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

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W.P.(C) No.4984 /2013

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Judgment delivered on: 24th December, 2014

SYNDICATE BANK

..... Petitioner

Represented by: Mr.S.K. Taneja, Senior
Advocate with Mr.Puneet
Taneja, Advocate.

Versus

K. PERIASWAMI

..... Respondent

Represented by: Mr.L.K.Singh and Ms. Sonal
Sinha, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present petition is directed against the impugned award dated 12.12.2012, passed by the Central Government Industrial Tribunal No.1, Karkardooma Courts Complex, Delhi, whereby the learned Tribunal reduced the punishment of the respondent from removal of

service to the discharge simpliciter entitling him to claim retiral benefits.

2. Mr.S.K.Taneja, learned senior counsel appearing on behalf of the petitioner submitted that the petitioner Bank issued the chargesheet against the respondent/workman on the allegations as under:-

“That you were functioning as Clerk at our Foreign Exchange Branch, Connaught Place, New Delhi, during the period between 19.7.91 and 28.7.97.

That you were placed under suspension vide proceedings No.ZOD/IRC/SUS.W.03/97 dated 1/3.10.97 of Asst. General Manager, Zonal Office, New Delhi, pending initiation of disciplinary action for certain allegations against you in the matter of opening of various Saving Bank/Current Accounts in your name/in the name of your wife/in the name of other persons through your introduction and carried out various transactions of unusual nature through these accounts.”

3. Mr. Taneja submitted that after giving opportunity to the respondent/workman, an inquiry was held and the respondent was removed from service. Being aggrieved, the respondent/workman raised an industrial dispute and vide order dated 23.09.2011, the learned Tribunal held the inquiry valid and proper by recording as under:-

“11. Ex.MW1/24 is based on evidence, produced before the Enquiry Officer. Findings recorded are in consonance with the plethora of facts proved. It cannot be said that the conclusion drawn are against the material available on the record. There are correction between the evidence and findings recorded by the Enquiry Officer. Considering the facts in entirety, it is concluded that the report is not perverse. In view of the reason detailed above, I find no reason to conclude the enquiry was violative of principles of natural justice.

12. The claimant projects that the bank had not allowed to him to engage an advocate to defend himself before the Enquiry Officer. In domestic enquiry, no such right is available to a charge-sheeted employee. He can seek assistance of his colleague or an office bearer of his union. Claimant does not dispute that such an opportunity was given to him, but he had not availed it. There was no obligation on the bank to allow him to be represented by an advocate. Therefore the enquiry cannot be said to be unfair or unjustified on that account.

13. He assails the enquiry on the count that a case was registered against him by the CBI. After investigation, CBI did not find any material to prosecute him. A closer report was filed, which was accepted by the Special Judge. He passed an order Ex.WW1/38 in that regard. Contention advanced by the claimant does not have any substance. CBI was concerned with commission of a cognizable offence. When no criminal offence could be established, a closer report was filed. However the domestic enquiry was based on distinct and different facts. The bank proceeded against the claimant, since he engaged himself in trade/business outside the scope of duties. Closer report by the CBI in criminal case would not provide any accolade to the claimant.

14. In view of the above reasons I find that the enquiry was in consonance with principles of natural justice. Virus of the enquiry is up held. The preliminary issue is answered in favour of the bank and against the claimant.”

4. Moreover, the learned Tribunal in the impugned award recorded as under:-

“28. As projected above, order of the Special Judge accepting the closure report and forming an opinion that there was no material to warrant trial of the claimant would not espouse his cause. As brought over the record, claimant opened saving bank accounts No.3785 on 31/7/91, account number 4116 on 29/6/92 and account No.4410 on 4.3.94. Saving bank account No.4503 was opened in the name of his wife on 20/07/94, with his introduction. Thus it has come over the record that various accounts were opened by the claimant in his name as well as in the name of his wife, with a view to route transactions involving huge turnover, which fact is sufficient to conclude that he was involved in business beyond the scope of his employment. When turnover worth crores took place in those accounts, authorities concerned with law and order became suspicious and arrested the claimant. His arrest got wide publicity in the media and image of the bank was tarnished. Claimant could not refute that his dealings in the aforesaid accounts put his employer’s name to disregard.

