

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5648 OF 2014

General Manager,
Reserve Bank of India
Fort, Mumbai-400 001

.....Petitioner

: VERSUS :

Shri. Ramesh Babaji Mhadlekar,
C/o. Deepak Narkar,
Shivsadan Bldg,
Opp. BEST office, Room no.86,
4th Floor, Sane Guruji Marg,
Jacob Circle, Mumbai-400 011.

.....Respondent

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Ms. Rajani Iyer, Senior Counsel i/by. Mr. Suresh Kumar, Advocate for the petitioner.

Mr. Sanjeev Sawant a/w. Mr. Sachin Kadam, Advocate for the respondent.

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Coram :-**Smt. R.P. SondurBaldota, J.****Judg. Resd on :-****16th December, 2014****Judg. Pron.on :-****6th May, 2015.****JUDGMENT :-**

1). This petition is by the employer,
Reserve Bank of India to challenge Award dated 24th October, 2013

passed by the Central Government Industrial Tribunal, Mumbai. Respondent is the employee.

2). The brief factual background of the case is that, the respondent was employed as a driver by the petitioner vide appointment order dated 31st July, 1991. As per the appointment letter, he was required to drive bank's fleet of automobiles viz. Cars, Bullion Vans etc. and also attend to their minor repairs. At the time of his appointment, he had submitted his driving license issued to him by the Regional Transport Officer. The driving license shows that, it authorizes him to drive "as a paid employee/a transport vehicle".

3). On 9th December, 2009 the petitioner was posted in the "Issue Department" and was asked to drive the bank's Bullion Van. The respondent refused to drive the Bullion Van stating that he did not have the required license. This was taken by the petitioner as an act of defiance and it initiated disciplinary proceedings by issuing show cause notice dated 26th February, 2010. The respondent replied the show cause notice by his letter dated 12th March, 2010. The petitioner, then on 28th April, 2010 issued chargesheet to him. The chargesheet alleged that the respondent had committed breach of Regulation 32 of Reserve Bank of India (Staff) Regulations, 1948 by failing to comply with and obey the orders and directions issued by his superiors by refusing to drive Bullion Van and breached Regulation 47(1) by failing to abide by the office

discipline. After due conduct of the enquiry, the enquiry officer found the respondent guilty of charges and submitted his report. That enquiry report was accepted by the petitioner and second show cause notice dated 31st December, 2010 was served upon the respondent indicating the tentative penalty. The respondent replied the second show cause by his letter dated 6th January, 2011. On consideration of the reply, the petitioner by its final order dated 31st January, 2010 imposed penalty of dismissal from service upon the respondent. The order was challenged by the respondent by preferring appeal to the Appellate Authority. His appeal was rejected by the Appellate Authority rejected the respondent's appeal by its order dated 13th October, 2011. Thereafter, the respondent raised industrial dispute before the Assistant Labour Commissioner. On failure of conciliation the appropriate government by its order dated 8th December, 2011 referred the dispute for adjudication to the Central Government Industrial Tribunal. The terms of reference made by the appropriate Government were as follows :

“Whether the action of the Management of Reserve Bank of India in dismissing Shri. Ramesh Babaji Mhadlekar, Driver from the service of the bank vides their order No.77/338 dated 31.01.2011 is legal and justified ? To what relief the workman is entitled ?”

4). After completion of the pleadings of the reference and the evidence, the Tribunal by its order dated 30th September, 2013 published Part-I Award holding that the enquiry conducted by the petitioner is fair

and proper and that the findings of the Enquiry Officer are not perverse. The parties thereafter were directed to argue/lead evidence on the quantum of punishment. Thereafter, by the impugned order the tribunal considered the punishment awarded to the respondent and held that the punishment was excessive and set aside the same. The Tribunal modified the punishment to compulsory retirement from service with all retirement benefits.

5). The Tribunal, for giving a finding that the punishment awarded to the respondent was disproportionate to the charges proved against him held that when the respondent was asked to drive Bullion Van, which comes in the category of “heavy vehicle”, could have sought for time to obtain for necessary license to drive heavy motor vehicle instead of out-right refusing to drive the same. He could have brought the fact to the notice of his superiors and sought time of 15 days or a month to obtain the necessary license. As his refusal to drive heavy motor vehicle was justified for want of license to drive heavy motor vehicle, the punishment of dismissal from service, was shockingly disproportionate.

6). Ms. Iyer, the learned Senior Counsel appearing for the petitioner submits that, the observation of the Tribunal that the license held by the respondent was to drive only a light motor vehicle and not to drive a heavy motor vehicle, is not correct. She also argues that a Bullion

Van cannot be said to be a "Heavy Motor Vehicle". She draws attention of the Court to Section 2(47) of the Motor Vehicles Act, 1988 which defines the term "transport vehicle" as "transport vehicle means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle". Section 2(21) of the Motor Vehicles Act defines "light motor vehicle" as "light motor vehicle" means a transport vehicle or omnibus, the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 7500 kilograms. Ms. Iyer argues that, since driving license of the respondent permitted him to drive a transport vehicle, the bank's bullion van could be driven by him. She submits that the bank's bullion van would fall in the category of "light motor vehicle" as defined under Section 2(21) of the Motor Vehicles Act.

7). There is no dispute that, since the time of his appointment the respondent had been regularly asked to drive cars of the petitioner. At no point of time, he was asked to drive the Bullion Van. Undoubtedly, driving a Bullion Van cannot be same as driving a Motor Car. After driving the motor car regularly over a long period of time i.e. between 1991 to 2009, if the respondent did not have the confidence of driving the Bullion Van and had refused to drive the same, the same could not be taken as defiance of the orders of the superiors, the punishment for which could be of dismissal from service. In my opinion, the Tribunal

has correctly balanced between the conduct of the respondent and his approach to the directions given to him to drive the bullion van and the punishment to be awarded to him for the purpose. It is to be noted that, it has not granted reinstatement to him but has softened the blow of removal from service to compulsory retirement with all retirement benefits. I find no infirmity in the impugned order. Consequently, the same does not require any interference at the hands of this Court. Hence, the petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)