

1/426855/2023

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

No.Labr/.746/(LC-IR)/22015(15)/71/2019 Date: .16/08/2023.

**ORDER**

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/976-IR/IR/10L-07/2010 dated 03/09/2010 the Industrial Dispute between M/s. Bakreswar Thermal Power Project under the West Bengal Power Development Corporation Ltd., P.O. - Bk. T.P.P. Dist. - Birbhum and its workman Sri Madan Mohan Ghosh, Shramik No. 3297, Vill. - Hossainbazar, P.O. - Chinpai, Dist. - Birbhum regarding the issue mentioned in the said order, being a matter specified in the Second / Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Ninth Industrial Tribunal, West Bengal.

AND WHEREAS the Ninth Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 31/07/2023 in case No. X-12/2010 on the said Industrial Dispute vide memo no. 119 - I.T. dated - 02/08/2023.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 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,

*Sd/-*  
Assistant Secretary  
to the Government of West Bengal

I/426855/2023

No. Labr/. 746<sup>115</sup> / (LC-IR)

Date: . . . 16/08 /2023.

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

1. M/s. Bakreswar Thermal Power Project under the West Bengal Power Development Corporation Ltd., P.O. – Bk. T.P.P. Dist. – Birbhum.
2. Sri Madan Mohan Ghosh, Shramik No. 3297, Vill. – Hossainbazar, P.O. – Chinpai, Dist. - Birbhum.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11<sup>th</sup> Floor, Kolkata- 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Assistant Secretary

No. Labr/. 746<sup>115</sup> / (LC-IR)

Date: . . . 16/08 /2023.

Copy forwarded for information to:

1. The Judge, Ninth Industrial Tribunal, West Bengal, Durgapur, Administrative Building, City Centre, Pin - 713216 with reference to his Memo No. 119- I.T. dated - 02/08/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Assistant Secretary

H.A.-(IT)/dipankar  
17/08/2023



*In the matter of Industrial Disputes between Messrs Bakresar Thermal Power Project under the West Bengal Power Development Corporation Ltd. P.O. Bk.T.P.P. Dist.-Birbhum, and its workman, Shri Madan Mohan Ghosh, Shramik No.3297 of Vill. Hossainbazar, P.O.-Chinpai, Dist.-Birbhum.*

*Case No. X-12/2010 U/s 10 of Industrial Disputes Act, 1947.*

*BEFORE THE JUDGE, NINTH INDUSTRIAL TRIBUNAL,  
DURGAPUR.*

*PRESENT:-SRI SUJIT KUMAR MEHROTRA,*

*JUDGE, 9<sup>TH</sup> INDUSTRIAL TRIBUNAL, DURGAPUR.*

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

*Advocate for the employer of the Industrial Establishment — Mr. Ranjay De and Mr. Krishnendu Pal.*

*Date of Award : 31<sup>st</sup> day of July, 2023.*


*The instant case has the foundation on the reference order no. 976-I.B / IR/10-L/07/2010 dated 3<sup>rd</sup> September, 2010 of the Govt. of West Bengal forwarded by the Assistant Secretary to the Govt. of West Bengal Labour Department IR Project to this Tribunal for adjudication of industrial disputes between the above named parties on the framed issues.*

*The Govt. of West Bengal by the said reference order directed this Tribunal to adjudicate on the following issues:-*

- 1) Whether the dismissal of service of Sri Madan Mohan Ghosh w.e.f 04.06.2008 by the management is justified?*
- 2) What relief Sri Ghosh is entitled to?*

*CR reveals that after receipt of the reference order of the Govt. of West Bengal this Tribunal registered the same as the instant case and thereafter put both the parties to notice and in consequence thereof both the parties appeared and contested the instant case by filing their statements in writing i.e in WS form.*





CR further reveals that the workman initially filed a petition U/S 15(2)(b) of the I.D Act, 1947 for interim relief and the same was disposed of on 20.11.2013 and thereafter the workman moved the Hon'ble High Court and ultimately on 26.02.2019 filed copy of the order of the Hon'ble High Court whereby the Hon'ble Court did not interfere with the order of this tribunal and subsequent thereto the matter was taken up for disposal by the then ld. Judge of this tribunal.

In terms of Order no.91 dated 06.12.2019, as passed by the then Ld. Judge of this Tribunal, a preliminary issue regarding the validity of the Domestic enquiry was framed and after taking evidence of both the parties the same was disposed of in favour of the Employer/Bakreswar Thermal Power Project, Birbhum vide order no.110 dated 17.11.2022 and thereafter the parties have been heard with respect to the referred issues.

Workman's petition case, in a nut shell, is that he was appointed as a Shramik on 23.02.2001 by the O.P and since then he discharged his duty in unblemished manner but as he earned the employment after long agitation, so the O.P had malice and hatred towards him since the very beginning. He further stated that although he used to discharge his duty sincerely but the management used to torture him on trifling matters. He used to take leave as per regulations of the O.P/establishment and after expiry of the leave period he used to submit the joining report to resume his duty.

