

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. 52/2011

Date of Passing Award- 18.10.2022

Between:

Shri Rajendra Singh
S/o Late Shri Ratan Singh,
R/o House No. C-5/57B, Keshav Puram
New Delhi-110035.

Workman

Versus

State Bank of India
Through
Regional Manager (Operations)
Delhi Zonal Office, Region 3,
11, Sansad Marg, New Delhi-110001.

Management

Appearances:-

Shri Sunil Kumar
(A/R)
Ms. Kittu Bajaj
(A/R)

For the claimant

For the Management

A W A R D

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 controversy, it is necessary to set out the relevant facts as per the claim statement in detail.

The claimant was initially appointed as a messenger in the management Bank and in the year 2005 he was promoted to the post of Senior Assistant. At the relevant time i.e in the year 2006 he was working as a Senior Assistant in the management Bank, Branch at Pratap Nagar. On 8/12 2006, he was placed under suspension for the allegation of misappropriation of funds from the accounts of the customers on

contemplation of a domestic inquiry and was forbidden from entering the Branch until further orders. On 12/11/2007 the memorandum of charge framed was served on him. Altogether 5 charges were framed out of which four were relating to an authorized debit of fund from customer's account and credit of the same to other accounts. The other charge was with regard to obtaining a loan by the claimant from another Bank without permission of his employer Bank. The claimant submitted his explanation to the charge and participated in the inquiry. At the end of the inquiry, the EO found charge no 1,4 and 5 proved and charge no 2and 3 partly proved. The report of the EO suggesting removal from service was accepted by the disciplinary authority, who, though called upon the claimant for a personal hearing, did not accept the submissions and the grounds supporting his innocence. On the contrary, he accepted the recommendation of the EO and passed the order directing for removal of the claimant from service with the superannuation benefits. Being aggrieved he preferred a departmental appeal, which was decided against him he then raised the Industrial Dispute challenging the fairness of the inquiry as well as the proportionality of the punishment. On completion of the pleadings issues were framed and issue no 2 was taken up for consideration as a preliminary issue as the same was about the just and fairness of the inquiry conducted. Both parties adduced their oral and documentary evidence and on consideration of the same this Tribunal by order dated 14/12/2021 decided that preliminary issue against the claimant holding that the inquiry was conducted fairly following the principles of natural justice. Hence both the parties were called upon to advance their argument on the proportionality of the punishment.

The claimant raised objection to the order on the ground that the Tribunal though comes to a conclusion that the inquiry was conducted fairly, has been bestowed with the power of examining the evidence adduced during the domestic inquiry and find out if the charges leveled against the delinquent employee were proved and at the same time give a finding on the proportionality of the punishment. To support his argument reliance has been placed in the judgments of the Hon'ble SC in the case of **General Secretary, South Indian Cashew Factory Workers' Union vs. The MD Kerala State Cashew Development Corporation (2006)LLR 657, SC** and in the case of **Usha Breco Mazdoor Sangh vs. Management of Usha Breco Ltd. 2008(118)FLR400 SC**. Citing the said judgments he argued that even if the inquiry is found to be fair, that would be only a finding certifying that all possible opportunities were afforded to the delinquent employee to set up a defence. But that would not mean that the inquiry officer and the disciplinary authority had arrived at a legal and proper finding. It is the Industrial Tribunal only,

who by exercising power u/s 11 A of the ID Act can look into and analyse the evidence and examine if the charges have been proved. Once it is held that the charges against the employee are proved it will examine the proportionality of the punishment. He further submitted that the evidence adduced by the Bank were inadequate for proving the charge , but the inquiry officer and the disciplinary authority in a pre occupied mind held the charges proved and imposed the punishment dismissal from service, which is harsh and disproportionate to the charge.

In her reply argument, the learned AR for the management Bank submitted that the Industrial adjudicator when comes to a conclusion that the domestic inquiry was conducted fairly, it is seized of it's power for examining if the charges were proved or not as if it is a court of appeal against the order of the disciplinary authority. Relying on the judgment of the Hon'ble SC in the case of **B C Chaturvedi vs. Union of India AIR 1996 SC 484** and in the case of **UPSRTC vs. Nanhe Lal Kushwaha (2009) 8 SCC 772**, she submitted that an Industrial Adjudicator may interfere with a quantum of punishment awarded by the employer in exercise of the power under section 11A of the ID Act, but ordinarily, the discretion exercised by the employer should not be interfered with or the evidence recorded during the inquiry be re appreciated.

