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PRINCIPLE OF PROPORTIONALITY: EXTENT AND APPLICATION IN INDUSTRIAL DISPUTES

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Principle of Proportionality:

Extent and Application in Industrial Disputes

Introduction

The reasonableness and proportionality principle seem to have a growing importance in labour law. One of the important questions which need to be answered is that what is the relation between them? In the Indian constitutional tradition, proportionality and reasonableness are strictly related as the proportionality principle has always been considered instrumental to the reasonableness principle and the proportionality test is seen as part of the reasonableness test. However, in most of the EU legal systems and also in European case law, the reasonableness principle is autonomous.

The proportionality principle is in use in different areas of law, especially in constitutional and administrative law, and it aims at controlling the exercise of public powers towards individuals. This unwritten constitutional principle developed by the German Constitutional Courts, finds its origin in the tradition of German public law. It was precisely the Prussian Supreme Court that established the principle in the field of police law¹ and Georg Jellinek's comment was that "*the police may not kill a swallow with cannon*". The principle requires that any restriction of individual freedom must be appropriate to the attainment of the objectives to be achieved. Any restrictive measures should not impose excessive limits on the freedom of the individual and must therefore be based on the principle of reasonableness. Following this principle every legislative and administrative act is subject to the control of the Constitution.²

Doctrine of proportionality signifies that administrative action should not be more drastic than it ought to be for obtaining desired result. The doctrine is of European origin and is very entrenched in the European *Droit Administratif*.³ The principle of proportionality has been characterized as the most important legal principle in the European Administrative Law.

The principle of proportionality envisages that a public authority ought to maintain a sense of proportion between his particular goals and the means he employs to achieve those goals, so that his action impinges on the individual rights to the minimum extent

¹ Decision 9 of 14 June 1882, PROVG 353.

² Juan Cianciardo, The Principle of Proportionality: Its Dimensions and Limits, Available at http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=juan_cianciardo (Last visited on 20 Nov., 2015).

³ The review of administrative action is entrusted to administrative tribunals and not to ordinary courts and, therefore, the broad concept of proportionality can be followed.

to preserve the public interest. This means that administrative action ought to bear a reasonable relationship to the general purpose for which the power has been conferred. The implication of the principle of proportionality is that the court will weigh for itself the advantages and disadvantages of an administrative action. The reasonableness is a principle or a criterion with a variety of meanings and of uses in different areas of law. It is surely a normative concept since it is used for the assessment of actions, decisions, rules and institutions and sometimes judgments also.⁴ Only if the balance is advantageous, will the court uphold the administrative action. The administration must draw a balance-sheet of the pros and cons involved in any decision of consequence to the public and to individuals. The principle of proportionality envisages that an administrative action could be quashed if it was disproportionate to the mischief at which it was aimed. The measures adopted by the administration must be proportionate to the pursued objective.

An administrative authority while exercising a discretionary power should maintain a proper balance between any adverse effects which its decision may have on the rights, liberties or interests of persons and the purposes which it pursues. All in all, it means that the decision maker must have a sense of proportion. Thus the doctrine tries to balance means with ends. Proportionality shares space with reasonableness and courts while exercising power of review see if it is a course of action that could have been followed. Its meaning is rather complex and is often confused with rationality, whereas the last one is included but it cannot be reduced to it, since reasonableness cannot be reduced to the correctness of reasoning, but it draws also on moral considerations⁵ and it comprises a series of practical and normative requisites for judging decisions and actions which have a legal relevance.

The principle of proportionality is designed to limit abuse of power and infringement of human rights and freedoms by governments and other public officials to the minimum necessary in the circumstances. As a philosophical notion, proportionality may be traced back to the ancient Silver Rule of "that which is hateful to you, do not do to your fellow".⁶ As a legal principle, it originated in the 19th Century in Prussian administrative law, where it imposed constraints on police powers which infringed individual's liberty or property.⁷ Throughout the years, the principle of proportionality

⁴ Alexy R., *Reasonableness of the Law* in REASONABLENESS AND LAW 7 (Bongiovanni G., *at. el.* eds. 2009).

⁵ See generally John Rawls, *POLITICAL LIBERALISM*, (1993).

⁶ See Aharon Barak, *PROPORTIONALITY: CONSTITUTIONAL RIGHTS AND THEIR LIMITATIONS* 175 (2012).

