

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% W.P.(C) No. 1888/2006

+ Date of Decision: 13th August, 2012

SYNDICATE BANK Petitioner

**! Through: Mr. S.K. Taneja, Sr. Advocate
with Mr. Puneet Taneja &
Mr. Amrit Anand, Advocates**

Versus

**\$ R.K.ROHILLA (SINCE DECEASED)
THROUGH LRs. ...Respondents**

Through: Ms. Sumeet Kaur, Advocate

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

In this writ petition the petitioner bank(hereinafter to be referred as ‘the management’) has assailed the correctness of the award dated 3rd October, 2005 passed by the Central Government Industrial Tribunal-cum-Labour Court(‘CGIT’ in short) whereby the respondent-workman(hereinafter to be referred as ‘the deceased workman’ since he expired during the pendency of this petition and is being represented by his

legal heirs) was awarded the penalty of stoppage of four increments service after setting aside the punishment of dismissal from service which had been awarded to him by the management for his having committed certain acts of serious misconduct.

2. The award dated 3rd October, 2005 came to be passed after the following industrial dispute raised by the workman about his dismissal from service was referred by the appropriate Government to CGIT for adjudication:-

“Whether the action of the Assistant General Manager, Syndicate Bank, Zonal Office, 6 Bhagwan Dass Road, New Delhi in dismissing from services to Shri R.K. Rohilla, Clerk of Syndicate Bank, G.B. Road Branch, Emp. No. 315331 New Delhi with effect from 21/11/1998 is justified, proper and legal? If not, what relief the concerned workman is entitled to ?”

3. The relevant facts of the case are that the deceased workman was working as a clerk with the petitioner bank and during the relevant period he was posted at its G.B. Road Branch in Delhi. He was charge-sheeted on 20th December, 1996 on the following allegations:-

“You attempted to defraud Shri Yogendra Kumar Gupta, holder of SB a/c NO. 10561 at the branch on 06.04.1996 by a sum of Rs. 5000/- and thus tried to derive undue pecuniary benefits at the cost of the Bank/Customer by committing various other irregularities detailed below:-

That you have been maintaining SB-201 and 9644 with our G.B. Road Branch, New Delhi and SB-10392 at our Ballabhgarh Branch.

That during the period between 25.06.1993 and 13.02.1996, you got discounted 16 cheques aggregating to Rs. 60,000/- drawn on your/third party Saving Bank account with our Ballabhgarh Branch, G.B. Road Branch, Faridabad Branch and Oriental Bank of Commerce, Sihi Faridabad Branch and withdrew the amounts there under through the above said SB account and derived undue pecuniary advantage at the cost of the Bank by committing various other irregularities detailed below:-

That you issue Cheques drawn on your SB a/c no. 9644 maintained at G.B. Road Branch to various parties without maintain sufficient balances in the said SB account which were returned unpaid when presented in clearing and thereby tried to derive undue pecuniary advantage by committing various other irregularities detailed below:-

That you misused additional housing loan facility availed at our Ballabhgarh Branch during March-April, 1996 and thereby derived pecuniary benefits at the cost of the Bank.”

4. Since the deceased workman had delayed the filing of his explanation the management decided to hold an enquiry into the aforesaid allegations levelled against him. The enquiry officer after concluding the enquiry submitted his report dated 9th July, 1998 holding the deceased workman guilty of all the acts of misconduct attributed to him in the charge sheet. The Disciplinary Authority of the deceased workman concurred with the enquiry officer's report and

inflicted the punishment of dismissal from service upon the deceased workman vide order dated 21st November, 1998. The deceased workman went in appeal against the order of the disciplinary authority but the same was rejected by the Appellate Authority by its order dated 10th March, 1999.

5. The deceased workman then raised an industrial dispute which was referred to the CGIT and there a statement of claim was filed on behalf of the deceased workman alleging that the enquiry held against him was not fair and proper and there were many violations of the principles of natural justice.

6. The management contested the claim of the deceased workman and pleaded in its written statement that the deceased workman was dismissed from service after holding a fair and proper enquiry against him in which he was given full opportunity to defend himself but he had failed to avail of the opportunity. The management had placed before the CGIT the enquiry record. No prayer was made by any of the parties to decide the validity of the enquiry as a preliminary issue.

