*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO. 13488 OF 1997

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% 16.02.2006

G. Bharadwaj, S/o Satyanarayana Raju, Hindu, aged about 48 years, Ex-Employee, Hindustan Shipyward Ltd., Resident of 48-17-2, Ashoknagar, Ashilmetta Junction, Visakhapatnam.

….. Petitioner

Vs.

1. $ Hindustan Shipyard Ltd., rep.,bty its Chairman & Managing Director, Gandhigram, Visakhpatnam.

….Respondents.

! Counsel for the Petitioner: Sri V. Venkataramana

^ Counsel for the Respondents:Sri P. Nageswara Sree, S.C.

< Gist:

>Head Note

? Citations:

AIR 1965 SC 155

2 AIR 1984 SC 289

3 1969(3) SCC 372

4 AIR 1977 SC 1512

5 AIR 1982 SC 673

6 (2000)3 SCC 324

7 (2005)3 SCC 134

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No.13488 of 1997

ORDER:

This writ petition is filed against the award of the Industrial Tribunal cum Labour Court, Visakapatnam, in I.D.No.17 of 1990, dated 27-08-1996, whereby the application filed by the petitioner-workman under Section 2-A(2) of the Industrial Disputes Act was dismissed holding that the petitioner was not entitled to any relief.

Facts, to the extent necessary for this writ petition, are that the petitioner was appointed in the Hindustan Shipyard Limited in the year 1972. In May, 1985, he took charge of the seat dealing with public tenders and while he was working in the said

capacity in the purchase department, he was issued charge-sheet on 15-07-1986, wherein three charges were framed and he was suspended from service.

The charges levelled against the petitioner is that on 30-06-1986 he sold five demand drafts, submitted by various parties in favour of Hindustan Shipyard Limited, to one Pankaj Mehta, proprietor of M/s.Jyothi Corporation, Madras, to enable him to purchase tender documents from the purchase department of M/s.Hindustan Shipyard Limited. It was alleged that the petitioner had stolen these demands drafts when they were kept under the lock and key of Sri P.James, Purchase Officer and to have submitted them, with a covering letter dated 12-06-1986, to the cash section with the forged initials of Sri P.James. The procedure for submission of tenders is stated to be that the party intending to purchase tender documents should submit a requisition along with demand drafts or postal orders to the purchase officer, who would put his initial and issue directions to the concerned employee to issue the tender form. After tender forms are issued, the demand drafts are to be sent to the Accounts Department.

The petitioner submitted his explanation denying the charges. The respondent-Management appointed Sri R.V.Krishna Rao, Personal Officer, as the Enquiry Officer to conduct an enquiry into the charges levelled against the petitioner. According to the petitioner, during the course of the enquiry, on 5.9.1987, he was not given an opportunity to cross-examine Sri Pankaj Mehta. The Enquiry Officer is said to have started the proceedings on that date at 8.30 a.m, to have set the workman ex-parte and to have closed the enquiry. The petitioner and his defence counsel are said to have requested the Enquiry Officer at about 12.00 noon to give them an opportunity to cross-examine the witness, but the same was rejected. Petitioner contends that he never sent any postal orders or demand drafts to the Accounts Department, under covering letter, in his handwriting and that the purchase officer, with the connivance of others, had been obtaining tender documents without submitting demand drafts or postal orders and that he was implicated and made a scapegoat. It is contended that while lesser punishments were imposed on Sri P.James and Sri T.V. Chandrasekhar, against whom serious lapses were found, the petitioner was victimized by removing him from service. It is contended that no police complaint was filed against Sri Pankaj Mehta.

