

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 15252 of 2005

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Bank of India, through its Zonal Manager, R.Block, Bir Chand Patel Marg,
Patna,

.... Petitioner

Versus

1. The Presiding officer, Industrial Tribunal, Patna.
2. Sri Binay Kumar, Maa Bhawan, Sudha Kunj, Jaiprakash Nagar, P.O. -
Gewal Bigha, Dist. - Gaya.
3. Union of India, Secretary Labour and Employment, Shram Bhawan,
New Delhi.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ram Janam Prasad, Advocate
 Mr. Nishi Nath Ojha, Advocate
 Mr. Hari Narayan Ram, Advocate

For the Respondent/s : Mr. V.N.Sahay, Advocate
 Mr. Arun Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 03-09-2015

The petitioner/Bank of India, invoking writ jurisdiction of this Court, has prayed for quashing of Award dated 30th September, 2005 passed by the Presiding Officer, Industrial Tribunal, Patna (hereinafter referred to as the 'Tribunal') in Reference Case No. 1 (C) of 2004. The Tribunal has directed for re-instatement of respondent no. 2 namely Sri Binay Kumar forthwith except salary for the period of his suspension holding that punishment of removal from service was too harsh and

disproportionate to his guilt.

2. Short fact of the case is that the respondent no. 2 was appointed as Cash-cum-Accounts Clerk in the year 1985 in the Bank of India. Subsequently, in the month of September, 2001, he was transferred to Gaya and posted at A.N.Puri Branch, Gaya. While, he was posted at Gaya, he committed serious misconduct and financial irregularities and thereafter, he was proceeded departmentally for two charges, which are:

1. On 01-01-2002, he unauthorisedly altered the amount of Rs. 276/- in P/L Debit entry pertaining to payment of interest in DBD A/c No. 3899 to Rs. 5276/- and further credited the difference amount of Rs. 5000/- to his own O/D account. He was charged for the said transaction, which was done by him using the password of one Sri Zafar Islam, CTO when Sri Islam had logged in on two computers simultaneously and working on one of the computer leaving the first computer logged in, he (respondent no. 2) used computer which is already logged in by Sri Zafar Islam, unauthorisedly to make alteration in the P/L Debit and to credit his O/D account. He was also charged with credit voucher, pertaining to his O/D account, was removed/destroyed by him.
2. On 11-01-2002, the respondent no. 2 altered P/L Debit entry of Rs. 1500/- pertaining to interest credited in DBD A/c No. 1081 to Rs. 11,500/- and credited difference amount of Rs. 10,000/- to his own S/B Account No. 5500. The amount so fraudulently credited to his own S/B account was withdrawn by him on 28-01-2002. He was also

charged that he altered the figure in the transfer book on 09-01-2002 manually and made the necessary alteration in the page total also.

3. In the departmental proceeding, some of the witnesses were examined, however; the respondent no. 2/delinquent before conducting authority accepted his guilt and as such, punishment order i.e. dismissal of the respondent no. 2 from service was passed. After the dismissal, a dispute was raised and matter was referred to the Tribunal for adjudicating on **“Whether the order of punishment to remove Sri Binay Kumar, Cash-cum-Accounts Clerk from service while working in Gaya Branch of the Bank of India was legal and justified? If not, what relief the workman was entitled to?”**

4. The learned Tribunal, while deciding the Ref. Case No. 1(C) of 2004, had examined entire record relating to departmental proceeding against the delinquent. It has been noticed by the Tribunal that the delinquent had accepted the guilt and subsequently, defalcated amount was also deposited by the



delinquent. The Tribunal did not find any illegality or irregularity in the departmental proceeding, in which decision for removal of delinquent was taken. However, the learned Tribunal, taking lenient view on the quantum of punishment, passed order of reinstatement of the delinquent, which has been assailed before this Court in the present proceeding.