7. After examining the enquiry record and other evidence adduced before it the CGIT observed as follows in its award:-

“.....Even if principles of natural justice have been followed in the inquiry procedure and the CSE has deliberately absented himself from the inquiry proceedings and the inquiry is quite proper, in that case too only charges regarding irregularity and negligence are proved against the workman applicant. It is settled law that the Tribunal can interfere in the quantum of punishment when the same is not in proportion to the misconduct committed by the CSE. In the present case the punishment is shockingly harsh. The CSE is found guilty of negligence and minor irregularities so there is no grave misconduct on the part of the applicant. The management should have considered his satisfactory long tenure of service and negligence committed by him he should have been awarded proportionate punishment. He was dismissed on 21.11.1998 by the management. The misconduct committed by the workman applicant does not warrant dismissal. It is the last penalty awarded in the extreme cases. If the penalty of dismissal is awarded for negligence or minor misconduct, in that case again when charge of serious misconduct is proved no other penalty than the dismissal would be awarded. Dismissal is the last penalty which should be awarded for very grave and serious charges found proved against the CSE.

In the present facts and circumstances of the case the punishment of dismissal is not appropriate and it is not in proportion to the misconduct committed by the workman applicant. Interference is required on the part of the Tribunal for reducing extremely harsh punishment to the cumulative stoppage of four increments from the date of suspension of the workman applicant. He deserves to be reinstated and his wage paid after deducting the amount which is accrued by way of stoppage of four increments with cumulative effect.

The punishment is no doubt shocking. The workman applicant has worked after his suspension period so he was found suitable for discharge of his duty when his suspension order was revoked and he was again entrusted duty as he has not committed any serious misconduct and grave misconduct and

grave misconduct which warrants the extreme punishment of dismissal.

The reference is replied thus:-

The action of the Assistant General Manager, Syndicate Bank, Zonal Office, 6, Bhagwan Dass Road, New Delhi in dismissing from services to Shri R. K. Rohilla, Clerk of Syndicate Bank, G.B.Road Branch, Empl. No. 315331, New Delhi w.e.f 21.11.1998 is neither justified nor proper nor legal. The workman applicant deserves to be reinstated from 20.08.1998 with stoppage of four increments with cumulative effect. The workman applicant is entitled to get his entire wages after deduction of the amount of stoppage of four increments with cumulative effect within one month from the publication of the award.”

8. Feeling aggrieved with the award of the CGIT the management approached this Court by filing the present writ petition. It was contended by Shri S.K.Taneja, learned senior counsel for the management that the CGIT had erroneously rejected the evidence of bank's customer who was an illiterate paan-wallah and from whose account the deceased workman had attempted to withdraw money in excess of what the illiterate paan-wallah wanted to withdraw with his assistance in good faith. It was further contended by the learned senior counsel that it had been erroneously held by the CGIT that the charges established during the enquiry were of mere negligence and minor irregularities on the part of the deceased workman not warranting the extreme penalty

of dismissal from service. Mr. Taneja further contended that the CGIT had also erred in not leaving the question of punishment to be decided by the management even if some lesser punishment was to be awarded and awarding of the punishment of stoppage of increments without even enquiring from the management as to whether any increments were due or not to the deceased workman at the relevant time had even otherwise resulted in the deceased workman getting rewarded and being let off without getting punished since in fact no increments were due to him at the relevant time. Learned senior counsel concluded his submissions by saying that this is a fit case where this Court should exercise *certiorari* jurisdiction and quash the impugned award of the CGIT and restore the punishment awarded to the deceased workman by the management.

9. On the other hand, Ms. Sumeet Kaur, learned counsel for the legal heirs of the deceased workman supported the award of the CGIT and submitted that this is not a fit case for any interference in the award of the CGIT by this Court as no perversity had been committed by it in coming to the conclusion that the management could succeed only in showing that the deceased workman was only negligent and

the impugned acts committed by him did not amount to serious acts of misconduct and that he had committed minor irregularities and directing his re-instatement.

