

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. 159/2012**

**Date of Passing Award- 17.04.2023**

Between:

Shri Sharad Kumar,  
Through Sunita Garg Legal Heirs  
S/o Shri Om Prakash,  
House No. Gali No.3 Prempuri Colony,  
Near Mittal Nursery,  
Bheta Road, Saharanpur, U.P.

Workman

Versus

1.The Circle Head,  
Punjab National Bank,  
Circle Office, Muzaffar Nagar,  
Uttar Pradesh

2. Disciplinary Authority,  
Punjab National Bank,  
Circle Office, Muzaffar Nagar,  
Uttar Pradesh

Managements

Appearances:-

Claimant in person

Sh. 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 (i) The Circle Head, Punjab National Bank, (ii)

Disciplinary Authority, Punjab National 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-12012/21/2012-(IR(B-II)) dated 22/11/2012 to this tribunal for adjudication to the following effect.

“Whether the action of management of Punjab National Bank in awarding the punishment of ‘Removal from service with superannuation benefits’ to Shri Sharad Kumar vide Order dated 25.09.2009, is legal and justified? What relief the concerned workman is entitled to?”

This order deals with the grievance of the claimant (since dead and substituted by the legal heir Smt. Sunita Garg the wife of the deceased and their four children as per order dt 7<sup>th</sup> April 2022) with regard to the punishment imposed on him in the domestic inquiry which he describes as unreasonably disproportionate to the charge leveled.

In order to deal with the dispute, it is necessary to set out the relevant facts as per the claim statement in detail.

The claimant was initially appointed as a Daftari/Peon of the Management Bank on 22.04.1985 and was a regular employee. In course of time he was promoted to the next higher posts and in the year 2007 he was working as the head cashier in the branch of the Bank at Ghunna Maheswari. On 30/08/2007 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 deposited by the customers. There was also allegation of illegal money lending by the claimant. On 11.12.2007, the charge sheet containing seven distinct and separate charges was served on the claimant and he was called upon to explain the charges and 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, on 29.09.2009, 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 upon his explanation which was again found not satisfactory. Hence for the financial irregularities committed by the claimant, the disciplinary authority imposed the punishment of removal from service with superannuation benefits. 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 allegation was 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 no 1 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 dt13.10.2022, 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 inquiry. The issue no1 was accordingly decided against the claimant 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.

Whereas the learned AR for the Management supported the order imposing punishment as proper, the claimant has described the same as extremely harsh. It was also argued 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.

In this case the cla

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 public 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. In this case during the relevant time, the claimant was serving as the head 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 02/07/2007 to 25/07/2007, though received certain amount from the customers for deposit in their account and granted receipts, the amount was not deposited in the respective accounts and vouchers to that effect are not available in the Branch. Not only that transactions of huge amounts in his and his wife's account were noticed during that period, which the claimant failed to explain during the domestic inquiry. 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 and placing the claimant under suspension in contemplation of the inquiry, a fact finding inquiry was conducted by the Bank and the officer of the Bank had met the customers whose money was allegedly misappropriated by the claimant and not deposited in their account though receipt of deposit were granted to the by the claimant under his signature. The evidence on record of course shows that the amount were later refunded and the customers during the Domestic inquiry, examined as defence witnesses stated to have got back the amount. But the said statement of the customers do not absolve the claimant of the charge as has been rightly held by the inquiry officer of the Domestic Inquiry.

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 Singlavs 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 as the claimant at the time of removal from service was allowed all superannuation benefits. Hence ordered.

### **ORDER**

The reference be and the same is answered against the claimant. It is held that the punishment of Removal from service with superannuation benefits 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.  
17<sup>th</sup> April, 2023.

Presiding Officer.  
CGIT-cum-Labour Court.  
17<sup>th</sup> April, 2023.