The argument advanced by the AR for both the parties has made it expedient to examine if the labour court or Industrial Tribunal is empowered to re appreciate the evidence recorded during the domestic inquiry and find out if the charge stands proved or disproved. A plain reading of the provision of sec 11A of the Act leads to the conclusion that the Tribunal while dealing with a dispute relating to the discharge or dismissal of a workman is empowered to examine the justification of the action taken and in appropriate cases is empowered to set aside the said order and direct reinstatement. For the purpose in exercise of the power given u/s 11A the Tribunal shall rely on the materials on record and shall not take any fresh evidence in relation to the matter. Thus, the mandate of the provision of law u/s 11A of the Act authorizes the Tribunal to analyse and appreciate the evidence adduced during the domestic inquiry in order to come to a conclusion on the justification of the action taken.

In the case of **General Secretary, South Indian Cashew Factory Workers' Union vs. The MD Kerala State Cashew Development Corporation (2006)LLR 657, SC** relied upon by the claimant the Hon'ble SC have clearly held that sec11A gives ample power to the labour court or Tribunal to reappraise the evidence adduced in the inquiry and examine the justification of the action of the employer and this

power is limited to the cases of dismissal or discharge as mentioned in sec 11A of the Act only. The word 'materials on record' mentioned in the proviso to sec 11A refers to the evidence recorded during the inquiry. Hence it is concluded that the Industrial Tribunal is empowered to re appreciate the evidence recorded during the inquiry to arrive at a decision on the justification of the action taken and proportionality of the punishment awarded.

Now coming to the plea of the claimant challenging the order of dismissal, the plea taken is that out of the five charges framed four were relating to unauthorized debit of money from the account of the customers and credit of the same to un intended accounts. The fifth charge is about availing a loan from another financial organization without permission and knowledge of the employer. That charge has no nexus with the former four charges.

The first charges as seen from the inquiry record speaks that the claimant had unauthorizedly debited Rs 20000/- from the account of M/S Surgical Equipments Co on 15.09.2006 and credited to the account of one Kishari Lal. The second charge is about unauthorized debit of Rs 5000/- from the account of Jaswant Nursery and credit of the same to the account of the canteen boy of the Bank named Dharambir. Similarly the third charge was about wrong feeding of the cheque of one Sh. Badrul Hudain to the account of Jaswant Nursery and later transferring Rs 5000/- from the account of Jaswant Nursery to the account of the canteen boy Dharambir. The fourth charge was about wrong feeding of a cheque deposited for collection by one R K Batra in account no 10137009301, which the claimant deposited in to his own account bearing no 1013678356.

The inquiry proceeding filed and proved by the management shows that during the inquiry the canteen boy Dharmbir and the then Accountant R.L. Tuteja were examined on behalf of the Bank. Whereas the canteen boy resiled from his earlier statement saying that being pressurized by the bank officials he had earlier stated about his wrongful nexus with the claimant in misappropriating the money, the accountant Mr. Tuteja had stated that the claimant as soon as detected the wrong posting and debit had requested him to rectify the mistake. No better evidence was adduced by the management Bank to negate the said statement of the accountant and the canteen boy. On the other hand as seen from the inquiry proceeding the claimant had examined himself and one Dharambir Kharbanda, the proprietor of M/S Surgical Equipments who admitted to have made a telephone call requesting the debit .the management made

no effort of examining the person named Kishori Lal to establish as to how the said credit to his account had caused wrongful gain to the claimant. The plea of the claimant during the inquiry that he apprised the Branch Manager about the wrong posting with a request to correct the same was simple reveals that only brushed aside by the inquiry officer holding that the same is not within the purview of the inquiry. That being the defence plea of the claimant facing the inquiry, the branch manager should have been called as a witness which was omitted without any convincing reason. The evidence adduced during the inquiry with regard to charge no 2 shows that on 16/08/2006, an amount was debited from the account of Jaswant Nursery and credited to the account of the canteen boy Dharambir, who on the same day withdrew the amount. In respect of this charge the letter of M/S Jaswant Nursery and letter of the canteen boy marked as Ext 16 and Ext 18 respectively are relevant. The representative of Jaswant Nursery stated that he had instructed the debit by giving a debit form. The canteen boy has stated that he was unaware of the credit to his account and being instructed by the claimant he withdrew the amount and handed over to the claimant. In this regard the statement of the claimant given during the inquiry is relevant in which he stated that the debit and credit were made for a bonafide mistake and was not even detected by the passing officers. As soon as he came to know about the same had apprised the Branch Manager with a request for correction. The Branch Manager was not examined during the inquiry there by giving a chance to the claimant of cross examining him. So far as charge no 4 is concerned the evidence shows that the amount was wrongly posted in the account of the claimant but the same was reversed on 18.01.2006. The inquiry officer found charge no 1,4 and 5 proved and charge no 2&3 partly proved.