On receipt of the report of the enquiry officer dated 24.2.1988, holding the petitioner guilty of the charges, the General Manager (Designs and Material), vide

proceedings dated 24.2.1988, dismissed him from service. Aggrieved thereby the petitioner approached the Industrial Tribunal cum Labour Court, Visakhapatnam, filing an application under Section 2-A(2) of the Industrial Disputes Act, 1947, which was numbered as I.D.No.17 of 1990. In his claim statement, the petitioner contended that the domestic enquiry was unfair, unreasonable, in violation of principles of natural justice, that a copy of the enquiry report was not supplied and that the order of dismissal was passed by an incompetent authority. The Tribunal, by order dated 10.8.1994, upheld the validity of the domestic enquiry. Aggrieved thereby the petitioner filed W.P.No.18893/94 which was dismissed by this Court holding that these questions could not be raised during the pendency of the industrial dispute. The Tribunal, in its award dated 27.8.1996, which was published on 22.10.1996, upheld the action of the respondents in dismissing the petitioner from service and held that the petitioner was not entitled to any relief in this regard. Aggrieved thereby, the present writ petition is filed.

Sri V.Venkataramana, learned counsel for the petitioner, would contend that the order of the Tribunal upholding the validity of the domestic enquiry was without application of mind, that the burden was on the employer to prove that the domestic enquiry was valid, that the Tribunal had erred in shifting the burden on the workman, that the order of punishment imposed was by an incompetent authority, that the enquiry proceedings were conducted in violation of the principles of natural justice and that the petitioner was denied the opportunity of cross-examining the material witness. Learned counsel would contend that the Tribunal had failed to properly exercise the powers conferred on it under Section 11-A of the Industrial Disputes Act. Learned counsel, would refer to the order of the Tribunal dated 10.8.1994 wherein the Tribunal held that the domestic enquiry was not invalid. Dealing with the question as to whether the petitioner was given sufficient opportunity to cross-examine Sri Pankaj Mehta, the Tribunal, in its order dated 10.08.1994, noted that the witness was examined on 5.9.1987 and on the said day, as per the report of the enquiry officer, the delinquent and his counsel were not present to cross-examine the said witness, even though they were informed of the date and time of examination of the witness. The Tribunal held that since no representation was made before the enquiry officer on that particular date as to why they were not able to be present to cross-examine the witness and when an opportunity was given and it was not availed of, it could not be said that the delinquent was not given

opportunity and that he could not at a later stage complain that principles of natural justice were not followed in his case. The Tribunal came to the conclusion that the management had given sufficient opportunity and had observed the principles of natural justice in conducting the domestic enquiry. While holding that it did not find any reason to hold that the domestic enquiry conducted by the management was invalid, the Tribunal held that the effect of not cross-examining Sri Pankaj Mehta, perverse findings, if any, of the enquiry officer and the legality of the same would be considered while disposing of the main I.D. on merits.

Learned counsel would refer to the award passed on 27.8.1996 wherein, at paragraph 14, the Tribunal took note of the fact that Sri Pankaj Mehta could not be examined even in chief as both the delinquent and his defence assistant were not present and in their absence the witness could not be examined at all. Learned counsel would contend that failure to examine Sri Pankaj Mehta, (the recipient of the demand drafts, in whose letter marked as Ex.M.19 dated 10.7.1986 it was stated that he had obtained the demand drafts from the petitioner, which formed the basis of the petitioner being found guilty of the charges), must necessarily result in the petitioner being held not guilty of the charges. Learned counsel would contend that failure to examine this material witness vitiates the entire enquiry proceedings.

With regards the competence of the General Manager to impose the punishment, Sri V.Venkataramana, learned counsel for the petitioner, would refer to the Service Rules & Regulations for monthly paid staff of Hindustan Shipyard Limited wherein clause 2 (c) defines ‘Manager’ to mean resident representative or any person authorized by the Managing Director of the Company for the time being to act in his place. Under Clause 16(iv), in awarding punishment under the standing orders, the Manager is required take into account the gravity of the misconduct and the previous record, if any, of the employee, and any other extenuating or aggravating circumstances that may exist. Learned counsel would submit that it is only the Manager and not the General Manager, who is competent to impose a punishment under the standing orders and since no other person has been authorized by the Managing Director of the company to act in his place, the punishment imposed by the General Manager (Designs and Material) was without authority of law and must be held to be an order passed by an incompetent authority. Learned counsel would also refer to the delegation of powers in Ex.M.1 wherein clauses 2 and 3 reads as under:

