

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. 04/2007

Date of Passing Award- 14.03.2022

Between:

Late Shri Madan Lal, Ex-peon,
(Through Legal Representative)
Smt. Santosh Devi,
A-285, Near Government Press of India,
New Delhi- 110001

Workman

Versus

1. The General Manager,
Reserve Bank of India,
6, Sansad Marg,
New Delhi.

2. The Estate Officer,
Reserve Bank of India,
6, Sansad Marg,
New Delhi.

Management

Appearances:-

Claimant in person
(A/R)
Ms. Kumkum Budgujar
(A/R)

For the claimant.

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 Reserve Bank of India, 6 Sansad Marg, 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-12012/100/2006 (IR(B-I)) dated 05/02/2007 to this tribunal for adjudication to the following effect.

“Whether the action of the management of Reserve Bank of India in imposing the penalty of dismissal from service on Shri Madan Lal w.e.f 20.02.2004 is legal and justified? If not, what relief the workman is entitled to?”

As per the claim statement the claimant Madan Lal (since dead and substituted by the legal heirs) was an employee of the management Bank

since 10.03.1976. Initially he was appointed as Khidmatgar and subsequently on account of his satisfactory performance appointed in the cadre of peon and served in many departments of the Bank and had discharged his duty with utmost sincerity. On 30.06.2003 a written complaint was received from Smt. Santosh kumari the sweeper of the Bank against the claimant Madan Lal peon alleging sexual harassment and misbehavior. On the same day a notice was issued to the claimant to showcause as to why disciplinary action shall not be taken. The matter was then referred to the Regional Complaints Committee on sexual harassment to women at work place where a fact finding inquiry was conducted. The said committee on 18th July 2003 submitted its report stating that prima facie this is a case of sexual harassment of Santosh kumari by Madan Lal the claimant. Pursuant thereto the chargesheet was issued to the claimant on 01.08.2003 alleging that he has omitted misconduct by indulging in an act of sexual harassment to a female employee at the work place in violation of regulation 41-C of the Reserve Bank of India staff regulation 1948. Thereafter, a domestic inquiry was conducted against the claimant and the General Manager of the management Bank from the initial days displayed bias and prejudice towards the workman and the inquiry was conducted in a superficial manner. The claimant was not afforded opportunity to cross examine the persons who had deposed before the Regional Complaint Committee and whose evidence was adopted during the domestic inquiry. No opportunity of engaging a proper defence Assistant was also given to the claimant. The inquiry officer being biased conducted the inquiry in a haste and allowed only 10mins time to adduce defence evidence. Being guided by his pre conceived notion, he submitted his report stating that the charge against the claimant stands proved. On being called upon to showcause as to why the punishment proposed by the inquiry officer shall not be imposed the claimant submitted his reply. But all the authorities had by then already made up their mind to punish him. Even though there was no adequate evidence of misconduct he was punished and the order of dismissal was served on him. The appeal made to the departmental authority was also decided against him. Finding no other way out and for the gross injustice meted to him by the management he raised a dispute before the conciliation officer and the same failed for the adamant attitude of the management. The appropriate government then referred the matter for adjudication in terms of the reference. In the claim petition the claimant has prayed for quashing the charge sheet, the finding of the inquiry officer and the decision of the disciplinary authority and the appellate authority. He has also prayed for a direction to the Bank management to reinstate him in service from the date of dismissal with full back wages and consequential benefits. During the pendency of the dispute the claimant died and his legal heirs have been substituted.

The management filed written statement refuting the stand taken by the claimant. According to the Bank the service condition of the employees of the RBI is governed under the Reserve Bank of India Staff Regulation

1948. Under this regulation the Bank authority is competent to initiate disciplinary action against an employee. On 30th June 2003 the sweeper of the Bank named Santosh Kumari made an allegation of sexual harassment against the claimant. A showcause notice was served on him. The showcause not being satisfactory the matter was referred to the Regional Complaints Committee on sexual harassment of women at work place. The inquiry was conducted and the committee by its report dated 18th July 2003 came to hold that the allegation of sexual harassment by Santosh Kumari against the claimant is *prima facie* established. Thereafter, on 01.08.2003 charge sheet was served on the claimant for violation of Regulation 41-C of the Regulation *ibid*. Thereafter, showcause was called upon and the inquiry was conducted by the inquiry officer and the bank was represented by the presenting officer. After taking evidence and affording opportunity to the claimant for setting up a defence the inquiry officer came to hold that the charge of sexual harassment is proved and he proposed that in terms of Regulation 41(1)(e) of the Regulation, the claimant be dismissed from service. Accordingly another showcause notice dated 17th January 2004 was served on the claimant. The claimant asked for 14 days time but he was allowed 7 days for the purpose. Finally the claimant on 3rd February 2004 submitted his representations against the proposed penalty. The same was considered but found untenable. Thus, the penalty proposed by the inquiring officer was accepted and the disciplinary authority passed the order dated 20th February 2004 dismissing the claimant from Bank service w.e.f 20th February 2004. The departmental appeal filed by the claimant was rejected by order dated 2nd June 2004. The other stand taken by the Bank is that the claimant during the tenure as an employee of the RBI had a tainted track record and he was previously issued with 10 charge sheets and 25 cautionary advises for various acts of misconduct. So far as this inquiry is concerned he was provided adequate opportunity to defend his case through the defence representative. The claimant had engaged a defence representative of his choice but for reasons known to the claimant the said representative quitted the assignment. It has also been stated in the WS that the stand of the claimant that he was black mailed by the complainant Santosh Kumari and was coerced by his community people was never brought to the knowledge of the inquiry officer. The witnesses examined during the inquiry were cross examined by the claimant. But the said witnesses had specifically implicated the claimant with the alleged sexual harassment. Thus, the management has pleaded that the inquiry was conducted following the procedure laid down under law and the Principles of Natural Justice and the finding entail no interference.

