

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. 52/2012

Date of Passing Award- 15th March,2023.

Between:

Sh Khem Chand, S/o Sh. Bihari Lal
2/1390,Budh Vihar, Avas Vikas Colony,
Moradabad, Uttar Pradesh,

Claimant

Versus

1. Deputy General Manager,
Bank of India, Regional Office,
B-32, Sector-62, Noida,
Uttar Pradesh
2. Regional Manager,
Bank of India, Regional Officer,
B-32, Sector-62, Noida
Uttar Pradesh,

Managements

Appearances:-

Sh. S.P Sexena, Ld. A/R for the workman.
Sh. Rajat Arora, Ld. A/R for the Mgt.

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 (i) Deputy General Manager, Bank of India, Regional Office,,(ii) Regional Manager, Bank of India, Regional Officer, 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-12012/27/2011(IR(B-II) dated 18/01/2012 to this tribunal for adjudication to the following effect’;

“Whether the action of management of Bank of India in imposing the punishment of compulsory retirement upon Shri Khem Chand, Ex-Clerk vide Order dated 22.02.2010 is illegal and unjustified. What relief the concerned workman is entitled to?”

The claimant in his claim statement has stated that on 21.02.1977, he was appointed as a sub staff and on 15.10 1984, he was promoted to the post of clerk. On 24.02.2009, when he was working in the Branch of the Bank at Pratap Vihar Ghaziabad, on some false allegations, he was placed under suspension and on 22.02.2010, a charge sheet containing several false charges was served on him. Pursuant there to, the domestic inquiry was held and the inquiry officer found some charges proved, some partially proved and some others not proved. The disciplinary authority, on the report of the inquiry found the claimant guilty of misconduct and imposed a major penalty in form of compulsory retirement from service. This punishment was imposed on the basis of an illegal inquiry in which principles of natural justice were violated. More over the punishment of compulsory retirement was passed just four days before his date of superannuation. Being aggrieved, the appeal preferred to the departmental appellate authority was rejected too by order dt 22.02.2010. being aggrieved the claimant raised the Industrial Dispute and the appropriate Govt. referred the matter for adjudication on the point of legality and justification of the punishment imposed on the claimant.

The management Bank being noticed appeared and filed written statement admitting that the claimant was the employee of the Bank and domestic inquiry was held against him for the charge of misconduct and the inquiry officer found three out of the seven charges fully proved, two partially proved and two not proved. The allegation against the claimant was that, he, by misusing his position had assisted another staff of the Bank in making illegal and un authorized transaction in respect of the accounts of the customers and eventually made illegal withdrawals from the accounts. The allegation is evident from the transactions and based upon documentary evidence. Hence appropriate punishment was imposed on him. The punishment of compulsory retirement was imposed just six days before the date of his superannuation. Hence, no harsh punishment was imposed on him. The management further pleaded that the domestic inquiry was conducted following the principles of natural justice and proper opportunity was allowed to the claimant for his defence. The allegations proved were based on documentary evidence and no injustice was meted out to the claimant. Thus the claim is not maintainable.

On the basis of the pleadings the following issues were framed by order dt 17.04.2013.

ISSUES

1. Whether the inquiry conducted against the claimant was just fair and proper?
2. Whether the punishment of compulsory Retirement commensurate to the charge of misconduct?
3. As in terms of reference.

This Tribunal by order dt 17.04.2013, directed for hearing of issue No 1 as the preliminary issue. Both parties were called upon to adduce evidence on the fairness of the inquiry conducted against the claimant. On assessing the said evidence, by order dt 15/01/2019, it was held that the inquiry held against the claimant stands vitiated for non compliance of the principles of natural justice and the management was granted opportunity of adducing evidence and proving the

charge of misconduct against the claimant. Management examined one Prem Prakash Gogia, who was the presenting officer on behalf of the Bank during the inquiry. He exhibited documents to prove the charge against the claimant and those were taken on record as Ext MW 3/1 to MW 3/116. The documents are the photocopies of Bank's record and intended to prove the alleged illegal transaction made by the claimant and another employee named Ved Prakash. The claimant did not adduce further evidence .