It has further been stated by the workman that on 15.03.2004 he submitted an application for leave in prescribed form sufficiently in advance intending to avail leave from 15.04.2004 to 05.06.2004 for the purpose of settling a family problem and the said application was duly received by the office of the O.P but neither any receipt of the same was given nor any communication emanated from the employer with regard to either grant or refusal of leave applied for and accordingly he proceeded on leave as applied for. That after expiry of the said leave period he submitted his joining report to the concerned office of the O.P intending to resume his duty on and from 10.06.2004 but he found that his punching card was withdrawn.

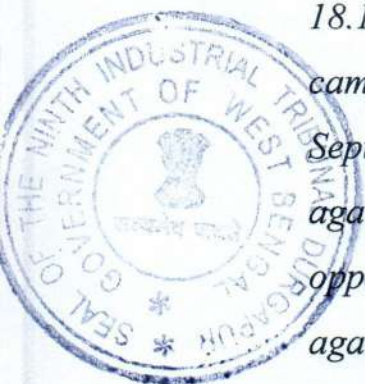


It has further been averred by the workman that thereafter on 11.06.2004 he submitted a petition to the Sr. Manager to enable him to résumé his duty but the same yielded no result and thereafter he also requested the General Manager to interfere into the matter by sending a letter dated 18.10.2004 but the same also yielded no result. However, subsequently, he came to know from the publication of notice in the newspaper dated 7<sup>th</sup> September, 2005 that the management has framed charges of habitual absentee against him on 16.05.2005 and the Enquiry Officer without giving him opportunity to take the assistance of an advocate conducted domestic enquiry against him in unfair manner. Subsequently, the management accepted the enquiry report imposed extreme punishment of dismissal from service w.e.f 04.08.2008.

Challenging the said order of the management he preferred a statutory appeal as per regulation 54 of the West Bengal Power Development Corporation Ltd. ( Employees' Service Regulations, 1990) but the standing Appellate Committee – I by its letter dated 04.02.2009 rejected his appeal and upheld the dismissal order of the management. Subsequently, he raised an industrial dispute for the 2<sup>nd</sup> time with the Asstt. Labour Commissioner, Suri but the said conciliation proceeding also ended in a failure.

On the other hand, O.P/Employer's pleading case is that the statement made by the workman in his WS regarding management having malice attitude towards him is absolutely false and it also denies all the averments of the workman's pleading case. Its positive pleading case is that the workman is a habitual absentee without any notice and accordingly the management proceeded against him as per the provisions of law and issued show-cause notice. He was served with the memorandum dated 26.05.2005 alongwith articles of charges and he submitted his reply to the said memorandum. As the reply was found unsatisfactory in nature the management decided to hold an enquiry into the article of charges levelled against him and he was duly informed about the same.

It has further been stated that the enquiry was held on various dates from 21.08.2006 and the delinquent workman although had the knowledge of







dates of Enquiry proceedings but he did not participate in the same and accordingly the enquiry was conducted in ex-parte against him with a due notice. The Enquiry Officer submitted his report holding him guilty of all the charges levelled against him and the copy of the same was sent to the delinquent workman. Subsequently, the management of the O.P/establishment imposed punishment of dismissal from service.

The further substance of the O.P/establishment's pleading case is that the delinquent workman was in the habit of remaining absent from his duty without his leave being sanctioned by its competent authority and even though he was cautioned previously he did not mend himself and the same resulted in further disciplinary action against him in accordance with the concerned rules and after following the principles of industrial disputes.

As it is the undisputed fact of this case that this Tribunal while deciding the preliminary issues i.e (1) "whether the domestic enquiry conducted by the management of the employer against the workman Sri Madan Mohan Ghosh is valid?", provided both the parties opportunities to adduce evidence on from their sides as well as produced documentary evidence and after having heard argument of both the parties decided the said issue in favour of the O.P/Employer by holding that the domestic enquiry was fair and valid and the delinquent workman did not challenge the said order no.116 dated 17.11.2022 before any higher forum, so the said order attained its finality.

In the backdrop of such findings of this Tribunal regarding the validity of the domestic enquiry this Tribunal is left with only the matter whether the punishment imposed as dismissal from service is justified or not and any other relief which the delinquent workman may be entitled.

In other words, the ambit of consideration of industrial dispute is very limited with respect to the quantum of punishment in reference to the proved or article of charges against the delinquent workman.

*Sell*  
JUDGE  
NINTH INDUSTRIAL TRIBUNAL DURGAPUR  
GOVT. OF WEST BENGAL





**Argument from the side of the delinquent workman**

During the course of argument it was submitted by the ld. lawyer that although this Tribunal has already come to findings about the validity of the domestic enquiry but by virtue of Sec.11A of the Act,1947 this Tribunal has the power to set aside the order of dismissal from service.

It was also contended by the ld. lawyer that it is clearly evident from the evidence of the delinquent workman and the documentary evidence that he was the victim of the biased attitude of the management of the employer since the very inception of his employment. Although the delinquent workman availed the leave for the period for which the articles of charges have been framed after submitting his leave application but the management of the employer did not consider the same and levelled the charges of habitual unauthorised absentee.