The claimant filed rejoinder reiterating the stand taken in the claim petition.

On the basis of the pleading this tribunal by order dated 01st November 2007 directed that the fairness of the domestic inquiry shall be decided at the first instance. Accordingly the witnesses were examined by both the parties and the documents were placed on record. The tribunal by

order dated 19.02.2008 came to hold that the domestic inquiry stands vitiated for not following proper procedure and Principles of Natural Justice. Thereby the tribunal permitted the management to adduce evidence to prove the charge giving liberty to the workman to rebut the same. Being aggrieved the management bank challenged the said order by filing Civil Writ Petition No. 4974 of 2008. The Hon'ble High Court of Delhi by order dated 09th March 2015 while setting aside the order of this tribunal deciding the preliminary issue directed that it is open for the workman to challenge the inquiry proceeding on other grounds. The matter being remanded opportunity was granted to the claimant as well as the management to adduce evidence on the fairness of the domestic inquiry as well as to prove the charge respectively. During this period the claimant Madan Lal expired and his LRs were substituted by order dated 10.12.2018.

During the hearing the son of the deceased claimant testified as WW1 and he was cross examined at length by the management. Similarly the management examined one of its managers as MW1 who, besides the oral evidence produced several documents marked as MW1/1 to MW1/25. These documents include the chargesheet, the proceedings of domestic inquiry, the showcause submitted by the claimant, report of the inquiry officer, order of the disciplinary authority and the appellate authority.

The admitted facts are that the claimant was an employee of the management bank as a peon and on the allegation of the misconduct/ sexual harassment chargesheet was served on him and a domestic inquiry was conducted in which the chargesheeted employee had participated. Whereas, the claimant alleges that he was denied the opportunity to defend himself the management has stated that adequate opportunity was granted and the inquiry was conducted in the most fair manner following the Principles of Natural Justice. Since, the Hon'ble High Court have already set aside the order of this tribunal holding the domestic inquiry vitiated for non compliance of the Principles of Natural Justice, the two aspects to be considered are (a) if the domestic inquiry was conducted fairly following the Principles of Natural Justice (b) if the management has proved the charge against the claimant and the punishment imposed commensurates the charge.

The son of the claimant while adducing evidence has stated that he does not know if his father was given the opportunity for cross examination of all the witnesses. But he knows that he was not afforded the opportunity of taking the assistance of a defence representative. No document has been produced by the claimant in support of the oral evidence. On behalf of the management the entire proceeding of the domestic inquiry has been filed and marked as exhibits. The law is well settled that when the charge is required to be proved by the management before this tribunal it is incumbent upon the management to produce the inquiring officer atleast to say that the proceeding was conducted in a fair manner. Merely by filing the record of the domestic inquiry cannot exonerate the management of proving the charge against the charge sheeted employee. A careful perusal of the

proceeding of the domestic inquiry the same doesn't reveal that at the beginning of the inquiry, the procedure of the inquiry was explained to the charged employee who was none but a peon. The proceeding further reveals that the defence assistant had attended the proceeding up to a particular date after which he abandoned the same. The request of the charged employee for 20 days time to make himself ready for cross examination was not allowed and only 10 days time was granted. The repeated request of the charged employee for time to cross examine the departmental witnesses was turned down. The inquiry proceeding further reveals that the claimant's request for cross examination of the complaint Santosh Devi after examination of other witnesses was also turned down. These aspects taken together lead to a conclusion that no fair procedure was adopted by the inquiry officer during conduct of the inquiry. During course of argument the Ld. A/R for the workman submitted that during the proceeding before the tribunal challenging the fairness of the inquiry, the inquiry officer is required to be examined. Unless he is examined the charged employee would not be in a position to bring on record the flaws in the inquiry. But this argument of the claimant is not accepted since, none examination of the inquiry report in all cases would not make the report inadmissible. Even if the inquiry officer is not produced as a witness, the inquiry report can be proved by other witnesses who are in a position to identify the signature of the inquiry officer on the report. But here is a case where the witness examined by the management has nowhere stated that he is acquainted with the signature appearing in the inquiry report. That itself clearly leaves a void in the procedure for proving the fairness of the inquiry report. Thus, for non examination of the inquiry officer and non proving of the inquiry report by a person competent to do so the one and only conclusion is that the inquiry was not conducted in a fair manner.