During course of argument the learned AR for the management Bank submitted that the allegation against the claimant is of misconduct on account of fraudulent and illegal transaction made from the accounts of the customers. At the relevant time, the claimant was the clerk cum cashier of the Bank and responsible for all the valid transactions from the account of the customer. But he, by misusing his position, assisted another employee Ved Prakash, who was a special assistant of the Bank then, and managed to withdraw amount unauthorisedly from the accounts of the customers. The illegal action of the claimant is a matter of Bank's Record and when detected, the claimant was called upon to explain the same. The explanation not being satisfactory, charge sheet was served and inquiry was held. Out of seven charges three were proved and three were partly proved. Thus he was rightly held guilty and the punishment of compulsory retirement awarded four days before his superannuation is not harsh, but commensurate the charge. He also argued that the Bank has it's own reputation of maintaining the records and ledgers with accuracy. The records of the Bank maintained in regular course of business should be accepted as authentic evidence for proving the charge. He also explained that the inquiry officer died before his examination and the presenting officer has duly proved the documents which may be considered.

The learned AR for the claimant, on the contrary argued that the charge against the claimant is that he had unauthorisedly withdrawn the amount from the account of the customers, which has been denied by him. In such a situation, the customers who were the victim of the situation were the most material witnesses. The domestic inquiry, having been found vitiated by this Tribunal, the evidence, what ever was

adduced during the inquiry, can not be looked in to now. The Bank being called upon to prove the charge, should have examined the account holders and should have produced the original documents of the Bank. Despite demand for the original documents, the Bank produced the photo copies without explanation, which should be rejected by the Tribunal.

Perusal of the chronologically maintained order sheet shows that the Bank by order dt 31/10/2013 was directed to file the original documents. But the same was not complied. The position of law is well settled that when the conduct of the domestic inquiry against the employee stands vitiated for what ever reason may be, the management shall adduce fresh evidence to prove the charge and can not rely upon the evidence adduced during the said inquiry. In such a situation, the Tribunal has to look in to the evidence led afresh before the Tribunal only.

In this case when the charge is of misconduct on account of unauthorized withdrawal, the duty of the Management Bank was to prove the same by at least examining the account holders. But, as admitted by the management witness, neither those account holders were produced during the inquiry nor during the present proceeding as witnesses. The photo copy of the Bank ledger, cheques and payment vouchers only prove that the Transactions were made from the accounts of the customers and at that time the claimant was the clerk cum cashier of the Bank entrusted with the duty of passing the cheques and facilitating withdrawal. This action of the claimant can not be viewed as misconduct in absence of evidence to the effect that the action was unauthorized. It is not the statement of the Management witness that the cheques used for withdrawal or any other transaction made was without the authority of the account holder. The said aspect could have been proved by the Bank either by examining the account holder or by sending the disputed and admitted hand writings for expert examination. No such steps having been taken by the Management Bank, it can not be held considering the documents that the claimant had misconducted himself by misusing his position and facilitated unauthorized transaction from the Accounts of the Account holders. Hence it is held that

the Management Bank has not succeeded in proving the charge against the claimant.

Once the charge is not proved, the legality of the action taken by the management is required to be examined. As admitted by both the parties, the inquiry officer found three out of the seven charges fully proved and two out of the same partially proved and the inquiry officer submitted his report to the disciplinary authority, who imposed the punishment of compulsory retirement on the claimant, which was again upheld by the departmental appellate authority. Now that the inquiry was held vitiated and the Bank has failed to establish the charge, it prima facie appears that the action taken by the Management against the claimant was a motivated and bias action and not sustainable in the eyes of law.

The Hon'ble High Court of Bombay in the case of V B ShetyevsKismat (p) Ltd (1983)LLN,884(Bom) have held that when the inquiry is not fair and the charge is not proved, it can not be held that the misconduct is established. Thereafter the employee can not be refused re instatement.

But in this case the punishment was imposed just four days before the date of superannuation of the employee. Hence there is no scope for his reinstatement. But the punishment imposed is held to be illegal and the claimant employee is entitled to all the service benefits of retirement or superannuation. Hence ordered.

ORDER

The reference be and the same is answered in favour of the claimant. It is held that the action of the Management Bank in imposing the punishment of compulsory Retirement on the claimant is illegal, unjustified and hereby set aside. The management Bank is directed to extend all the Retrial benefits to the claimant due on retirement on superannuation and make payment of all the financial benefits which has accrued in his favour within two months from the date of publication of the award together with a nominal interest of three percent per annum from the date of accrual and till the payment is made,

failing which the amount so accrued shall carry interest @ 6% per annum from the date of accrual and till the final 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.
15rd March, 2023

Presiding Officer.
CGIT-cum-Labour Court.
15th March 2023