

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-I, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 42/2014
Date of Passing Award- 20th March.,2023

Between:

Shri. Rajender Singh,
S/o Sh. Khacheru Ram
R/o WZ-523,Nangall Rai,
Delhi-110046

Workman.

Versus

The Punjab National Bank,
Through Its Chief Master,
Regional Office, South Delhi,
Rajinder Bhawan, Rajinder Place,
New Delhi-110025

Management.

Appearances:-

Sh. Harish Sharm, Ld. A/R for the Claimant.

Sh. Ajit Arora, A/R for the Management.

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A W A R D

This is an application filed u/s 2- A of the ID Act by the workman against the managements praying a direction to the managements to reinstate the workman into service with full back wages and all other consequential benefits

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 was working as a peon in the management Bank since 1980. In the year 2004, he was posted as such in the branch at Naroji Nagar New Delhi. In the month of July 2004, few lockers of that branch were found broken and the valuables were stolen. On the FIR lodged by the manager of the Bank a case was registered at SarojiniNagar ps as FIR No 386/2004 u/s 406 IPC nad as Fir No 401/2004 u/s 380 IPC. When the investigation was going on, the police got information about the stolen articles being taken in a Maruti car coming from Lodhi road side towards Nizamuddin. The car was intercepted and the occupants were apprehended with huge amount of gold ornaments and cash purported to be the articles stolen from the locker of the Bank. All the three occupants of the car were apprehended and the claimant was one among them and driving the car then. He was taken to the PS, where he confessed his involvement in the breaking and theft of valuables from the locker. A major portion of the stolen articles and huge amount of cash was recovered from the possession of the claimant as led by him to discovery while in police custody, and the valuables recovered from him were later on handed over to the lawful owners. He was then arrested by police and an intimation to that effect was received by the Bank from police. The claimant workman was placed under suspension by order dt 20.10 2004. The Bank four years after the order of suspension, served the charge on the claimant and initiated domestic inquiry against him for the alleged act of misconduct. In the said domestic inquiry, the charges were found proved and the claimant being found guilty of misconduct, the punishment of 'dismissal from service without notice ' was imposed on him. The departmental appeal filed by him was also decided against him. After serving a legal demand notice, the workman raised the Industrial dispute and the effort for conciliation since failed,he filed the application invoking the jurisdiction of the Tribunal u/s 2A of the Act. He made a prayer for setting aside the order of dismissal and re instatement in to service on the ground that the Domestic Inquiry against him was conducted in an unfair manner and principles of natural justice was violated during the inquiry.

The Respondent Bank filed the written statement denying all the allegations leveled by the claimant against the Respondent Bank. It has been stated that there was delay in initiation of the inquiry as the Bank as per the Bipartite settlement had to wait for the criminal case to be finalized. But in this case the claimant was placed under suspension in the year 2004 and was being paid subsistence allowance for doing no work as by an administrative order of the Bank, he was disallowed to enter the premises of the Bank. Though the charge for the criminal trial was framed on 18/01/2005, the trial did not progress and the Bank after waiting for a reasonable time period, proceeded with the domestic inquiry, which was conducted in a fair manner and the workman had duly participated in the same. The punishment imposed by the disciplinary Authority commensurate the charge and was confirmed by the appellate authority.

On these rival pleadings the following issues were framed.

ISSUES

- 1- whether the departmental inquiry conducted against the claimant was just, fair and legal, as well as it was not against the principles of natural justice. If so, it's effect.
- 2- whether the workman is entitled to reinstatement to service with full back wages and consequential benefits, if so it's effect.
- 3- whether the alleged misconduct dis entitles him for re instatement.

The issue No was ordered to be decided as the preliminary issue. After both parties adduced evidence and advanced argument, this Tribunal by order dt 05/02/2019, came to hold that the domestic inquiry against the workman was not conducted in a fare manner and thus stands vitiated. The management Bank was allowed opportunity to prove the charge against the workman.

