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

Date of decision: 17th December, 2012

+ **LPA 622/2012 & CM No.15799/2012 (for stay)**

R.K. ROHILLA (DECEASED) THROUGH LRS Appellants
Through: Mr. Ajit Nair, Advocate.

Versus

SYNDICATE BANK Respondent
Through: Mr. S.K. Taneja, Sr. Advocate with
Mr. Puneet Taneja and Mr. Anand
Kumar Singh, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra court appeal impugns the judgment dated 13th August, 2012 of the learned Single Judge allowing W.P.(C) No.1888/2006 preferred by the respondent Bank. The said writ petition was preferred impugning the Award dated 3rd October, 2005 of the Industrial Adjudicator on the following reference:

“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 it”

and since the question of fairness of the inquiry was not pressed, on the basis of the evidence led, holding that since the respondent Bank had not

suffered monetary loss and there was no *mala fide* intention on behalf of the appellant, his actions for which he was dismissed were at best of negligence and irregularity and the punishment of dismissal was unwarranted and substituting the punishment of dismissal with the punishment of stoppage of four increments with cumulative effect and directing the reinstatement of the appellant with back wages.

2. During the pendency of the writ petition from which this appeal arises, the workman Shri R.K. Rohilla died and his legal heirs were substituted.

3. The learned Single Judge has observed/found/held:

- (i) that the charge against the deceased workman was of attempting to cheat an illiterate customer of the Bank;
- (ii) that the said customer was examined in the departmental inquiry and the deceased workman inspite of several opportunities had avoided to cross-examine him;
- (iii) that the Industrial Adjudicator had refused to accept the evidence of the said customer on totally flimsy ground, not appreciating that it was the deceased workman who inspite of opportunities had failed to cross-examine him;
- (iv) that such rejection of evidence was unsustainable and perverse inasmuch as the Industrial Adjudicator had also in the same Award observed that there was no violation of principles of natural justice;

(v) the Industrial Adjudicator had also ignored that the deceased workman had also admitted to having obtained the thumb impression of the said customer on a withdrawal slip and having paid him Rs.1500/- from his own pocket;

(vi) that qua the other charges also, the Industrial Adjudicator was wrongly influenced by the fact that no monetary loss had been caused to the Bank;

(vii) that the charge of attempting to cheat the Bank's customers is a serious one and the Industrial Adjudicator was not justified in substituting the punishment awarded of dismissal from service with that of stoppage of four increments with cumulative effect.

4. Notice of the appeal limited to quantum of punishment was issued. We have heard the counsels. ***For better appreciation of the matter, we have also requisitioned the writ records and have perused the same.***

5. Though elaborate arguments have been urged qua all the charges but we are of the view that our findings on one charge alone i.e. of cheating of customer of the respondent Bank would be enough for dismissal of this appeal. We otherwise agree with the findings of the learned Single Judge.

6. The undisputed position is that the aforesaid illiterate customer of the Bank who otherwise used to transact through a pigmy agent, who on the concerned day was on leave, sought the assistance of the deceased workman working as a clerk in the Bank, for withdrawal of Rs.1500/- from his account; that the deceased workman made him sign a blank withdrawal form and gave him Rs.1500/- from his own pocket; that the deceased workman

thereafter on the basis of the said withdrawal form sought to withdraw money from the account of the said customer but which was not permitted by the cashier; that the deceased workman thereafter again called the said customer and made him withdraw a sum of Rs.6,500/- out of which the deceased workman took Rs.1500/- and made the said customer deposit back Rs.5,000/- together with his further saving of Rs.500 in the bank account.

7. While it is the case of the respondent Bank that the deceased workman on the basis of the blank withdrawal form got signed from the customer had sought to withdraw Rs.6,500/- from his account and which was not permitted by the cashier and for which reason he made the said customer come personally and withdraw Rs.6,500/-, it is the case of the deceased workman that he had sought to withdraw on the basis of the blank withdrawal form Rs.1500/- only. It is further the case of the respondent Bank that the withdrawal form for Rs.6,500/- which was not cleared by the cashier was taken back and destroyed by the deceased workman.

8. We have gone through the evidence in this regard and find the version of the Bank and accepted by the learned Single Judge to be correct and the appreciation of the evidence by the Industrial Adjudicator to be not borne out from the record.

9. Once it is found as aforesaid, the deceased workman clearly acted dishonestly. Significantly, the Industrial Adjudicator also did not absolve the deceased workman and punished him with stoppage of four increments with cumulative effect. The question which arises is, whether for the conduct as aforesaid, was the Industrial Adjudicator justified in interfering with the punishment? The answer obviously has to be 'No'. No employer,

particularly a Bank, can be compelled to continue with a dishonest employee who by the very nature of his employment has access over moneys of others lying entrusted with the Bank.

10. Counsel for the appellant has invited our attention to ***Mavji C. Lakum Vs. Central Bank of India*** (2008) 12 SCC 726 in support of the proposition that even where the domestic inquiry is found to be just and fair, the Industrial Adjudicator is empowered to consider whether the punishment was proportionate. Reliance is also placed on ***Krushnakant B Parmar Vs. Union of India*** 2012 Law Suit (SC) 110, which was a case of unauthorized absence from duty and has no application to the present case.

