

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19548 of 2012

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Bank Of India, Through Its Zonal Manager R. Block, Birchand Patel Marg,
 Patna Petitioner

Versus

1. The Central Government Industrial Tribunal No. 1, Dhanbad Through
 Union Of India
 2. Shri Satish Rajak S/O Late Ganga Rajak Bhola Niketan, Jai Mahavir
 Colony, Sandalpur, P.S.- Bahadurpur, P.O.- Mahendru, District- Patna
 3. The Union Of India Through The Secretary Ministry Of Labour And
 Employment, New Delhi Respondents

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Appearance :

For the Petitioner/s : Mr. Ranjit Sinha. Advocate
 For the Union of India : Mr. Ravinder Kumar Sinha, Advocate
 For the Respondent No.2: Mr.Dilip Kumar Sinha, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
 PRATAP SINGH**

ORAL ORDER

9 13-01-2015 The petitioner-Bank of India seeks quashing of the award
 dated 17.7.2012 passed by the Presiding Officer, Industrial
 Tribunal No.1, Dhanbad in I.D. Case No.1/2012 whereby after
 setting aside the order dated 20.10.2011 directed the petitioner
 Bank to reinstate the workman (respondent No.2 herein) with 50%
 back wages with all consequential benefits.

2. The facts of the case in brief are as follows; the respondent
 No.2 was initially appointed in the Bank in the year 1985 as Sub-
 staff. Later on, he was posted in the Zonal Office, Patna as a Peon.
 In the year 2009, he was departmentally preceded for three
 charges. As per Charge No.1, the respondents introduced one
 Dhananjay Thakur as his relative to Shri Utpal Kumar Rai, Chief
 Manager, Rajendra Nagar Colony Branch and requested him to



sanction his application for loan. The employee assured Shri Dhananjay Thakur that his loan application would be considered favourably and would be duly sanctioned. He demanded a sum of Rs.5,600/- from Shri Thakur for sanction of loan from Rajendra Nagar Colony Branch. Charge No.2 relates to misuse of Credit Card facility for excess withdrawal. Charge No.3 states that respondent No.2 did not deposit the loan amount in time.

3. Charge No.1 was found fully proved in the departmental enquiry, whereas Charge Nos.2 and 3 were found partially proved. On conclusion of the enquiry, the enquiry report was submitted on 28.1.2011 (Annexure-4). After providing personal hearing to the respondent No.2 on the enquiry report, the disciplinary authority vide his order dated 20.10.2011 passed an order of compulsory retirement with all superannuation benefit i.e. Pension, Provident Fund and Gratuity. Respondent No.2 preferred an appeal which too was rejected by the Zonal Manager vide his order dated 1.3.2012. Being aggrieved, the respondent No.2 filed complaint before the Central Government Industrial Tribunal No.1, Dhanbad (in short C.G.I.T.) which vide order dated 17.7.2012 while setting aside the order of compulsory retirement, directed the petitioner-Bank to reinstate him (respondent no.2 herein) with 50% back wages. Now it was turn of Bank of India to move this Court in

writ jurisdiction.

4. Learned counsel for the petitioner submits that once the Tribunal has found that the enquiry was fair and proper, he ought not to have set aside the enquiry report and doubted the findings arrived at by the Enquiry Officer. In support of his submission, learned counsel for the Bank has relied upon a decision in the case of Mahindra and Mahindra Limited vs N.B. Naravade, reported in (2005) 3 SCC 134, particularly paragraph 18. Further more, the Tribunal relied upon extraneous materials not on record of enquiry. To be specific, the Tribunal erroneously has relied upon letter dated 23.8.2011 and affidavit dated 20.8.2011 which are enclosed to writ application. In the affidavit, Dhananjay Thakur seems to deny the allegation he had made against respondent No.2.

Learned counsel submits that the affidavit dated 20.8.2011 was submitted after conclusion of the departmental proceeding in which Dhananjay Thakur had participated and had also got examined himself. He thus submits that the Tribunal ought not to have relied upon such documents brought on record after closure of proceeding. Respondent No.2 in fact committed misconduct by demanding gratification from Dhananjay Thakur for getting his loan sanctioned and as such punishment of compulsory retirement

is not disproportionate to the offence. However, the Tribunal on the basis of the affidavit dated 20.8.2011 exonerated respondent No.2 of the charges and had set aside the order of compulsory retirement.