Ld. Sr. lawyer further submitted that this Tribunal should take into consideration that the alleged period of absent of the delinquent workman cannot be termed as habitual absentee for any longer period and the said mitigating fact should be taken into consideration while considering the quantum of punishment. He also argued that at best it can be said that the delinquent workman was unauthorised absentee and the same may amount to misconduct but the management of the employer did not consider the same and imposed the capital punishment of dismissal from service in unfair manner.

Ld. lawyer further submitted that it is the settled proposition of law that while imposing punishment on the basis of disciplinary proceedings the management of an establishment has to follow the principles of proportionality but the same has not been followed by the management in the instant case.

To fortify his said argument he relied upon the case of **Chennai Metropolitan Water Supply and Sewerage Development and Ors. Vs. T.T. Murali Babu (Civil Appeal No.1941 of 2014), State of Punjab Vs. Dr. P.L. Singla (2008)8 SCC 469, Chairman and Managing Director, Coal India Ltd. and another Vs. Mukul Kumar Chowdhury and Ors. AIR 2010 SC 75**, as decided by the Hon'ble Supreme Court of India.



*In concluding his argument Ld. Sr. lawyer submitted that considering dictum of the Hon'ble Supreme Court it cannot be said that the capital punishment imposed with respect to the contents of the charges are proportionate in any manner and accordingly, this Tribunal should invoke its discretionary power U/S 11A and set aside the dismissal order and reinstate the delinquent workman in his service with all backlog benefits.*

**Argument from the side of the employer**

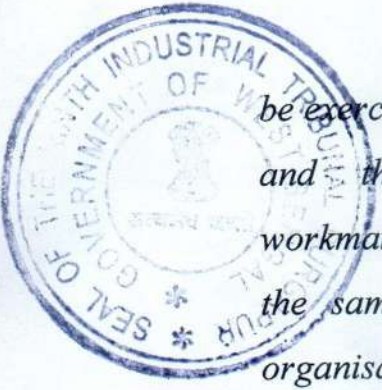
*Argument of the ld. lawyer may be capsulated in three parts. Firstly, he made the argument on the issue of tribunal's power to invoke its discretionary power U/S 11A of the Act, 1947 to interfere with the imposed punishment and submitted that undisputedly the tribunal has the power to interfere with the punishment of dismissal or discharged from service of an workman but the said power has to be exercised judiciously.*

*He further submitted that since in the instant case this tribunal has already held the domestic enquiry as fair, proper and valid, so, no interference with the order of punishment is invited especially when there is no allegation of unfair labour practice and victimisation.*

*To fortify his such argument he relied upon the case of **General Secretary, South Indian Cashew Factories Workers' Union Vs. the Managing Director, Kerala State Cashew Corporation Ltd. and ors.,(2006) 5 SCC 201, M/s. Tata Engineering and Locomotive Co. Ltd. Vs. N.K. Singh, (2006) 12 SCC 554, Maharashtra State Road Transport Corporation Vs. Uttam Jayabhay(2022) 2 SCC 696** and further contended that in all those cases the Hon'ble Supreme Court expounded the power of the tribunal to interfere with the punishment of dismissal or discharge U/S 11A and very categorically held that where domestic enquiry has been found to be valid and proper by the tribunal the order of dismissal should not be interfered with.*

*Ld. lawyer by referring the case of **Christian Medical College Union and another Vs. Christian Medical College Vellore Association and another (1987) 4 SCC 691** further submitted that the power conferred to the tribunal to*





be exercised judiciously only where the punishment is grossly disproportionate and the aspect of punishment of dismissal causing hardship upon the workman should not be the sole factor for substituting the punishment but at the same time the tribunal also has to consider that discipline of on organisation is to be maintained.

It was further argued by the ld. lawyer that while exercising the discretionary power it is not open to the tribunal to substitute one punishment by another but may interfere with the quantum of punishment if only it is found to be grossly disproportionate. In this regard, he relied upon the case of **Hombe Gowda Educational Trust and another vs. State of Karnataka and ors.**(2006) 1 SCC 430. That apart, ld.lawyer also relied upon the case of **Devasab Husainsab Mulla vs. North West Karnataka Road Transport Corporation** (2013) 10 SCC 185.

The ld. lawyer by relying the case of **The management of West Bokaro Colliery M/s. TISCO Ltd. vs. the concerned workman, Ram Pravesh Singh** (2008)3 SCC 729 also submitted that the Hon'ble Supreme Court while considering the ambit of use of discretionary power of tribunal or Labour Court U/S 11A of the Act, 1947 clearly observed that when two views are possible the tribunal should be very slow in coming to a conclusion different from the management.

He also relied upon the case of **Calcutta Jute Manufacturing Ltd. vs. State of West Bengal and ors.**, 2002(4) CHN 708 and submitted that the tribunal does not have the power to reappraise the evidence in domestic enquiry as an appellate court but the reappraisal should be made as a revisional court.

It was also contended by the ld. lawyer that since from the contents of the memorandum of charges and the evidence, as available with the domestic enquiry report and the evidence of the applicant/workman evolved in the form of his cross-examination, it is clearly evident that he is a habitual absentee and he did not mend himself even after being cautioned on number of occasions by the management.





