sending any e-mail addressed to the Zonal Manager Subrata Mukherjee. On the contrary, when she was confronted with her downloaded copy of e-mail dated 08.04.2016 i.e Exbt. 5 and Exbt.6 (collectively) she admits the same to be her reply of show-cause notice sent to her through e-mail dated 21.04.2016.

From the contents of the Exbt.5 and Exbt.6 I find that the management of the employer establishment clearly mentioned about the contents of the allegations in detail of false reporting of tour programme and the delinquent employee in reply of the same accepted the allegation of show-cause notice. The contents of the reply of the delinquent employee vide Exbt.5 clearly reflects that she although admits the allegations of false reporting of her alleged visit for those number of days but she tried to justify the same by telling that the sale of the products have been growing because of her work.

I am really astonished to take note of the conduct of the delinquent employee in justifying her making false reporting to the management through justification by taking defence of growing sale of the product of the O.P/establishment.

It is not the case of the delinquent employee that those three doctors were available in their chamber on the date of her claimed visit as well as of her joint visit with the higher officials of the O.P./establishment or she has been falsely implicated by the management of the employer establishment for any reason

Another important aspect should be taken into consideration while considering the factor of whether the punishment of dismissal of service was/is proportionate to the proved charges or not, is the entire conduct of the delinquent employee as evident from her evidence on oath. She in her evidence on oath tried her level best to play hide and seek game with this Tribunal as her evidence –in-chief is absolutely silent about her making admission of those false reporting with the management of the employer establishment. She only admits about the same when she was confronted with the her reply in her cross-examination.

Besides that, from the contents of the Exbt. H it is also evident that she was involved in similar nature of activities of false reporting of her making visits to the doctors and for that she was cautioned by the management of the O.P./establishment. From such materials it is crystal clear that the delinquent employee did not mend herself even after first show cause notice and also by hiding fact from this Tribunal before she was being confronted with first show-cause notice i.e Exbt. H and her reply i.e Exbt. I . Her such conduct clearly reflects that she does not have any sort of repentance for her such delinquent conduct.

In my considered view, if it is found that even after tendering apology of her false reporting for the period prior to the charged period the delinquent employee had mended herself then, it could have been said that the management should have taken lenient view while awarding capital punishment for the proved charge. On the contrary, from the Exbt. 18 as well as from my above discussion it is crystal clear that the delinquent employee was in the habit of involved in taking recourse of

false reporting of her visits to the doctors not on one or two occasions but on number of occasions for months together. As I have already stated herein above that this Tribunal while considering preliminary issue has already came to the findings that the domestic enquiry is fair and proper and its such findings has neither been set aside or modified by any higher forum, so this Tribunal has to act upon the same.

The ld. Sr. lawyer for the delinquent employee only on this day produced the copy of the judgement of the Hon'ble Supreme Court reported ***AIR 1989 SC 149 (Scooter India Ltd., Lucknow Vs. Labour Court, Lucknow and Ors.)*** *and submitted that even though this Tribunal came to the findings that the domestic enquiry is fair and proper but it has got power to set aside the punishment or interfere with the same by awarding lesser punishment. On the other hand, the ld. lawyer for the employer contended that although by virtue of Sec.11-A this Tribunal can interfere with the awarded punishment but considering the magnitude of charges proved against the delinquent employee, it cannot be said that this case is the fit case for invoking its discretionary power.*

I have meticulously gone through the said case law and of the view that the said aspect has already been considered by the Hon'ble Supreme Court in its subsequent judgements, as mentioned herein above. However, at the cost of repetition I must mention again that there remains no confusion regarding power of the Tribunal under Sec.11-A of the Act of 1947 in interfering with the punishment awarded but the same depends upon the magnitude of charges proved and the circumstances, as discussed herein above. Accordingly, I am of the view the case law relied upon by the delinquent employee does not help her in any way on the facts and circumstances of the instant case.

Having regard to my above discussion and especially taking into consideration the series of false reporting of alleged visits to the doctors by the delinquent employee and her previous conduct, it cannot be said

that the punishment of dismissal from the service in consequence of proved charges is either highly disproportionate or ***shockingly disproportionate*** *with the charges proved. Consequently, in view of above discussed dictum of the Hon'ble Apex Court, I am of the view this Tribunal has no jurisdiction to invoke its discretionary power U/S 11-A of the Act, 1947 either to set aside the punishment inflicted or to modify the same by awarding lesser punishment.*

Before parting with this judgement I must mention herein that the ld., lawyer for the delinquent employee also assailed the order of punishment by submitting that the same is not maintainable in the eye of law as prior to passing of the sentence the management did not issue second show-cause notice to the delinquent employee. His such argument has been refuted by the ld. lawyer for the employer /establishment that issuance of second show-cause notice is not mandatory as there is no service by-laws of the employer/establishment. To fortify his such submission he also relied upon the case of ***Sreela Banerjee Vs.Food Corporation of India,(2004) 2 SLR 349 of our Hon'ble High Court.***

To consider merit of such argument we are to see whether issuance of second show-cause notice is required as per the service by-laws of the employer/establishment as well as whether the same is mandatory before imposition of any penalty by the management of the employer / establishment.

So far as the pleading case of the delinquent employee is concerned the it is silent about the same. Not only that, delinquent employee in his entire evidence on oath nowhere stated about the same. During the course of argument the ld. lawyer for the delinquent employee also failed to produce any service by-rules of the employer/establishment. Had it been a fact that there is any service by-rules or conditions of the employer/establishment for regulations of service of the delinquent employee, then she would have taken plea of the same and could have

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easily produced copy of the same or could have taken recourse under the law for production of the same by the employer/establishment. Her such conduct does not speak in support of her argument. Moreover, the Hon'ble Supreme Court in the case of ***Associated Cement Companies Limited; Ramashankar Vs.T.C.Shsrivastava, LAWS(SC)1984 3 36*** *also observed that non-issuance of second show-cause notice against the proposed punishment of dismissal does not make the vitiate the dismissal order. That apart, the case law, as relied upon by the delinquent employee ,also does not support contention of the ld. lawyer for her. Accordingly, I find no merit in such argument from the side of the delinquent employee.*

To conclude my discussion I am of the view that the delinquent employee / petitioner miserably failed to prove her case justifying exercise of discretionary power of this Tribunal in the instant case. Thus, all these issues are decided against her.

In the result, the instant case fails on merit.

Hence, it is

ORDERED

that the instant case U/S 10(1B)(d) of the Industrial Disputes Act is dismissed on merit against the employer M/s. Nutricia International Pvt. Ltd. but without cost.

Send a copy of this award to the Additional Chief Secretary, Labour Department, Govt. of West Bengal for information and necessary action from his end.

D/C by me.

Sd/- Sujit Kumar Mahurkar
27.4.2023
Judge,
JUDGE
NINTH INDUSTRIAL TRIBUNAL DURGAPUR
GOVT. OF WEST BENGAL

Sd/- Sujit Kumar Mahurkar
27.4.2023
Judge,
9th I.T,Durgapur.
JUDGE
NINTH INDUSTRIAL TRIBUNAL DURGAPUR
GOVT. OF WEST BENGAL