5. Learned counsel for respondent No.2 submits that the award of Tribunal is correct and does not need any interference. He submits that the complainant Dhananjay Thakur has finally stated the correct facts in his affidavit dated 20.8.2011 that he lodged the case at the instance of the then Branch Manager, and respondent No.2 had not demanded any gratification for sanctioning of loan. He submits that Respondent No.2 is a staff of zonal office, whereas application for loan was submitted before the Rajendra Nagar Colony Branch of the Bank. He next argued that Charge Nos.2 and 3 would not amount to misconduct. He submits that it is correct that respondent No.2 withdrew amount beyond the credit card facility, but he repaid the entire amount with full interest. Similarly, with respect to Charge No.3 he submits that there was some delay in paying the mortgaged loan but he did make payment of the full amount with due interest.

6. I may agree with the broad submissions of learned counsel for Respondent No.2 that the delayed payment of mortgaged



loan would not strictly speaking be a 'misconduct' but a mere violation of terms and norms of repayment of loan. As such Charge No.3 is not made out against respondent No.2. So far as Charge No.2 is concerned, respondent No.2 ought not to have withdrawn in excess of credit card facility. The offence would not term grievous and the same has rightly been found to be only partially proved.

7. This takes me to the first charge. Charge No.1 is grave. The allegation was that respondent No.2 took bribe of Rs.5600/- from Dhananjay Thakur for having his loan sanctioned from Shri Rai, who was Chief Manager of R.N.Colony Branch. The issue is whether the prosecution has been able to produce materials in support of the charge. I find from paragraph 6(i)(Ka) of the Enquiry Report that Mr. U.K. Rai stated that respondent No.2 introduced Dhananjay Thakur, the complainant as his relative (nephew) and requested him to sanction his loan. The loan could not be sanctioned on account of procedural short comings. Thereupon, Dhananjay Thakur filed a complaint against respondent No.2 which was enquired into by the Inspector of the Bank. In the preliminary enquiry, the allegation leveled by the Dhananjay Tiwary against respondent No.2 was found prima facie to be correct. Thereafter, charge sheet was served and

regular enquiry was held. In the regular enquiry, the Enquiring Officer on the basis of materials on record found the Charge No.1 to be proved.

8. I too find that the complainant Dhananjay Thakur in his letter dated 18.9.2009 stated that Respondent No.2 asked bribe for getting his work done. Further more, Dhananjay Thakur in his evidence before the Enquiring officer admitted that he gave money to respondent No.2. The Tribunal or this Court in exercise of jurisdiction under Article 226 of the Constitution of India would not go into sufficiency or otherwise of the materials on the basis of which disciplinary authority has recorded a finding of fact. However, if such finding is based on no materials or on the basis of materials not germane to the facts of the case, then definitely both Tribunal and this Court can interfere in the matter. In the instant case, I find that the Tribunal has relied upon the materials de hors the record of the proceedings. In fact, the Tribunal heavily relied upon the subsequent affidavit filed by respondent No.2 after conclusion of the departmental enquiry to the affect that he had not made any allegations or complaint against Respondent No.2.

9. In my view, the Tribunal misdirected itself in considering the materials beyond what has come on record in course of



enquiry. Respondent No.2 next submits that the Enquiry Officer has made interpolation in the complaint filed by Dhananjay Thakur. He submits that between paragraphs 12 and 13, there is a gap which suggests that a whole line has been sought to be rubbed by putting a paste. He further submits that paragraphs 12,13 and 14 has been renumbered as paragraphs 13, 14 and 15 in order to cover up the interpolation.

10. Respondent No.2 lastly submitted that the punishment is harsh, excessive and disproportionate to the offence committed by him.

11. Learned counsel for the Bank submits that no interpolation was done by the Enquiry Officer and Ext. M/9 is a copy of the complaint which has been filed by Dhananjay Thakur.

12. I find that Respondent No.2 had not put any question to Dhananjay Thakur whether complaint made by him has been interpolated as he would have been the best person to answer whether he had himself obliterated the line between paragraphs 12 and 13 or whether it is handi work of Enquiry Officer. Respondent No.2 has failed to establish whether there was any mischief at all. As such, I do not find any infirmity in the order of the disciplinary proceeding and the Tribunal has erred in setting aside the proceedings primarily on the basis of the

materials which was subsequently produced.

13. For the reasons aforementioned, the award dated 17.7.2012 passed by the Presiding Officer, Industrial Tribunal No.1, Dhanbad in I.D. Case No.1/2012 is set aside. So far as quantum of punishment is concerned, I am inclined to grant one more opportunity to respondent No.2 in the matter. If respondent no.2 files a fresh representation with respect to quantum of punishment before the Zonal Manager, he would consider his representation in accordance with law within three months from the date of its filing without any prejudice. Nothing should be construed as this Court having expressed any opinion on the correctness or otherwise of the quantum of punishment.

14. With the aforesaid liberty to the respondent No.2, this writ application stands disposed of.

(Samarendra Pratap Singh, J)

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