

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. 155/2015

Date of Passing Award- 7th January, 2022.

Between:

Shri Harish Chander,
S/o Late Shri Govind Vallabh,
R/o H.No.-33, East Guru Angad Nagar,
Behind Scope Minar
Delhi-92.

Claimant

Versus

The Dy. General Manager.
A- Block, Old Building, Regional Branch Office-2,
Parliament Street,
New Delhi 11001

Management

Appearances:-

Shri D M Sharma
(A/R)
Shri Sunil Prakash
(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 State Bank of India, 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-12011/54/2015 (IR(B-I) dated 08.10.2015 to this tribunal for adjudication to the following effect.

“Whether the action of the management of State Bank of India, New Delhi in terminating the service of the workman Shri Harish Chandra S/o Late Shri Govind Vallabh is justified or not, what relief the workman is entitled to and from which date?”

The facts pleaded in the claim petition leading to the present Industrial dispute are that the claimant Harish Chander was initially appointed as a messenger in the State Bank of India and subsequently promoted to the post of Senior Assistant. When he was working as a Cashier Himatpuri Branch, Delhi some false and frivolous allegation were made against him alleging

serious lapses while making cash payment of Rs. 2,000 on 06.07.2012 and Rs. 18000/- on 12.09.2012 from the account of one Hori Lal maintaining pension account with the Bank. A showcause notice was served on him calling him to explain as to why disciplinary action shall not be taken against and he was immediately transferred to the Branch Ujaina in the District of Mewat Haryana and a charge sheet was served on him. The claimant submitted his reply to the showcause notice and management of the Bank decided to appoint the enquiry officer for conduct of the inquiry. The charge against the claimant was that he made payment from the account of a dead person without matching the photograph of the account holder and also did not exercise due diligence to verify the thumb impression of the account holder on the withdrawal slip and made the payment to a third party without taking any discharge from the later, when the payment was through withdrawal slip. When the wrong was detected the claimant on the same day made deposit of the entire amount with explanation that he recovered the amount from the son of the account holder to whom payment was made on good faith.

It has also been stated by the claimant that the Bank management in a bias manner conducted the inquiry without affording proper opportunity to the claimant of examining the complainant i.e. the son of the account holder from whose account the payment was allegedly made. Not only that the demand made by the claimant for calling the complainant as a witness during the inquiry was never acceded to. But none of his objections were recorded and the inquiry officer found the charges proved and submitted a report to the disciplinary authority on 24.10.2013 recommending imposition of major penalty on him. The disciplinary authority while accepting the inquiry report of the inquiry officer imposed a major penalty on the workman and directed that he be removed from service with all pensionary and other retiral benefit. The showcause submitted by the claimant was found not satisfactory. The departmental appeal filed by him was also decided against him. Being aggrieved the workman had issued a demand notice to the management requesting his reinstatement on the ground that the entire inquiry proceeding was illegal for omission to follow the Principles of Natural Justice. Having failed in all his efforts he raised a dispute before the conciliation officer. The conciliation since failed the appropriate government referred the matter to this tribunal for adjudication in terms of the reference.

Being noticed the bank management appeared and filed WS denying all the allegations leveled by the workman. It has been pleaded that the copy of the charge sheet was duly served on the workman who also took the assistance of a defence personnel. He participated in the inquiry and cross examined the witnesses. The allegations leveled against him are matters on record and when he was confronted with the documents which were bank records, admitted the same. His only stand taken was that the payment was made to a person named Ashok on good faith as said Ashok came with the withdrawal slip and informed that the account holder being extremely old is

sitting outside to avoid the rush inside the bank hall as advised by the doctor. Since Ashok was earlier accompanying the account holder and was known to the claimant and other staff of the Bank, he omitted to cross match the photograph and the LTI of the account holder. The Bank has further pleaded that the lapses at the instance of the claimant being serious in nature the management immediately transferred him to a different branch and initiated a departmental proceeding. The said proceeding was conducted fairly following due procedure and Principles of Natural Justice. The inquiry office found the charges proved and recommended for major penalty. Another showcause was called from the claimant before imposition of penalty and the said explanation being unsatisfactory the disciplinary authority imposed the punishment on the claimant directing dismissal from service with pensionary and other retiral benefits. Though a departmental appeal was preferred by the claimant the same was dismissed and order of disciplinary authority was confirmed.