11. Per contra, the senior counsel for the respondent Bank has relied on:

(a) ***Uttar Pradesh State Road Transport Corporation Vs. Nanhe Lal Kushwaha*** (2009) 8 SCC 772 reiterating that if the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently and misconduct in such cases has to be dealt with iron hands;

(b) ***Employers, Management, Colliery, M/s. Bharat Coking Coal Ltd. Vs. Bihar Colliery Kamgar Union*** 2005 Lab.I.C. 1341 (SC) where the order of the Tribunal substituting the punishment of dismissal with that of reinstatement without back wages and stoppage of one increment for the misconduct of assault was held to be unjustified;

- (c) ***Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma*** AIR 2005 SC 1924, where also interference with the punishment for misconduct of hitting superior officer and subsequent unauthorized absence was held to be not justified;
- (d) ***State Bank of India Vs. Tarun Kumar Banerjee*** (2000) 8 SCC 12, where non-examination of a customer of a Bank in a domestic inquiry was held to be not fatal;
- (e) ***South Indian Bank Ltd. Vs. V.G. Krishnakumar*** 2006 LLR 415 (Kerala), where interference with the punishment of dismissal for misconduct of abusing Branch Manager and customers was held to be not justified;
- (f) ***Elder Pharmaceuticals Ltd. Vs. Krishna Vithal Bendre*** 2006 LLR 1226 (Bombay), where punishment of dismissal for the misconduct of assault was held to be not disproportionate;
- (g) ***G. Vijayan Vs. Presiding Officer, Labour Court, Salem (Madras)***, 2008 LLR 48 (Madras) where interference with the punishment of dismissal for the misconduct of habitual absence was held to be a case of misplaced sympathy;
- (h) ***The Branch manager, Central Bank of India, Amreli Vs. Hasanbhai Nazbuddin Vankar*** 2006 LLR 425 (Gujarat), holding that merely characterizing the misconduct as minor lapse of negligence not warranting dismissal is not permissible.

12. We may add :

- i. the Supreme Court in ***Damoh Panna Sagar Rural Regional Bank Vs. Munna Lal Jain*** (2005) 10 SCC 84 has held that a Bank Officer is required to exercise higher standard of honesty and integrity; he deals with money of depositors and customers; every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank Officer. The very discipline of a Bank was held to be dependent on each of its officers acting and operating within their allotted spheres;
- ii. to the same effect are ***UCO Bank Vs. Hardev Singh*** 2006 (11) SCALE 88 and ***Nahar Singh Vs. Food Corporation of India*** (2008) 5 SCC 209;
- iii. reference may also be made to ***State Bank of India Vs. Ramesh Dinkar Punde*** (2006) 7 SCC 212 observing that every officer/employee of a Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and that good conduct and discipline are inseparable from the functioning of every officer/employee of the bank and if this is not done the confidence of the public/depositors would be impaired;
- iv. the Supreme Court in ***Bharat Heavy Electricals Ltd. Vs. M. Chandrasekhar Reddy*** AIR 2005 SC 2769 held that when an

employer losses confidence in his employee particularly in respect of a person who is discharging a function of trust/confidence, there cannot be any justification for directing his reinstatement;

- v. the Supreme Court in ***Apparel Export Promotion Council Vs. A.K. Chopra*** (1999) 1 SCC 759 reiterated that the jurisdiction to interfere with the disciplinary matters of punishment cannot be equated with appellate jurisdiction and that it is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the Competent Authority and if there has been an inquiry consistent with the Rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter within the jurisdiction of the Competent Authority and it is only when the punishment imposed shocks the conscience, should the power to mould the punishment be exercised;
- vi. the same principles were reiterated recently in ***State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya*** (2011) 4 SCC 584;
- vii. ***Disciplinary Authority-cum-Regional Manger Vs. Nikunja Bihari Patnaik*** (1996) 9 SCC 69 reiterated in ***Chairman & Managing Director, United Commercial Bank Vs. P.C. Kakkar*** (2003) 4 SCC 364 laying down that once an officer is held guilty of acting without authority, it is no defence to say that there was no loss caused therefrom. It was held that acting beyond one's authority is by itself a breach of discipline and a misconduct of a serious and not casual nature.

- viii. the Supreme Court in ***Ganesh Santa Ram Sirur Vs. State Bank of India*** (2005) 1 SCC 13 held that acting beyond one's authority is by itself a breach of discipline and trust and a misconduct; the earlier dicta in ***Regional Manager, UPSTRC Vs. Hoti Lal*** MANU/SC/0102/2003 laying down that if a charged employee holds a position of trust and deals with public money or acts in a fiduciary capacity, trust /honesty and integrity and trustworthiness of highest degree are must and unexceptionable and it would not be proper to deal with the matter leniently, was cited with approval.
- ix. reference in this regard may also be made to ***State of Meghalaya v. Mecken Singh N. Marak*** (2008) 7 SCC 580 laying down that it would not be proper to deal with the matter leniently where the charged employee holds the position of trust and misconduct in such cases has to be dealt with iron hands.
- x. the Supreme Court in ***Mahindra and Mahindra Ltd. v. N.B. Naravade*** AIR 2005 SC 1993 held that the discretion vested in the Industrial Adjudicator under Section 11A of the Industrial Disputes Act to interfere with the quantum of punishment awarded by the management is to be exercised only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman and in the absence of any such factor, the Industrial Adjudicator cannot, by way of sympathy alone exercise the power under Section 11A and

reduce the punishment.

13. Applying the principles culled out hereinabove also, to the facts of the present case, we do not find any merit in the appeal and dismiss the same.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

DECEMBER 17, 2012

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