"2. In the case of workmen, Disciplinary Authorities/Appellate Authority are spelt in the Schedule-I of the Standing Orders. Accordingly, General Manager (Personnel & Administration) (erstwhile C.M.(P) is the Disciplinary Authority for major penalties and Managers of the respective departments are the Disciplinary Authorities for minor penalties. Chairman and Managing Director is designated as the Appellate Authority for major penalties, for minor penalties the Appellate Authority rests with General Manager (P &A).

3. In the case of staff, the Disciplinary Authority is the Chairman and Managing Director of his nominee. In the delegated capacity, General Manager (P&A) is designated as Appointing and Disciplinary Authority, while the Appellate Authority rests with the Chairman and Managing Director. "

Under para 6 thereof, the disciplinary authority for imposing the penalties of stoppage of increments/reduction in pay/reduction in rank/dismissal, is the Chief Manager/Director/General Manager (Head of Group Division) and the appellate authority is the Chairman & Managing Director. Clause 11 provides that the revised procedure will come into effect from 1.7.1983 on a provisional basis and its continuance will be reviewed after six months.

Sri V.Venkataramana, learned counsel for the petitioner, would contend that since Clause 11 provides that the procedure, prescribed in the delegation of powers dated 1.7.1983, was to be reviewed after six months, in the absence of any review, the procedure prescribed under the delegation of powers lapsed on 31.12.1983 and no reliance can be placed thereon to determine the competent authority, for imposing punishments, on or after 1.1.1984. Learned counsel would submit that since the punishment of dismissal, imposed on the petitioner, was on 24.2.1988, more than four years after the delegation of powers had lapsed on 31.12.1983, no reliance can be placed on the said delegation of powers and since the order of punishment has not been imposed by the manager, the order of punishment must be held to have been passed by an incompetent authority. Learned counsel would contend that Clause 11 of the delegation of powers must be strictly construed and not liberally interpreted since it is a penal provision and since this penal provision visits the petitioner with civil consequences, the interpretation accorded thereto by the Tribunal ought not be accepted. Learned counsel would further submit that since the value of the amount involved is negligible the punishment, of dismissal, imposed on the petitioner was grossly disproportionate to the charges held proved.

Sri P.Nageswara Sree, learned standing counsel for the respondents, would submit

that since clause 11 of the delegation of powers merely enables the Chairman and Managing Director to review the procedure and take a decision on its continuance, the mere fact that the said procedure was not reviewed, did not mean that the revised procedure, prescribed in the delegation of powers dated 1.7.1983, ceased to remain in force. According to the learned counsel, the revised procedure of delegation of powers continued to operate in the absence of its being reviewed by the competent authority. Learned counsel would refer to the award of the Tribunal wherein this question has been dealt with by the Tribunal. In

paragraph 7 of the award, the Tribunal held thus:

