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. 19/2009

Date of Passing Award- 16.08.2022

Between:

Shri Rajpal Singh,
R/o 140/22, Street No. 38, Sadh Nagar-II,
Palam Colony,
New Delhi- 110045. Workman

Versus

The General Manager,
Syndicate Bank, Sarojini House 6,
Bhagwan Dass Road,
New Delhi. Management

Appearances:-

Shri Kumar Gaurav (A/R) For the claimant

Shri Rajesh Mahindru (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 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-12012/85/2008 (IR(B-II) dated 05/02/2009 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of Syndicate Bank in Awarding the punishment of termination from services of Shri Rajpal Singh w.e.f 31/12/2002, after acquittal of the workman by the court is just, fair and legal? What relief the concerned workman is entitled to and from which date?'

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, an ex army person, at the relevant time was working as the attender in the management Bank at it's Head District

Office, Gurgaon. He was initially appointed as probationary attender on 04/10/1983 and confirmed in the service of the Bank on 04/04/1984. On a complaint that while working in the central Accounts Office during the period 09/10/1986 to 24/10/1986, the claimant removed / destroyed some cheques having value of Rs 74, 000/- when presented for clearance and managed to cause wrong full gain to himself by crediting the account to his own account. The mischief was detected and when confronted the claimant admitted his guilt. He was placed under suspension with effect from 22/11/1986 and FIR was lodged against him on 25/11/1986. Since the criminal Trial was pending against him the departmental domestic inquiry was kept on hold as agreed in the Bipartite Settlement applicable to the claimant and the Bank. Since the criminal Trial prolonged for an unreasonably long period the Bank on a sympathetic consideration, revoked the order of suspension and the claimant was re instated in to duty from 27/02/1998. During the period of suspension he was paid subsistence allowance as admissible. On 06/07/2000 the trial of the criminal case ended with a finding of acquittal as benefit of doubt was extended to him. There after the Bank started the departmental proceeding, which started with the framing of charge. All the procedures required for the said inquiry was followed and the claimant as the charged employee had participated in each and every stage of the inquiry which culminated with a finding of guilt by the inquiring officer. The order of inquiry was served on the claimant calling him to show cause as to why the proposed punishment shall not be imposed on him. The explanation offered not being found satisfactory, the disciplinary authority passed the order of termination from service. The departmental appeal preferred by him was rejected and the order of the disciplinary authority was confirmed.

Being aggrieved the claimant raised an industrial dispute in which amongst others he pleaded about unfairness in conduct of the inquiry. On completion of the pleadings, issues were framed and the issue relating to the fairness of the inquiry was considered as the preliminary issue, since 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 and by observing the Principles of Natural Justice.

This Tribunal by order dated 25/03/2022 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. Not only that it has also been held that the delay in framing the charge and commencement of the inquiry after closure of the criminal Trial has not caused prejudice to the claimant as the same is in accordance to the terms of Bipartite settlement and order of acquittal recorded in a criminal Trial shall not necessarily terminate the departmental proceeding in favour of the charge sheeted employee as the standard of proof required in those proceedings re distinct and separate. Thus the claimant was called upon to advance argument on the proportionality of the punishment imposed. Both parties advanced detailed argument in support of their respective stand.

Whereas the learned AR for the Management supported the order imposing punishment as proper, the claimant has described the same as extremely harsh. During course of argument it was pointed out by the AR for the claimant that for the long drawn litigation the claimant was deprived of contesting the matter properly and now suffering for the illegal order of dismissal. Hence a lenient view may be taken in the matter and the fact of acquittal in the criminal trial be considered for deciding the proportionality of the punishment. The counter argument by the learned AR for the Bank is that it is a case of loss of confidence. The business of the Bank thrives on the faith and confidence of the customers. The action of the claimant had visibly impacted the business of the Bank and as such he does not deserve any sympathy.

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 Coalliery 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."

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, as in this case. More over the finding in the relevant inquiry is based upon the oral and documentary evidence. It is a matter of record that the claimant, on detection of the wrong done by him, had admitted about the misappropriated amount. The explanation offered by the claimant was found not acceptable by the disciplinary authority and the departmental appellate authority.

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 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 preceeding 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.

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.

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, can not 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 only conclusion is that the punishment imposed on the claimant for misappropriation of customer's money amounting to mis conduct is proportionate to the charge and same has been imposed for loss of confidence on the employee by the employer. Merely because the claimant was acquitted from the criminal charge and granted benefit of doubt, will not put him in a position for sympathy. 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.
16th August, 2022

Presiding Officer.
CGIT-cum-Labour Court.
16th August, 2022.