29. An employee is expected to promote interest of his employer in connection with the job for which he was engaged. Contract of an employment engrafts a stipulation that the employee should serve his mater with

good faith and fidelity. Thus it was expected of the claimant to inform his employer in respect of the bank drafts, which he routed through the aforesaid four accounts. He opted not to inform his employer in that regard. Once there were heavy turnovers in the aforesaid accounts, wherein crores of rupees were involved, this proposition is conclusive of the fact that of the claimant indulged in business beyond the scope of his employment. For business activities he never took his employer in confidence, nor obtained permission in this regard. Further more activities of the claimant had tarnished the image of his employer. His acts and conduct proved detrimental to fair image of the bank. Consequently it is clear that through his aforesaid acts the claimant acted prejudicial to the interest of his employer and committed gross misconduct. Financial loss is not only criteria to be taken into account, while awarding punishment for a misconduct. The misconduct committed by the claimants is serious one and penalty for such misconduct should be harsher one. Such an employee cannot be retained in service.”

5. Despite, the learned Tribunal has shown sympathy and leniency towards the workman by recording reasons in para 30 of the award as under:-

“30. Question would arise as to whether punishment of dismissal is the only appropriate penalty for the misconduct. As detailed above, Special Judge, CBI, recorded as opinion that there was no material warranting trial of the claimant for an offence of assets disproportionate to known sources of his income. However, it is clear that commercial angel of such acts

cannot be ruled out. The claimant was moved with an idea to gain out of those acts, which were done by him beyond the scope of his employment. Further more he put reputation of his employer to stake and tarnished fair image of the bank. These facts, coupled with his more than 20 years unblemished service, making me to comment that punishment of dismissal from service can neither be called proportionate nor appropriate to his misconduct. This punishment is excessive to the acts of his misconduct. Considering all facts and circumstances projected by the claimant, I am of the view that indulgence by the Tribunal is called for. Therefore the Tribunal holds that punishment lesser than dismissal is to be awarded to the claimant, without making the bank to retain him in service. Hence punishment of discharge simpliciter from service would meet the ends of justice. This punishment would relieve the bank from retaining the claimant in service and the claimant would receive his retiral benefits. These issues are, therefore, answered accordingly.”

6. Mr. Taneja, learned senior counsel submitted that the respondent/workman was doing business without the knowledge and permission of the petitioner Bank and the transactions have taken place in crores, which tarnished the image of the petitioner. Therefore, such a person, especially in the Banking institution, does not deserve any leniency and sympathy.

7. To strengthen his arguments, learned senior counsel has relied upon a case of ***LIC of India Vs. R. Dhandapani (2006) 13 SCC 613***, wherein the Apex Court held as under:-

7. It is not necessary to go into in detail regarding the power exercisable under Section 11A of the Act. The power under said Section 11A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

8. Learned senior counsel has also relied upon the case bearing No.LPA 622/2012, titled as ***'R.K. Rohilla (Deceased) Through LRs Vs. Syndicate Bank'***, decided on 17.12.2012, whereby the Double Bench of this Court held as under:-

"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.

9. Mr. Taneja submitted that the learned Tribunal has erred by reducing the punishment because it is the prerogative of the Management to give appropriate punishment in the facts and circumstances of the case, when the learned Tribunal has already held that the misconduct of the respondent/workman is serious one and also held him guilty of the charges leveled against him in the chargesheet. Therefore, there was no occasion for the learned Tribunal to hold that the punishment given to the respondent/workman is disproportionate to the gravity of misconduct committed by him.

10. Mr. Taneja further submitted that the learned Tribunal also failed to consider that as per the settled law, the courts should not interfere with the administrative decision of punishment unless it was illogical or

shockingly disproportionate to the conscience of the court in the sense that it was defiance of logic or moral logic.

11. To strengthen his arguments, learned senior counsel has relied upon the case of ***Syndicate Bank & Ors. Vs. Venkatesh Gururao Kurati (2006) 3 SCC 150***, wherein the Apex Court held that:-

“.....this is no ground for converting the order of removal from service into compulsorily retirement. On the question of punishment being disproportionate to the charges framed and proved, we are of the view that the charges framed and proved are grievous in nature, which would normally attract removal from service, if such charges were proved. We are also of the view that sentiments and compassion have no role to play in such a situation when the gravity of misconduct such as this has been found well proved against the respondent.”

12. On the other hand, Mr. L.K.Singh, learned counsel appearing on behalf of the respondent/workman submitted that the respondent was arrested by CBI and his arrest came in Media. Whatever the image of the petitioner Bank was tarnished, that was not because of the respondent, however, only because the Media flared the issue. Since, CBI had no evidence against the respondent/workman, therefore, filed the closure report, which was accepted by the concerned Court and the

said report had attained finality, being not challenged by any authority. Moreover, a case for possessing assets disproportionate to known sources of his income was registered against the respondent/workman, however, in that case also he has been acquitted vide order dated 13.08.2013.