⁷ Courts examined whether police action was for a legitimate purpose, whether the action was suitable to reach this purpose, and whether there was a less intrusive means to achieve this purpose. In some cases, the courts also assessed whether a proper balance was struck between the adverse effects of the action and the benefits of achieving the purpose. See Dieter Grimm, *Proportionality in Canadian and German Constitutional Jurisprudence* 57 U. TORONTO L.J. 384-85 (2007).

expanded and migrated to other European countries,⁸ where it is now a central and binding public law principle,⁹ and to other jurisdictions including Canada, New Zealand, Australia, South Africa, Hong Kong, India, and countries in South America.¹⁰ Furthermore, it has become part of many constitutional and international documents.¹¹

Position in India

*Associated Provincial Picture Houses v. Wednesbury Corporation*¹² is the English law case which sets down the standard of unreasonableness of public body decisions which render them liable to be quashed on judicial review. This special sense is accordingly known as Wednesbury reasonableness. The court stated three conditions on which it would intervene to correct a bad administrative decision, including on grounds of its

⁸ In 1949, the Basic Law for the Federal Republic of Germany was adopted, and although it did not contain any explicit reference to proportionality, the Constitutional Court gradually applied, without explanation, the test of proportionality whenever a law infringed fundamental rights (except for the right to dignity which is absolute). An explanation on how this principle operates came in subsequent cases in the 1960s. See Grimm, *supra* note 2 at 385-86. See also Robert Alexy, A THEORY OF CONSTITUTIONAL RIGHTS (2002) (1986), who argues that constitutional rights are not rules but rather principles, "optimization requirements" which are subject to a balancing and proportionality analysis.

⁹ See e.g. Nicholas Emiliou, THE PRINCIPLE OF PROPORTIONALITY IN EUROPEAN LAW: A COMPARATIVE STUDY (1996); Evelyn Ellis ed., THE PRINCIPLE OF PROPORTIONALITY IN THE LAWS OF EUROPE (1999). The European Court of Justice views proportionality as a general principle of EU law which regulates the exercise of powers and measures chosen by the EU institutions and Member States affecting fundamental freedoms. See *R. v. Minister for Agriculture, Fisheries and Food, Ex parte Fedesa* (C-331/88) [1990] ECR I-4023, 4062-4. The principle of proportionality is laid down in Article 5 of the Treaty on the European Union. The principle of proportionality is also used to assess limitations on fundamental rights and freedoms (see EU Charter). While the European Convention for the Protection of Human Rights and Fundamental Freedoms does not include a specific reference to proportionality, the European Court of Human Rights applies the test of proportionality when rights are infringed (see Barak, *Supra* note 6 at 183-84).

¹⁰ See Barak, *Supra* note 6 at 180-202, 208-10; See also David M. Beatty, THE ULTIMATE RULE OF LAW (2004). Furthermore, the principle of proportionality has been recently advocated in the U.S. See E. Thomas Sullivan & Richard S. Frase, PROPORTIONALITY PRINCIPLES IN AMERICAN LAW: CONTROLLING EXCESSIVE GOVERNMENT ACTIONS 6 (2009), who provide an overview of the long-standing acceptance of proportionality in western countries and argue that, 'every intrusive government measure that limits or threatens individual rights and autonomy should undergo some degree of proportionality review'.

¹¹ This includes for example the *Canadian Charter of Rights and Freedoms* (Charter, Section 1), the Constitution of the Republic of South Africa (Article 36), Israeli Basic Law: Human Dignity and Liberty (Article 8) and the Israeli Basic Law: Freedom of Occupation (Article 4), the Federal Constitution of Switzerland of 1999 (Article 36), the Constitution of Turkey (Article 13), the European Convention of Human Rights and Fundamental Freedoms, November 4, 1950, 213 UNTS 222 (Articles 8- 11), New Zealand Bill of Rights Act 1990, No. 109 (Article 5) and the EU Charter of Fundamental Rights of the Union, O.J. C. 2007 303/01 (Article 52).

