

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 110/2011

Date of Passing Award- 1.09.2022

Between:

Shri Milind Goel,
S/o Shri Mam Chand Goel,
House No. 105, Mohalla- Chaklan,
Kankhal, Haridwar.

Workman

Versus

1. General Manager (HRD),
Punjab National Bank,
7, Bhikaji Cama Place, New Delhi.

2. Chief Manager/ Circle Head,
Punjab National Bank,
Circle Office,
BHEL, Ranipur, Sector-4
Haridwar.

3. Sr. Manager,
Punjab National Bank,
Peeth Bazar, Jwalapur,
Haridwar.

Managements

Appearances:-

None for the claimant
(A/R)
Shri Rajat Arora
(A/R)

For the claimant

For the Management

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of Punjab National Bank, 7, Bhikaji Cama Place, Syndicate Bank, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12012/33/2011 (IR(B-II) dated 11/11/2011 to this tribunal for adjudication to the following effect.

“Whether Shri Milind Goel S/o Late Shri Mam Chand Goel, Ex-CTO is workman under ID Act, 1947. If so, whether his termination of service by the Punjab National Bank vide order dated 31.12.2009 is legal and justified? What relief he is entitled to?”

This order deals with the grievance of the claimant with regard to the punishment imposed on him in the domestic inquiry which he describes as unreasonably disproportionate to the charge leveled against him.

In order to deal with the dispute and the grievance of the claimant it is necessary to set out the relevant facts as per the claim statement in detail.

The claimant was working as CTO in PNB Branch at Peeth Bazar Jawalpur Haridwar. By an order dated 23.02.2008 he was placed under suspension by the Senior Manager on account of an alleged act of misconduct. He was found involved in serious misconduct by issuing an ATM Card in respect of an inoperative saving bank account of one Suraj Prakash Seth. For that purpose he used the user Id and password of the clerk cum cashier of the Bank having name Rakesh Kumar. He also managed to verify the same using the userID and password of the then manager of the Branch of Peeth Bazar Jawalpur having name Shri Pal Bhardwaj. But the ATM card so issued was never handed over to the account holder but retained by the claimant. He then started debiting money from the ODFD account of the bank and crediting the same to the account of Suraj Prakash Seth on different dates. Thereafter he started withdrawing the said amount from the account of Suraj Prakash Seth using the ATM Card issued by him. When this act of misconduct was detected he was placed under suspension and as per the terms of bipartite settlement and the conditions laid down in Shashtri Award charge was framed, served on him calling him to showcause. Instead of giving reply the claimant disputed the authority of the person framing the charge. After that the inquiry officer was appointed and again the claimant was informed to participate in the inquiry. As in the earlier occasion the claimant did not participate in the inquiry and challenged the legality of the appointment of the inquiry officer and presenting officer. For the non cooperation and non participation of the claimant during the inquiry, the same was held exparte and the inquiry officer submitted his report notwithstanding the non participation of the claimant as the chargesheeted employee. The disciplinary authority, on receipt of the inquiry report served showcause notice alongwith the inquiry report on the claimant. In reply the claimant submitted his representation requesting to set aside the disciplinary proceeding. But the explanations submitted was not found satisfactory and the disciplinary authority imposed the punishment on the claimant for discharge from service with superannuation benefit. The claimant instead of making any departmental appeal made correspondence with the disciplinary authority to know as to who is the appellate authority. No appeal

being filed the order of the disciplinary authority attained finality. The claimant thereafter raised an industrial dispute before the conciliation officer taking a stand that the domestic inquiry against him was never conducted following the Principles of Natural Justice. The attempt for conciliation since failed the appropriate government referred the matter for adjudication on the legality and justification of the punishment imposed on the claimant.

After completion of pleading and considering the stand taken by the management issues were framed and the issue relating to the fairness of the inquiry was directed to be decided as a preliminary issue as the Tribunal, before deciding the justification and correctness of the punishment awarded is required to decide if the inquiry, a quasi judicial proceeding was conducted fairly observing the Principles of Natural Justice.

This tribunal by order dated 21.02.2022 have already decided the said issue against the claimant holding that the procedure adopted during the inquiry was correct and the claimant was allowed due opportunity to defend himself. But he did not avail the same. It has also been held that the procedure prescribed pursuant to the bipartite settlement were properly followed during the inquiry. Thus the parties were called upon to advance argument on the proportionality of the punishment imposed. After 21.02.2022 the claimant stopped participating in the proceeding and the Ld. A/R for the management advanced his argument on the date fixed with regard to the proportionality of the punishment.

The Ld. A/R for the management supported the order imposing the punishment as proper and submitted that the kind of misconduct committed by the claimant false within the category of severe misconduct. The same had tarnished the image of the Bank which thrives on the interpersonal relationship with the customers and in the long run influenced the business of the Bank. But the disciplinary authority being sympathetic towards the claimant had passed the order of dismissal alongwith the pensionary benefits. He thereby argued the punishment imposed was never harsh.