"It is elicited in the cross-examination of M.W.1 that there is no revised subsequent instructional order in this respect to his knowledge. But in view of the provision made in clause 11 for reviewing the procedure after 6 months, the same is to be taken as reviewed and accepted even after the expiry of the period mentioned therein by the management by its behaviour on following this procedure even after the said period of six months. In view of the statement of MW1 that Ex.M1 is being followed in all the cases of disciplinary action, it is to be implied that the Chairman and Managing Director reviewed and continued the same procedure and this position is implied unless and until Ex.M.1 is revoked by him by an express and specific order. Thus, I come to the conclusion that Ex.M1 governs the disciplinary action taken against the petitioner herein. In this Ex.M1, the disciplinary authority is stated to be general manager, who is the head of the Group division and where punishment of dismissal is considered 'appropriate', he shall consult the general manager (P&A) before imposing the punishment. Even as per the regulation 2(c) under Ex.W1, the Managing Director of the company is empowered to authorize any person to act on his behalf. It is stated in the reply written arguments filed by the management that the Hindusthan Shipyard Ltd is having its Chairman and Managing Director who heads the organization and who functions through several divisional departments and heads in order to have effective control of the working of the organization and powers are delegated to them, and Ex.M1 is one such delegation of powers relating to service matters. It is stated in the written arguments filed by the management that as per Ex.M1 the disciplinary authority is general manager (heads of division) and when the charge sheet was given to the workman in 1986, the divisional head of the purchase department where he was working is general manager (technical) and when the dismissal orders were issued in 1988 the divisional head is general manager (designs and materials). Thus, it is evident that concerned general managers at the relevant time issued charge sheet and dismissal orders respectively and thus, both are competent to issue the same. Further they have not stated to be below the rank of the chief personnel officer of the management company, who issued the appointment order under Ex.M2. Thus, viewed from any point, there is no force in the contention of the petitioner that the authorities, who issued charge sheet and who passed dismissal order against him are not competent to do so"

It is well settled that the certiorari jurisdiction of this court, against orders of Tribunals, is supervisory and not appellate. This Court would not, normally, sit in

appeal over the findings recorded by Tribunals and quasi judicial authorities unlike an appellate authority and even if this court, while exercising its jurisdiction under Article 226 of the Constitution of India, comes to the conclusion that another view is possible on the issue, so long as the conclusion of the Tribunal is a possible view, it would still not interfere, even if it is satisfied that other view espoused by the party challenging the award is also a possible view. The Tribunal herein has come to the conclusion that until the delegation of power under Ex.M.1 was revoked by an express and specific order, it would continue to remain in force. This conclusion of the Tribunal cannot be said to be a view which could not have been taken at all. The contention that Clause 11 of the delegation of powers is a penal provision and must be strictly constructed does not merit acceptance. The said clause in the order of delegation of powers, has been interpreted by the Tribunal. It cannot be said that the construction placed on Clause 11 by the Tribunal is an interpretation which could not have been arrived at all. The finding of the Tribunal in this regard does not call for interference, by this Court, in exercise of its certiorari jurisdiction under Article 226 of the Constitution of India. The conclusions reached by the Tribunal in holding that the order of punishment was imposed by a competent authority, does not, therefore, call for interference.

It is no doubt true that Sri Pankaj Mehta, whose letter was relied upon by the enquiry officer to come to the conclusion that the petitioner was guilty of misconduct, was not examined in the enquiry. As rightly contended by Sri V.Venkataramana, learned counsel for the petitioner, Sri Pankaj Mehta (M.W.5), was not even examined in chief in the enquiry proceedings. The question, however, is whether failure to examine Sri Pankaj Mehta vitiates the enquiry proceedings. It is well settled that the Enquiry Officer, holding a domestic enquiry, cannot take any effective steps to compel attendance of witnesses and consequently cannot be said to have caused any procedural irregularity in not causing production of witnesses.(**Tata Oil Mills Company Ltd. v. the Workmen; Shambunath Goyal v. Bank of Baroda**). Since the Enquiry Officer has no power as a court to summon witnesses, just as the company produces its witnesses, the workman has to take steps to produce his witnesses. The Enquiry Officer has neither the power to produce nor compel the company to produce witnesses for being cross-examined by the workman (**Tata Engineering & Locomotive Company Ltd. v. S.C. Prasad**). Nothing prevented the petitioner, from producing Sri Pankaj Mehta as a witness in his defence. The mere fact that Sri Pankaj Mehta was not examined as a witness, cannot automatically lead

to the conclusion that the enquiry proceedings are vitiated.

It is no doubt true that the letter addressed by Sri Pankaj Mehta was also relied upon by the enquiry officer in holding the petitioner guilty of the charge of misconduct. While it would undoubtedly have been desirable to have Sri Pankaj Mehta examined in this regard, the question is whether non-examination of the said witness vitiates the domestic enquiry. It is well settled that unlike in criminal proceedings, the degree of proof required in domestic enquiries is preponderance of probabilities and not proof beyond reasonable doubt. Hearsay evidence is also permissible in departmental proceedings.