*He by taking this tribunal through the entire cross-examination of the applicant/workman submitted that he inspite of having the knowledge that his leave has not been granted by the authority concerned he unauthorisedly remained absent from his duty since 10.03.2004 till this date.*

*Ld. lawyer also contended that it has been proved in the domestic enquiry that the workman failed to give any satisfactory explanation for his remaining unauthorisedly absent since 10.03.2004 so, his such misconduct is grave in nature and considering the same it cannot be said that the punishment imposed on the proved charges of habitual absenteeism is either disproportionate or grossly disproportionate.*

*In assailing the argument of the ld. Sr. lawyer for the applicant/workman regarding disproportionate punishment it was submitted that the matter of remaining unauthorisedly absent on few occasions and the aspect of frequently remaining unauthorisedly absent from his duty by a workman cannot be equated. In the case in hand it has been proved in domestic enquiry as well as from the cross-examination of the workman and the documentary evidence that the workman was in the habit of remaining unauthorisedly absent from his duty for more than 26 occasions prior to his finally unauthorised absence since 10.03.2004 till this date, so it cannot be said that the punishment imposed is disproportionate to the charges proved and accordingly, this tribunal should not invoke its discretionary power to interfere with the punishment imposed by the management of the employer / establishment.*

*In concluding the argument it was also submitted that this tribunal while exercising its discretionary power also should take into account the adverse impact on the discipline of the workforce of the organisation and prayed for an award holding that the action taken by the management is justified and affirm the punishment imposed.*

*Sd/*  
**JUDGE**  
 NINTH INDUSTRIAL TRIBUNAL DURGAPUR  
 GOVT. OF WEST BENGAL





### **Evidence from the side of the workman**

In order to prove the referred issues in his favour the workman examined himself as P.W-1 and he produced the following documentary evidence:-

- 1) Copy of Leave application of workman dated 15.03.2004—Exbt.1,
- 2) Copy of Joining Report of workman dated 08.06.2004—Exbt.2,
- 3) Copy of letter addressed to the Sr. Manager (P&A) dt.11.06.2004—Exbt.3,
- 4) Copy of workman's letter addressed to the General Manager dt.18.10.2004—Exbt.4,
- 5) Copy of Rejoinder of G.M dated 14.08.2006—Exbt.5,
- 6) Copy of the Enquiry Officer's letter dated 21.08.2006(two sheets)---Exbt.6,
- 7) Copy of workman's letter addressed to the Enquiry Officer dated 28.08.2006(two sheets)---Exbt.7,
- 8) Copy of Enquiry report received by the workman —Exbt.8,
- 9) Copy of computerised Attendance sheets—Exbt.9.

### **Evidence from the side of the employer**

On the other hand, O.P/establishment examined its General Manager(HR & A) – Mr. Bivash Nandi Majumder as O.P.W-1 and also produced the following documentary evidence in support of its case:-

- 1) Copy of the Memorandum of Charge Sheets---Exbt.A,
- 2) Copy of the reply of the workman dated 12.09.2005--Exbt.B,
- 3) Copy of Joining report dated 04.09.2002—Exbt. C,
- 4) Copy of Joining report dated 16.09.2002—Exbt.C/1,
- 5) Copy of Joining report dated 30.09.2002—Exbt. C/2,
- 6) Copy of Leave application dated 16.09.2002—Exbt. C/3,
- 7) Copy of Identity Card of .O.P.W-1, Mr.Bivash Nandi Mazumder —Exbt. D,

*Sd/-*  
JUDGE  
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- 8) Scan copy of letter dated 22.04.2022 of B.N.Mazumder addressed to Mr. B.N.Chatterjee --Exbt. E,
- 9) Copy of Death certificate of Biswanath Chatterjee --Exbt. F,
- 10) Copy of entire enquiry proceedings---Exbt. G,
- 11) Copy of Appointment letter of Mr. B.N.Chatterjee dated 01.08.2006—Exbt.H,
- 12) Copy of Appointment letter of Mr. B.N.Mazumder as presenting officer dated 01.08.2006—Exbt.I,
- 13) Copy of letter dated 01.08.2006 sent to the Madan Mohan Ghosh regarding date of enquiry---Exbt.J,
- 14) Copy of letter dated 05.10.2006 written by Mddan Mohan Ghosh to the Enquiry Officer—Exbt.K,
- 15) Copy of letter dated 15.01.2007 of Enquiry Officer addressed to the employee—Exbt.L,
- 16) Copy of letter dated 31.01.2007 of the employee addressed to the to the Enquiry Officer—Exbt.M,
- 17) Copy of letter dated 04.09.2006 of Enquiry Officer addressed to the employee—Exbt.N,
- 18) Copy of A/D card dated 11.09.2006---Exbt.O,
- 19) Copy of show-cause notice dated 09.07.2004—Exbt.P,
- 20) Copy of reply of show-cause dated 14.07.04 --Exbt. Q,
- 21) Copy of show - cause notice dated 07.10.2004—Exbt.R,
- 22) Copy of reply of show-cause dated 18.10.04 --Exbt. S,
- 23) Copy of letter dated 30.10.2004/02.11.04 of G.M addressed to the employee—Exbt.T,
- 24) Copy of letter dated 19.11.2004 of G.M addressed to the employee —Exbt.U,
- 25) Copy of notice published in the Bengali Newspaper, Ananda BazarPatrika—Exbt.V,
- 26) Copy of Attendance sheets for the month of October,2003 to May,2005 of the employee—Exbt.W.