This tribunal in view of the arguments advanced has to give a finding on the proportionality of the punishment imposed on the claimant. In the case of **Muriadih Colliery VS Bihar Coallier Kamgar Union (2005) 3 SCC331**, The Hon'ble SC have held:-

“it is well-established principle in law that in a given circumstance, it is open for the Industrial Tribunal acting u/s 11-A of the I D Act 1947 to

interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the tribunal decides to interfere with such punishment awarded in domestic inquiry, it should bear in mind the principle of proportionality between the gravity of the offence and stringency of the punishment.”

It is a decided principle of law that the power of the tribunal u/s 11A is not arbitrary or unguided. This power is not without limitation as well. The Tribunal can interfere with the punishment imposed by the disciplinary authority when for reasons to be recorded it gives a finding that the punishment is disproportionate to the proved guilt or charge. In the case of **LIC of India vs. R. Dhandapani, (2006)13SCC 613**, the Hon'ble Supreme Court have clearly held that the power u/s 11A is to be exercise only when the punishment is found to be suckingly disproportionate to the degree of guilt of the workman. To support its conclusion the industrial tribunal has to give reasons in support of its decision.

Whether a misconduct is severe or otherwise, depends on the facts of each particular case. In a case where the charge is about misappropriation of a customer's money or breach of Trust, no doubt the same is serious in nature and distinguishable from the charge of demeanor or in – subordination. Moreover the finding in this inquiry is based upon the oral and documentary evidence collected during the inquiry. It is a matter of record that the claimant, on detection of the wrong done by him, was placed under suspension as his further continuance in the post held by him was found detrimental to public interest. He was called upon to submit an explanation to the charge. The claimant opted not to give any explanation but challenged the authority who framed the charge and the authority for appointment of enquiry officer and presenting officer. It is a fact noticeable that the claimant never participated in the inquiry and when the disciplinary authority served a showcause notice on him he again challenged the authority of the disciplinary authority. The disciplinary authority when accepted the inquiry report and passed the order imposing punishment, the claimant, as seen from the record never seriously challenged the said order. Instead he made correspondence to know as to who is the appellate authority. For no appeal being filed the order of the disciplinary authority attained finality.

In the case of **Regional Manager U.P.SRTC, Etawah & Others VS Hotilal and another, 2003(3) SCC 605**, referred in the later case of **U.P.SRTC VS Nanelal Kushwaha (2009) 8 SCC, 772**, the Hon'ble Apex Court have held that “The court or Tribunal

while dealing with the quantum of punishment has to record reason as to why it is felt that the punishment inflicted was not commensurate with the proved charge. A mere statement that the punishment is not proportionate would not suffice. It is not only the amount involved, but the mental set up, the type of the duty performed and similar relevant circumstances, which go into the decision making process are to be considered while deciding the proportionality of the punishment awarded. If the charged employee holds a position of trust where Honesty and Integrity are in built requirements of functioning, it would not be proper to deal with the matter leniently.”

As stated in the preceding paragraph the allegation against the claimant was of misconduct leading to loss of faith and Trust of the customer which in turn, led to loss of confidence of the employer on the employee.

The learned AR for the management while placing reliance in the case of **M/S Firestone Tyre and Rubber Co of India vs. The Management And Others** argued that the discretion vested in the Tribunal u/s 11-A should be judiciously exercised. The crux of his argument is that the punishment imposed on the claimant is appropriate to the charge and the Tribunal should not interfere.

On hearing the argument advanced by the Ld. A/R for the management it is felt proper to observe here that in the case of **Firestone** referred supra, the Hon'ble SC have held that after incorporation of the provision of sec 11A in the ID Act, the Tribunal in order to record a finding on the fairness of the domestic inquiry or the proportionality of the punishment, cannot be confined to the materials which were available at the domestic inquiry. On the other hand 'material on record' in the proviso to sec 11A of the ID Act must be held to refer the materials before the Tribunal. Which are (1) the evidence taken in by the parties during the domestic inquiry (2) the evidence taken before the Tribunal. But in this case no evidence has been adduced by the claimant before this Tribunal to presume that the punishment imposed is disproportionate to the charge. The evidence was adduced to prove the irregularities in conduct of the domestic inquiry, which was not found worthy of acceptance. Thus on considering the evidence recorded during the domestic inquiry and adduced before this Tribunal, the one and only conclusion is that the punishment imposed on the claimant for misappropriation of customer's money amounting to misconduct is proportionate to the charge and same has been imposed for loss of confidence on the employee by the employer. Hence it is not felt proper to interfere and modify the punishment imposed by the disciplinary authority, in

exercise of the power conferred u/s 11A of the ID Act. Hence, ordered.

ORDER

The reference be and the same is answered against the claimant. The finding of the disciplinary Authority in imposing the punishment is held proportionate to the finding of misconduct. The claimant is held not entitled to any relief. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
1st September, 2022

Presiding Officer.
CGIT-cum-Labour Court.
1st September, 2022.