In **State of Haryana v. Rattan Singh**, failure on the part of a conductor of the Haryana State Road Transport Corporation to collect bus fares from 11 passengers and consequent termination of his service was questioned on the ground that none of the passengers had been examined in the domestic enquiry. In this context, the Supreme Court held thus:

"It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there *some* evidence or was there *no* evidence — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of *any evidence* in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record……."

In **J.D.Jain v. The Management of State Bank of India,** based on a verbal complaint from a savings bank account holder that, while he had withdrawn Rs.500/- , a debit entry of Rs.1500/- was shown in his pass book, disciplinary proceedings were initiated against the cashier to whom the said customer had given authorisation. On the basis of the verbal complaint of the customer, a charge sheet was issued against the cashier. The customer was not examined in the domestic enquiry. However, the officers to whom the customer had made the complaint were examined. Consequent upon his termination from service, the cashier approached the Industrial Tribunal and the Tribunal recorded a finding that failure to examine the complainant vitiated the enquiry proceedings and that hearsay evidence was not permissible. The Supreme Court held that strict rules of evidence were not applicable to domestic enquires and relying on its earlier judgment in **Rattan Singh**[4] held thus:

"The next question is, is the evidence in the domestic enquiry really hearsay, as held by the Tribunal?

The word "hearsay" is used in various senses. Sometimes it means whatever a person is heard to say; sometimes it means whatever a person declares on information given by someone else. (see *Stephen on Law of Evidence*)

The Privy Council in the case of *Subramaniam* v. *Public Prosecutor*,(1956)1 WLR 965) observed:

> "Evidence of a statement made to a witness who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made. The fact that it was made quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or some other persons in whose presence these statements are made."

In the instant case, the alleged misconduct of the appellant was that he forged documents, withdrew Rs 1500 — Rs 1000 in excess of the amount he was authorised to do and misappropriated the excess amount of Rs 1000. With regard to the fact whether the appellant manipulated the documents, withdrew excess amount and misappropriated it, there is, of course, no direct evidence of any eyewitness except the appellant's 'confession' referred to above. The evidence on which reliance has been taken by the respondent is the confession and circumstantial evidence, namely, the authority letter containing the admitted interpolations by the appellant in his own handwriting in different ink, and the addition of the digit '1' before 500. The evidence of Kansal would have been primary and material, if the

fact in issue were whether Kansal authorised the appellant to make the alterations in the authority letter. But Kansal's complaint was to the contrary. For the purpose of a departmental enquiry complaint, certainly not frivolous, but substantiated by circumstantial evidence, is enough. What the respondent sought to establish in the domestic enquiry was that Kansal had made a verbal complaint with regard to the withdrawal of excess money by the appellant in presence of the four witnesses, namely, Wadhera, Gupta, Ramzan and Sarkar, aforesaid, against his advice. On the complaint of Kansal, the evidence of these four witnesses is direct as the complaint is said to have been made by Kansal in their presence and hearing; it is therefore, not hearsay. As the respondent has succeeded in proving that a complaint was made by Kansal on the evidence of the above-named four witnesses, the respondent has succeeded. No rule of law enjoins that a complaint has to be in writing as insisted by the Tribunal."

As such even in the absence of the complainant being examined, the enquiry officer, on the basis of the evidence on record, can always come to the conclusion that the delinquent workman was guilty of the charges levelled against him. The question which therefore falls for examination is as to whether, in the absence of the deposition of M.W.5 being recorded in the domestic enquiry, the evidence of M.Ws.1 to 4 would establish the charges levelled against the petitioner.