Once it is held that the inquiry was not conducted in a fair manner the tribunal has to examine the material and evidence before it to find out if the said evidence proves the charge against the charged employee. In this case the charged employee was facing the charge of misconduct on account of sexual harassment meted to a co employee. The domestic inquiry was preceded by an inquiry conducted by the sexual harassment committee. On the basis of the deposition recorded during that inquiry the domestic inquiry was initiated. The same witnesses were examined during the domestic inquiry. As stated in the preceding paragraph due opportunity was denied to the charged employee for cross examination. Now the question that emerges is can the Industrial Tribunal while adjudicating the dispute substitute its own judgment or interfere with the finding. Prior to the introduction of section 11A in the Industrial Dispute Act in 1972, the jurisdiction of the Industrial Tribunal was limited. In different judicial pronouncements it was held that the tribunal cannot substitute its own judgment for that of the management since, the domestic inquiry is clearly a managerial act. But after the incorporation of section 11A to the Act the powers of the Tribunal have been changed and the Industrial Tribunal can now interfere in the quantum

of punishment when the circumstances give rise to the presumption of victimization.

In this case no additional evidence has been adduced before this tribunal by the management to prove the charge. By filing the copy of the inquiry proceeding the management remained satisfied. The inquiry report exhibited clearly shows that there were no eye witnesses to the alleged occurrence. The other witnesses who stated during the inquiry that soon after the incident victim Santosh Kumari has disclosed about the same to them were not cross examined effectively by the charged employee since he had no proper Defence Assistant nor adequate time was allowed. If in a case when the evidence before the tribunal leads to a conclusion that the charge of misconduct is established, the tribunal is not authorized to interfere with the punishment unless victimization on unfair labour practice is proved. But the situation would be otherwise if the Industrial Tribunal forms opinion that the charge has not been proved. In this case the management has failed to establish the charge against the claimant on the backdrop that the Principles of Natural Justice were not followed.

A clear picture of the Principles governing the jurisdiction of the tribunals when adjudicating disputes relating to dismissal or discharge was given by the Hon'ble Supreme Court in **workmen vs. Firestone Tyre and Rubber Co. of India (P) Ltd (1973) I SCC 813**. These are:

- (1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a tribunal, the latter has power to see if action of the employer is justified.
- (2) Before imposing the punishment, an employer is expected to conduct a proper inquiry in accordance with the provisions of the standing orders, if applicable, and principles of natural justice. The inquiry should not be an empty formality.
- (3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said inquiry, the tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty; of victimization, unfair labour practice or malafide.
- (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

- (5) The tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

Thus, the industrial tribunal is now well authorized to interfere with the punishment inflicted on a chargesheeted employee when it is of the opinion that the domestic inquiry was not conducted fairly and the evidence placed on record doesn't prove the charge as has been done in the case in hand. The punishment of dismissal from service imposed on the claimant appears to be the harshest punishment and bites the consigns of the tribunal while adjudicating the dispute. Hence, it is felt to be a fit case for interference so far as the conduct of the proceeding and the punishment imposed are concerned.

During the pendency of the proceeding the claimant was substituted by his legal heirs. His son examined as WW1 has stated that the dismissal from service has a long drawn effect on the employee and the family members. He has stated that atleast his father not being alive for reinstatement an order be passed for compassionate appointment of any one of his legal heirs. This submission of the claimant is not worthy of acceptance since, the witness examined by the management has clearly stated during cross examination that under the compassionate package scheme 2008 the spouse/dependant of a deceased employee will not be eligible for the option of employment in the bank instead he will be granted financial benefits under liberalized compassionate package scheme. However, compassionate appointment may be offered were an employee dies while performing his official duty as a result of violence terrorism robbery etc. or if the employee dies within 5years of his appointment or before he reaches the age of 30 years. The candidature of legal heirs of the present claimant doesn't fall under any of the category mentioned above. Hence, the only benefit which can be allowed to the claimant is for reinstatement with back wages. Since the claimant in this case is dead and the domestic inquiry conducted against him and the punishment imposed are held not sustainable in the eye of law, it would be proper to direct that the claimant would be deemed to have been in service from the date of dismissal till the age of superannuation and he would be entitled to full back wages for the said intervening period alongwith all other consequential service benefit. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the claimant. The domestic inquiry and the punishment of dismissal imposed on the claimant is held to be illegal and hereby set aside. The management Reserve Bank of India is directed to treat the deceased claimant as if he was on duty on the date of dismissal and till the date of superannuation and grant him full back wages alongwith all other service benefits including pension. The

arrear salary and all other financial entitlement shall be calculated and paid to the legal heirs of the claimant within 3 months from the date of publication of this award alongwith interest @ 5% from the date of accrual and till the date of actual payment. If the amount shall not be paid within the time stipulated above the amount accrued shall carry interest @9% from the date of accrual and till the actual payment would be made. 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.
14th March, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
14th March, 2022.