¹² [1948] 1 KB 223.

unreasonableness in the special sense later articulated in *Council of Civil Service Unions v. Minister for the Civil Service*.¹³

In India though, the principle of proportionality in its broad European sense has not so far been accepted. Only a very restrictive version thereof has so far come into play. The reason is that the broad principle does not accord with the traditions of common-law judicial review. The European version of proportionality makes the court as the primary reviewer of administrative action is entrusted to administrative tribunals and not to ordinary courts, and therefore the broad concept of proportionality can be followed. In common law, the tradition so far has been that the court does not probe into the merits of an administrative action. This approach comes in the way of a full-fledged acceptance of the principle of proportionality, for, if accepted, it will turn the courts into primary reviewer of administrative action.

Accordingly in India, the courts apply the principle of proportionality in a very limited sense. The principle is applied not as an independent principle by itself as in European administrative law, but as an aspect of article 14 of the Constitution, viz., an arbitrary administrative action is hit by article 14. Therefore, where administrative action is challenged as arbitrary under article 14, the question will be whether administrative order is rational or reasonable as the test to apply is the *Wednesbury* test.¹⁴ As has been stated by the Supreme Court in *Royappa*,¹⁵ if the administrative action is arbitrary, it could be struck down under article 14. Arbitrary action by an administrator is described as one that is irrational and unreasonable. Accordingly, a very restrictive version of proportionality is applied in the area of punishments imposed by administrative authorities.

With respect to India, administrative action affecting fundamental freedoms have always been tested on the anvil of proportionality. By proportionality, it is meant that the question whether, while regulating exercises of fundamental rights, the appropriate or least restrictive choice of measuring has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of administrative order, as the case may be.

Under the principle court, the legislature and the administrative authority maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purposes which they were intended to serve. The legislature and the administrative authority are given an area of discretion or a range of choice but as to whether the choice made infringes the rights excessively or not is for the court to decide. This is the principle of proportionality.

While dealing with the validity of the legislation, infringing fundamental freedoms enumerated in article 19(1) of the Constitution, the Supreme Court had occasion to

¹³ [1984] 3 All ER 935.

¹⁴ *Associated Provincial Picture House v. Wednesbury Corporation*, (1947) 2 All ER 680.

¹⁵ *E. Royappa v. State of Tamil Nadu*, A.I.R. 1974 S.C. 555.

consider whether the restriction imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. Reasonable restrictions under article 19(2) to (6) could be imposed on these freedoms only by legislation and courts had occasion to consider the proportionality of the restrictions. Legislation may be made and the restriction may be reasonable, but a balance has to be struck between fundamental right and need for restriction.¹⁶ In cases where such legislation is made and the restrictions are reasonable, yet if the statute concerned permitted administration authorities to exercise power or discretion while imposing restrictions in individual situations, question frequently arises whether a wrong choice is made by the administration for imposing the restriction or whether the administrator has not properly balanced the fundamental right and the need for the restrictions or the reasonable quantum of restrictions, etc. In such cases, the administration action in our country has to be tested on the principle of proportionality, just as it is done in the case of main legislation.¹⁷

Proportionality in Industrial Adjudication

The question of a proportionate action arises at two stages. First, when the matter relates to an action taken by an employer during the pendency or after the conclusion of a disciplinary proceeding against an employee in a case of misconduct. And secondly, when the same action is called in question before an industrial tribunal or court and the tribunal can exercise its powers under section 11A validating or altering the punishment after testing it on the anvil of proportionality. As proportionality is a public law principle so in the strict sense as a 'doctrine' it must be followed by these tribunals as they are very much administrative in nature. To understand the scope of proportionality, we need to understand the essence of industrial tribunals and the powers under section 11A of Industrial Disputes Act, 1947, which was inserted almost after 25 years of its enactment.

As discussed earlier, proportionality is very much inherent in the Indian Constitution and thus can be stated as an essential feature to govern and regulate administrative actions. While speaking of administrative actions one cannot forget to mention and discuss the administrative tribunals which are quasi-judicial bodies discharging administrative functions and having trappings of regular courts. The Constitution of India, which envisions a welfare state, was bound to recognize the exercise of tribunals. India – due to historical reasons – preferred to adopt the common law system in which, unlike France, tribunals were subject to superintendence of ordinary courts. It was in 1976 that the concept of a tribunal free from the high court's control and subject only to the Supreme Court's limited appellate power was brought in through the Constitution (Forty-Second Amendment) Act, 1976.