On behalf of the claimant argument was advanced that the plea of the claimant about deficiency in computer operation was not considered at all to adjudge his innocence. On the contrary the harshest punishment was imposed. The stand of the claimant that he has studied up to class 8 only and initially appointed as a messenger and got promotion by virtue of his seniority and pursuant to the bi partite settlement has not been disputed by the respondent Bank.

Being aggrieved the claimant though preferred departmental appeal the same was decided against him. Having no other departmental remedy available, he approached this Tribunal. Whereas the learned AR for the Management, supported the order imposing punishment as proper the claimant has described the same as extremely harsh.

This tribunal in view of the arguments advanced has to give a finding on the justification and 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 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. But here is a case where the Bank though has alleged about the willful misconduct of the claimant has not succeeded in proving the same as against the stand of the claimant that the mistakes occurred due to deficiency in knowledge of computer operation. The action of the claimant in bringing the mistake to the knowledge of the manager who never appeared as a witness proves his bonafides. More over there is absolutely no evidence to believe that the alleged misconduct had caused any wrongful gain to the claimant or financial loss to the Bank. It is also the lone incident when the misconduct was charged against the claimant.

In the case of **Regional Manager U.P.S R TC, Etawah & others VS Hotilal and another, 2003(3) SCC 605**, referred in the later case of **U.P.SRTC VS Nanelal 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.”

But as stated in the preceding paragraph the allegation against the claimant was of an authorized debit and credit of money from customers' account. The admitted evidence is that before initiation of domestic inquiry and placing him under suspension in contemplation of the inquiry, the amount unauthorizedly debited and credited were refunded and adjusted leaving no scope for wrong full loss of the Bank or wrongful gain by the claimant.

The learned counsel for the management Bank 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.

But in the case of **ML Singla vs. Punjab National Bank, AIR 2018 SC 4668**, the Hon'ble SC while dealing with the legislative intension behind incorporation of sec 11A to the Act by way of amendment have held that even if the issue relating to the fairness of the inquiry is decided in favor of the employer, even then the Tribunal has to consider, if the punishment commensurates the charge.

In this case the evidence available on record reveals that the alleged occurrence is the lone incident for which the claimant was proceeded to. It is also not disputed that the claimant lacks proficiency in computer operation and in the present time all the activities in the Bank are being taken up using computer and the chances of mistake by a person without proficiency is possible. More importantly the alleged act has not caused any financial loss to the Bank. In such a situation the imposition of punishment of removal from service with superannuation benefits appears disproportionate to the charge.

Hence in the circumstances, it is felt proper to interfere and modify the punishment awarded to a lesser punishment in exercise of the power conferred u/s 11A of the ID Act. Hence, ordered.

ORDER

The claim petition be and the same is answered in favour of the claimant. For the finding rendered in the preceding paragraphs,

it is held that imposition of the punishment of removal from service with superannuation benefits is illegal and liable to be set aside. The management is directed to reinstate the claimant in service notionally with effect from the date of removal from service with 50% of last drawn salary per month for the intervening period and on such reinstatement his two annual increments shall be stopped with cumulative effect as a mode of punishment. If the claimant has in the meantime attained the age of superannuation, his pension and other service benefits shall be allowed as per his entitlement. The management is directed to carry out the order within two months from the date of publication of the award and pay the arrear salary and other consequential benefits within a period of one month from the date of reinstatement failing which the accrued amount shall carry interest at the rate of 9% per annum from the date of accrual and till the actual 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.

Dictated & Corrected by me.

Presiding Officer
CGIT-Cum-Labour Court.
18th October, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
18th October, 2022.