### **Decision with Reasons**

#### **Referred Issue No.1 :**

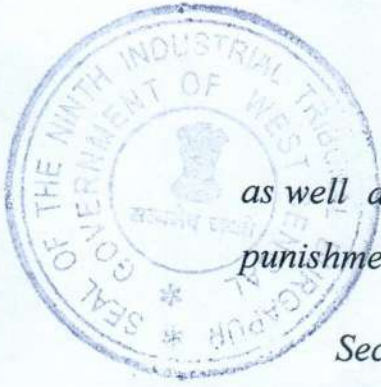
*The instant referred issue relates to the dismissal of service of the workman w.e.f 04.06.2008 by the management of the O.P/establishment. There are two parts of this issue one relates to the part of holding of domestic enquiry and the other one is regarding the quantum of punishment with respect to the charges proved in the domestic enquiry. So far as the first part regarding validity of domestic enquiry is concerned this tribunal while deciding the preliminary issue vide order no.116 dated 17.11.2022 held that the domestic enquiry conducted by the management is fair, proper and valid.*

*It is also the undisputed fact of this case that the said order has neither been challenged nor been modified by any higher forum and during the course of hearing of argument the ld. lawyer for the workman very candidly submitted that he has not moved either the Hon'ble High Court or the Hon'ble Supreme Court challenging the impugned order of this tribunal. In consequence thereof the impugned order of this tribunal attains finality. In other words, the findings of this court regarding validity of the domestic enquiry of the management of the employer/establishment becomes final and undisputedly the charges levelled against the workman tantamounts to have been proved by the management of the employer/establishment.*

*In view of such facts and circumstances this tribunal cannot reappraise its own order by which it held the domestic enquiry to be fair, proper and valid. Consequently, the first aspect of the instant issue goes against the workman and this tribunal is left with the only aspect of its discretionary power to interfere with the punishment of dismissal of service imposed as a result of proved charges in the domestic enquiry by the management of the O.P/Employer.*

*However, in my considered view, to consider the same we are to first look into 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 while awarding the punishment on the basis of domestic enquiry.

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 workman 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 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

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JUDGE  
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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 workman 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 Workmans' 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 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 judiciously 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. ....”.

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 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 depend

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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 workman 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 workman concerned, the past conduct of the workman, 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 workmen than any good for the workman concerned. It will be worthwhile to refer to the repercussions that would result in the event of any misplaced sympathy shown

*Sd/-*  
JUDGE  
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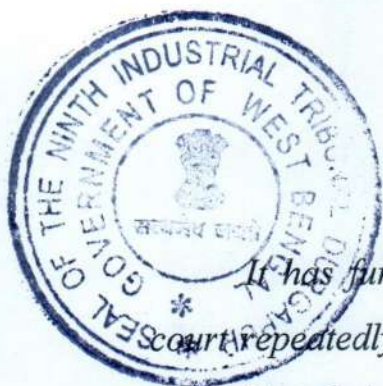


to a workman who indulges in certain acts of misconduct which has been lucidly explained in a decision of the Madras High Court in *Royal Printing Works Vs. Industrial Tribunal* (1959) 2 LLJ 629(Mad) wherein Hon'ble Balakrishna Ayyar.J. (as he then was) stated the position as under {1959(2) LLJ pp.621-22)

"There are certain passages in the order of the tribunal which as I understand them suggest that carelessness on the part of a workman in relation to his work would not justify serious punishment. 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 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 workman 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 the Tribunal's jurisdiction is akin to one U/S 11-A of the Industrial Dispute Act and 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 exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia it is found to be **grossly disproportionate**.





It has further been held by the Hon'ble Court 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 about 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. 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 all its 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 approaches to the industrial relation 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. Our country is governed 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

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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 abundantly clear from such dictum of the Hon'ble Supreme Court that there is no place for showing unnecessary generosity or sympathy on the part of the Tribunal while 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 the principles have to be followed by all the judicial forum of our country..

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 workman 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 in consistent with the principle laid down by the Hon'ble Supreme Court. According to that principle once the Tribunal has found 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 materials on record which was produced before the Inquiry Officer and it cannot travel beyond that while considering whether the punishment inflicted was 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 workman by the management of the industrial establishment.

The Hon'ble Supreme Court in the case of **South Indian Cashew Factories Workers Union (Supra)** held that when the enquiry is held to be

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valid and proper in the absence of any allegation of unfair labour practice or victimisation, the Labour Court has no power to interfere with the punishment imposed.



The Hon'ble Supreme Court in the case of **M/s. Tata Engineering and Locomotive Co. Ltd. (Supra)** and in the case of **Maharashtra State Road Transport Corporation (Supra)** further observed that the Labour Court having found that the domestic enquiry was fair, proper and in accordance with the principles of natural justice should not have interfered with the order of dismissal. But in both the cases the Hon'ble Supreme Court took into consideration the serious and grave nature of charges and other facts and circumstances. Accordingly, it cannot be said that the discretionary power of the tribunal U/S 11A has been curtailed completely in cases where the tribunal or the Labour Court as the case may be found the domestic enquiry to be valid and proper.