10. I have given my due consideration to the rival submissions and also perused the Labour Court's record which includes the enquiry proceedings and also the enquiry officer's report.

11. There is no doubt that High Court should not interfere with the findings of the industrial adjudicators unless the same are perverse or are so unreasonable that no reasonable person would have come to those conclusions, as was the submission of the learned counsel for the legal heirs of the deceased workman. So, in order to find out whether the CGIT in the present case had acted unreasonably in not agreeing with the findings of the enquiry officer, as was the submission of the learned senior counsel for the management, I have examined the enquiry record. The charge of which the deceased workman was exonerated was of attempting to cheat an illiterate customer of the petitioner bank Yogender Kumar Gupta who was a petty paan-wala and was examined in the enquiry as MW-1. Enquiry record shows that MW-1

was regularly appearing in the enquiry for his statement but the deceased workman had been getting the proceedings adjourned on one pretext or the other. Since this material witness had come for his statement after closing his shop more than once and the deceased workman was getting adjournments to get the recording of his statement deferred, the enquiry officer finally decided to record his statement in the absence of the deceased workman. The CGIT had itself also observed in the impugned award that the deceased workman had been absenting from the enquiry deliberately. This is what MW-1 had stated before the enquiry officer:-

“On 6.4.96 I went to Syndicate Bank G.B.Road Branch as I wanted to withdraw Rs.1500/- from my SB a/c NO: 10561 with them. As I am illiterate I used to go to Mr. Mishra, the pigmy agent for assisting in doing my banking transactions. On that day Mr. Mishra was not there so I approached Masterji, i.e, Mr. Rajinder Kumar Rohilla, staff of the branch and requested him to help me to withdraw Rs.1500/- from my said SB a/c. Masterji Sri Rajinder Kumar Rohilla brought a withdrawal slip and made me put my thumb impression on the blank withdrawal slip. He did not give me token. However immediately he gave me Rs. 1500/- (Rupees one thousand five hundred) which were in the denomination of Rs.500/- i.e. 3 x 500. After withdrawing the money I went to the market for making purchases and when I returned to my shop then somebody told me that I have been called by the Manager of Syndicate Bank to the branch. I went to the branch and met Mr. Arora. Mr. Arora enquired from me as to how much amount I have withdrawn from my a/c. I informed Shri Arora that I have asked for a withdrawal of Rs.

1500/- and Masterji (Mr. R. K. Rohilla) has given me the said payment in denomination of Rs. 500/-.

Then on 8.4.96 Masterji (i.e. Mr. Rajendra Kumar Rohilla) approached me and informed that there is some mistake in my a/c and I should withdraw an amount of Rs. 6500/- from my said a/c and 1500/- would be given to him and rest of 5000/- I could re-deposit after a day. Accordingly on 8.4.96 I withdrew the said amt. of Rs. 6500/- and given Rs. 1500/- to Masterji (Mr. R.K.Rohilla). On 9.4.96 I have deposited an amt. of Rs. 5500/- in my said SB a/c which is inclusive of 500/- of savings lying with me. I have also given the above facts in writing in Hindi addressed to Sri M.K. Venkatesan, Vigilance Officer, Syndicate Bank, Delhi. During investigation the said statement has been told by me to Sri Anil Kumar Mishra, pigmy agent of the branch, recorded in Hindi, later on read it out to me and thereafter I put my thumb impression on that and the same was witnessed by Sri D.K.Arora, I identify the said document and standby the contents of the same. I also identify the withdrawal slip bearing no. 719580 on which my thumb impression was obtained by Shri Rohilla on 6.4.96 when it was blank. All the details were filled up by him subsequently. I reiterate that I told him to withdraw only Rs. 1500/- on 6.4.96 and received only Rs.1500/- in the denomination of Rs. 500/- rupee notes. I also identify/confirm that I have put my thumb impression to obtain the above withdrawal slip in the register. I also identify the withdrawal slip no. 719601 dt. 8.4.96 through which I had withdrawn Rs. 6500/- as insisted by Masterji (i.e. Sri R. K. Rohilla) for the reasons best known to him.”