¹⁶ *Om Kumar v. Union of India*, (2001) 2 S.C.C. 386

¹⁷ *Teri Oat Estates Pvt Ltd. v. U.T Chandigarh*, (2004) 2 S.C.C. 130.

Article 323-A and 323-B have been inserted by which Parliament has been authorized to constitute administrative tribunal for the settlement of disputes and adjudication of matters specified therein.

In *Bharat Bank v. Employees of Bharat Bank*,¹⁸ the Supreme Court held that a body or authority vested with certain functions of a court of justice and having some of its trappings would fall within the ambit of the word 'tribunal' as used in article 136 of the Constitution. In *Engineering Mazdoor Sabha v. Hind Cycles*,¹⁹ Gajendragadkar CJ., pointed out that in order to fall within the purview of article 136(1), three requisites of tribunal should be satisfied:

1. It must have the trapping of the Court,
2. It should be constituted by the state through statute; and
3. It should be invested with the state's inherent judicial power.

Similar Tribunals and Labour courts have been established when it comes to industrial disputes, the authority to decide matters pertaining to such disputes is vested with the Tribunals established under the Industrial Disputes Act of 1947.²⁰ Therefore it is very much desirable that these tribunals follow the principle of proportionality to meet the ends of justice especially when they have to deal with sensitive matters when a dispute or a difference exists between employee and employer relating to wages, discharge and dismissal of a workman, conditions of labour, bonus, terms of employment etc.

The principle of proportionality is usually understood to include three separate requirements, all concerning the means chosen to achieve the State's goals.²¹ First, there must be a *rational relation* between the means and the goals, in the sense that the means applied can indeed advance the ends they are supposed to advance. Second, the State must choose the least drastic means necessary to achieve its goals, i.e. any infringement of rights is justified only to the extent necessary ("*minimal impairment*"). The third requirement, which is more controversial, goes beyond a mere review of the means chosen. It demands the harm caused by the use of force (in terms of the infringement of rights) to be proportional to the benefit that stems from that action ("*proportionality in the strict/narrow sense*"). This obviously requires judges to make value judgments about the importance of certain goals, which makes the last test prone to indeterminacy. But it is still considered necessary in public law, in many legal systems, to prevent extreme violations of rights for trivial goals.²²

To extend the powers of the tribunals in matters of labour adjudication a new section was inserted in 1971 namely section 11A in the Industrial Disputes Act of 1947.²³ The

¹⁸ A.I.R., 1950 S.C. 188.

¹⁹ A.I.R. 1963 S.C. 874.

²⁰ See generally Section 7, 7A and 7B, Industrial Disputes Act, 1947.

²¹ *Supra* note 9 at 23.

²² *Id.*

²³ Section 11 A of the Act reads as follows: 11A. Powers of Labour Court, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an

Statement of Objects and Reasons for enacting this provision in 1971 has been reproduced in the decision of the Supreme Court in *The Workmen of M/s Firestone Tyre & Rubber Co. of India P. Ltd. v. The Management and Others*,²⁴ and *Neeta Kaplishv. Presiding Officer, Labour Court and Another*.²⁵

Regarding section 11A, in the Statement of objects and reasons it is stated as follows: In *Indian Iron and Steel Company Limited and Another v. Their Workmen* (AIR 1958 SC 130 at 138), the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc. on the part of the management.

The International Labour Organisation, in its recommendation (No. 119) concerning termination of employment at the initiative of the employer adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled, to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case, and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power in cases wherever necessary, to set aside the order of discharge or dismissal and

industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement 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 on record and shall not take any fresh evidence in relation to the matter.

²⁴ A.I.R. 1973 S.C. 1227

²⁵ (1999) 1 S.C.C. 517

direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workmen including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new section 11A is proposed to be inserted in the Industrial Disputes Act, 1947....²⁶

The necessity of enacting section 11-A arose because of a recommendation (No.119) adopted in June, 1963 by the International Labour Organisation concerning termination of employment at the initiative of the employer. The Industrial Disputes (Amendment) Act 1971 inter alia introduced section 11A into the parent Act of 1947. The new section provided that if in the course of the adjudication of an Industrial dispute relating to the discharge or dismissal of a workman a Labour Court, Tribunal, or National Tribunal 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 workmen or reduce punishment etc. The proviso to the section laid down that in any proceeding under the section the Court or Tribunal in question shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter. The section came into force with effect from December 15, 1971.