To consider the aspect of proportionality of the punishment imposed with respect to the charges proved we are to consider the entire conduct of the workman and all other mitigating factors are to be taken into consideration while imposing the capital punishment of dismissal from service.

The concept of habitual absenteeism depends upon number of factors such as period of absence from duty; frequency of remaining unauthorisedly absent; the intention of the workman to defy authority of superior which has direct bearing on the discipline of the workforce of an industrial establishment; explanation, if any, given by the workman for his remaining unauthorisedly absence ; nature of job of the workman concerned; the overall impact of absent of a workman on the remaining workforce : conduct of the applicant/workman in departmental enquiry and other mitigating factors and circumstances regarding the proved charges etc.

From the materials of this case it is evident that the employer/establishment is a State Govt. Public Undertaking and is engaged in thermal power generation and the workman was employed as Shramik in the Fire safety Deptt. on 23.02.2001. The workman obtained the service as a

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nominee of his mother whose land has been acquired for establishment of the Thermal Power Plant.

From Exbt. A(series) i.e the copy of memorandum of charges it is evident that main allegation against the workman is for remaining unauthorisedly absent on 25(twenty-five) days from 11.10.2003 to 08.03.2004 and thereafter from 10.03.2004 to till this date. His such act of remaining unauthorised by absent constitutes offence of misconduct under various regulations of West Bengal Power Development Corporation Ltd.(Employees') Service Regulations, 1990.

It is pertinent to mention herein that the workman voluntarily did not participate in the domestic enquiry and accordingly his written explanation i.e.Exbt.7 could not be taken into consideration and as this tribunal has already held the domestic enquiry as valid.

However, during the course of hearing on this issue as well as during the course of hearing of the preliminary issue the workman was provided with the opportunity to adduce evidence and he examined himself as P.W-1 in this case. He in his examination-in-chief stated that on 15.03.2004 he submitted an application for leave in the prescribed form sufficiently in advance intending avail leave from 15.04.2004 to 05.06.04 for the purpose of settling a family affair but as per articles of charges no.1 and 2 he was unauthorisedly absent from his duty since 10.03.2004. His evidence is absolutely silent regarding his reason for remaining absent from his duty since 10.03.2004.

He in his further evidence-in-chief stated that his leave application was duly received by the employer's office but neither any receipt in acknowledgement was given nor any communication emanated with regard to either grant or refusal of his leave application. Thus, it is crystal clear that the workman had the knowledge that his said leave application has not been sanctioned by the authority concerned and despite thereof he remained absent from his duty from 10.03.2004.

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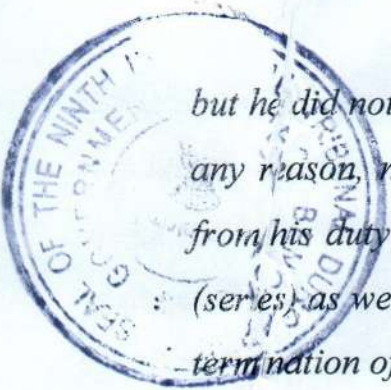
He during the course of his cross-examination by the employer was confronted with his explanation i.e Exbt. B with respect to the articles of charges and being asked, he himself stated that he did not mention about sanction of leave of the dates as mentioned in the articles of charges i.e. Exbt. A. That apart, he was also confronted with his previous joining reports i.e Exbt. C (series) to prove the procedure followed by the management of the employer/establishment in sanctioning leaves to its workman. It is evident therefrom that the joining reports of the workman has the endorsement of sanctioning of leave by the O.P/establishment. Although it is the settled proposition of law that ignorance of law is no excuse for an offender but from such evidence in cross-examination of the workman it is proved beyond any doubt that he is was aware of the rules and regulations of sanctioning of leave of a workman of the O.P/establishment.

If for the sake of argument I do accept that the evidence-in-chief of the workman of submitting his alleged leave application on 15.03.2004 for availing leave on and from 15.04.2004 to 05.06.2004 as sacrosanct, then too, it cannot be said that the competent authority allowed the same in favour of the workman. Besides that, he in his further cross-examination admitted that he in his written explanations i.e Exbt.3 or 4, did not mention about sanction of leaves on the dates as mentioned in the Articles of charges i.e Exbt.A. From his above piece of evidence it is crystal clear that the workman miserably failed to prove that he submitted the alleged leave application either on 15.03.2004 or any subsequent dates thereto for the intended leave from 15.04.2004 to 05.06.2004.

At this juncture, it is pertinent to mention herein that entitlement of leave to an employee availing the same as a matter of legal right is completely different aspect and leave cannot be availed as a matter of right. An authority is not bound to sanction all leave applied for by an employee and it depends upon various factors of the establishment.

The workman in his WS as well as in his examination-in-chief further took the plea that he intended to avail the said leave to settle a family affair





but he did not adduce any evidence on that issue. Moreover, he did not assign any reason, not to speak of reliable or believable, for his remaining absent from his duty on the dates as mentioned in the Articles of charges i.e Exbt.A (series) as well as for his remaining absent since 10.03.2004 till the date of his termination of service.