12. The enquiry officer, however, in order to give opportunity to the deceased workman to cross-examine MW-1 had still adjourned the proceedings many times after recording ex parte statement of Yogender Kumar Gupta. The

enquiry record shows that every time the witness appeared in the enquiry adjournment was sought on behalf of the deceased workman for cross-examining him on one pretext or the other. Finally, the witness felt so frustrated by coming to attend the enquiry again and again that he refused to come any more for his cross-examination.

13. When the defence statement of the deceased workman was recorded by the enquiry officer this is what he had stated in respect of the charge of attempting to cheat the bank's customer Yogender Kumar Gupta:-

“With regard to the charge of attempt to defraud it is totally a lie and due to the enmity in the branch some people have worked against me and made this to happen and as such there was no fraud taken place. Even there was no complaint from the customer and there is no loss to the bank and may be some irregularities here and there due to my ignorance. The withdrawal slip was issued by me and the token was issued to him and since he was in a hurry he asked me to pay Rs. 1500/- (Rupees one thousand five hundred) and rest of money he will collect it later. That being a Saturday the business hours were closed at 12.00 clock and since the customer did not turn up I was forced to cancel the same and again it is a fact that the customer Mr. Gupta did not come to the branch even after around 2.00 clock when I left the branch. He might have come afterwards and rest of the allegations were made against me. Or otherwise he would not have filled up a withdrawal for Rs.6500/- on 8.4.96 which was filled by some third person and his thumb impression was identified by some other person due to his necessity though Mr. A.K. Mishra was present in the

branch, the very fact shows on 6th also he demanded that he needs 6500/- from his a/c.....”

14. Then the enquiry officer had generally questioned him and the question put to him in respect of the allegation of attempting to cheat Yogender Kumar and his answer are being re-produced below:-

“Q. 05) : Have you paid Rs. 1500/- to Sh. Yogendra Kumar Gupta the holder of SB-10561, after getting the withdrawal slip passed or before that?

Ans : I have paid it before passing of the withdrawal slip from my pocket as customer was known to me and balance of Rs. 5000/- he will collect it later.”

15. From the foregoing narration of the statement of Yogender Kumar Gupta, which had remained unchallenged, and the defence version of the deceased workman it is clear that Yogender Kumar Gupta being a customer of the bank knew the deceased workman and he had obtained the thumb impression of Yogender Kumar Gupta on a withdrawal slip. Since Yogender Kumar Gupta was an illiterate person the deceased workman did nothing wrong in offering his help to him in getting the money withdrawn. However, the deceased workman had obtained his thumb impression on a blank slip and Yogender Kumar Gupta must have done that in good

faith. Since the deceased workman had not challenged the statement of Yogender Kumar Gupta by not cross-examining him that his thumb impression was obtained on a blank withdrawal slip the same had to be accepted as correct and in fact the same stood corroborated also by the statement of the investigator who was also examined in the enquiry as MW-4 and who had claimed that Yogender Kumar had told him also that the deceased workman had obtained his thumb impression on a blank withdrawal slip and had paid him Rs. 1500/- from his pocket. Thus, the enquiry officer did nothing wrong in accepting the statement of Yogender Kumar Gupta and rejecting the cock and bull story put forth by the deceased workman that since the customer was in a hurry he had paid him Rs. 1500/- immediately and the customer had told him that he shall collect the balance money later on. This defence taken by the deceased was highly improbable. The deceased workman had no business to pay money from his own pocket to the bank's customer, as was admitted by himself before the enquiry officer, even if he was known to the customer, and telling him to go after obtaining his thumb impression on a blank withdrawal slip. That showed his bad intention right from the beginning. However, before he could withdraw any money from the account of the customer the

official at the cash counter became suspicious and he insisted the presence of the customer himself and so no money could be withdrawn by the deceased workman from the account of the customer. The deceased workman did not say anything as to why he could not withdraw the money from the account of Yogender Kumar Gupta and how he got back Rs. 1500/- if not in the manner stated by Yogender Kumar Gupta in the enquiry.