On the rival pleading of the parties the following issues were framed for adjudication.

ISSUES

1. Whether departmental inquiry was conducted against workman is just, legal and proper? If so its effect?
2. Whether the action of the State Bank of India, New Delhi is terminating the service of the workman Shri Harish Chander, S/o Late Shri Goving Vallabh is justified or not? If so its effect?
3. To what relief the workman is entitled to and from which date?

In view of the dispute this tribunal decided to adjudicate issue no.1 as the preliminary issue. During that preliminary issue hearing the claimant examined himself as WW1but proved no documents. On behalf of the bank management one of its manager testified as MW1. He proved a series of documents which include the departmental inquiry proceeding, banks record, and showcause submitted by the claimant marked in a series of MW1/1 to MW1/8.

On considering the evidence adduced during the departmental inquiry and all other documents including the oral evidence of the witnesses adduced in this proceeding this tribunal by order dated 17.09.2019 came to hold that the departmental inquiry was conducted without following the Principles of Natural Justice and the demand of the claimant during that inquiry for examination of the complainant was not accepted. He was not even given the opportunity of cross examining the material witnesses. It was also held that during the preliminary issue hearing the Bank management failed to produce the inquiry officer as a witness. Considering all these aspects by order dated 17.09.2019 the tribunal decided the preliminary issue in favour of the claimant observing that the departmental proceeding stands vitiated for omission in following the procedure of inquiry and Principles of Natural Justice.

The management thereafter wanted to adduce evidence to prove the charge against the claimant. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Karnatak SRTC vs. Laxmidevamma and another reported in (2001(5) SCC 433)** this tribunal turned down the request of the management to adduce the evidence.

Hence this dispute is to be adjudicated on the proportionality of the punishment keeping in view the evidence placed on record.

At the outset of the argument the Ld. A/R for the claimant workman submitted that the preliminary issue was decided on the basis of the evidence adduced during the domestic inquiry which has been found as illegal and vitiated. Thus management was under the obligation of adducing further evidence to prove the charge. In this case since no evidence at all has been adduced by the management to prove the charge the tribunal has no option than holding that the charge against the claimant stands disproved. Relying on the judgments of the Hon'ble Supreme Court in the case of **workmen of M/s Firestone Tyre and Rubber Company of India vs. Management of others decided by the Hon'ble Supreme Court and reported in AIR 1973 SC 1227** and also in the case of **UCO Bank vs. Presiding Officer and another decided by the Hon'ble High Court of Delhi and reported in ILR 1999 Delhi 331** and again in the case of **State Bank of Bikaner and Jaipur vs. Nemichand Nalwaya decided by the Hon'ble Supreme Court of India in Civil appeal No. 5861 of 2007** by judgment dated 1st March 2011, he submitted that the law is now well settled that the courts will not act as an appellate Court and reassess the evidence laid in the domestic inquiry nor interfere on the ground that another view is possible on the basis of the materials on record. He also submitted that in a case when the inquiry is found to have been done fairly and properly and findings are based on evidence, the question of adequacy of the evidence or reliable nature of the evidence will not be grounds for interfering with the findings in departmental inquiry. But here is a case where the entire departmental proceeding has been held vitiated for violation of the Principles of Natural Justice. Hence, the evidence adduced in that proceeding cannot be considered for proving the charge against the claimant. He thereby submitted that this is a classic case where the claimant has been punished with a major punishment like dismissal from service without the charges against him being properly proved.

