

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2,
MUMBAI**

PRESENT

S. S. GARG

Presiding Officer

REFERENCE NO.CGIT-2/35 of 2015

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF
STATE BANK OF INDIA**

Assistant General Manager
State Bank of India
Jeevan Tara B Wing, 513 Sadar Bazar,
Satara Koregaon Road,
Satara - 415001.

AND

THEIR WORKMEN

Shri Pradeep Shamrao Desai,
Rukhmini Park,
Mangalwar Peth,
B-31, Wakhana Road,
Karad,
Dist. Satara.

APPEARANCES:

FOR THE EMPLOYER : Mr. S. Alva,
Advocate.

FOR THE WORKMEN : Mr. Sunil.V. Patil,
Advocate.

Mumbai, dated the 6th January, 2022

AWARD PART-I

1. The Government of India, Ministry of Labour & Employment by its Order No.L-12012/62/2015 (IR(B-I)) dated

23/06/2015 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Asstt. General Manager (Admn.) State Bank of India, Pune in terminating the services of Shri Pradeep Shamrao Desai w.e.f. 8.6.2011 is legal and justified? If not, to what relief the workman is entitled to ?”

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party union filed their statement of claim at Ex-5. According to union second party workman was appointed by the management i.e. Party No.1 on 29.8.94 as a Messenger at Miraj branch. His last drawn salary is Rs.11000/-. He confirmed on 1.3.95 and workman is working at Karad branch regularly. Bank issued a false letter on 14.7.09 with contention that he withdraw the amount of Rs.30,000/- from other account without pass book and Party No.1 issued another letter on 30.10.09 with false contention that withdrawal of Rs.10,000/- from saving account of Smt. Desai. According to Party No.2, these charges are totally false. Even though on the basis of complaint of Smt. Jayshree Desai, police lodged complaint against him and party No.1 suspended him and hand over the charge sheet to him.

3. Party No.1 bank decided to conduct enquiry against him. During the enquiry, Inquiry officer did not give list of witnesses and also not given documents and procedure likely to be followed. According to the workman, party no.2 department conducted incomplete enquiry and on the basis of this report he illegally dismissed from the services. According to workman it is unfair labour practice. According to workman department did not given proper opportunity and do not follow the principle of natural justice. He also asserted that party No.1 then did not given withdrawal slip and did not prove the charges.

In this way party No.2 by filing statement of claim pray that he should be reinstated with full back wages with consequential benefits.

4. On behalf of party No.1 through Ex.6 they filed written statement by denying the contention of the workman i.e. statement of claim. According to party No.1 all contentions of the workman are false and removal of the workman from service is proper. According to management he withdraw from the A/c. of Smt. Sunita Pradeepchandra Patil a sum of Rs.30,000/- and she made oral complaint before the Branch Manager. On the basis of this complaint Branch Manager enquiry this matter made a complaint through Shri Suhas Dongre, Asstt. Manager [Cash] to seek explanation from party No.2 and workman by filing reply clearly admit withdrawal of Rs.20,000/- and Rs.10,000/- from the account of Smt. Sunita Pradeepchandra Patil, complainant.

5. Branch management on 22.8.09 received another complaint of Smt. Jayshree Dhanaji Desai for false withdrawal of Rs.10,000/- by forging her signature. According to management by a comparison of signature of withdrawal slip with specimen signature, Branch Manager come to conclusion that signature on withdrawal slip is forged and perusal of CCTV footage of branch pertaining to 7/7/09 reveals that party No.2 had received the payment from Shri Dongre.

6. According to party No.1 enquiry held into the charges against the workman were fair and proper and made an alternate prayer that if tribunal come to contrary conclusion it may be given opportunity to prove the charges against the workman by leading evidence before the tribunal.

7. On the pleading of both side my predecessor framed two preliminary issues on 24.8.16 Ex.10.

1. Whether the Second party workman proves that the enquiry conducted into the charges framed against him is not fair and proper ?

2. Whether the Second party workman proves that the findings of enquiry officer are perverse ?

REASONS FOR DECISION

8. On behalf of party No.2 it was argued that false charges are framed against him and party No.1 did not supply him required

documents with regard to complain and during the enquiry they did not provide proper opportunity and principle of natural justice did not follow. So he pray that enquiry conducted against second party to be set aside and findings of Enquiry Officer is quashed and set aside in the interest of justice. He relied on following case laws.