16. The deceased workman was, however, exonerated by the CGIT of the aforesaid serious charge. The learned Presiding Officer of the CGIT had refused to accept the evidence of Yogender Kumar Gupta on totally flimsy grounds. First reason given was that his statement was not recorded in the presence of the deceased workman and he was also not produced in the enquiry to be cross-examined by the deceased workman. Other reason given was that the deceased workman was not given the copy of the preliminary investigation papers demanded by him. In my view, the rejection of the evidence of Yogender Kumar Gupta is totally unsustainable and the reasoning of the CGIT is perverse since it had been observed by the CGIT itself in the impugned award, and which observations have already been highlighted

by me in para no. 7, that there was no violation of the principles of natural justice in the enquiry and also that the deceased workman himself had been deliberately avoiding to participate in the enquiry. So, no fault could be found in the recording of the statement of Yogender Kumar Gupta by the enquiry officer in the absence of the deceased workman after noticing that the charge-sheeted employee(CSE) had been avoiding to appear in the enquiry and accepting the objection of the management's representative that the witness was being put to great inconvenience by calling him again and again. Even when this witness was appearing for cross-examination the enquiry officer had noticed that the deceased workman was deliberately avoiding to appear in the enquiry and this observation was endorsed by the CGIT also. So, evidence of Yogender Kumar Gupta could not be excluded by the CGIT from consideration while examining the question whether the management's case stood proved or not in respect of this charge.

17. The CGIT also ignored the fact that the deceased workman had in his defence statement also admitted the management's case that he had obtained the thumb impression of Yogender Kumar Gupta on a withdrawal slip

and without giving it back to him to be presented at the cash counter had himself paid Rs. 1500/- to the customer from his own pocket. He should have told the customer to himself present the withdrawl slip at the cash counter instead of telling to go with Rs. 1500/- only and come back to collect the balance amount. Even if the customer was in great hurry to go back the deceased workman had no business to retain the withdrawl slip with him for withdrawing the cash from the account of a customer in his absence. In these circumstances, non-supply of the documents/statements pertaining to the preliminary investigation, which admittedly was carried out by the management before charge-sheeting the deceased workman, to the deceased workman could not be made a ground by the CGIT for rejecting the statement of Yogender Kumar Gupta. In fact, the management had examined the investigator himself who had conducted the preliminary enquiry into all the allegations of misconduct levelled against the deceased workman and he had stated before the enquiry officer as to how in his opinion, which was based on what he was told by the witnesses examined by him during the investigation, including Yogender Kumar Gupta, and the relevant documents perused by him the deceased workman had committed various acts of misconduct

enumerated in the charge-sheet. He was cross-examined at length by the representative of the workman even in the absence of enquiry documents having been supplied to him and so non-supply of those documents also could not be made a ground for rejecting the management's case in respect of this charge of which the deceased workman was exonerated by the CGIT. Even otherwise, the deceased workman had not even claimed before the CGIT that he had in any way been prejudiced due to non-supply of the preliminary investigation report and before this Court also the learned counsel for the legal heirs was unable to show any prejudice having been caused to the deceased workman. In fact, lengthy cross-examination of the investigator (MW-4) by the deceased workman even without copies of the papers relating to the investigation conducted by him negated even a possibility of any kind of prejudice to the deceased workman on that count.

18. As regards other charges the CGIT had accepted the decision of the enquiry officer though it was observed that those were minor acts of misconduct/irregularities and that factor appears to have weighed with the learned presiding officer while considering the question of punishment and

coming to the conclusion that the punishment of dismissal from service inflicted upon the deceased workman was quite harsh and disproportionate to the irregularities committed by him. In my view, the charge of attempting to cheat the bank's customer, which has also been now found to have been established, by itself is grave enough to attract the punishment of dismissal and considering the fact that the deceased workman had been found guilty of other acts of misconduct also by the CGIT there is no scope for any interference with the punishment awarded by the management.

19. This writ petition is accordingly allowed and the award of CGIT is set aside and the decision of the management to dismiss the deceased workman stands restored.

P.K. BHASIN, J

AUGUST 13, 2012