

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. 28/2009

Date of Passing Award- 8th May, 2023

Between:

Sh. Duli Chand,
C-15B, Hari Nagar, Janta Flats
New Delhi-110063

Workman

Versus

The General Manager,
Allahabad Bank, Nodal Regional Office,
3rd floor, 17, Parliament Street,
New Delhi-110063

Management

Appearances:-

Shri R.S Saini, Ld. A/R for the claimant.

Shri Rajat Arora, Ld. A/R 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 The General Manager, Allahabad Bank, Nodal Regional Office, 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-12012/93/2008 (IR(B-II)) dated 25.03.2009 to this tribunal for adjudication to the following effect.

“ Whether the termination of service of Sh. Duli Chand, ex cashier by the management of Allahabad Bank w.e.f 21.05.04 is just and fair and legal? Whether the non releasing of arrear as per industrial level settlement dated 02.06.05 beyond 90 days of signing the industrial level settlement in respect of Sh. Duli Chand just fair and legal? Whether Sh. Duli Chand is entitled to interest on delayed payment w.e.f 02.09.05 what relilef the workman concerned is entitled to and from which date?”

This order deals with the grievance of the claimant (since dead and substituted by legal heirs) with regard to the punishment imposed on him in the domestic inquiry which has been described as unreasonably disproportionate to the charge leveled .

The facts as pleaded by the claimant is that , he was initially appointed as a peon in the management Bank on 16.12.1983 as a regular employee. Later on he was promoted to the post of clerk cum cashier of the Management Bank on 07.05.1993 and was posted in different branches. On20.05.2004, he was posted in the branch of the Bank at Mongolpur Kalan New Delhi. On that day he was placed under suspension in contemplation of a disciplinary action, on the allegation / complaint received from the customers of the Bank relating to misappropriation of the money from the accounts of the customers in a fraudulent manner. The order of suspension was followed by the notice to show cause. The show cause submitted by him was not found as satisfactory and thus, charge sheet was served on him and he was called upon to submit his reply.

The reply submitted by the claimant was found unsatisfactory and the authorities decided to ensue the domestic inquiry against him. During the inquiry the Bank as well as the claimant as the charged employee adduced their evidence and after considering the same the enquiry officer, on04.08.2005, submitted his report finding that the charges against the charge sheeted employee stands proved. The disciplinary authority served the report of inquiry on the claimant and called for his explanation which was again found not satisfactory. Hence for the fraudulent action amounting to misconduct committed by the claimant, the disciplinary authority imposed the punishment of removal from

service with a further order that the charged employee shall not get his wage/ salary for the period under suspension except the subsistence allowance already paid. The said order is under challenge in this proceeding.

The grievance of the claimant is that the inquiry was not conducted in accordance with the principles of natural justice and the procedure prescribed in the Bi partite settlement was not followed. Not only that the punishment awarded was disproportionately harsh and high. Hence the claimant has made a prayer to set aside the order of the disciplinary authority.

The management Bank had filed written statement denying the stand taken in the claim petition. It has been stated that the allegations were matters of record and the inquiry was conducted fairly by following the principles of natural justice. The claimant had all along participated in the inquiry and the charges against him were proved. The explanation offered by the claimant was not accepted as satisfactory and the disciplinary authority had rightly passed the order which needs no interference.

On the basis of the pleadings, this Tribunal framed altogether three issues and the issue relating to the fairness of the Domestic inquiry was heard and considered as a preliminary issue.

The tribunal after considering the materials placed on record and the evidence adduced by both the parties, by order dt 17.11.2021, came to hold that the domestic inquiry was conducted in accordance to the Rule and procedure and principles of natural justice were also followed during the said inquiry. The issue relating to the fairness of the inquiry was accordingly decided against the claimant observing that principles of natural justice was not violated during the inquiry and it was directed that both the parties shall advance argument on the proportionality of the punishment imposed. Hence extensive argument was advanced by the learned AR for the Bank Management to establish that the punishment imposed on the claimant commensurates the charge of mis conduct on account of financial irregularities and fraud committed by the claimant.

The learned AR for the claimant argued to the contrary and submitted that the punishment is disproportionately high since the

superannuation benefits were not allowed nor the pay during the period of suspension.

Whereas the learned AR for the Management supported the order imposing punishment as proper, the claimant has described the same as extremely harsh saying that for the said punishment the claimant was denied the benefits for the remaining years of his service which had caused huge financial loss in terms of salary and pension

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 CoallieryKamgar 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.”

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 public money or breach of Trust, no doubt the same is serious in nature and distinguishable from the charge of demeanor or in subordination. In this case, during the relevant time, the claimant was serving as the cashier of a Nationalized Bank. The business of the bank thrives on the Trust of the customers and the flawless service provided. In this case the charge against the claimant is that, he between 14.01.2004 to 12.05.2004, by mis using his position got on cheque book issued against the account of a customer and using the said cheque managed withdrawal of huge money. Not only that, he also effected withdrawal of Rs 50,000/- from the account of a customer who had requested for withdrawal of 10,000/- by filling up the withdrawal slip in his own hand writing , but handed over Rs 10,000/-to her. When it was detected he made refund of the said amount. More over the finding in the relevant inquiry is based upon documentary

evidence which are the transaction related documents of the Bank and oral evidence too.

In the case of **Regional Manager U.P.S R TC, Etawah & others VS Hotilal and another, 2003(3) SCC 605**, referred in a later case of **U.P. SRTC VS Nanhelal 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 on account of financial irregularities. The admitted evidence is that before initiation of domestic inquiry claimant was placed under suspension in contemplation of the inquiry. The inquiry was conducted by the Bank and the claimant was found involved in mis appropriation of the public money in the capacity of cashier.

The learned AR for the management relied upon the judgment of the Hon'ble SC in the case of **M/S Firestone Tyre and Rubber Co of India vs The Management And Others** to argue 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.

The learned AR for the claimant on the other hand argued on the legislative intention behind incorporation of sec 11A of the Act. By placing reliance in the case of **ML Singla vs Punjab National Bank, AIR 2018 SC 4668**, submitted that in the said judgment the Hon'ble SC have held that even if the issue relating to the fairness of the inquiry is decided in favour of the employer, even then the Tribunal has to consider if the punishment commensurate the charge.

In this case the evidence adduced before this Tribunal reveals that the alleged occurrence is about mis appropriation of the money of the customers. The same has deeply impacted the reputation of the Bank and it's business. The conduct of the claimant as stated by the Management led to loss of confidence of the employer. In such a situation the imposition of punishment appears to be proportionate and commensurate the charge. It can not be held as a harsh punishment. Hence ordered.

ORDER

The reference be and the same is answered against the claimant. It is held that the punishment of removal from service as imposed on the claimant by the management is just, legal and commensurate the charge and the claimant is not entitled to the benefits claimed.

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.
8th May, 2023

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