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

% *Judgment delivered on: 18th December, 2014*

+ **W.P. (C) No. 7461/2012**

RAJESH DABAS

..... Petitioner

Represented by: Mr. Pradeep Kumar Arya
and Mr. Narinder Chaudhary, Advocates.

Versus

UNION OF INDIA & ORS.

..... Respondents

Represented by: Mr. Rajat Arora, Advocate
for Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition, the petitioner has challenged the award dated 31.07.2012, whereby Id. Industrial Tribunal has dismissed his claim petition.

2. The facts of the case are that Chairman, K.G. Denim Limited, Coimbatore came to meet Chairman and Managing Director of Punjab National Bank/R-2 on 13.11.2007. While going inside the cabin, said

visitor kept his mobile phone outside. When he came out of the cabin, he found his mobile phone missing from the place where it was kept. Accordingly, he lodged a report of theft with the Bank Authority. Consequently, search of the said phone was conducted.

3. The petitioner, who was working as peon in the General Service Administration Division of the said Bank at Bhikaji Cama Place, New Delhi was interrogated. He got the mobile phone recovered from the top of an Almirah kept on 5th floor of the said building during night hours on 14.11.2007. Accordingly, the petitioner was placed under suspension on 15.11.2007. The chargesheet was served upon him on 26.11.2007 and a domestic enquiry was conducted. The petitioner participated in the said enquiry and he was found guilty of the charges levelled against him. Accordingly, the petitioner was awarded punishment vide order dated 05.06.2008 of compulsory retirement with superannuation benefits.

4. Mr. Pradeep Kumar Arya, Id. Counsel appearing on behalf of the petitioner submits that in the charge sheet there is no allegation that

anyone had seen him while taking the mobile phone from the place where it was kept by the visitor.

5. As per the report dated 13.11.2007 submitted by the General Manager (Security), the video recording established that mobile set was picked up by one Arjun at 13:36:45 seconds and put it in his pocket at 13:36:50 seconds. During this period no other person was seen in the area. At about 13:43:22 seconds the said Arjun had moved towards conference room door and seen for a fraction of seconds with the petitioner, who was attached to the Conference Mess at 7th Floor. Later on both of them were seen near lift at 7th Floor at 13:44:45 hours, where the said Sh. Arjun handed over the mobile phone to the petitioner.

6. After detailed investigation and physical verification of the persons, it is evident from the video recording that Sh. Arjun only stolen the mobile phone and handed over the same to someone else known to him.

7. Despite, ld. Tribunal rejected the claim of the petitioner and failed to appreciate his reply to the show cause notice that the enquiry officer ignored that both Sh. Arjun Singh and the petitioner were taken to police station on 14.11.2007 and were allowed to talk to each other and thereafter the petitioner came back immediately and informed that mobile was in Bank's building. Thus, the petitioner had helped the respondent / Management to get the mobile phone recovered. Moreover, the CD which was an important and only document was not provided to the petitioner.

8. Mr. Arya further submitted that the petitioner had served 14 years in service. He was not involved in any of the offence in the past. Thus, the punishment was disproportionate to the alleged misdemeanour committed by the petitioner.

9. On the other hand, Mr. Rajat Arora, ld. Counsel appearing on behalf of the respondent no. 2 submitted that vide the present petition, petitioner has prayed to set aside the award dated 31.07.2012, however, has not challenged the order dated 14.07.2011, whereby the ld. Tribunal held that enquiry was fair and proper, accordingly, decided in

favour of respondent no. 2. Thus, the present petition deserves to be dismissed on this count alone.

10. Moreover, the petitioner assailed the enquiry proceedings and report on the following counts as recorded by the Id. Tribunal vide its order dated 14.07.2011 as under:

- “ (i) That the Enquiry Officer conducted the enquiry in utter violation of principles of natural justice. No procedure of enquiry was explained to him.*
- (ii) The Enquiry Officer took his signatures on day to day proceedings but took signatures of the management representative on some proceedings.*
- (iii) Despite several requests the Enquiry Officer did not direct the management to supply copy of CD, which was the primary evidence in the enquiry.*
- (iv) His entire version was not recorded by the Enquiry Officer. He was not even afforded opportunity to lead evidence.*
- (v) In 18.02.2008 proceedings, the Enquiry Officer directed the management representative to supply documents to his representative. However, management neither, supplied the documents nor the Enquiry Officer took any action against the management for not complying with his orders.*
- (vi) Neither he was provided with a copy of the CD which could be viewed on personal computer nor full day's CD for 13.11.2007 was made available.*