5. Sri Ram Janam Prasad, learned counsel, who was assisted by Sri Nishi Nath Ojha, learned counsel for the petitioner/Bank assailing the award dated 30th September, 2005 in Ref. Case No. 1(C) of 2004 prepared by the Presiding Officer, Industrial Tribunal, Patna submits that once in the departmental proceeding, it was noticed that the delinquent, being employee of the Bank, had committed serious misconduct pertaining to financial irregularity, save and except, passing order of removal of such employee from the Bank service, no other punishment was required to be passed. He fairly submits that ofcourse, the charges against the petitioner were relating to commission of criminal offence, for



which, the delinquent was required to be prosecuted, but in any event, no prosecution was initiated against him. He further submits that once the reference was made by the Government of India to adjudicate on the matter pertaining to the question of legality or illegality of the order of removal, the learned Tribunal was not authorized to travel beyond the term of reference and come to the conclusion that the punishment order was disproportionate to the charges.

6. He further submits that in an identical case, the Hon'ble Supreme Court, in a case reported in **(2006) 1 Supreme Court Cases 63 (Karnataka Bank Ltd. -vs.- A.L. Mohan Rao)** had interfered with the order of the Karnataka High Court, whereby, in case of financial irregularity committed by the employee, though he was dismissed from the service, the High Court taking lenient view had altered the punishment and directed for re-instatement without any back-wages. Learned counsel for the petitioner has specifically referred to paragraph - 6 of the afore-referred case, which is quoted

here-in-below:-

“6. In our view, a gross misconduct of this nature does merit termination. We fail to see what other type of misconduct would merit termination. It is not for the courts to interfere in cases of gross misconduct of this nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved. In such matters, it is for the disciplinary authority to decide what is the fit punishment. In any case on such a misconduct, it could never have been said that termination of service is not the appropriate punishment.”

7. Besides this, he has relied on Bipartite Settlement dated 19-10-1966. Referring to Clause 19(V)(J), learned counsel for the petitioner submits that an act pre-judicial to the interest of Bank or gross-negligence or negligence involving or likely to involve Bank in serious loss has been termed as gross misconduct. In case of commission of gross misconduct by an employee of the Bank, Clause 19(VI)(A) prescribes dismissal even without notice. However, in the present case, despite the fact that the delinquent had committed gross misconduct, he was proceeded departmentally and in the departmental proceeding, he had already admitted his guilt and thereafter, dismissal order was passed. In sum and

substance, it has been argued that in a case of such gross misconduct pertaining to financial irregularities, the learned Tribunal has erred in altering the punishment of removal to re-instatement and Award is liable to be set aside.

8. Sri V.N.Sahay, learned counsel, who has appeared on behalf of respondent no. 2/delinquent opposing the prayer of the petitioner submits that the learned Tribunal was well competent and authorized to alter the punishment, even beyond the terms of reference. He submits that the learned Tribunal has exercised power under Section 11-A of the Industrial Disputes Act, 1947, which empowers the Tribunal to pass order for imposing lesser punishment. However, he does not dispute that the delinquent had not admitted his guilt, rather he submits that delinquent had admitted his guilt on certain assurance given by the Bank and as such, no error has been committed by the Tribunal in altering the punishment order. He further submits that the learned Tribunal has discussed each and every aspect of the matter and for altering the

punishment, he has assigned a detailed reason, which has been incorporated in paragraph 46 & 47 of the award.

9. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that the delinquent was charged for gross misconduct pertaining to financial misappropriation in the Bank while functioning as bank employee. Moreover, the delinquent had already admitted his guilt. Such facts were noticed by the Tribunal in paragraph - 36 of the Award, which is quoted here-in-below:

"36. We have perused the record of Domestic Enquiry filed by the management which runs into several pages. The Enquiry findings, which has been marked Ext. M on behalf of the management, shows that as the C.S.E. have already admitted his guilt, he did not propose to make enquiry elaborately. That some witnesses namely L.N.Jha, Manager, D.Bosh, Staff Officer, J.M.Meena, Staff Officer, A.K.Singh, Staff Officer, Zafar Ishlam, C.T.O. were examined by the Enquiry Officer who all supported the allegations made against the workman. The Enquiry Findings further show that the C.S.E. was advised to produce list of defence documents and defence witnesses, but the C.S.E. stated that since he admitted his guilt, he had no defence documents or defence witnesses. On this statement of the C.S.E., the Enquiry Officer concluded the enquiry on 26.3.2002 at 4.30 P.M. He submitted his report to the Disciplinary Authority in which he held that it was clearly established as well as admitted that the C.S.E. had altered the entry in the Bank records and had taken pecuniary advantage of the

same. It further appears from the report that the C.S.E. had refunded Rs. 15000/- to the Bank when the fraud was detected. He concluded his enquiry saying that C.S.E. Binay Kumar had acted in a manner prejudicial to interest of the Bank and had committed fraud on two occasions."

