

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. 20/2013

Date of Passing Award- 16.08.2022

Between:

Shri Gopal Singh Rawat,
Through Legal Heirs,
R/o 17, Old Mohanpuri,
Behind Office Sub Registrar,
Meerut (U.P).

Workman

Versus

1. Managing Director,
Union Bank of India, Union Bank Bhawan,
293, Vidhan Sabha Marg, Mumbai.
2. Deputy Manager (P)
Union Bank of India
Regional Office,
Varanasi, UP
3. General Manager(P)
Union Bank of India,
Industrial Relation Department,
Central Office, Mumbai,
Mumbai.
4. Branch Manager,
Union Bank of India,
Delhi Road, Meerut,
Meerut, UP

Managements

Appearances:-

Shri Anish Kumar Mishra

For the claimant

(A/R)

Shri Rajat Arora

For the Management

(A/R)

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 Union Bank of India, Union Bank of Bhawan, 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-12012/56/2012 (IR(B-II) dated 28/02/2013 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Union Bank of India in terminating the services of Shri Gopal Singh Rawat by way of punishment vide order dated 12/07/1999 and order of appellate

authority dated 12.01.2001 is justified, if not, to what relief he is entitled to?"

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 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 at the relevant time was working as the cashier/clerk in the management Bank. On 12th April 1996 he was discharging the function of the receiving cashier in the Delhi Road Merrut Branch of the Bank. On that day two bearer cheques bearing no 603253 dated 14th March 1996 and cheque no 603257 dated 20th March 1996 for Rs 19,960 and Rs.23,582 respectively were issued by M/S Narender Tyers in favour of M/S Apollo Tyres Ltd. Both the establishments were maintaining account in the Branch of the Bank at Merrut, where the claimant was working. Both the cheques were deposited in the CD account of Apollo Tyres. On a complaint received from Apollo Tyres that the amount in respect of both the cheques have not been credited to their account a preliminary inquiry at the branch level was conducted and it was ascertained that on 12th April 1996, the claimant working as the receiving cashier on being asked by the cashier /clerk Rajendra Kumar working in the same branch issued two tokens in respect of those two cheques ignoring the instruction of the customer for crediting the amount in to the account. Using those two tokens an amount of Rs. 43,542/- was fraudulently encashed. It was detected that the claimant working as the cashier on that day had entered the cheques in the scroll for deposit of the amount in the account of the payee and simultaneously issued tokens for encashment of the amount. When the fraudulent action of the claimant was detected, he, on 5th July, by using pay in slip filled in his own hand writing, made deposit of Rs 38,542/- in the account of Apollo Tyres and on 19th July 1995 made deposit of the balance 5000/- in the current account of Apollo Tyres. Pursuant to the preliminary fact finding inquiry, charge of misconduct was framed and after calling for the reply from the claimant, domestic inquiry was conducted in which the charged employee was given opportunity to defend himself. The charged employee participated in the inquiry, which ended with a finding that the claimant being a permanent employee of the Bank committed grave misconduct affecting the reputation of the Bank and impacting its customer relationship and faith. Thus the disciplinary authority accepted the punishment proposed by the inquiry officer and after serving the show cause notice, passed the order dismissing the claimant from service by order dated 12/07/2009. Being aggrieved the claimant had preferred a departmental appeal which was also rejected the same confirming the order of the disciplinary authority.

Challenging the said order of dismissal, when an industrial dispute was raised and attempt for conciliation failed, the appropriate Govt. referred the matter for adjudication. Issues were framed basing on the pleadings of the parties and the issue relating to the fairness of

the inquiry was taken up for decision s a preliminary issue. This tribunal after recording evidence and hearing argument advanced by both the parties, by order dated 11/11/2019, came to hold that no illegality was committed in conduct of the inquiry and the plea taken by the claimant that the Deputy Manager is not competent to conduct the inquiry was not accepted. Thereafter both the parties were called upon to advance argument on the proportionality of the punishment imposed on the claimant.

Detail argument was advanced by the AR for both the parties.

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 died during the pendency of the proceeding. His legal heirs are suffering for the illegal dismissal of the claimant .a lenient view may be taken in the matter. The counter argument by the learned A/R 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 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.”

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 made deposit of the misappropriated amount in to the account of the complainant Apollo Tyres on two different date. 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.S RTC, Etawah & others VS Hotilal and another, 2003(3) SCC 605, referred in the later case of U.P.S R.T.C 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 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 otherhand 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 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 otherhand '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. 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. Merely because the claimant made refund of the amount mis appropriated, will not put him in a position for sympathy. Hence it is not felt proper to interfere

and modify the punishment 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 grave 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

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