13. Learned counsel for the respondent fairly conceded that the respondent/workman accepted the money by way of cheques or pay orders from different persons from his native place or from part of South India only for the purpose that when they would come to Delhi, they can withdraw the amount and use the same for their expenses. Further submitted, no doubt aforesaid mistake was committed by the respondent/workman, however, that was not so grave in nature, that he can be removed from service. Even, if it is considered as 'misconduct', the lesser punishment could have been awarded by the petitioner Bank, however, the respondent was removed from service, which has been rightly reduced by the learned Tribunal. Moreover, the respondent/workman worked for more than 20 years with Bank without any blemished record. Moreover, in a case, he was arrested by CBI, no

material or evidence was found, hence, CBI filed the closure report. And, in case of disproportionate assets, the respondent has been acquitted by the competent court. Thus, no misconduct has been proved against him.

14. Learned counsel submitted that presently respondent is around 59 years old and is not able to seek any employment and earn his livelihood, therefore, this Court may not interfere with the award dated 12.12.2012 passed by the learned Tribunal.

15. I have heard the learned counsel for the parties.

16. The petitioner is aggrieved of the award dated 12.12.2012, whereby the learned Tribunal reduced the punishment of the respondent from removal of service to the discharge simpliciter entitling him to claim retiral benefits.

17. It is pertinent to mention here that vide order dated 23.09.2011, the learned Tribunal held the enquiry valid and proper.

18. It is not in dispute that the power exercisable under section 11-A of the Act, the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

19. In the case of ***Uttar Pradesh State Road Transport Corporation Vs. Nanhe Lal Kushwaha (2009) 8 SCC 772*** wherein the Apex Court has held 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.

20. In the case of ***Employers, Management, Colliery, M/s. Bharat Coking Coal Ltd. Vs. Bihar Colliery Kamgar Union 2005 Lab.I.C. 1341 (SC)*** wherein the Apex Court has held that 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.

21. It is pertinent to mention here that the learned Tribunal in the impugned award recorded that the order of the Special Judge accepting the closure report and forming an opinion that there was no material to warrant trial of the claimant would not espouse his cause. The respondent workman opened saving bank account No.3785 on 31/7/91, account number 4116 on 29/6/92 and account No.4410 on 4.3.94. Saving bank account No.4503 was opened in the name of his wife on 20/07/94, with his introduction. Thus, various accounts were opened by the respondent in his name as well as in the name of his wife, with a view to route transactions involving huge turnover, which fact is sufficient to conclude that he was involved in business beyond the scope of his employment. When turnover worth crores took place in those accounts, authorities concerned with law and order became suspicious and arrested the respondent. His arrest got wide publicity in the media and image of the bank was tarnished.

22. It is further recorded that an employee is expected to promote interest of his employer in connection with the job for which he was engaged. Contract of an employment engrafts a stipulation that the employee should serve his master with good faith and fidelity. Thus it was expected of the respondent to inform his employer in respect of the bank drafts, which he routed through the aforesaid four accounts. He opted not to inform his employer in that regard. Once there were heavy turnovers in the aforesaid accounts, wherein crores of rupees were involved, this proposition is conclusive of the fact that of the respondent indulged in business beyond the scope of his employment. His acts and conduct proved detrimental to fair image of the bank. Consequently it is clear that through his aforesaid acts the respondent acted prejudicial to the interest of his employer and committed gross misconduct. The misconduct committed by the respondent is a serious one and penalty for such misconduct should be harsher one.

23. Despite, the learned Tribunal has shown sympathy and leniency towards the workman by recording that the Special Judge, CBI, recorded its opinion that there was no material warranting trial of the

respondent for an offence of assets disproportionate to known sources of his income. However, it is clear that commercial angle of such acts cannot be ruled out. These facts, coupled with his more than 20 years unblemished service making the Tribunal to comment that punishment of dismissal from service can neither be called proportionate nor appropriate to his misconduct.

24. The fact remains that the respondent workman was doing business without the knowledge and permission of the petitioner bank and the transactions have taken place in crores. Such a person, especially in the banking institution, does not deserve any leniency and sympathy.

25. In the case of **R.K. Rohilla (supra)** the Double Bench of this Court held that 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.

26. In the case of **Venkatesh Gururao Kurati (supra)** the Apex Court held that on the question of punishment being disproportionate to the charges framed and proved, which are grievous in nature, normally attract removal from service. Sentiments and compassion have no role to play in such a situation when the gravity of misconduct such as this has been found well proved against the respondent.

27. Keeping in view the facts recorded above and the settled law, there was no occasion before the Tribunal to reduce the punishment imposed upon the respondent from removal of service to the discharge simpliciter entitling him to claim retiral benefits.

28. Accordingly, the award dated 12.12.2012 passed by the Industrial Tribunal is hereby set aside.

29. Consequently, the writ petition is allowed with no order as to costs.

**SURESH KAIT
(JUDGE)**

DECEMBER 24, 2014
Sb/RS