The management Bank examined it's chief manager as MW 2, who stated to be the person acquainted with the facts of this proceeding as in the capacity of the disciplinary authority, he had imposed the punishment on the claimant, which was later confirmed by the departmental appellate authority. The witness also proved the documents as MW2/1 to MW2/5. These documents are the report of arrest of the claimant communicated by the investigating officer to the

Bank, the order of the Metropolitan Magistrate of Delhi, application submitted by the Bank to the Metropolitan Magistrate for release of the recovered valuables and jewellery, the seizure list, the charge framed in the criminal proceeding against the work man etc. the witness was cross examined by the claimant. However no evidence in rebuttal was adduced by the claimant workman.

During course of argument the learned counsel for the Bank submitted that the 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 domestic inquiry proceeded and the charge of misconduct was duly proved. this being a case of loss of confidence on the employee the punishment was appropriately imposed. Drawing the attention to the exhibited documents and the proceeding of the departmental inquiry, he submitted that the charge has been duly proved against the claimant in this proceeding. Hence the Tribunal should not sit over the punishment imposed as if the appellate authority.

Where as 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 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.

Before deciding on the proportionality of the punishment, it is to be seen if the management Bank has succeeded in proving the charge against the claimant. For this the Bank is required to adduce evidence independent of the evidence adduced during the domestic inquiry as the Domestic inquiry has been held conducted in violation of the principle of natural justice. In several decisions of the Hon'ble SC it has been held that the domestic inquiry is held to be invalid and fresh evidence is led before the Tribunal, then the Tribunal can not rely on the evidence adduced during the domestic inquiry. If the inquiry is not fair, it is to be completely ignored. In such cases it is obligatory on the part of the Industrial Tribunal to consider the material produced

before it and come to a conclusion if the action taken by the Respondent is justified or not.

In this case the Chief Manager examined as MW2 has clearly stated how the allegation of theft was investigated against the claimant. The documents proved by MW 2 goes to show that the claimant while in police custody led to discovery of the valuables and jewellery stolen from the safety locker of the Bank. A huge amount of cash was also recovered from his possession during the investigation. These aspects of the investigation and framing of charge by the criminal trial court prima facie proves the complicity of the claimant with the alleged occurrence either as a thief or as a receiver of stolen property.

The evidence adduced by MW2 has remained unrebutted as the claimant after the order on preliminary issue has not adduced any evidence. The only argument advanced by the claimant is that the management should not have proceeded with the domestic inquiry when the criminal trial was in progress. To support the contention, the claimant has relied upon the judgment of the Hon'ble SC in the case of **State Bank of India vs Neelam Nag, 2016 LAB IC 4274 (SC)**

Management has also placed reliance in the same judgment to argue that in the judgment the Hon'ble SC have clearly held that clause 4 of the Bipartite Agreement does not stipulate prohibition on the institution and continuation of the disciplinary proceeding for an indefinite period merely because the criminal case is pending. Hence the argument advanced by the claimant faulting the action of the management is not accepted. On the contrary, it is found that the management by adducing the oral and documentary evidence has successfully proved the charge of misconduct against the claimant and the same stood unrebutted for want of evidence by the claimant to disprove the same. When the management has successfully discharged the burden of proving the charge, the claimant has failed to discharge the onus of disproving the same.

Now, in view of the arguments advanced by the parties a finding is to be given on the proportionality of the punishment imposed on the claimant. In the case of **Muriadih Colliery VS Bihar Coalliery Kamgar Union (2005) 3 SCC 331**, 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 or theft of customer's property 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 it is a matter of record that the claimant, during the investigation had admitted about the theft and led to discovery of huge cash and jewellery from his possession. Even though the criminal trial is yet to be concluded, the claimant is expected to explain as to how he came in to possession of the articles recovered from his possession. No explanation has been offered nor there is any evidence to believe that the charge framed in the criminal trial has been challenged in any forum by the claimant. Thus the explanation offered by the claimant during argument was found not acceptable .

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 otherhand 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.

It is felt proper to observe herethat 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. 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 adduced before this Tribunal, the one only conclusion is that the punishment imposed on the claimant for indulging in an unlawful activity of stealing valuables from the safety lockers of the customers of the Bank amounting to misconduct, is proportionate to the charge and same has been imposed for loss of confidence on the employee by the employer. Merely because the criminal case is pending for a long period, 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 claim advanced by the claimant be and the same is answered against him. The charge of misconduct stands proved against the claimant. Hence, 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.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
20th March, 2023.

Presiding Officer.
CGIT-cum-Labour Court.
20thMarch, 2023.