P.W.3, the purchase officer, in his evidence, stated that a representative of M/s Jyothi Corporation, Madras had approached him on 13.6.1986 along with requisition letters enclosing separate demand drafts towards the cost of tender documents, that he found five letters were of the same date and the DDs from different banks with different dates. He stated that subsequently the petitioner had approached him on his own accord for writing tender documents and that he had replied that the tender documents would be given to the party only after thorough verification of the demand drafts produced by the party. Since he had a doubt with regards the DDs submitted from different banks with different dates, he had brought the matter to the notice of the senior purchase officer, P.W.4 who instructed him not to furnish tender documents to M/s Jyothi Corporation. In the note submitted by him in Ex.M-5, P.W.3 stated that he doubted that there was some mischief in these five DDs submitted by Sri Pankaj Mehta. P.W.4, senior purchase officer, deposed that he received a note, under Ex.M-5, from P.W.3, that he had noted down the numbers of the D.Ds. and made some investigation. He addressed letters to Central Bank of India, Gandhigram under Ex.M.12 and M.14 and the Central Bank, in its reply under Ex.M13, confirmed that four out of the five DDs were issued by the bank in favour of

different parties mentioned therein and not to M/s Jyothi Corporation, Madras. The State Bank of India authorities endorsed on the letter, in Ex.M-4, sent by P.W.4, that the D.D. was issued in favour of Tredco. Exports, Calcutta. On being contacted by P.W.4 under Ex.M.15, M/s Tredco Exports, in their reply under Ex.M16, confirmed that the said D.D. was obtained by them for Rs.200/-. In his investigation report in Ex.M.18 dated 7.7.1986, P.W.4 informed that he suspected the genuineness of these five D.Ds. because the dates of the DDs were earlier to the date of publication of the tender, they were in the names of different parties and addresses. PW.4 refers to letters of Pankaj Mehta, wherein he had mentioned that he had obtained these DDs from the petitioner. P.W.4, in his report, stated that on 14.6.1986 P.W.3 informed him that the five DDs and the covering letters were missing from his table drawer though locked and on 13.6.1986 itself in the evening he had called Sri Pankaj Mehta and on his enquiry, Sri Pankaj Mehta had stated that he had himself obtained the DDs. Then when P.W.4 asked Mr.Mehta to submit duplicate copies of the letters, he promised to come on 20.6.1986. Instead of doing so he had submitted fresh D.Ds. along with two letters on 21.6.1986. P.W.4 stated that, on being confronted on 9.7.1986, Mr.Mehta had informed him that the said DDs were given to him by the petitioner. P.W.4 also deposed that he had received a letter from Sri Pankaj Mehta on 10.7.1986 under Ex.M19 from which it is clear that Mr.Mehta had admitted that he had obtained DDs from the petitioner on 13.6.1986. P.W.4 also deposed that he received another letter on 11.7.1986 under Ex.M.20 from Mr.Mehta, along with Inland letter dated 15.6.1986, under Ex.M.21, said to have been written by the petitioner to Sri Pankaj Mehta.

From the evidence of P.W.4, it is clear that he was informed by Sri Pankaj Mehta himself that the demand drafts were given to him by the petitioner. The fact that Sri Mehta sent a copy of the letter, sent to him by the petitioner, establishes that the petitioner had given the DDs to Mr.Pankaj Mehta. Further the Tribunal, on noting the contents in Ex.M21 letter said to have been addressed by the petitioner to Sri Pankaj Mehta, recorded a finding that the signature in the said letter tallied with the admitted signature of the petitioner in his claim petition. The Tribunal also took note of the fact that the petitioner did not deny that he wrote the letter, but had merely contended that it was obtained under threat and coercion. The Tribunal disbelieved the petitioner's contention regarding coercion, since the inland letter bore a postal stamp and was sent by post to Pankaj Mehta at Madras. The conclusions of the Tribunal in this regard cannot be said to be perverse, nor can these findings be said

to based on no evidence. It is not for this court to re-appreciate the evidence on record to come to a conclusion different from that of the Tribunal. Since there is ample evidence on record, in support of the conclusion that the petitioner was guilty of the charges of misconduct levelled against him, failure to examine M.W.5, Sri Pankaj Mehta is of no consequence.

