

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. 99/2011**

**Date of Passing Award- 08.08.2022**

Between:

Shri Raj Kumar  
S/o Shri Mehar Chand,  
209, Maktulpuri, Roorkee,  
Haridwar.

Workman

Versus

1. Chief General Manager,  
Local Head Office, State Bank of India,  
Parliament Street, New Delhi-110001.
2. Deputy General Manager,  
State Bank of India,  
1, New Cantt Road,  
Dehradun.
3. Asstt. General Manager,  
State Bank of India, Region-I,  
1, New Cantt Road,  
Dehradun.

Managements

Appearances:-

Shri Vijay Kumar  
(A/R)  
Shri Sajal Gupta  
(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 Local Head Office, State Bank of India, 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-12012/69/2011 (IR(B-I) dated 12/10/2011 to this tribunal for adjudication to the following effect.

“Whether the action of the management of State Bank of India, Zonal Office, Dehradun in imposing the penalty of dismissal from service without notice on Shri Raj Kumar, Assistant, State Bank of India, Dharotari Branch, vide their order dated 23/11/2004 is legal and justified? To what relief the workman is entitled to?”

This order deals with the proportionality of punishment imposed on the claimant pursuant to a domestic inquiry which he describes as illegal and unreasonably disproportionate to the charge leveled against him.

It is necessary to set out the relevant facts as per the claim statement in detail. The claimant was appointed as a clerk cum cashier in the State Bank of India. In 1992. In the year 1993 he was posted in the Branch of the Bank at dhantauri in the district of Uttarkashi (U.K). On an allegation of misappropriation by him from the accounts of the customers causing wrongful loss to the Bank a departmental proceeding was initiated and on the allegations charge was framed. Simultaneously FIR was also lodged and the Police investigation ensued. Whereas the police submitted charge sheet and the claimant was sent up for a criminal trial, the departmental proceeding went ahead with the inquiry. The claimant participated in the inquiry held in the year 2002 and the inquiry officer submitted his report holding the charge proved against the claimant. After perusing the said inquiry report the disciplinary authority served show cause notice as to why the inquiry report shall not be accepted and ultimately accepted the finding of the inquiry officer and in the year 2004 passed the order of dismissal against the claimant. Being aggrieved the industrial dispute was raised by him before the Labour Commissioner. The conciliation since failed reference was made by the appropriate government to this tribunal for adjudication on the legality of the order of dismissal from service.

The claimant and the management filed their pleadings rebutting each other stand. On the basis of the said pleadings the following issues were framed for adjudication and it was directed that issue No.1 shall be treated as preliminary issue to decide the fairness of the inquiry.

### **ISSUES**

1. Whether the inquiry conducted by the Bank was just fair and proper.
2. Whether delay of 6 years in filing the claim frustrates the grievance of the claimant.
3. Whether the punishment of dismissal from service without notice commensurate the misconduct of the claimant.
4. As in terms of reference.

During hearing of the preliminary issue the management as well as the claimant were called upon to adduce their evidence. On behalf of the claimant it was raised that proper opportunity for defence was not given to him nor the witnesses were called by the management to testify and thereby giving an opportunity to the claimant for cross examination. The other main objection taken by the claimant was that the alleged misconduct took place in the year 1993 and the charge was served on him 8 years thereafter on 01.02.2001. The inquiry officer in a hasty manner concluded the inquiry and submitted his report on 30.03.2002. The copy of the inquiry report was never supplied to him as contemplated under the bipartite settlement. Though, there was an allegation of manipulation of records, the originals were never

placed during the inquiry giving opportunity to the claimant for verification. The then Branch Manager whose signature was allegedly forged and who was initially a delinquent alongwith the claimant was not called to testify during the domestic inquiry. The claimant had also alleged that the disciplinary authority took an arbitrary decision of dismissing him from service without serving a notice to showcause.

On behalf of the management it was argued that the inquiry was conducted in a fair manner and in accordance with the Principles of Natural Justice. Opportunity was given to the workman to defend himself. Since the allegation was based upon facts on record and since, the claimant when confronted with relevant documents of the Bank, admitted his signature there on, the management committed no illegality for not examining the witnesses. It was also argued by the management that the conduct of the claimant led to loss of confidence by the management and thus, the punishment was appropriately imposed.

Having heard the argument and considering the evidence adduced this tribunal by order dated 27.08.2019 came to hold that the domestic inquiry conducted against the workman was not proper for violation of the Principles of Natural Justice and the said inquiry stands vitiated. Thereby the tribunal ordered the management to lead evidence and prove the charge against the workman. Thus, the management examined one Davendra Kumar the Chief Manager HR as MW1 and no additional document was filed. Similarly the claimant examined himself as WW1 and no additional document was placed on record by the claimant.

During course of argument the Ld. A/R for the management pointed out on the merits of the domestic inquiry conducted and drawing attention to different documents exhibited during the inquiry argued that the domestic inquiry itself proves the charge. The charge against the claimant being of serious nature no order of reinstatement should be passed. Relying on the judgment of the Hon'ble High court of Delhi in the case of **R K Singhla vs. PNB 2002 (1994) FLR 1053** he argued that the termination of the criminal case in acquittal is no way helpful to the delinquent employee as the scope of departmental proceeding and criminal proceeding being different the tribunal cannot conclude in favour of the workman merely because he has been acquitted from the criminal trial. Reliance has also been placed by the management in case of **Depot Manager Andhra Pradesh State Road Transport Corporation vs. Mohd. Yousuf Miya AIR 1997SC 2232**, wherein it has been held that approach and objective in the criminal proceeding and disciplinary proceeding is altogether distinct and different. In the disciplinary proceeding the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment as the case may be whereas in the criminal proceeding the question is whether the offence registered are established and if established what sentence should be imposed on him.