10. Once the delinquent himself had accepted the guilt in the departmental proceeding, keeping in view the seriousness of the charges, the Bank had rightly passed order for removal of delinquent from the service. Ofcourse, the learned Tribunal had tried to justify his action of altering the punishment by discussing some facts in paragraphs 46 & 47. It would be appropriate to quote paragraph 46 & 47 of the Award, which are as follows:

"46. It is clear from the aforesaid discussion that the workman admitted his guilt in course of domestic enquiry of the Bank and give in writing on 6.2.2002 and 7.2.2002 before the Officers of the Bank that he had committed the misconduct by defalcating the Bank money. It is also clear that he expressed his regret and assured that he would not repeat such mistake in future. It also may be mentioned that the defalcated money was deposited by the wife of the workman in the Bank. It is in this context, that it has been argued on behalf of the workman that a lenient view should have been taken while awarding punishment to him. That the punishment of dismissal from service is too harsh. Now, we propose to refer to some rulings on this point. It has been held in a ruling reported in (1987) II LLJ-491 that it is fundamental principle of justice that the punishment should be commensurated with the guilt. That a Judge ought to have equity before his eye. In Rama Kant Mishra Vs. State of U.P. (1982) Lab I.C.1790 (S.C.) the Hon'ble Supreme Court



observed that "It is well recognized principle of jurisprudence which permits the penalty to be imposed for misconduct that the penalty must be commensurate with the gravity of the offence charged". It is well settled law that even where the Tribunal is satisfied that the act of misconduct alleged against the workman is proved and penalty has been imposed, it has to examine as to whether the extreme penalty of dismissal or discharge is justified or not in the facts and circumstances of this case. If it comes to the conclusion that the punishment is disproportionate or excessive, to the act of misconduct committed by the workman, it has the power to vary the punishment and impose lesser punishment which it may deem just and fair in the circumstances of the case.

47. In the light of the evidence on the record of the domestic enquiry it is clear that the workman expressed his regret and assured the Bank not to commit such misconduct in future. The money defalcated by him was also made good to the Bank. The workman is aged 49 years and still about 11 years of service is left to be rendered by him. It is stated that his entire family is in ruins and facing many difficulties in carrying on his family affairs and is also on the brink of starvation. Considering all these facts we are of the opinion that the punishment to remove Sri Binay Kumar Cash-cum-Accounts Clerk from service while working in Gaya A.N.Puri Branch is very harsh and disproportionate to the misconduct alleged against him.

11. The Court is of the opinion that in case of allegation of serious misconduct pertaining to financial irregularity against a bank employee, stern action is required to be taken. The Apex Court in a case reported in AIR 2003 SUPREME COURT 1571 (Chairman and Managing Director, United Commercial Bank and others -vs.-

P.C. Kakkar) has held that the Bank employees/officers are required to exercise higher standard of honesty and integrity. For just decision in the matter, it would be appropriate to quote paragraph – 14 of the judgment, which is as follows:-

“14. A Bank Officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the 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, Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, 1996 (9) SCC 69, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one’s authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.”

12. Accordingly, in view of guidelines given by the Apex Court, as discussed above as well as the order of the Apex Court in the case of **Karnataka Bank Ltd. (supra)**, the Court is of the opinion that learned Tribunal was not justified in altering the punishment,

particularly; keeping in view the charges against the delinquent relating to financial irregularities.

13. So far as point, which has been raised by the learned counsel for the petitioner that the Tribunal has traveled beyond its jurisdiction/limits, the Court is in the agreement with Sri V.N.Sahay, learned counsel for the respondent no. 2 that in view of Section 11A of the Industrial Disputes Act, 1947, the Tribunal can pass an order for lesser punishment, but in view of the facts and circumstances of the present case i.e. proved charge of financial irregularity, the Tribunal was not justified to modify the punishment.

14. Accordingly, the Award dated 30th September, 2005 in Ref. Case No. 1(C) of 2004 by the Presiding Officer, Industrial Tribunal, Patna is, hereby, set aside.

15. The writ petition stands allowed.

(Rakesh Kumar, J.)

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