- (vii) *The Enquiry Officer was hand in glove with the Presenting Officer. Most of the time Enquiry Officer favoured the management.*
- (viii) *The report of the Enquiry Officer was perverse. Enquiry Officer relied upon the deposition of MW2 Ashwani Kumar, who was discharged from the enquiry as irrelevant witness.*
- (ix) *Enquiry Officer relied upon statement of management witnesses who themselves stated that they did not know about contents of documents (MEX-8) shown to them.”*

11. However, the 1d. Tribunal considered the enquiry proceedings and evidence on record thereafter, recorded in the award that as deposed by Sh. Ray, MW1, copy of day-to-day proceedings of the enquiry was supplied to the petitioner. The said MW1 deposed that signature of the petitioner was obtained on the proceedings dated 31.12.2007, which is Ex.MW1/W1. The petitioner admitted that copy of day-to-day proceedings were supplied to him.

12. Admittedly, the copy of the CD was not made available to the petitioner. However, the Enquiry Officer explained that more than 1 hour clippings of CD was shown to the petitioner. The contents of the CD were viewed on 08.02.2008 and 18.02.2008 on full screen at the request of representative of the petitioner. This fact has been admitted

by the petitioner. Therefore, Ld. Tribunal recorded that petitioner as well as his defence representative were given due opportunities to view the contents of clippings of CD. Moreover, MW1 Sh. Ray deposed that after viewing the contents of clippings of CD, defence representative again exercised his right to cross-examine the witness.

13. Mr. Arora further submitted that Id. Tribunal after receiving the report of the enquiry observed that the service of show-cause notice on proposed punishment and hearing of the petitioner on it are not disputed. Thus, the enquiry conducted by the respondent / Management confirms to all standards of fairness and its tenets of natural justice.

14. Therefore, the fact remains that the video film was recorded by the security cameras installed in the respondent Bank. When Sh. Arjun Singh and petitioner were left alone in the police-station, the petitioner came out and disclosed that the phone was in bank only.

15. MW2 Ashwani Kumar in his cross-examination specifically stated that he saw the petitioner kept a chair in front of an Almirah and stepped on the chair and took out the mobile phone from there.

16. Id. Counsel further submitted that in the departmental enquiry preponderance of probability is required. Another Staff member namely Arjun, who stole the mobile phone was awarded dismissal from service. However, the petitioner was compulsorily retired with all benefits of service. Hence, there is no perversity in the award passed by the Id. Tribunal. Therefore, under Article 226 of the Constitution, this court is not required to interfere in the award.

17. Upon hearing, Id. Counsel for the parties, it is not in dispute that the phone was got recovered by the petitioner. His movement was seen in the cameras installed in the Bank. He was seen moving with another staff member namely Arjun. When both were taken to the police station, they were left alone for some time and thereafter the petitioner disclosed the location of the mobile phone. Thus, the petitioner cannot say that he was not involved in stealing the mobile phone in question with another staff member namely Arjun. The

stealing of any item of the establishment where the petitioner was working is a serious offence, which cannot be assessed with leniency and sympathy. Since, Sh. Arjun was the main culprit, therefore, he was removed from the service, whereas the petitioner helped the above-named Arjun in the alleged theft, therefore, the respondent / establishment punished him with lesser punishment.

18. Though, in the judicial review this court need not to appreciate the evidence, however, it is established by the witnesses of the Management and video cameras installed in the respondent Bank that the petitioner along with other Arjun Singh was found stealing the mobile phone which admittedly was got recovered by the petitioner. Had the petitioner not involved in the theft, this fact would have been disclosed by Arjun, another staff member. However, it was disclosed by the petitioner himself. Therefore in any stretch of imagination, it cannot be said that the petitioner was not involved in the theft.

19. Moreover, the movement of the petitioner with another staff member has been seen in the cameras installed in the building which clearly establishes that the said mobile was stolen in collusion with the

petitioner. Accordingly, he was given compulsory retirement with all service benefits. Moreover, vide order dated 14.07.2011, ld. Tribunal held that the enquiry conducted by the Respondent / Management was proper by giving full opportunity to the petitioner. The same has not been challenged by the petitioner.

20. However, if it is considered that the order dated 14.07.2011 is merged in the final order, even then, I do not find any discrepancy in order dated 14.07.2011 and 31.07.2012.

21. Accordingly, present petition is dismissed with no order as to costs.

SURESH KAIT, J

DECEMBER 18, 2014

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