The Ld. A/R for the bank management counter argued that the tribunal has the discretion and power to analyse the evidence adduced during the domestic inquiry to guide itself and find out whether the charge has been proved or not. He thus, submitted that the decision to ignore the evidence adduced during the domestic inquiry would be a hyper technical approach and unjustified when the management was denied the opportunity of adducing evidence.

The admitted facts are that the management had adduced evidence in the domestic inquiry and to challenge the same as illegal and contrary to the Principles of Natural Justice the claimant had adduced evidence during the preliminary issue hearing. Rebuttal evidence was also adduced by the management. The preliminary issue has been decided against the management. Though management was required to adduce evidence for proving the charge against the claimant no evidence has been adduced. The Ld. A/R for the management submitted that this is a case where the claimant as an employee had misconducted himself by making payment from the account of a dead person and when the fault was detected he made deposit of the said amount. All these are matters of bank record produced and proved during the domestic inquiry. This being a clear case of loss of confidence the charge was found proved and the claimant was rightly dismissed.

In this regard reliance can be placed in the case of **The Punjab National Bank Limited vs. Its workmen reported in 1960(1)SCR page 806** wherein the apex court have held that in a case where an industrial dispute is raised on ground of dismissal and it is referred to the tribunal for adjudication, the tribunal naturally wants to know whether the impugned dismissal was preceded by a pro-per inquiry or not. Where such a proper inquiry has been held in accordance with the provision of the relevant standing order and it is evident that the employer is not guilty of victimization or any unfair labour practice, the Tribunal is generally reluctant to interfere with the impugned orders. There is another principle which has to be borne in mind when the tribunal deals with the Industrial dispute arising from the dismissal that a proper inquiry was held before such dismissal. In this case it has already been held that the inquiry conducted was not fair and proper.

The proviso to Section 11A of the Id Act provides that in any proceeding under this section, the Labour Court, Tribunal or National tribunal shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter. In the case of State Bank of Bikaner and Jaipur vs. Nemichand referred supra it has been held:-

It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic inquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquires. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a Tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of

natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, malafide or based on extraneous considerations. (vide B.C Chaturvedi vs. Union of India 1995(6)SCC749, Union of India vs. G. Gunayuthan-1997(7) SCC 463, and Bank of India vs. Degala Suryanarayana 1999 (5) SCC 762, High Court of Judicature at Bombay vs. Shahsi Kant S patil- 2001(1) SCC 416

In this case as has been held in the preceding paragraph the disciplinary proceeding against the claimant held by the respondent has been held vitiated and no other evidence has been placed on record by the management to prove the charge. Hence, the one and only conclusion is that the charge against the claimant was not proved in the inquiry. Had a proper inquiry been held by the employer and the finding of misconduct is the plausible conclusion flowing from the evidence adduced in the said inquiry this tribunal would not have the jurisdiction to sit in judgment over the said decision of the employer. The effect of the employer not holding a proper inquiry leads to a conclusion that the charge of misconduct has not been proved against the claimant and he has been punished with a major penalty. This tribunal has the authority to interfere with the said finding. Hence, ordered.

ORDER

The reference be and the same is answered in favour of the claimant and it is held that the action of the management of State Bank of India in terminating the service of the workman Shri Harish Chander is unjustified and the workman is held entitled to reinstatement to the post he was working on the date of termination with all back wages, if he has not yet attained the age of superannuation. In such a situation the retiral benefits if any granted to the claimant shall be adjusted towards his earned salary for the intervening period of dismissal and reinstatement. In case the claimant has attained the age of superannuation in the mean time he shall be paid the amount of back wages and other related service benefits as arrear. The bank management is directed to pay the amount accrued in favour of the claimant within 3 months from the date of publication of award. If the Bank management would fail to pay the amount within the time stipulated, the accrued amount shall carry interest @ 9% per annum from the date of accrual and till the final 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.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
7th January, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
7th January, 2022.