In my considered view, to consider the factum of validity of quantum of punishment with respect to proved charges of unauthorised absence, cogent and valid reason assigned by a workman for his remaining absent for that period can be taken into consideration. Absence of any explanation from the side of a workman for his remaining unauthorised by absent for the charged period also goes against him while considering the validity of the punishment imposed.

This tribunal while considering the validity of the domestic enquiry report had elaborately dealt with the defence taken by the delinquent workman that after availing the leave he had been to the office to resume his duty on and from 10.06.2004 but he could not resume his duty as he found that the punching card was withdrawn by the management of the O.P/Organisation as unbelievable and found no merit on the same. As the said order of this tribunal attained finality, so this tribunal cannot reopen the same while deciding this issue. But, at the cost of repetition it must be mentioned that the delinquent workman in his cross-examination stated that "I have no documents to show that I lodged complaint with any authority against any officer for not allowing me to join my duty from 10.06.2004 to 26.05.2005. I am not a member of any union. I do not have any document to show that I lodged any complaint with any authority including union regarding withdrawal of my punching card from the gate. I also did not lodge any complaint with the police or any authority for not allowing me to enter into the office prior to receiving the charge sheet".

His such evidence makes his defence highly unbelievable as because it is highly unbelievable that a workman of a Govt. undertaking would not take appropriate action against the officials who did not allow him to resume his duty after availing his alleged legitimate leave.



Furthermore, considering the findings of this tribunal while deciding the preliminary issue that the delinquent workman was provided with opportunities of being heard in his defence by the enquiry officer but he voluntarily did not avail the same, is also a factor to be considered for unbecoming conduct on the part of a public servant which virtually strengthens the contention of the employer of his remaining unauthorisedly absent frequently for a considerable long period from his duty as well as defying authority of his superior.

Besides that, such conduct of the materials compels this tribunal to draw conclusive presumption that he had no intention to continue with his job under the organisation of the O.P.

From my above discussion it cannot be said that the delinquent workman was absent from his duty for the period, as mentioned in the articles of charges, due to any compelling circumstances under which it is not possible to him to perform his duty, it cannot be said that he was not wilfully absent from his duty for such long period.

The Hon'ble Supreme Court of **State of Punjab vs. Dr. P.L.Singla**, (2008) 8 SCC 469 dealt with the case unauthorised absence of an workman and has stated "unauthorised absence (or overstaying leave), is an act of indiscipline whenever there is an unauthorised absence by an workman, two courses are open to the employer, the first is to condone the unauthorised absence by accepting the explanation and sanctioning leave for the period of unauthorised absence in which event the misconduct stood condoned. The second is to treat the unauthorised absence as misconduct, held an enquiry and imposing a punishment for misconduct".

In the said case while dealing with the concept of punishment the Hon'ble Court ruled as follows:-

"Where the workman who is unauthorisedly absent does not report back to duty nor any satisfactory explanation, or where the explanation offered by the workman is not satisfactory, the employer will take recourse of disciplinary



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action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increment without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the workman the period of absence and the cause /explanation for the absence".

Reverting back to the fact of the case in hand it must be mentioned herein that this tribunal has already come to the findings that the workman miserably failed to give any satisfactory explanation for his remaining absent from duty on number of days, as mentioned in the articles of charge, as well as for his not making any attempt to resume his duty from 10.03.2004, so, it is proved beyond any doubt that the workman was in the habit of remaining unauthorisedly absent from his duty very frequently and he did not resume his duty even after his remaining unauthorisedly absent till 08.03.2004.

It is also pertinent to mention herein that admittedly the workman was engaged in the job of Fire Extinguishing Deptt. of the O.P/establishment and his such nature of job certainly comes within the ambit of emergency nature of job wherein a workman is supposed to remain present during is shift except upon compelling circumstances or because of his legitimate leave.

The Hon'ble Supreme Court in the case of **Krushnakant B Permer vs. Union of India and another, (2012)) 3 SCC 178** reiterated its view.

Moreover, the Hon'ble Supreme Court considered the aspect of unauthorised absence for a long period and the workman failure to resume his duty after remaining unauthorisedly absent for a long period in the case of **Chennai Metropolitan Water Supply and Sewerage Board and ors., (Civil Appeal No. 1941 of 2014)** and after taking into consideration of all its previous judgements including above mentioned two judgements and the case of **Chairman-Managing Director, Cola India Ltd.(Supra)**, as relied upon by the Id.Sr. lawyer for the workman, was pleased to set aside order of the Hon'ble Single Bench and Division Bench of the Hon'ble Madras High Court

whereby the writ petition and appeal were allowed and after setting aside the



punishment of dismissal and employee was reinstated with continuity of service but without back wages.

From the fact of the said case it transpires the same is more or less similar or identical with the facts and circumstances of the case in hand as because in the said case the charges against the Jr. Engineer for remaining continuously absent from his duty without any intimation to the employer. In the said case the Hon'ble Supreme Court held such conduct of remaining unauthorised absence from duty of a workman as Habitual Absenteeism and ultimately affirmed the punishment of dismissal from service.

