

## HR Law Hotline

February 04, 2005

### SUPREME COURT UPHOLDS DISMISSAL FOR SLEEPING ON THE JOB

In a significant judgment, the Supreme Court has upheld the decision of Bharat Forge Company Ltd. to dismiss an employee who was found sleeping on the job. The matter had wound its tortuous way over a period of more than 20 years through a number of proceedings - first in the Maharashtra Labour Court, then before the Industrial Tribunal, followed by hearings in the Bombay High Court until it was finally disposed off in the Supreme Court.

The employee was a helper and had previously been found sleeping during working hours on three occasions. He was let off with minor punishments. On August 26, 1983, he was discovered sleeping yet again in the work premises during the first shift when he was on duty.

The company conducted an internal inquiry into his conduct and initiated disciplinary proceedings against him under the Industrial Employment Act, 1946. The employee was found guilty and dismissed from service on January 17, 1984.

The employee filed a complaint of unfair trade practices against the company before the Maharashtra Labour Court. The Labour Court held that the lapse by the employee did not amount to "gross misconduct adversely affecting the interests of the company". The Labour Court further held that the punishment of dismissal was harsh and disproportionate. However, it did not let the employee entirely off the hook - it recommended a lesser punishment for him while directing the company to reinstate him with continuity of service and 50% of back wages.

Both parties, being dissatisfied by the ruling, filed Revision Applications before the Industrial Tribunal. The employee alleged that he was being victimized by the company. The Revisional Court of the Tribunal, relying on a Supreme Court decision, rejected this on the basis that in a case of proved misconduct, the question of victimization did not arise. The Revisional Court further observed that the Labour Court had exceeded its jurisdiction - which should have been confined to making an enquiry and determining whether the company had committed an act of unfair labour practice. The Revisional Court set aside the order of the Labour Court and upheld the dismissal.

The employee then filed a Writ Petition in the Bombay High Court. The petition was heard by a Single Judge who observed that sleeping on duty was a serious misconduct and that showing leniency would affect discipline in the workplace. The Single Judge further observed that to weigh the length of service against the previous instances of misconduct would amount to discounting "quality against quantity", and upheld the finding of the Revisional Court in favour of the order of dismissal.

The employee then filed an Appeal before a Division Bench of the Bombay High Court, which held that the employee's past misconduct was not sufficient justification for the dismissal. The Division Bench relied on an earlier decision which rested on the proposition that discharge or dismissal for a minor or technical misconduct would amount to "a shockingly disproportionate punishment". The Division Bench quashed the orders of both the Industrial Tribunal and the Single Judge of the Bombay High Court and directed the company to pay the employee INR 250,000 (approximately US\$ 5,000) by way of compensation.

The company went in appeal to the Supreme Court against the order of the Division Bench of the Bombay High Court. The SC, while pronouncing the judgment, made several observations, including the following:

- The commission of misconduct was admitted by the employee (in a letter addressed to the company, asking for "another chance") and agreed to by all the courts.
- The Labour Court had not given sufficient reason as to why a lenient view should be taken.
- Instead of passing an order for reinstatement, the Division Bench of the Bombay High Court directed the company to pay a compensatory payment
- Although victimization had been mentioned as a ground in the complaint, it was not proved by facts on record.

The Supreme Court set aside the order of the Division Bench the Bombay High Court and by its judgment passed on January 18, 2005, upheld the dismissal.

*The Supreme Court's decision is noteworthy as traditionally, Indian courts tended to show sympathy towards employees and workers. The judgment reflects a growing intolerance by sections of the judiciary for laxity in the workplace in the post-economic reform era in India and the recognition for need of efficiency to remain competitive.*

*The apex court, by its judgment, has castigated both the Labour Court and the Bombay High Court (Appellate Side) for not only condoning but rewarding an employee's misconduct by their respective awards. The employee's persistence in pursuing the matter indicated that he attempted to exploit the known sympathy of the Indian courts towards employees and workers in the hope of receiving a hefty compensation. In fact, in the 20 years since his dismissal, he has remained unemployed.*

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*The general principle embodied in the Supreme Court judgment, that sleeping on the job amounts to a level of misconduct that can justify dismissal, may now – in the reported opinion of Indian labour law practitioners – be applied across the board to both blue and white collar employees.*

*Rina Kamath & Daksha Baxi*

Sources: [The Times of India, January 20, 2005](#) / [Rediff.com, January 20, 2005](#)

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