The Ld. A/R for the claimant on the other hand argued on the legislative intention behind in corporation of section 11A of the Act and submitted that in Number of judgment the Hon'ble Supreme Court 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 commensurates the charge. He also argued that the provisions of section 11A of the Act empower the Industrial Tribunal to interfere with the quantum of punishment in appropriate cases. Here is a case where the fairness of the inquiry considered as Issue No.1 has been answered against the management and thus, it is incumbent upon the management to adduce evidence and prove the charge against the claimant. In the case of **Oriental Textile Finishing Mills vs. Labour Court (1971)3SCC 646** it has been held that:-

if inquiry is not held or is defective, the employer can nonetheless support his order of discharge by producing evidence before the industrial tribunal.

Thus, when the departmental inquiry fails due to some omission or deficiency the employer can support the order of dismissal by producing satisfactory evidence and proving the misconduct. Furthermore, in the case of **Divyash Pandit vs. NCCBM, (2007)15SCC787** the Hon'ble Supreme Court have held:

Once the labour court came to the finding that the inquiry was nonest, it should have give opportunity to the employer to establish the charge.

In this case by order dated 27.08.2019 it has already been held by this tribunal that the domestic inquiry against the workman was not conducted properly and not in accordance to the Rule, standing order and by following the Principles of Natural Justice and thus, stands vitiated. In view of the same it is necessary to examine if the management has succeeded in proving the charge and the claimant successfully rebutted the same.

The management has examined one of its HR Managers as MW2 who except repeating the statement given earlier during the Preliminary Issue hearing has added nothing more. In his sworn testimony he has only stated about the evidence and the documents produced during the inquiry and trustworthiness of the same. He has not produced any additional document. During cross examination to a question put by the claimant about the current status of the inquiring officer he expressed his ignorance. No explanation has been offered by the management as to why the inquiry officer was not examined who prove the charge. On the other hand the claimant testified again as WW1 and stated that the Branch Manager Nilendu Das who as a co-accused in the criminal case was not issued charge sheet for the departmental proceeding and was given promotion in the meantime. The management has not produced the inquiry officer to prove the charge and the documents on the basis of which he was proceeded have not been placed on

record. He also added that the criminal case ended in his favour and he has been acquitted from the charge.

When this tribunal has already come to a finding that the inquiry conducted stands vitiated, it was open for the management to supplement the evidence and prove the charge. The opportunity so granted has not been availed by the management. The Ld. A/R for the claimant argued that when the charge is not proved and the claimant has disputed the alleged misconduct the tribunal gets the jurisdiction to interfere in the finding of the management and decide the dispute on the merits on the basis of the evidence led before it. Reliance has been placed in the case of **Orrisa Cement Limited vs. Adikan Sahu (1960)LLJ 518** decided by the Hon'ble Supreme Court to submit that the only remedy available to the claimant is his reinstatement.

On hearing the argument and on perusal of the evidence adduced by both the parties and in view of the order on preliminary issue already passed, it is found that the management has miserably failed to prove the charge against the claimant and for the earlier finding given in respect of issue No.1 it is held that the finding of the disciplinary authority against the claimant and the consequential order of dismissal passed against him are illegal and disproportionate.

The alleged misconduct as found from the evidence had taken place in the year 2001 and the claimant was dismissed from service by order dated 23.11.2004. The claimant when sworn his affidavit in the year 2020 has declared his age as 62 years. Hence, the claimant who has already attained the age of superannuation cannot be ordered for reinstatement. Hence, the proper recourse is to direct the management to treat him as if on duty from the date when he was placed under suspension and till the date of superannuation. For the period from the date of suspension and the dismissal of service he shall be entitled to subsistence allowance as permissible under the Rule of the Bank and from the date of dismissal and till the date of superannuation he shall be paid 50% of the salary as during this period the claimant has not discharged any duty. During this period the other service benefits available to the claimant including annual increment shall be allowed to him. Hence, ordered.

### **ORDER**

The reference be and the same is answered in favour of the claimant and it is held that the order of dismissal dated 23.11.2004 is illegal and unjustified. The claimant is held entitled to the following. The management is directed to treat him as if on duty from the date when he was placed under suspension and till the date of superannuation. For the period from the date of suspension and the dismissal of service he shall be entitled to subsistence allowance as permissible under the Rule of the Bank and from the date of dismissal and till the date of superannuation he shall be paid 50% of the salary he is entitled to as during this period the claimant has not discharged any duty. During this period, the other service benefits available to the

claimant including annual increment shall be allowed to him. The management is further directed to settle the dues of the claimant as indicated above within 3 months from the date of publication of the award without interest failing which the amount shall carry interest @9% per annum from the date of accrual and till the payment is made. 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.  
08<sup>th</sup> August, 2022

Presiding Officer.  
CGIT-cum-Labour Court.  
08<sup>th</sup> August, 2022.