Firestone concerned itself with the interpretation of section 11-A of the Act when a domestic enquiry is held, when the Court can interfere in the quantum of punishment awarded after a domestic enquiry and whether Section 11-A of the Act is retrospective.

The court observed that the Statement of Objects and Reasons cannot be taken into account for the purpose of interpreting the plain words of the section. But it gives an indication as to what the Legislature wanted to achieve. At the time of introducing section 11A in the Act, the legislature must have been aware of the several principles laid down in the various decisions of this Court referred to above. The object is stated to be that the, Tribunal should have power in cases, where necessary, to set aside the order of discharge or dismissal and direct reinstatement or award any lesser punishment.²⁷

While dealing with the quantum of punishment and the scope of interference under section 11-A of the Act, the Supreme Court noted in *Firestone* case that the section abridges the rights of employers when it comes to awarding a punishment based on the conclusion of a domestic enquiry. The Labour Court can alter the punishment imposed by the employer under section 11-A of the Act, even if the misconduct is proved. The Labour Court is entitled to hold the opinion that the order of discharge or dismissal for the said misconduct is not justified. It can then award to the workman a lesser punishment. It was held that the Labour Court has been given power for the first time to interfere with the punishment imposed by an employer but wide as this power may

²⁶ *Workmen of Messrs Firestone Tyre & Rubber Company of India v. Management* [1973] INSC 38 (6 March 1973)

²⁷ *Id.*

be, it is hedged in by the proviso to section 11-A of the Act which requires the Labour Court to take into consideration only the material on record.

That the Labour Court has a wide discretion while exercising power under section 11-A of the Act was reiterated by the Supreme Court in *Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya and Another*,²⁸ where the Supreme Court noted that section 11-A is couched in wide and comprehensive terms and vests a wide discretion in the Tribunal in the matter of awarding a proper punishment.

The concept of proportionality in this connection was first adverted to by the Supreme Court in *Management of Hindustan Machine Tools Ltd. v. Mohd. Usman and Another*,²⁹ in which it was held that if the punishment imposed is disproportionately heavy in relation to the misconduct, interference would be justified. This was reiterated in *Ved Prakash Gupta v. M/s Delton Cable India (P) Ltd.*,³⁰ wherein the Supreme Court approved interference because the punishment was shockingly disproportionate in relation to the charge framed against a workman. Also in *Rama Kant Misrav. State of Uttar Pradesh and Others*,³¹ the Supreme Court reiterated that the extreme penalty of dismissal or discharge can be interfered with if it is found to be either disproportionately heavy or excessive.

An illuminating discussion on the proportionality principle can also be found in *Union of India v. Ganayutham*,³² and in *Om Kumar and Others v. Union of India*.³³ There again, the discussion is with reference to legislative action and administrative action. The concept of proportionality as a facet of reasonableness in our constitutional law is well-known. In *Om Kumar*,³⁴ it was pointed out that in administrative action affecting fundamental freedoms, proportionality has always been applied as a test though that word has not been specifically used. However, in the context of punishment in service law, it was pointed that the Wednesbury principles³⁵ would still be applicable. Decided cases referred to, such as *Ranjit Thakur v. Union of India*,³⁶ legitimize interference in the quantum of punishment only if it is shockingly disproportionate or if it shocks the conscience of the Court as a secondary reviewing authority. This view has recently been reiterated by the Supreme Court.³⁷

In contrast, section 11-A of the Act requires a lower standard or test to be applied as a primary reviewing authority, even though no fundamental freedom is involved. This is apparent from the various decisions referred to above (although *Ved Prakash Gupta* uses the expression shockingly disproportionate) as well as the intendment of section

²⁸ (2002) 6 S.C.C. 41.

²⁹ A.I.R. 1984 S.C. 321.

³⁰ (1984) 2 S.C.C. 569.

³¹ (1982) 3 S.C.C. 346.

³² (1997) 7 S.C.C. 463.

³³ (2001) 2 S.C.C. 386.

³⁴ (2001) 2 S.C.C. 386.

³⁵ *Supra* note 14.

³⁶ (1987) 4 S.C.C. 611.

³⁷ *Chairman and Managing Director, United Commercial Bank. v. P.C. Kakkar*, (2003) 4 S.C.C. 364.