1. SC 2018 I CLR Page 1047.
2. SC 1971(0) AIJEL-SC-27156
3. SC 1963 (o) AIJEL-SC-30969

9. On the contrary on behalf of management it was argued that charges framed against the workman is proper. He also argued that documents including CCTV footage which were taken on record and original record also cross checked by the party No.2. According to management, party No.2 did not examine any witness even he provided an opportunity for the same. He also argued that enquiry report and findings of 3.3.11 along with translation in Marathi sent to party No.2. They have also argued that party No.2 admitted his guilt in 4 documents e.g. Ex.10, Ex.19, Ex.13, Ex.16 and documents filed on 3.6.11 in support of charge sheet.

10. According to management they follow principle of natural justice and provided proper opportunity and relied on following case laws.

1. Sur Enamel and Stamping Works Ltd – reported in 1963
2 LLJ page 367.

2. Damoha Panna Sagar Rural Regional Bank – reported in 2005 (10) SCC 84.
 3. Mrs Thenmozhi V/s. Neyveli Lignite Corporation – reported in 2005 2 CLR page 89.
 4. Hamdard Dawakhana Wakf – reported in 1962 2 LLJ page 772.
 5. Manager Boisahabi tea Estate V/s. P.O. Labour Court – 1981 Lab IC 557.
11. On behalf of workman in support of their statement of claim examined himself (Ex.13) on the contrary on behalf of party No.1 examined Mr. Sudhir Madhukar Bhatambrekar (Ex.18), Branch Manager in support of their defence. Both are cross examined by opposite party. First I want to see the evidence of workman on the point of principle of natural justice.
12. Workman Mr. Desai in his cross examination admitted that Mr. Gawli and Joshi are their Defence Representatives in departmental enquiry but party No.1 did not supply him document as mentioned on page 8 of Ex.8. He could not understand the contents of above documents because these documents are in English language even though he and his D.R. put signatures on these documents. He also asserted that in enquiry proceedings pg.15 this fact is mentioned that “copies of documents were verified by me with original....it is not true to suggest that witness Sunita Patil was subjected to cross examination

by my D.R. I do not know that pg.11 of enquiry proceeding my D.R. was asked whether he wanted to cross examine the witness to which he stated that he wanted to cross examine the witness”.

13. On the contrary chief examination of management witness MW1 denied all these facts but I want to see para 11 of cross examination in which management witness admitted that “award as amended in Memorandum of settlement is not on record....The names of complaints are Mr. Sunil S. Patil and Smt. Jayshree D. Desai”.

14. He also admitted that he did not mention in enquiry proceedings as to how enquiry is conducted. He also admitted that he did not given separate exhibit to each document during the enquiry proceedings but in second enquiry he given exhibit on each document. In para 12 of his statement he mentioned that “in enquiry proceedings it is true that there was no mention in the enquiry proceedings that pg. 1 & 2 were supplied to the second party. Original 15 documents were brought before me during enquiry proceedings...I cannot say that documents were not verified on the first date. It is not mentioned in proceeding on the first date that documents were verified before me”.

15. On the perusal of the cross examination of management witness, it reveals that second party was not informed next date of enquiry proceedings but according to him he give separately for next date. It also appears that he did not intimate to the workman the name of management witness who was examined next. He also admitted that DR has reserved his right to cross examine to the first witness. He also

admitted that original withdrawal slip and deposit slip were in police custody and copy of all slips not verified by him from original slips. He also admitted that evidence of concerned workman was not recorded during the enquiry proceedings. He also admitted that original withdrawal slips were not shown to the witness. He also admitted that he do not know about the report of hand writing expert of the enquiry report.

16. In this way the management witness admitted some defaults in conducting the enquiry which in my opinion is important to discard the enquiry report. In written notes of arguments Ex.27 pg.2, para 2 mentioned that, "The second Party thoroughly cross-examined the Management's witnesses and was given an opportunity to examine himself and his witnesses. The Second party did not examine any witness". It means proper opportunity of cross examination not provided to the workman.

17. On going above discussion I come to the conclusion that allegations of the workman is appears to be true as principle of natural justice are not followed by the management properly and enquiry conducted in hurry without giving proper opportunity to the workman. So in my humble opinion, this enquiry is not called to be fair and proper. So in my humble opinion the report based on such enquiry is declared to be perverse.

18. Thus I proceed to pass the following order.

ORDER

(i) The inquiry is found not fair and proper.

(ii) The findings of the Inquiry Officer are declared perverse.

(iii) Opportunity is given to the first party management to prove the charges by leading evidence. Parties to remain present on the next date of hearing.

Date: 06/01/2022

(S.S. GARG)
Presiding Officer
CGIT-2, Mumbai