The other contention urged by Sri V.Venkataramana, learned counsel for the petitioner, regarding proportionality of punishment, must also be rejected. Learned counsel would submit that the value of the D.Ds. was for a negligible amount and even if the charges levelled against the petitioner were held to be proved, it could not be said that the charges were so grave as to warrant imposition of the deterrent punishment of dismissal from service. Learned counsel would contend that the Tribunal, in exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act, has the power not only to re-appreciate the evidence on record, but also to modify the punishment imposed by the employer, and since the award of the Tribunal, on the quantum of punishment, suffers from patent illegality, the award is liable to be set aside.

The charges held established against the petitioner is that he had sold five DDs of Rs.300/-, Rs.300/-, Rs.200/-, Rs.300/- and Rs.200/- submitted by various other parties in favour of M/s Hindustan Shipyard Limited to Sri Pankaj Mehata, proprietor of M/s Jyothi Corporation, Madras to enable him to purchase tender documents from the purchase department of Hindustan Shipyard Limited. The other charge relates to stealing of DDs from the drawer of Mr.P.James, Purchase Officer and to have submitted these five DDs with a covering letter on 12.6.1986 to the cash section with the forged initial of Sri P.James. While it is true that the value of all the five DDs put together is Rs.1300/-, the fact remains that the misconduct held proved against the petitioner includes cheating the management, colluding with parties, illegally collecting money from them and in assisting them in illegal submission of tender documents. The petitioner was also held guilty of forging the initials of an officer of the corporation and in stealing DDs from his drawer. The Tribunal, at paragraph 18 of the award, considered these charges and concluded that they involved moral turpitude. The Tribunal held that the three charges were grave in nature involving dishonesty on the part of the petitioner and that in view of the gravity of the charges, the management could not be forced to impose any lesser punishment than that of dismissal from service. The Tribunal held that no

management could be forced to keep such an employee in service. The Tribunal came to the conclusion that the action of the management in dismissing the petitioner from service was justified and did not call for any interference.

It is well settled that the quantum of punishment to be imposed on an employee for proved misconduct is for the employer, in its wisdom, to decide. While Section 11-A confers power on the Tribunal to examine the proportionality of punishment, the Tribunal can only interfere in cases where the punishment imposed by the employer is grossly disproportionate. The Tribunal is not entitled to interfere with the punishment awarded, to an employee on sympathetic grounds.

In **U.P. State Road Transport Corporation v. Subhash Chandra Sharma**, the Supreme Court held thus:

"The Labour Court, while upholding the third charge against the respondent nevertheless interfered with the order of the appellant removing the respondent from the service. The charge against the respondent was that he, in a drunken state, along with the Conductor went to the Assistant Cashier in the cash room of the appellant and demanded money from the Assistant Cashier. When the Assistant Cashier refused, the respondent abused him and threatened to assault him. It was certainly a serious charge of misconduct against the respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of the respondent from the service when the charge against him stood proved. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the respondent was in any way "shockingly disproportionate" to the nature of the charge found proved against him."

In **Mahindra and Mahindra Ltd v. N.B.Narawade** the Supreme Court held thus:

"It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of

the Act and reduce the punishment."

In the case on hand, the Tribunal has assigned valid reasons for its conclusion that the punishment of dismissal, imposed by the respondents on the petitioner, is justified. It is not for this court, in exercise of its Certiorari jurisdiction under Article 226 of the Constitution of India, to interfere with the punishment imposed on an employee for proved misconduct and it is only when the punishment imposed is one which shocks the conscience of the Court or is a punishment which could not have been imposed at all, would any interference be called for. In the facts and circumstances of the present case, it cannot be said that the punishment imposed on the petitioner calls for interference.

The challenge to the award of the Tribunal in I.D.No.17/90 fails. The writ petition is accordingly dismissed. However, in the circumstances, without costs.

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Note: L.R.copy to be marked.

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