11-A of the Act as inferred from the Statement of Objects and Reasons and the recommendation of the International Labour Organization, to the effect that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination, among others, to a neutral body such as an arbitrator, a Court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination.

Considering the scope of section 11-A of the Industrial Disputes Act, 1947, the Apex Court in *Life Insurance Corporation of India v. R. Suresh*³⁸ has held as follows:

Indisputably again, the jurisdiction must be exercised having regard to all relevant factors in mind. In exercising such jurisdiction, the nature of the misconducts alleged, the conduct of the parties, the manner in which the enquiry proceeding had been conducted may be held to be relevant factors. A misconduct committed with an intention deserves the maximum punishment. Each case must be decided on its own facts. In given cases, even the doctrine of proportionality may be invoked.

Doctrine of irrationality is now giving way to doctrine of proportionality.³⁹ The Apex Court in a catena of judgments was pleased to hold that backwages are not automatic. Even in a case where reinstatement has been ordered, it has been held by the Apex Court that backwages are not automatic. The question as to whether in a given case where a workman is entitled to get reinstatement or not depends upon its own facts, length of litigation and the nature of employment and the charges framed. When that is the position while reinstating the employee on merits, the Court will have to exercise more caution in ordering backwages, while exercising the power under section 11-A of the Industrial Disputes Act, 1947. A judicial discretion under section 11-A of the Industrial Disputes Act, 1947 and the exercise under article 226 of the Constitution of India is based upon goodwill and fairness leading to the doctrine of proportionality.

In *Muriadih Colliery v. Bihar Colliery Kamgar Union*,⁴⁰ the Court, inter alia, following another case⁴¹ held:

It is well-established principle in law that in a given circumstance it is open to the Industrial Tribunal acting under section 11-A of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment.

³⁸ (2008) 11 S.C.C. 319.

³⁹ *Commr. of Police v. Syed Hussain* (2006) 3 S.C.C. 173.

⁴⁰ (2005) 3 S.C.C. 331.

⁴¹ *Mahindra and Mahindra Ltd. v. N.N. Narawade*, (2005) 3 S.C.C. 134

Again, in the case of *Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Assn. and Another*,⁴² the court considered the doctrine of proportionality and it was held that so far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the doctrine of proportionality.

Proportionality is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise--the elaboration of a rule of permissible priorities.⁴³

Conclusion

This Court has come a long way from its earlier viewpoints. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach of the industrial relation wherein only 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 that how discipline at the workplaces/industrial undertaking 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 by rule of law. All actions, therefore, must be taken in accordance with law.

On the basis of the above discussion, the principles of law on the scope of interference by a Labour Court or Tribunal under section 11-A of the Act in regard to the quantum of punishment may now be summed up as follows:⁴⁴

The power conferred by Section 11-A of the Act is wide and comprehensive, and yet only discretionary.

1. The Labour Court or Tribunal may alter the punishment imposed by the employer even if misconduct is proved.
2. Interference by the Labour Court or Tribunal is quantitative enabling it to determine the adequacy or otherwise of the punishment.

⁴² 2007(3) L.L.N. 128.

⁴³ *Id.*

⁴⁴ *Municipal Corporation of Delhi v. Shri Daulat Ram WP (C) No. 2149 of 1990* (Judgement delivered on 27 Aug., 2001). Available at: <https://indiankanoon.org/doc/276085/> (last visited on 07 Apr., 2018).

3. The power is to be exercised judicially, that is, in appropriate cases, as well as judiciously. The power cannot be exercised arbitrarily and interference may take place only if the Labour Court or Tribunal is satisfied about the necessity to interfere.
4. Any satisfaction or interference by the Labour Court or Tribunal must be supported by reasons and the reasons are subject to judicial review.
5. Relevant circumstances such as past conduct may be considered while arriving at a decision, provided they are supported by material on record.
6. Interference in the quantum of punishment is not called for on grounds of misplaced or uncalled for sympathy.
7. The concept of proportionality and primary review is inherent in section 11-A of the Act.

Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under section 11 A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

Thus doctrine of proportionality has not only given a new dimension to the powers of tribunals under section 11A but has rather provided a pathway as to how the tribunals must go ahead with a matter where a proper departmental enquiry has been held and punishment has been inflicted on the employee.

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