In the said judgement the Hon'ble Apex Court also considered the doctrine of proportionality in the case of habitual absenteeism of a workman from his duty and endorsed the capital punishment of the management after completion of all legal formalities such as holding of valid departmental enquiry.

The Hon'ble Supreme Court in the case of **North Eastern Karnataka R.T. Corporation vs. Ashappa**, (2006)5 SCC 137 while dealing with the matter of misconduct resulting from a workman's remaining absence from duty for a long time has been pleased to held that the same cannot be said to be a minor misconduct.

Moreover, the Hon'ble Supreme Court in the case of **Om Prakash vs. State of Punjab**, (2011)14 SCC 682 also considered the aspect of remaining absent without obtaining leave by a workman as Habitual Absentee without leave and while considering the proportionality of punishment of termination imposed by the management it did not interfere with the same.

Our Hon'ble High Court in the case of **Goutam Kumar Das Vs. State of West Bengal and Ors.**, (2018)3 CHN 122 dealt with the issue of sentence imposed with respect to the similar fact of charge proved of remaining absent unauthorisedly from duty by a workman on frequent basis and has been pleased to observe in para 22 "it is clearly evident that unauthorised absence and habitual absenteeism on the part of an employee can have serious and







grave consequences on the actual running and business output of an employer. Such effect on the business output may harm the overall performance of the company in general and, jeopardise the very employment of other employees in particular. One employee cannot also be allowed to live off at the expense of the regular working and rule abiding employees".

This apart, in **Mithilesh Singh Vs. Union of India**(2003)3 SCC 309 held that absence from duty without proper intimation is indicated to be a grave offence warranting removal from service.

The Hon'ble Supreme Court in the case of **Daily transport Corporation Vs. Sardar Singh**,(2004)7 SCC 574 in para 9 observed that, "when an employee absents himself from duty, even without sanctioned leave for a long period, it prima facie shows lack of interest in work".

The Hon'ble Supreme Court just two days back i.e on 28.07.2023 while deciding the case of **Ex Sepoy Madan Prasad Vs. Union of India**, Civil Appeal No.246 of 2017 paid much emphasis on the discipline of an employee in the workforce and observed that "Discipline is the implicit hallmark the Armed Forces for having failed to rejoin duty on expiry of the leave granted to him".

Although the said case relates dismissal of a member of our Armed Force on the ground of his failure to rejoin his duty after availing sanctioned leave but pith and substance of the said judgement it is crystal clear the factor of indiscipline attitude of a workman in his work place should be taken into consideration while considering the legality of the punishment of dismissal.

From above discussed dictum of the Hon'ble Apex Court there remains no shadow of doubt in understanding settled proposition of law that while considering the proportionality of penalty imposed in relation to proved charge of Habitual Absenteeism against a workman the said concept should not be stretched only with an intention to hold such punishment highly disproportionate or shockingly disproportionate.

At this juncture, it is pertinent to mention herein that the fact of the case of **Federation India Chamber of Commerce and Industry vs. workmen**, 1972



*1 SCC 40 is distinguishable from the facts of the instant case as because in the said case the delinquent workman fairly admitted his guilt of remaining unauthorised absence from his duty for six months and also an explanation the reason for his absence as well as his intention for not disobeying the order of higher authority. But, in the instant case from the proved charges it is established that conduct of the workman since the very inception of his shows his disobedience to the authority of his superior, as revealed from the departmental enquiry and also from above discussed evidence.*

*In view of above dictum of the Hon'ble Supreme Court and Hon'ble High Courts as well as the fact of proved charges of remaining frequently absent unauthorisedly from duty and/or on leave without sanction and failure of the workman to resume his duty even unauthorisedly availing his leave on and from 10.03.2004 certainly amounts to grave misconduct and also proves that the workman is habitual absentee which invites grave punishment from the management of the employer/establishment.*

*Having regard to the above discussed settled proposition of law, the contents of the proved charges as well as conduct of the workman prior to initiation of the domestic enquiry, during the course of domestic enquiry and subsequent thereto it cannot be said that no reasonable employer would not have imposed extreme punishment of dismissal from his service in like circumstances. In other words, the delinquent workman fails to establish that the imposed punishment is either highly disproportionate or shockingly disproportionate to the proved charge of misconduct resulting from his remaining unauthorisedly absent frequently from his duty and also his failure to resume his duty on and from 10.03.2004.*

*In view of my such findings, this tribunal finds no reason to interfere with the punishment imposed by the management for dismissal from service w.e. f 04.08.2008 against the workman vide letter no. WBPDC/L/P & A-31/4996 dated 04.08.2008. Thus, the instant issue is disposed of against the workman.*

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Issue No.2 :

In view of my findings regarding the Issue No.1, the instant issue becomes redundant. Thus, the same is disposed of accordingly.

In the result, the instant case fails on merit.

Hence, it is

Ordered

That the impugned reference dated 3<sup>rd</sup> September, 2010 of the Labour Department, Govt. of West Bengal is adjudicated against the workman Sri Madan Mohan Ghosh.

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/- Sri Sejit Kumar Mohraltra,  
Judge, 31-07-2023.

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Sd/- Sri Sejit Kumar Mohraltra,  
Judge, 31-07-2023.

9<sup>th</sup> I.T, Durgapur.

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